

## Domestic and international law contradictions in Zimbabwe's gender quota system

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**Summary:** *In 2013 Zimbabwe adopted a gender quota system for the National Assembly. However, the quota system is set at 30 per cent, contrary to international law obligations domesticated under section 17 of the 2013 Zimbabwean Constitution, which requires women to constitute at least half of all elected and nominated positions of power. While the Constitution further allows women to compete for first-past-the-post (FPTP) parliamentary seats, there are neither constitutional measures to ensure that women win FPTP seats, nor mechanisms to transition women from quota seats to FPTP seats. While the gender quota and FPTP constituency seats have increased the number of women in Parliament, they have decreased the number of women nominated and elected for FPTP seats. The quota parliamentarians are not voted by the electorate, lack a link to constituencies, and are not entitled to constituency funds. Each political party applies discretion in the nomination of women for quota seats, exposing them to exploitation and corruption. This negatively affects the quality of quota parliamentarians and, in turn, their transition to constituency seats. The article suggests that Zimbabwe extend the proportional representation electoral system and Zebra system applicable in the election of senators to the*

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*election of members of parliament. This will facilitate the alignment of Zimbabwe's political representation gender equality commitments with its constitutional and international law obligations.*

**Key words:** *gender quota; temporary special measures; constitutions; women's political representation; Parliament; Zimbabwe*

## 1 Introduction

Women in Zimbabwe comprise the majority of the population, at 52 per cent, compared to 48 per cent of their male counterparts.<sup>1</sup> However, since time immemorial, Zimbabwean women have experienced significant levels of marginalisation and relegation to private and domestic spheres, as having a voice in public spheres is considered unwomanly and uncultured.<sup>2</sup> Nevertheless, women, including Joice Mujuru,<sup>3</sup> played a vital role during liberation struggles, resulting in women's emancipation being recognised as a critical part of the fight for independence.<sup>4</sup> Obtaining its independence in 1980 from the British, Zimbabwe adopted the Lancaster Constitution, which was the result of a compromise agreement attained at the Lancaster House Conference in 1979.<sup>5</sup> The making of the Lancaster Constitution was closed to the public, with a few Zimbabwean leaders negotiating with the British.<sup>6</sup> Consequently, the Lancaster Constitution contained serious inadequacies, including being neutral regarding citizens' participation in public life. It contained no specific measures to promote the participation of historically-marginalised groups in public life, including women. The 1996 amendment to

1 Zimbabwe National Statistics Agency 'Zimbabwe 2022 Population and Housing Census Report' (2022) in 2018 xxv, [https://www.zimstat.co.zw/wp-content/uploads/Demography/Census/2022\\_PHC\\_Report\\_27012023\\_Final.pdf](https://www.zimstat.co.zw/wp-content/uploads/Demography/Census/2022_PHC_Report_27012023_Final.pdf) (accessed 6 January 2024). The total population is 15 178 979, of which 7 289 558 (48%) are male, and 7 889 421 (52%) are female.

2 M Kolawole 'Rethinking African gender theory: Feminism, womanism and the Arere metaphor' in S Arnfred (ed) *Re-thinking sexualities in Africa* (2004) 251.

3 T Mangena 'Narratives of women in politics in Zimbabwe's recent past: The case of Joice Mujuru and Grace Mugabe' (2022) 56 *Canadian Journal of African Studies* 407-425.

4 B Chiroro 'Persistent inequalities: Women and electoral politics in the Zimbabwe elections in 2005' (2005) 4 *Journal of African Elections* 94, 95.

5 Constitution Net 'Milestones towards a new constitution for Zimbabwe: Overview of constitution-making process', [https://constitutionnet.org/sites/default/files/zimbabweoverview\\_of\\_the\\_constitution\\_making\\_process.pdf](https://constitutionnet.org/sites/default/files/zimbabweoverview_of_the_constitution_making_process.pdf) (accessed 26 December 2023).

6 The Lancaster Constitution was negotiated by the British government, the Patriotic Front (led by Robert Mugabe's Zimbabwe African National Union (ZANU) and Joshua Nkomo's Zimbabwe African Peoples Union (ZAPU)), and the Zimbabwe-Rhodesia government (represented by Abel Muzorewa and Ian Smith). G Dzinesa 'Zimbabwe's constitutional reform process: Challenges and prospects' (2012) *Institute for Justice and Reconciliation* 1.

the Lancaster Constitution outlawed gender discrimination<sup>7</sup> but maintained a clause permitting discrimination on the grounds of marriage, divorce, inheritance, and customary law.<sup>8</sup>

The 1980s independence barely moved women in Zimbabwe from the margins of public life. The number of women in decision making fluctuated and moved at a snail's pace. For example, women constituted 9 per cent of the parliamentary seats in 1980, 8 per cent in 1985, and 14 per cent in both the 1990 and 1995 elections. The percentage of women in parliament dropped from 14,1 per cent in 1995 to 9,3 per cent in 2000 and rose to 16 per cent in 2005.<sup>9</sup> The fluctuation of women's representation in parliament between 1980 and 2010 reflected the dynamics in Zimbabwe's electoral context since the 1980s independence. The elections were characterised by hostility, endemic violence and impunity, evidenced by the electoral violence that occurred in 2000, 2002, 2005 and 2008, which further pushed women to the margins of political life.<sup>10</sup>

The slow pace of women's representation in Zimbabwe's Parliament in the 1980s to 2000s existed while the government of Zimbabwe was, on the other hand, demonstrating its commitment to respect human rights and women's rights in all spheres of life. Zimbabwe signed and ratified the 1948 Universal Declaration for Human Rights (Universal Declaration);<sup>11</sup> the 1966 International Covenant on Civil and Political Rights (ICCPR);<sup>12</sup> the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>13</sup> the 1995 Beijing Declaration and Platform for Action;<sup>14</sup> the Protocol to the African Charter on Human and Peoples' Rights on the Rights

7 Sec 23.

8 Chiroro (n 4) 94, 95.

9 Chiroro (n 4) 92.

10 Both the 2000 and 2002 elections were marked by structural and organised violence involving the army, the military and para-governmental wings, including ruling party supporters. In the 2002 presidential election, 36 people were killed and thousands injured; 7 000 people were displaced, and intimidation, electoral manipulation and violence were recorded. LM Sachikonye 'The electoral system and democratisation in Zimbabwe since 1980' (2003) 2 *Journal of African Elections* 130.

11 Art 1 of the Universal Declaration regards all humans as born free and equal in dignity and rights. UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, <https://www.refworld.org/legal/resolution/unga/1948/en/11563> (accessed 20 February 2024).

12 UN General Assembly International Covenant on Civil and Political Rights (ICCPR), GA Res 2200A (XXI), UN Doc. A/6316 (1966), entered into force 23 March 1976, acceded to by Zimbabwe on 13 August 1991.

13 UN General Assembly Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, Vol 1249 13, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (accessed 20 February 2024).

14 Fourth World Conference on Women in Beijing China, <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm> (accessed 13 November 2019).

of Women in Africa (African Women's Protocol);<sup>15</sup> and the SADC Protocol on Gender and Development (SADC Gender Protocol),<sup>16</sup> to mention but a few. These international and regional instruments, overall, require state parties to take deliberate measures to eradicate all forms of discrimination against women, to ensure that women can vote and be voted for and to take measures to attain equal representation of men and women in all decision-making positions.<sup>17</sup>

Bowing to both internal and external pressure,<sup>18</sup> Zimbabwe adopted a home-grown Constitution in 2013, resulting from a participatory process between 2009 and 2013. Through section 17 of the 2013 Constitution, Zimbabwe commits to

- promote full gender balance in Zimbabwean society, and in particular
- (a) promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
  - (b) take all measures, including legislative measures, needed to ensure that –
    - (i) both genders are equally represented in all institutions and agencies of government at every level, and
    - (ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament.

While section 17(1) of the Constitution requires women to constitute at least half of decision-making positions, a deviation is witnessed regarding women's representation in the National Assembly. Women can access the National Assembly through either competitive seats

15 African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union, 11 July 2003, <https://www.refworld.org/legal/agreements/au/2003/en/18176> (accessed 28 February 2024) (African Women's Protocol).

16 Initially adopted in 2008 as the SADC Protocol on Gender and Development (see [https://www.sadc.int/sites/default/files/2021-08/Protocol\\_on\\_Gender\\_and\\_Development\\_2008.pdf](https://www.sadc.int/sites/default/files/2021-08/Protocol_on_Gender_and_Development_2008.pdf)), the 2016 Consolidated Text of the Protocol on Gender and Development combined the SADC Protocol on Gender and Development, 2008, the agreement Amending the SADC Protocol on Gender and Development, 2016. Reference in this article is to the 2016 revised SADC Gender Protocol, unless otherwise stated. This Consolidated Text Edition of the Protocol on Gender and Development replaces the 2008 version. See [https://www.sadc.int/sites/default/files/2023-02/EN-REVISED\\_SADC\\_PROTOCOL\\_ON\\_GENDER\\_AND\\_DEVELOPMENT\\_2016-final.pdf](https://www.sadc.int/sites/default/files/2023-02/EN-REVISED_SADC_PROTOCOL_ON_GENDER_AND_DEVELOPMENT_2016-final.pdf) (accessed 16 June 2024).

17 Art 21 Universal Declaration; arts 3 & 25 ICCPR; art 2,4 & 7 CEDAW; art 9 African Women's Protocol.

18 The 2008-2013 constitution-making process in Zimbabwe was one of the deliverables of the Global Political Agreement (GPA) signed on 15 September 2008 by the three political parties represented in Parliament – the Zimbabwe African National Union-Patriotic Front (ZANU-PF) led by Robert Mugabe, and the two formations of the Movement for Democratic Change (MDC), namely, the MDC-T led by Morgan Tsvangirai, and the MDC-N led by Welshman Ncube. The GPA was negotiated by the Southern African Development Community (SADC) to end the 2007 election dispute between Tsvangirai and Mugabe.

via the first-past-the-post (FPTP) electoral system<sup>19</sup> or through a reserved 60-seat (30 per cent) gender quota system established under section 124 of the Constitution. Although the combination of FPTP seats and quota system has increased the overall number of women in parliament, it has not facilitated women to constitute at least half of the National Assembly as required under section 17 of the Zimbabwean Constitution.

Zvobgo and Dziva argue that the adoption of gender quota immediately increased the number of women in the National Assembly, from 14,29 per cent in 2008 to 32 per cent in 2013.<sup>20</sup> Disputedly, Tshuma demonstrates the negative impact the quota system has had on the nomination and election of parliamentarians. He argues that the number of women contesting for parliamentary seats dwindled from 105 in 2008 to 90 in the 2013 elections, causing a decline of the number of elected women parliamentarians from 34 in 2008 to 26 in 2013.<sup>21</sup> Tshuma further argues that the quota system brought into parliament a tokenist representation, patronage and clientelist politics that brings along 'unqualified' women with an interest in serving the party rather than women's or community interests.<sup>22</sup> Musasa and others add that the women's system benefits spouses of established politicians and women who have been in politics for a long period of time and have the knowledge to navigate party politics. They also point to the absence of geographical location, thematic focus, and constituency funds that consequently affect the performance of quota parliamentarians. In addition, Musasa and others argue that quota parliamentarians are taken as second-class and experience name-calling, ridicule, and endless squabbles with elected parliamentarians.<sup>23</sup> In the same vein, Mangena argues that political parties nominate quota parliamentarians for their mediocrity and incapacity to disturb the status quota as one of the strategies to sustain patriarchal domination.<sup>24</sup>

19 The first-past-the-post, also referred to as the Single Member Plurality System. In Zimbabwe this system is used for elections in the National Assembly and for local authority elections. Under this electoral system, the country is divided into 210 electoral constituencies and 1 970 wards, respectively, with each represented by a candidate. The candidate who attains the highest number of votes against the other candidate(s) is declared the winner.

20 EF Zvobgo & C Dziva 'Practices and challenges in implementing women's right to political participation under the African Women's Rights Protocol in Zimbabwe' (2017) *African Human Rights Yearbook* 69.

21 D Tshuma 'Looking beyond 2023: What next after Zimbabwe's parliamentary quota system?' (2018) 3 *Conflict Trends* 12-20.

22 As above.

23 T Musasa, F Nhekede & F Koke 'Examining the effectiveness of the women's quota in Zimbabwe: Opportunities and challenges' (2022) 6 *International Journal of Research and Innovation in Social Science* 761-768.

24 Mangena (n 3).

Notably, the missing puzzle in this scholarly conversation and literature is the demonstration of the extent to which the implementation of the gender quota system in Zimbabwe is compatible with international law.

This article, therefore, depicts the extent to which the design and implementation of the gender quota system in Zimbabwe align with the international and regional conventions that the country willingly signed, ratified and domesticated in the national laws. ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol call upon state parties to take measures to ensure equal representation of men and women in all decision-making positions.<sup>25</sup> While section 17 of the 2013 Zimbabwean Constitution domesticates the international law obligations by requiring women to hold at least half of all nominated and elected positions, an apparent deviation is witnessed under section 124, which establishes a 30 per cent gender quota system. The contradiction of sections 17 and 124 of the 2013 Zimbabwean Constitution in light of the international law obligations presents a stimulating legal puzzle worthy of scholarly exploration. Therefore, this article is informed by election reports released since 2013, including reports from election observers, as well as scholarly work on the subject matter. It has also benefited significantly from the data collection exercise that was done between September 2023 and December 2023.<sup>26</sup> Twenty-two interviews were undertaken with civil society organisations working in the area of women's political participation as well as political party leaders and government officials.<sup>27</sup>

The article is divided into three parts. The first part situates gender quota under international law, while part two demonstrates the inconsistency of Zimbabwe women's quotas with national and international law. The third part concludes the article and provides recommendations.

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25 Arts 3 & 25 ICCPR; arts 2, 4 & 7 CEDAW; art 9 African Women's Protocol; arts 12 & 13 SADC revised Gender Protocol.

26 Ethical research clearance was granted by the Open University of Tanzania on 23 September 2023. This clearance covered the interviews conducted in Zimbabwe, conducted by the author while undertaking a research visit to that country.

27 The interviews included civil society leaders from Gender Links, Women Coalition of Zimbabwe, Women in Law in Southern Africa, Women Institute for Leadership Development, Women in Politics Support Unit, Southern Africa Defenders Coalition, Women's Academy for Leadership and Political Excellence, Youth Empowerment and Transformation Trust, Election Resource Centre, and Women in Local Government Forum. Interviews were also undertaken with women leaders, candidates and parliamentarians from ZANU-PF, MDC, and staff from the Zimbabwe Gender Commission. These interviews are on file with the author.

## 2 Gender quotas under international law

Before the promulgation of the 2013 Constitution, Zimbabwe had signed and ratified the global and regional instruments that contain commitments to promote the realisation of equal representation of men and women in positions of power. For example, Zimbabwe signed the 1948 Universal Declaration for Human Rights (Universal Declaration). Article 21(1) of the Universal Declaration provides everyone with the right to participate in the government of their country, directly or through freely-chosen representatives. Article 3 of ICCPR, which Zimbabwe ratified in 1991, calls upon state parties to ensure equal rights of men and women to the enjoyment of all civil and political rights. In addition, articles 25(a) and (c) of ICCPR provide every citizen the right to take part in the conduct of public affairs directly or through freely chosen representatives, including the right to vote and to be elected. Zimbabwe also signed and ratified women-specific international and regional conventions. Article 4(1) of CEDAW, which Zimbabwe ratified in 1997, states as follows:

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

The framing of article 4 of CEDAW encourages the deployment of temporary special measures by state parties to address gender inequalities and accelerate substantive and *de facto* equality of men and women in all spheres of life.<sup>28</sup> The meaning of 'temporary special measures' is provided under General Recommendation 25, which expounds article 4 of CEDAW.<sup>29</sup> It defines 'measures' to encompass a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.

28 Substantive and *de facto* equality is the type of equality that requires more actions than formally prohibiting discrimination based on sex or gender. It considers the actual conditions of women's lives rather than guaranteeing formal equality to all people and ensures women experience equality in their lives. Substantive and *de facto* equality considers not only negative discrimination but both negative and positive legal obligations.

29 General recommendation 25, on art 4, para 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, [www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20) (English).pdf (accessed 5 December 2023).

General Recommendation 25 appreciates that although the term 'special' conforms with human rights discourse, it needs to be carefully explained as it is sometimes used to cast subjects of past discrimination as weak, vulnerable and in need of extra 'support' to participate in society. According to General Recommendation 25, the real meaning of 'special' in the formulation of article 4(1) of CEDAW is that the measures are designed to serve a 'specific goal' of addressing inequalities. Such special measures are sometimes referred to as 'affirmative action', 'positive action', 'special measures' or 'positive measures'. Such measures are not considered discriminatory and can be applied in various fields, including in politics and public life.<sup>30</sup> Further, article 7 of CEDAW provides as follows:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and ... shall ensure to women, on equal terms with men, the right (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies ...

Furthermore, Zimbabwe is also part of the 1995 Beijing Declaration and Platform for Action, which requires state parties to take steps to achieve equal representation of men and women in political spaces.

As a member of the African Union (AU)<sup>31</sup> and the South African Development Community (SADC),<sup>32</sup> Zimbabwe has ratified the African Charter on Human and Peoples' Rights (African Charter) in 1986,<sup>33</sup> and the African Women's Protocol in 2009.<sup>34</sup> Article 9(1) of the African Women's Protocol provides as follows:

States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that

<sup>30</sup> Special measures have also been used to provide scholarships for women and grant women rights in line with their biological needs, such as maternity leave, to name a few. In the political sphere, such measures have been used to allocate seats for women in parliaments and local councils in many countries.

<sup>31</sup> The AU is a continental body consisting of the 55 member states of the African continent. It was officially launched in 2002 as a successor to the Organisation of African Unity (OAU, 1963-1999).

<sup>32</sup> The SADC is a regional economic community comprising 16 member states: Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe. The SADC's objective is to promote sustainable and equitable economic growth and socio-economic development among the member states and as a sub-regional block.

<sup>33</sup> Organisation of African Unity (OAU) African Charter on Human and Peoples' Rights (African Charter) CAB/LEG/67/3 Rev 5, 21 ILM 58 (1982), 27 June 1981, <https://www.refworld.org/legal/agreements/oau/1981/en/17306> (accessed 20 February 2024).

<sup>34</sup> African Women's Protocol (n 15).



- (a) women participate without any discrimination in all elections;
- (b) women are represented equally at all levels with men in all electoral processes.

In addition, the Zimbabwean government signed the 2008 SADC Gender Protocol in 2008, ratified it in 2009,<sup>35</sup> and signed the 2016 revised SADC Gender Protocol in 2016.<sup>36</sup> Article 12 of the Revised SADC Gender Protocol calls upon state parties to ensure equal and effective representation of women in decision-making positions in the political, public and private sectors, including through the use of special measures. Article 13 of this Protocol demands that state parties adopt specific legislative measures and other strategies to enable women to have equal opportunities with men to participate in all electoral processes.<sup>37</sup> Zimbabwe further is a signatory to the SADC Updated Principles and Guidelines Governing Democratic Elections, which require that state parties ensure that at least 50 per cent of women are in decision-making positions by 2015.<sup>38</sup>

Despite the goodwill of signing and ratifying, the international and regional conventions do not have automatic operation in Zimbabwe.<sup>39</sup> Being a dualist state,<sup>40</sup> section 34 of the 2013 Zimbabwean Constitution calls upon the state to ensure that all international conventions, treaties and agreements that Zimbabwe has signed and ratified are incorporated into domestic law. Further, section 327(2) of the Constitution states:

- An international treaty which has been concluded or executed by the President or under the President's authority
- (a) does not bind Zimbabwe until it has been approved by Parliament; and

35 P Made 'Southern Africa Gender Protocol 2015 Barometer – Zimbabwe' (2015) 5, [https://www.veritaszim.net/sites/veritas\\_d/files/SADC%20Gender%20Protocol%202015%20-%20Zimbabwe.pdf](https://www.veritaszim.net/sites/veritas_d/files/SADC%20Gender%20Protocol%202015%20-%20Zimbabwe.pdf) (accessed 17 May 2024).

36 See Consolidated Text of the Protocol on Gender and Development, 2016.

37 The Protocol provides other measures under arts 13(2) and (3) to include (a) building the capacity of women to participate effectively through leadership and gender sensitivity training and mentoring; (b) providing support structures for women in decision-making positions; (c) the establishment and strengthening of structures to enhance gender mainstreaming; and (d) changing discriminatory attitudes and norms of decision-making structures and procedures ... (3) gender training and community mobilisation.

38 Southern African Development Community (SADC) SADC Principles and Guidelines Governing Democratic Elections, adopted on 20 July 2015, Pretoria, South Africa.

39 R Phooko 'The direct applicability of SADC community law in South Africa and Zimbabwe: A call for supranationality and the uniform application of SADC community law' (2018) 21 *Potchefstroom Electronic Law Journal* 5.

40 As above. There are two theories pertaining to the relationship between international law and municipal law: the dualist and monist theory. According to the dualist theory, international law and municipal law are different legal systems. International law is only applicable in the national courts if it has been adopted into national law through legislation. This is different from the monist theory, in which international law has automatic application in the country.

- (b) does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament.

Evidently, through the 2013 Constitution, the Zimbabwean government has largely succeeded in the domestication of gender equality-related international law obligations set forth in the Universal Declaration, ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol. Gender equality was one of the negotiated pillars during the 2009-2013 constitution-making process. Henceforth, the 2013 Constitution was celebrated for containing progressive gender equality provisions,<sup>41</sup> including in the area women's political participation.<sup>42</sup> Section 3 of the 2013 Constitution provides for Zimbabwe's founding values and principles, which include principles of equality of all human beings, gender equality, and recognition of women's rights. Expressly, in line with CEDAW, the 2013 Constitution bans discrimination of all forms under section 56 and demands Zimbabwe to take measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination to redress circumstances of genuine need and, under no circumstances, such measures shall be regarded as unfair. Section 80(3) of the Constitution considers that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement. The 2013 Constitution guarantees every Zimbabwean citizen of or over the age of 18 years the right to vote and stand for election.<sup>43</sup> Remarkably, section 17 of the Constitution domesticates the international law obligations that call upon state parties to ensure equal representation of men and women in all elected and nominated positions of power as stipulated under the Universal Declaration, ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol. As a dualist state, the domestication of international law obligations requiring states to take measures to attain equal representation of men and women in positions of power is profound and demonstrates Zimbabwe's commitment to abide by its obligations. Section 17(b) of the Zimbabwean Constitution commits to ensuring that

41 The Constitution guarantees women equal rights to own land and have equal pay and contains a specific section on women's rights. Sec 80(1) of the 2013 Constitution provides every woman with full and equal dignity of the person to men, including equal opportunities in political, economic and social activities.

42 Institutions such as the Parliamentary Women Caucus and the G20 women during COPAC proceedings have been instrumental in ensuring that gender parity laws are enacted towards a new constitution in 2013. The G20 comprised women parliamentarians, the Ministry of Women Affairs, the Women Movement in Zimbabwe and women academics. The group drafted the critical demands for gender equality in the Constitution, provided constitutional literacy across the country and lobbied for a gender-sensitive constitution.

43 Secs 67(3)(a) & (b) 2013 Zimbabwe Constitution.

both genders are equally represented in all institutions and agencies of government at every level, and women constitute at least half the membership of all commissions and other elective and appointed governmental bodies established under the Constitution or any Act of Parliament.

Despite the clarity of section 17 of the 2013 Constitution, the provisions guiding gender representation in the National Assembly demonstrate a clear non-conformity and have not facilitated the attainment of equal representation of men and women in the National Assembly, as expanded on below.

### **3 Inconsistency in Zimbabwe's gender quota system in light of national and international law**

Women in Zimbabwe can access the National Assembly through either constituency seats via the FPTP electoral system or through a reserved 60-seat gender quota established under section 124 of the Constitution. However, the drafting of section 124(1) of the Zimbabwean Constitution overlooked section 17 of the same Constitution, as well as the state's international law obligations.<sup>44</sup> The section sets the parliamentary quota system at 30 per cent, while section 17 of the Constitution requires women to constitute at least half of those holding positions of power. Similarly, as noted in the previous part, the international and regional treaties to which Zimbabwe is party, including CEDAW,<sup>45</sup> the Constitutive Act of the African Union<sup>46</sup> and the African Women's Protocol,<sup>47</sup> call for equal representation of men and women in decision-making positions. Aside from being set below the 50 per cent target, the design and execution of gender quota in Zimbabwe are constrained by a number of shortcomings when further fully mirrored against the gender equality obligations set under the Universal Declaration, ICCPR, CEDAW, the Beijing Declaration and Plan for Action, the African Women's Protocol and the SADC Gender Protocol domesticated under section 17 of Zimbabwe's Constitution.

There is an unspoken presumption within the political parties that if the Constitution provides for 60 seats for women, then the FPTP constituencies are designated for men.<sup>48</sup> Since the introduction of gender quota in Zimbabwe in 2013, the political parties, including

44 Tshuma (n 21).

45 Art 7 CEDAW.

46 Art 4 Constitutive Act of the African Union.

47 Arts 9 & 11 African Women's Protocol.

48 An online Interview with a political party leader (anonymous) on 18 October 2023.

ZANU-PF and MDC-Alliance, have discouraged women from vying for FPTP seats contrary to article 4 of CEDAW that requires temporary special measures, including quota system, not to cause discrimination against women. Political parties argue that women already have guaranteed seats under a quota system and, hence, should not be vying for FPTP seats.<sup>49</sup> Consequently, since the onset of the quota system in 2013, women have been consistently leaving FPTP seats for quota seats. Also, the nomination of women for FPTP seats by political parties declined from 105 in 2008 to 90 (13 per cent) in 2013 and subsequently to 12,4 per cent in the 2018 elections.<sup>50</sup> Only 70 (11 per cent) of women contested for FPTP seats out of 636 candidates in the 2023 general elections.<sup>51</sup> Similarly, since 2013, the number of women elected from FPTP constituencies has declined. After Zimbabwe's 2013 elections, the number of elected women in the National Assembly fell from 34 to 29 and then to 25 (11,9 per cent) in the 2018 elections.<sup>52</sup> After the 2023 elections, the number of women directly elected to parliament dropped to 22 (10,5 per cent).<sup>53</sup> Only 30 per cent of the women who contested won, a decline of 1,9 per cent from the 2018 elections.<sup>54</sup> The evidence that gender quota causes a decline in the number of women winning constituencies communicates that the purpose of gender quota to facilitate the realisation of equal representation of men and women in Zimbabwe's parliament is far-fetched.

On the other hand, it is the requirement of the CEDAW Committee that member states institutionalise clear guidelines to guide the political parties' nomination of women for quota seats.<sup>55</sup> In Zimbabwe, however, the nomination of women for quota seats is not

49 Tshuma (n 21).

50 Zimbabwe Human Rights NGO Forum 'Human rights violations in the context of the 2018 harmonised elections' 36, <https://ntjwg.uwazi.io/api/files/1572944113287d5g3mfabq2w.pdf> (accessed 5 February 2024).

51 Zimbabwe Electoral Commission 'Zimbabwe 2023 harmonised elections report' 32, <https://www.zec.org.zw/download-category/elections-reports/> (accessed 12 February 2024).

52 The Carter Center 'The Republic of Zimbabwe 2018 presidential, parliamentary, and local council (harmonized) elections' (2020) Election Expert Mission Final Report 39, [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/zimbabwe-final-2018-elections.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/zimbabwe-final-2018-elections.pdf) (accessed 6 December 2023).

53 Twelve women won from ZANU-PF and 10 from CCC. Men took 187 parliamentary seats.

54 European Union Election Observation Mission 'Final Report for 23 August 2023 harmonised elections, Zimbabwe' (2023) 28, <https://www.eas.europa.eu/sites/default/files/documents/2023/EU%20EOM%20ZWE%202023%20FR.pdf> (accessed 10 January 2024).

55 General Recommendation 25 on article 4 paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 30th session, 2004.

guided by the nationally-recognised uniform procedure.<sup>56</sup> Political parties apply absolute discretion: Each party has its own mechanism to obtain women for quota seats, resulting in several ramifications. To get their names at the top of the party list and increase the chance of being nominated, women must either come from a background of privilege, such as being a member of the liberation struggle, or have a powerful husband or male relative to root for them within a political party. Other quota aspirants are subjected to exploitation and corruption, including sexual corruption.<sup>57</sup> After making it to the party list, the quota seat aspirants use their own resources to campaign extensively for FPTP seat candidates. This is because a share of quota parliamentarians to the party is dependent upon the number of FPTP seats won by the respective party. Nevertheless, there is no meaningful engagement between the electorate and gender quota aspirants during campaigns because the latter do not campaign for themselves but for FPTP seat candidates. After the quota women get to parliament, the disconnection with voters is further exacerbated by the tug of war with the elected parliamentarians. As quota parliamentarians officially operate in no designated constituencies, they are obliged to constantly ask permission from elected parliamentarians before engaging and/or undertaking any development-related projects in constituencies.<sup>58</sup> Elected parliamentarians consider quota parliamentarians as potential competitors and often block their engagement in FPTP constituencies. The *status quo* affects the engagement of quota parliamentarians with voters and further hampers their decision to transition to FPTP seats. Similarly, constituency engagement by quota parliamentarians is further faced yet with another layer of challenges. While article 4 of CEDAW calls upon the special measure not to cause discrimination to the beneficiaries, there are practices that discriminate against quota parliamentarians in Zimbabwe. Although elected parliamentarians receive \$50 000 as a constituency fund to finance development projects in their constituencies, quota parliamentarians do not receive such funding as they are considered as operating without constituencies. Accordingly, quota parliamentarians use their salaries and stipends to finance constituency work, limiting their financial power to engage with the electorate, build rapport and a political network, and add constraints hindering their transition to FPTP seats. Similarly, the fact that quota parliamentarians are nominated

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56 The Electoral Act ch 2:13, only provides a formula for allocating the seats to eligible parties but not how political parties should nominate women for the quota system.

57 An online interview with a woman leader in a political party (anonymous) on 15 October 2023.

58 An online interview with a non-governmental organisation leader (anonymous) on 16 October 2023.

by their political parties and not citizens makes them accountable to the party and distances them from citizens. Quota parliamentarians diligently work to serve party interests, sometimes at the expense of citizens and or women's interests, mainly as a strategy to maintain the quota seat and secure nomination in the next round of elections.

It is also argued that political parties often nominate weak women, party stalwarts whose ability to disrupt the *status quo* is compromised.<sup>59</sup> This is because of the strong patriarchal veins and the desire to maintain patriarchal hegemony within the political parties.<sup>60</sup> Political parties perceive quota seats as a mechanism to maximise their political grip rather than to promote gender equality.<sup>61</sup> While the amendment to section 124 of the 2013 Zimbabwean Constitution requires political parties to ensure that 10 of the 60 quota parliamentarians are under the age of 35 and that women with disabilities are represented in party lists, the period between 2013 and 2023 witnessed quota seats occupied by old women with no energy, capacity, or interest to engineer the transformation of gender relations, leading to the quota seats being nicknamed as 'retirement seats'.<sup>62</sup> The *status quo* births underperformance, has caused a slow change in society's perception of women's political leadership and brought ridicule to the quota system. The quota parliamentarians are called BACOSI and are considered substandard and token representatives.<sup>63</sup> These challenges affect how voters regard quota parliamentarians, have intensified female parliamentarians' preference for quota seats, and affect progress towards the realisation of equal representation of men and women in the National Assembly as required under section 17 of the Constitution, ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol.

With the view to complementing the 30 per cent gender quota system, section 124(1)(a) of the 2013 Constitution allows men and

59 An online interview with a woman leader in a political party (anonymous) on 15 October 2023.

60 As above.

61 E Jarnegård & P Zetterberg 'Gender equality reforms on an uneven playing field: Candidate selection and quota implementation in electoral authoritarian Tanzania' (2016) 51 *Government and Opposition* 464-486.

62 Sec 124(1)(c) of the Zimbabwe Constitution requires political parties to ensure that (a) ten of the sixty women members are under the age of thirty-five; (b) women with disabilities are represented on their party lists; and (c) young women with disabilities are represented on their party lists in terms of an Act of Parliament. This proviso was inserted by sec 11 of Act 2 of 2021.

63 According to Mangena, the name 'Bacossi Parliamentarians' has been taken from the Basic Commodity Supply Intervention Facility (BACOSI), 'a 2008 Zimbabwe Reserve Bank initiative aimed at subsidising basic commodities. Just as the basic commodities were considered substandard, so were the women who became parliamentarians through the women's quota policy. They are seen as having a "lower status politically" and as being essentially incompetent and incapable of winning contests based on merit.' Mangena (n 3).

women to vie for competitive seats through their political parties via the FPTP electoral system and as independent candidates.<sup>64</sup> The fact that women can also run in FPTP constituency seats has not helped to close the gender gap in Zimbabwe's National Assembly. Since the start of the gender quota in 2013, women have not constituted at least half of the National Assembly, contrary to the requirement of section 17 of the Constitution. By April 2024, the Inter-Parliamentary Union data shows that women make up only 28,9 per cent of the National Assembly, a decline from 32 per cent after the 2018 elections.<sup>65</sup>

The dynamics of Zimbabwe's elections since 2013 reveal the challenges for getting nominated and winning a constituency seat. Primaries and campaigns for FPTP seats are tainted with manipulation, vote buying, impunity, violence and corruption, including sexual corruption.<sup>66</sup> Aspirants and candidates, including women, are abducted, disappear, beaten and subjected to sextortion.<sup>67</sup> Elections are increasingly becoming unbearably expensive. For example, in the August 2023 elections, aspirants were required to pay \$100, \$1000 and \$20 000 to be nominated to vie for local councils and parliamentary and presidential seats, respectively.<sup>68</sup> In Zimbabwe, men, in comparison to women, still control financial resources, have wider political networks, leverage political patronage systems, and generally dominate politics. Negative beliefs on the role of women in society as chief officers in homes and as main executors of unpaid care work still dictate political parties and voters' preference for male candidates.<sup>69</sup> Nevertheless, there is no constitutional appreciation of ways in which the entrenched social, economic and cultural beliefs disproportionately prevent women from aspiring, nominating, and being elected for an FPTP seat. There are neither ring-fenced FPTP seats for women, nor do the electoral laws provide for legislated quotas for FPTP seats. There is no legal obligation for political parties to ensure that a certain percentage of nominated candidates for FPTP seats are women.<sup>70</sup> Political parties' gender policies, strategies

64 Secs 67(3)(a) and (b) of the 2013 Constitution provides every Zimbabwean citizen who is of or over 18 years of age the right to vote in all elections and to stand for election for public office and, if elected, to hold such office.

65 Inter-Parliamentary Union 'Monthly ranking of women in national parliaments' (2024), [https://data.ipu.org/women-ranking/?date\\_month=1&date\\_year=2024](https://data.ipu.org/women-ranking/?date_month=1&date_year=2024) (accessed 8 June 2024).

66 An online interview with a non-governmental organisation leader (anonymous) on 3 October 2023.

67 With sextortion, women are asked to provide sexual favours in return for political favour or position.

68 European Union Election Observation Mission (n 54) 28.

69 An online interview with a non-governmental organisation leader (anonymous) on 13 October 2023.

70 An online interview with a staff member of the Zimbabwe Gender Commission (anonymous) on 9 October 2023.

and/or manifestos rarely contain concrete and actionable strategies to nominate women candidates and protect them from politically-motivated violence and sexual harassment.<sup>71</sup> While some political parties have adopted a one-third voluntary candidate quota, the measures remain aspirational and discretionally implemented. The few women leaders in political parties often are patriarchal subjects, and women wings, merely appendages to the party with no real power to influence equitable candidate nomination procedures.<sup>72</sup> The women in party leadership positions and those in women's wings prefer to maintain the *status quo* and shy away from demanding favourable candidate nomination procedures as they benefit from and/or are on a waiting list to benefit from gender quota seats.<sup>73</sup> Political parties avoid placing women candidates, fearing that other political parties would field strong male candidates in a constituency where they plan to field a female candidate. When the ruling party nominates a woman candidate, she is often fielded in opposition strongholds, and when the opposition party nominates a woman candidate, she becomes likely to be placed in the ruling party's stronghold.<sup>74</sup> It is normal for women candidates to be fielded in big, rural and challenging constituencies where the possibility of success is flimsy.<sup>75</sup> These compounding challenges negatively affect how women stand and win FPTP seats. In turn, it affects how FPTP seats complement the 30 per cent gender quota to close the gender gap for women to account for half of the national assembly as required by section 17 of the 2013 Constitution, ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol.

Finally, article 4 of CEDAW requires temporary special measures to be removed after the goal of achieving equal representation of men and women has been achieved. However, the design and the implementation of the first phase of the gender quota system between 2013 and 2023 and the circumstances under which the quota system and FPTP system continue to operate will hardly result in an equal representation of men and women in Zimbabwe's national assembly to warrant its abolition. The CEDAW Committee advises countries to operate a quota system alongside long-term measures that set favourable conditions for men and women to equally access decision-making positions before disbanding the

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71 An interview with a political party leader (anonymous) on 11 October 2023.

72 An online interview with a non-governmental organisation leader (anonymous) on 4 October 2023.

73 An online interview with a political party leader (anonymous) on 18 October 2023.

74 An online interview with a non-governmental organisation leader (anonymous) on 23 October 2023.

75 An online interview with a non-governmental organisation leader (anonymous) on 12 October 2023.



affirmative action measures.<sup>76</sup> In Zimbabwe, the 2013 Constitution set the quota system to apply for two terms, from 2013 to 2023. The 10-year duration, however, was institutionalised while the gender quota was set at 30 per cent and with neither legal mechanisms to transition women from quota to FPTP seats, nor mechanisms to ensure that FPTP seats close the 20 per cent gender gap for women to make up at least half of parliament as required under section 17 of the Constitution.

According to General Recommendation 25 on article 4 of CEDAW, the duration of a temporary special measure is determined by its outcomes and not by a mere predetermined passage of time, as is the case in the Zimbabwean Constitution. Overall, special measures must be discontinued when the desired results of bringing about equal representation of men and women in positions of power have been achieved and sustained for a period of time. I have argued elsewhere that a well-planned and executed quota system should not time the system itself; instead, the quota parliamentarians should hold the quota seats for predetermined fixed terms (preferably two terms) with deliberate measures in place to transition quota parliamentarians to competitive seats.<sup>77</sup> This would allow more women to leverage the quota system to gain political knowledge, skills, experience, and financial muscles to transition to FPTP seats, hence producing cycling benefits for the quota system. Once there is wide community acceptance of women as leaders and a level of playground, the quota system can be eradicated.

#### 4 Conclusion and recommendations

A decade of operation of gender quota in Zimbabwe ended in 2023. The system, however, is extended for another decade, until 2033.<sup>78</sup> The quota system is also replicated in local councils.<sup>79</sup> The extension of the quota system to 2033 and its replication to the local council, however, has been done without adequately addressing the

76 Pacific Islands Forum Secretariat (PIFS) and United Nations Development Programme (UNDP) Pacific Centre 'Utilising temporary special measures to promote gender balance in pacific legislatures: A guide to your options' (2009) Suva.

77 V Lihuru 'The 2020 CHADEMA special seats dispute in Tanzania: Does the National Electoral Commission comply with the law?' (2021) 20 *Journal of African Elections* 1-18.

78 Sec 124(b) Zimbabwe Constitution. This para was amended by sec 11 of Act 2 of 2021.

79 Secs 277(4) & (5) Zimbabwe Constitution. This sub-sec was inserted by sec 20 of Act 2 of 2021.

challenges discussed in the previous part.<sup>80</sup> Accordingly, the extension of quota seats for ten more years and its subsequent duplication to the local councils, albeit without substantive modification, can be summed as an absolute replication of the past decade's misery to the coming decade, not only at the parliamentary level but also in local councils. The experience from the implementation of the quota system from 2013 to 2023 points to a reasonable expectation that its extension to 2033 will still not facilitate women to make up at least half of the national assembly.

Notably, Zimbabwe has a useful home-grown example for proper execution of section 17 of the Constitution at the senate level. According to sections 120(1) and (2), the senate consists of eighty senators, of whom six are elected in each province from party lists through a proportional representation (PR) electoral system in which male and female candidates are listed alternately, and every list is headed by a female candidate. While other groups of senators, such as the traditional chiefs, have made it difficult for women to comprise half of the senate, the percentage of women senators has been sustained between 40 and 49 per cent since 2013.<sup>81</sup>

Although the PR electoral system is partly applicable in Zimbabwe, the country is not reaping its full benefits, particularly at the national assembly level, because its application has been limited to the allocation of quota seats to the political parties and does not apply in the election of constituency parliamentarians.<sup>82</sup> The recommendation for the country to fully move from the FPTP electoral system to the PR electoral system in conducting elections at local councils and the national assembly level is often met with scepticism regarding its effectiveness in measuring accountability and the desire to

80 The only change is seen under sec 124(1)(c) of the Zimbabwe Constitution, which presently requires political parties to ensure that (a) ten of the sixty women members are under the age of thirty-five; (b) women with disabilities are represented on their party lists; and (c) young women with disabilities are represented on their party lists in terms of an Act of Parliament. No further changes have been made to the mechanisms to obtain women for quota seats.

81 Sec 120(b) of the Zimbabwe Constitution provides that 16 traditional chiefs elected by the provincial assembly of chiefs from each of the provinces shall also be in the senate. It is rare for women to be traditional chiefs in Zimbabwe; hence, these positions are often dominated by men. Currently, all traditional chiefs in the National Assembly are men. The percentage of women in Zimbabwe's senate as of April 2024 is 49%; Inter-Parliamentary Union 'Monthly ranking of women in national parliaments' (2024), [https://data.ipu.org/women-ranking/?date\\_year=2024&date\\_month=04](https://data.ipu.org/women-ranking/?date_year=2024&date_month=04) (accessed 7 June 2024).

82 In secs 120, 124 and 277 of the 2013 Constitution, the PR system is applied to 60 members of the senate; 60 members of the National Assembly Women's Quota; 10 members of the National Assembly Youth Quota; 10 members in each Provincial/Metropolitan Council; and 30% Local Authority Women's Quota. Zimbabwe uses FPTP for the 210 National Assembly seats and 1970 wards available in local government authorities.

leave behind the colonial legacy.<sup>83</sup> This notwithstanding, scholarly evidence points to the usefulness of the PR electoral system in delivering inclusive elections. Women are four times more likely to win elections in a PR system than in an FPTP electoral system.<sup>84</sup>

Zimbabwe was part of the Beijing World Conference in 1995, which calls on countries to 'review the impact of electoral systems on the political representation of women and consider reforming those systems by adopting the electoral systems that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and level as men'. African countries are currently considering PR as an electoral system of choice. While most of the 42 per cent of African countries (23/52) still follow the FPTP system, 33 per cent of African countries (18/52) have transitioned to the PR electoral system.<sup>85</sup> Zimbabwe's decision to transition from an FPTP electoral system to a PR electoral system accompanied by a Zebra system has the potential of facilitating more women to win elections, often close to 50 per cent, as witnessed in Namibia, South Africa and Rwanda,<sup>86</sup> thus facilitating the country to meet the national legal obligation under section 17 of the Constitution and the international law obligations set forth under the ICCPR, CEDAW, the African Women's Protocol and the SADC Gender Protocol.<sup>87</sup>

As Zimbabwe considers the recommendation to move from FPTP to the PR electoral system, preliminarily, the quota system needs urgent reforms to deliver the intended objectives. Zimbabwe's quota system realignment to international law benchmarks calls for the creation of uniform procedures to guide all political parties in the nomination of women for quota seats. The procedure should prescribe a mechanism for quota parliamentarians to be voted by the electorate and should designate constituencies from which the quota parliament will operate and be responsible. The quota parliamentarians should qualify for constituency funds, and a clear

83 An online interview with a non-governmental organisation leader (anonymous) on 16 October 2023.

84 V Lihuru 'Exploring suitable electoral systems for promotion of women's representation in Tanzania and Rwanda' (2022) 21 *African Studies Quarterly* 61-75.

85 Lihuru (n 84).

86 The Zebra System model requires political parties to alternate women and men in their candidate lists. An additional requirement for the list to be headed by a woman makes the election of women certain. As a result of the application of the PR electoral system, Rwanda has 61%, South Africa 46% and Namibia 44% of women in their respective parliaments. Inter-Parliamentary Union 'Monthly ranking of women in national parliaments' (2024), <https://data.ipu.org/women-ranking?month=1&year=2024>, (accessed 10 February 2024).

87 Lihuru (n 84).

mechanism for their transition to constituency seats should be in place. Zimbabwe should also invest in public awareness to complement the legal measures for accelerating mindset transformation on the role of women in public life. Article 12 of the Revised SADC Gender Protocol,<sup>88</sup> which Zimbabwe signed in 2016, calls upon state parties to ensure that all legislative and other measures are accompanied by public awareness campaigns that demonstrate the vital link between the equal representation and participation of women and men in decision-making positions, democracy, good governance and citizen participation. Holding free and fair elections and addressing violence against women in politics are key building blocks for creating a conducive environment for meaningful women's participation in Zimbabwe's political processes.

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88 Gender Protocol (n 16).