

"The Constitution of a nation is not simply a structure which mechanically defines the structures of government and the relation between the government and the governed, it is a "mirror of the national soul", the identification of the ideals and aspirations of a nation, the articulation of the values binding its people and disciplining its government"- Ismael Mohammed¹

"...a super imposed constitutional formulae or constitutional arrangements that....do not address the real causes of the discontent, are sure to generate their own legitimacy crisis."²

A critical Appreciation of the constitution making process in Zimbabwe this far

The importance of the Constitution is undisputable as it is the central point of all governance issues and one of the tenants of democratisation. Constitutional democracy entails using the constitution as a supreme and fundamental law to regulate and limit the powers of government as well as to secure the efficacy of such limitations in actual practice. Similarly, the Constitution ensures that the legitimacy of the government is regularly established by requiring that its powers are not assumed or exercised without the mandate of the people. This end is achieved through periodic, regular, free and fair elections that are administered by well defined electoral laws espoused in a nation's constitution.

A good constitution assures the protection of fundamental rights of a nation's citizens, impartiality and independent conduct of the three arms of state and above all the safety, security of citizens and the rule of law. Therefore, the aim of any country is to achieve a constitutional order that is legitimate, credible, enduring and structurally accepted by its people without compromising the integrity and effectiveness of governance.

However, Africa in general and Zimbabwe in particular has been facing challenges in its quest to

¹ Justice Ismail Mohammed is the former (and late) Chief Justice of South Africa

² Jan van der Vyver; *Constitutional options for Post Apartheid South Africa*.

achieve constitutional order. Zimbabwe's current constitution was crafted in 1979 under the Lancaster House agreement and has succumbed to a record of 19 Amendments to date. Attempts to craft a new constitution in the year 2000 were rejected by the people of Zimbabwe in a referendum. Various interlocking factors help to explain the "no vote". Amongst them was the lack of wider consultation with the responsible committee alleged to be purely elitist (500 members comprising mostly MPs)³ and a perception that it was a ZANU-PF attempt to smuggle a Constitution of its liking. Thus the search for a viable, acceptable and a credible constitution in Zimbabwe continues as evidenced by Constitutional Amendment number 19 which legalised the Global Political Agreement (GPA) of 2008. Amongst other things, the GPA stated the need for a people driven and people oriented constitution in Zimbabwe⁴. As such, since June 2010 the country has embarked on a drive towards the constitution making process.

The stages that have been implemented thus far are as follows:

- The Appointment of the Constitution Select Committee
- All stakeholders Conference
- Outreach consultations
- Data uploading
- Sitting of thematic committees.

The stages that remain are as follows:

- Drafting stage
- Second all stakeholders conference
- Draft constitution debate in Parliament
- Referendum⁵

However, an in depth analysis of the process thus far shows that it has been marred by a lot of

³ J. Hanchard; *Some lessons on Constitution making from Zimbabwe*, Journal of African Law, 45 (2), 2001

⁴ See the Global Political Agreement.

⁵ See update from Copac on; www.copacgva.org

errors and inconsistencies. A delay in the process and poor financial and logistical arrangements ascertains this claim. Adding to the suppression of people's views at the outreach stage, the collation stage of the process has been viewed as an indirect attempt by political parties to influence the content, further reducing the credibility of the whole process. An issue of major concern for youth centered organisations like NYDT is the limited youth participation thus far. According to reports from COPAC, only 22,58% of outreach meeting participants nationwide were youths⁶. This is incredibly low in view of the fact that youths make up about 66 percent of Zimbabwe's total population.

Provincial statistics further help to ascertain skewed youth participation. In Bulawayo for example, out of a total of 11 556 participants only 2 611 constituted the youths⁷. Only 7 000 youths in Matabeleland South participated in the process out of a total of 48 000 participants. In essence these statistics show that in each province less than 10 percent of the youths managed to cast their opinion during the collation stage. Important to note is the fact that these statistics do not show any meaningful or positive contribution by the youths at the meetings but just their presence.

It is worthy to contextualize the political historiography in Zimbabwe so as to ascertain meaningful youth participation. Political parties in the past have managed to permeate the youths and use them as objects only to achieve political ends. The orgy of youth driven violence in the elections of 2000, 2005 and 2008 further substantiate this view⁸. More so, media reports of "*youth militia attempting to influence the process*" were noted⁹. Also, through their structures, political parties aimed to indoctrinate their party positions to youths thus eliminating independent and critical thinking during the whole process.

⁶ See media report from COPAC; www.copaccgva.org

⁷ Ibid

⁸ See L. Bhebhe on the Politics of Regime Change in Post colonial Zimbabwe, 2010, S. J Ndlovu-Gatsheni on Zimbabwe's nationalist Military alliance.

⁹ www.finacialgazette.co.zw/.../9l060-constitution-making-process-hits-sang.html, also see www.sokwanele.com/thisiszimbabwe/archives/5442.

Critics have come in strongly in offering a comparison of the current constitution making process with that of 2000. Such critics no doubt are meant to show the inconsistencies of COPAC as well as draw the committee to take positives from the previous process. Amongst the positives of the 2000 process was the effort made to include the participation of youths as evidenced by consultations in schools, colleges, universities, churches and some youth centers. Also, the consultations in the year 2000 targeted people living with disability as evidenced by the meetings at Jairos Jiri. Jairos Jiri was also targeted in the current process but not the youths in above mentioned institutions.

The timing of the COPAC outreach stage has been further used to expose the exclusion of the above mentioned groups. For example, the outreach meetings were done when Universities and Colleges were opened as well as during times when most school going pupils were in lessons. As a result most students and school going pupils did not offer their input into the envisioned “supreme law of the land”. This has been further used to justify the low turnout of the youths in COPAC consultation stages.

Zimbabwe’s historiography is unique, thus it should have been imperative for COPAC to incorporate this in their planning. For the past ten years Zimbabweans have been migrating to other countries due to numerous reasons including political insecurity and to seek economic sustainability. This has seen more than three million Zimbabweans being exiled in numerous foreign lands. However, despite the fact that COPAC made promises to hold outreach meetings in the Diaspora this turned out to be daunting task for them to accomplish. Attempts to fill this gap were made in the form of a website, however in most if not all cases the live chat was not active meaning that some Zimbabweans failed to make their input into this important process.

Perhaps an interesting observation to note in the constitution making process is the fact that COPAC seemed to admit only to financial challenges and hardly any administrative or implementation challenges. It is the view of NYDT and indeed a number of other civic society (CSOs) sector organisations that COPAC would have achieved a lot with better results and fewer resources if direct consultation with, or even direct involvement from CSOs had been allowed. A

number of these institutions have structures in rural areas and work with specific special interest groups that would have been easily consulted or included in the process. Also, the CSOs could have been useful in the success of the meetings in the Diaspora. While individuals from CSOs were engaged, this is a far cry from working with an institution that champions specific objectives and mandates for its members.

CSOs cannot escape the blame in the errors of the constitution making process so far. Many times organisations concentrated on the failures of the process, low participant numbers and failed to ensure that those who did go to the meetings understood fully the talking points and knew how to articulate their issues as constitutional concerns. Many reports sent out by Civic society revealed little to do with how they had ensured that citizens know how to articulate for example the full understanding of the three arms of state, decentralization/ devolution or the introduction of a competitive system in the economy. Many were concerned with participants being turned away or inadequately informed of venues and times without really encouraging people to articulate issues critically from an informed position. While these were genuine concerns, it is also very true that it was more important for participants to contribute meaningfully at meetings than to just attend them.

A window of opportunity for youths

No doubt the current constitution making process in Zimbabwe has been noted with concern by various institutions and organisations. Of interest to NYDT in particular is the skewed participation of youths. However, the remaining stages in the constitution making process present an opportunity for various groups in general and youths in particular to proactively participate. These include, the second all stakeholders meeting, debates in parliament and the referendum. In all these phases, the youths still have an opportunity to ensure that they meaningfully influence the constitution making process.

Second All Stakeholders Conference

The 2nd stakeholders' conference will involve mostly the civic society and the various interest groups to discuss on the content and process of the constitution making process. The youths

through identified stakeholders that represent their interest can lobby for their concerns to be included in this Conference. It is imperative to note that this cannot be achieved in scenarios where information disparities amongst the youths prevail. Therefore, firstly it is the role of youths to be proactive and inquisitive enough to gather necessary information regarding the content of the constitution. Secondly, CSOs have a precise role to play in informing (not influencing the youths with their opinions) on the constitution making process. Similarly it would be imperative for the inclusion of the media fraternities in properly disseminating information.

Parliamentary Debate of the constitution making

In this stage of the constitution making process, the parliamentarians have a mandatory role to consult members in their constituencies on the contents of the constitution making process. Parliamentarians, community leaders, Civic society organisations and all responsible members of society must ensure the mass reproduction and distribution of the draft constitution. This will guarantee that people know what is being debated and in turn what they will be voting for come the time for the referendum. Consultative meetings and platforms for debate in the communities and in the media must be availed if this process is to be a success. It must also be noted that this stage of the process has the great potential of including more of the excluded voices of the outreach meeting stage. Obviously, this would be to assume that all legislatures are progressive democratic proponents and there is a linear progression of political dispensation. Also, it is with the hope that the legislatures ensure that they will cast aside their political positions in the debate and constructively proffer arguments that are mirror to their communities' needs and aspirations.

The youths in this scenario have a duty to actively discuss the content of the constitution in the presence of their legislators. It is also imperative that young people take note of feedback sessions with parliamentarians in order to take advantage of this stage of the process to input their views. Young people and youth focused organisations can also hold their own consultative processes so as to promote constructive debates. Youths can at this time conduct outreach meetings where they also take the draft to other young people and debating commissions to ensure that their peers know and understand what is included in this draft (peer to peer

education). CSOs on the other hand have an opportunity to complement this through the creation of necessary platforms for debate and constructive input from people.

Referendum

The last key stage would call for the youths to actively participate as the rightful citizens of the country through casting their ballot during the referendum exercise. Far from being passive or negative participants in the electoral process, youths need to claim their space and contribute towards the final implementation of the Constitution. Obviously this end has to be achieved when the youths register as eligible voters. So far, the Registrar General's office has been very stiff in terms of registering new voters or ensuring that those that turn eighteen are able to acquire the necessary documents to register. Given this state of affairs youths have to start acquiring necessary documentation for them to be eligible voters. Youth organisations and other CSOs are thus mandated to lobby for mobile registration centers, assist youths in acquiring necessary registration documents as well encouraging people in general to register as voters.

It is NYDT's position that no constitutional referendum must be held before a thorough clean up of the voters roll.

An April 2010 audit of the voters roll carried out by the Zimbabwe Election Support Network (ZESN), the country's election watchdog, showed that at least 27 per cent of voters registered in the current voters roll are deceased and only 18% of those registered are youths aged between 18-30¹⁰. It is therefore NYDT's recommendation that if the Registrars office fails to clean up the voters roll in time for the referendum, national IDs be used for the purposes of this occasion only. ID voting is not recommended for other elections as it may allow for massive rigging. However, it may be used as a once off stop gap measure to allow all eligible citizens to input into the constitution making process.

It must be understood that going to the constitutional referendum with a messed up voters roll may mean many of the views that were expressed in the COPAC meetings, no matter how good may be undermined. Unregistered youths will be deprived of the chance to either reject or

¹⁰ http://www.zesn.org.zw/publications/publication_280.pdf

endorse the constitution they want. This will mean all the efforts to get young people's wishes included in the constitution will have been futile. It is therefore NYDT's recommendation that the Registrar General's Office must prioritize the cleaning up the voters roll.

There must also be a deliberate voter registration drive for young people so that they take an active part in the referendum process of the constitution making. NYDT recommends that mobile registration centers be set up while all national identity Card issuing centers have registration points to allow for a "one stop" service delivery. Furthermore, given the amount of resources needed for this kind of exercise, the RG's office must partner with civic society organisations like NYDT in different parts of the country to help mobilize young people to register to vote. This will ensure that the constitution making process has a complete buy in from all sectors of society, young people in particular. It will also build the credibility of the electoral process and the electorate's confidence in the system. Similarly, youths and youth groups need to be proactive in lobbying and advocating for the cleanup of the voters roll before the nation goes to the referendum.

Conclusion

Despite evident disparities in the constitution making process thus far, the participation of youths in particular is very much imperative for an attempt at democratizing the country. Youths still have an opportunity to effectively participate in the remaining stages of the constitution making process. However, to ensure that this end is achieved the youths need to participate from an informed position so that they get to articulate their issues using relevant channels. Obviously this contributes to youths being exploited. Strategic stakeholders in the form of CSOs and the media have a role to play in ensuring that all interest groups are somehow involved in this otherwise important national process.