

A CRITICAL ANALYSIS OF CITIZEN PARTICIPATION IN THE
CONSTITUTION MAKING PROCESS IN ZIMBABWE IN 2008 TO 2012. THE
CASE OF HARARE AND MASVINGO PROVINCES

BY

MERJURY MHLANGA

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER IN PUBLIC POLICY AND
GOVERNANCE IN THE INSTITUTE OF PEACE, LEADERSHIP AND
GOVERNANCE OF AFRICA UNIVERSITY

2014

Abstract

Zimbabwe went through a constitution making process which started in 2008 and ended in 2013 when the constitution was signed into law by the President. The process was led by a specially convened parliamentary committee and other civic society representatives. The committee solicited views of the public before a draft was produced after much deliberation. The problem identified by the study was that most post colonial constitution making processes failed to succeed hence the need to craft a process that would lead to the successful adoption of a new constitution. The study seeks to ascertain whether the process was people driven and the key features of the process which led to the successful adoption of a new constitution in Zimbabwe. Theories which guided the study included theories of citizen participation, constitution making and public policy. Qualitative techniques which were mainly used to gather data through interviews, document analysis and focus group discussions. The main conclusions drawn from the study were that the timing of the process was ideal as the Government of National Unity allowed people of different political persuasions to lead and participate in the process. Challenges such as poor participation in urban areas, repressive legislation, and divided civil society may have limited the benefits of a participatory process. The process provided learning points which can be harnessed in other developmental initiatives. The learning points included the benefits that can be accrued from having a balanced leadership and the advantages of strong coalitions. The recommendations were that civic education needs to be improved in Zimbabwe. In addition, mechanisms used to break deadlocks need to be promoted for national building. Civic society in Zimbabwe also needs to redefine its role in the governance discourse if they are to remain relevant.

Declaration

I declare that this research study is my original work submitted as a requirement in partial fulfilment of a Masters Degree in Public Policy and Governance at Africa University, in Zimbabwe. I declare that this work is submitted for the first time at this University/ Faculty and that it has never been submitted to any other Institution of Higher Learning for the purpose of obtaining a degree qualification.

Student's Signature

Date

Supervisor's Signature

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Acknowledgements

I would like to recognize the immense support that I received as I was doing this project. I would like to thank Dr. Kachere for the expert advice. I also wish to express my gratitude to my fellow classmates and the staff at the Institute of Peace Leadership and Governance in particular Dr. Machakanja and Susan.

I further wish to appreciate all the people who participated in this study. Without their input, this study would not have succeeded.

I also want to thank my husband George and family for being my pillar of support.

Finally, I would like to thank the Lord for the strength and guidance that he gave me during my studies.

Dedication

This dissertation is dedicated to the memory of my father, Cleopas Makaza.

List of Acronyms

CoE	Committee of Experts on Constitutional Review
COPAC	The Parliamentary Select Committee on the new constitution for Zimbabwe
G20	Group of 20
GPA	Global Political Agreement
MDC-T	Movement for Democratic Change
NCA	National Constitution Assembly
SAPST	Southern African Parliamentary Support Trust
UN	United Nations
USIP	United States Institute of Peace
ZANU PF	Zimbabwe African National Union Patriotic Front
ZESN	Zimbabwe Elections Support Network
ZI	Zimbabwe Institute
ZLHR	Zimbabwe Lawyers for Human Rights
ZPP	Zimbabwe Peace Project
ZPWC	Zimbabwe Parliamentary Women's Caucus

ZZZiCOMP Zimbabwe Peace Project, Zimbabwe Election Support Network,
Independent Constitution Monitoring Project

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CHAPTER 1 INTRODUCTION

For any country, the constitution making process is arguably the most important policy process: the final product sets the foundation for subsequent policies. Section 3 of the Lancaster House Constitution prescribes that the ‘Constitution is the supreme law of Zimbabwe and if any other law is inconsistent with this Constitution they shall, to the extent of the inconsistency be void’. This means that the Constitution is the most important statute in Zimbabwe. Therefore any interrogation of the process becomes of essence as the outcome will point to the legitimacy and success of the policy.

According to the United States Institute of Peace (USIP) (2003:4), ‘How a constitution is made and what it says matters’. Involving the people in constitution making is important as it ensures that the constitution reflects the values, ideals, interests and aspirations of people (Odoki, 1991). People must identify themselves with the constitution so that they can be able to embrace, safeguard and respect it (Odoki, 1991).

The right to participate in constitution making is also backed by international legal instruments. For instance, the United Nations (UN) Declaration of Human Rights (1948 Article 21), grant the right to democratic participation (Hart, 2003). The extension of such a right to constitution making is highly contested (Hart, 2003). In

addition, international legal instruments also have their own limitations as they lack 'legal teeth and enforcement' (Hart, 2003:5).

Austin (2009) argues that if a constitution making process is seriously contested and flawed, it will be difficult to obtain a constitution that can stand the test of time and is acceptable to both government and the people. Therefore, it is crucial that all major stakeholders support the constitution making process prior to its implementation.

1.1 Background of the study

The Lancaster House Constitution was a product of negotiations, between white colonisers and the representatives of the black-led political parties, concluded in 1979 (Dzinesa, 2012). That constitution was largely criticised for being a cease fire document that did not adequately capture the views, aspirations and ideologies of majority Zimbabweans. In addition, the Lancaster House Constitution was amended nineteen times which may be construed as a reflection of fundamental shortcomings.

The call for a new constitution for Zimbabwe to replace the Lancaster House Constitution started in earnest in 1997 and was driven by various civic organisations that included churches, political parties and human rights groups which formed the National Constitutional Assembly (NCA) (Hatchard, 2011). The grouping was mainly concerned with the various constitutional amendments that resulted in the

steady accumulation of power by the President (Hatchard, 2011). In response, the President set up a constitutional commission which he controlled (Hatchard, 2011). The process resulted in a draft constitution that was, however, rejected by the people when the document went through a referendum in 2000(Hatchard, 2011).

Following the rejection, the NCA launched its own process thereafter. During this NCA process, the NCA, working with its own structures and those of its member institutions, received submissions which were used to draft a constitution that was first published in September 2001(Dzinesa, 2012). Following public debate on the draft, a final draft was subsequently published in December 2001(Dzinesa, 2012). According to the NCA, the process was people driven as the organisation had widely consulted the people throughout the country (Dzinesa, 2012). However, the government rejected the NCA constitution was neither willing to acknowledge the NCA process nor the contents of their draft constitution (Dzinesa, 2012). Thereafter, the momentum that had been gained on the drive for a new constitution was lost.

The issue of a new constitution regained prominence after the 2008 elections as the three main political parties (Movement for Democratic Change – led by Morgan Tsvangirai (MDC-T), Movement for Democratic Change led by Arthur Mutambara (MDC), Zimbabwe African National Union Patriotic Front (ZANU PF)), were negotiating a power sharing deal. As a result, prior to the signing of the Global Political Agreement (GPA) on 15 September 2008, another process had been secretly undertaken by political parties which came up with a draft commonly referred to as

the Kariba Draft (Dzinesa, 2012). The Kariba Draft was signed on 30 September 2007. Since the Kariba Draft was secretly crafted by political parties, the process was widely criticised by civil society as not being participatory hence the draft was viewed as not reflective of the demands of the people (NCA, 2009). This led the political parties to reconsider and agree on a participatory constitution making process as part of the GPA.

The Parliamentary Select Committee on the new Constitution for Zimbabwe (COPAC) process, which will be the subject of this study, is based on the Global Political Agreement. Article 6 of the GPA acknowledges the fundamental right and duty of Zimbabweans to make a constitution by and for them. In addition, the GPA acknowledges that the government should create conditions for people to write a constitution for themselves. The process was led by parliamentarians and encountered a lot of problems along the way before a draft was eventually finalised. The problems included erratic funding for the process as well as persistent disagreements by political parties who were in the process. As a result the process took more than four years to complete. Eventually, the political parties finally agreed on a document that was subjected to a referendum on 16 March 2013, (ZESN, 2013). A total of 93% of the voters who cast their ballots voted 'yes' in the referendum (ZESN, 2013). Subsequently, the constitution was adopted by Parliament and later signed by the President into law on 22 May 2013.

1.2 Statement of the Problem

Zimbabwe has made several attempts as outlined above to come up with a legitimate constitution that is generally acceptable to the people (NCA, 2009). Most of the constitution making processes undertaken in post colonial Zimbabwe failed. As a result, the Lancaster House Constitution was amended nineteen times as government attempted to respond to governance issues that arose. However, the government interventions were to a large extent lacking in as far as addressing key issues that affected ordinary Zimbabweans such as improving rights of women, addressing issues of citizenship, socio economic rights, among other issues (Hatchard, 2011). Therefore, there remained an unsatisfied need for constitutional reform within ordinary people as well as within civil society organisations such as NCA (NCA, 2009). The challenge that remained was to identify an appropriate process that would lead to a successful adoption of a new constitution which would address the demands of ordinary Zimbabweans. Civil society organisations such as the NCA were also agitating for a new constitution and suggesting that a new process needed to be participatory (NCA, 2009). This research seeks to unearth the key issues that shaped the COPAC led constitution making process. More importantly, the study will explore if the COPAC led process satisfied the requirements of the GPA which stipulated that the constitution making process was supposed to be people driven.

1.3 Purpose of the study

The purpose of the study is to ascertain whether or not citizen participation was a key component of the constitution making process. This is important as it helps to determine if citizen participation contribute towards a successful constitution making process.

1.4 Research Objectives

The objectives of the study were:

- a. To explore the key features of the COPAC process;
- b. To assess the role of key actors in constitution making process;
- c. To analyse the factors that inhibited and facilitated the process; and
- d. To establish the design of the constitution making process and assess if the process facilitated public participation.

1.5 Research Questions

The study will seek to answer the following questions:

- a. What were the key features and actors in the COPAC process?
- b. Who were they key actors in the process and what was their role?
- c. What were the inhibitors and facilitators of citizen participation?
- d. Did the design of the process facilitate public participation?

1.6 Significance of the study

The study is aimed at adding to public policy formulation in Africa. Since a constitution making process is arguably the most important policymaking process, interrogating the process is crucial in shedding light on the success and sustainability of the resulting constitution. In addition, the research will be a crucial rubric for scholars who have an interest in studying the Zimbabwean polity and the role of citizens in public policy. The study will also provide learning points for other countries who also intend to go through constitution making processes. Because citizen participation in constitution making is a fairly recent concept, exploring the concept in the context of Zimbabwe will help policy makers to identify if the concept works and to adopt good practices and to discard bad practices.

1.7 Assumptions of the study

The researcher assumed that there would be eagerness to participate by politicians from across the political divide. This assumption was proved true.

The researcher had assumed that civic society would eagerly participate in the study, however, it was noted that it was very difficult to gain access to the senior management and the reason given was mostly the issue of pressure of work.

1.8 Definition of terms

The following key phases were identified as key issues that would be referred to consistently in the study:

Constitution

The New Penguin Dictionary defines a constitution as

the fundamental principles and laws of a nation, state, or social group that guarantee certain rights to people in it, determine the powers, duties of the government, and state how the government is appointed and what its structures will be

Odoki (1991:3) citing Professor Kanyeimba stated that:

a constitution of a state consists of the basic and fundamental laws which the inhabitants of a state consider to be essential for their governance and well being. The constitution lays down political and other state institutions and distributes powers among them and puts limitations on the exercise of those powers

Therefore a constitution may be defined as the supreme law of a country which encompasses principles and laws establishing major organs of government, functions and powers and the relationship amongst them (Odoki, 1991). In addition, the constitution also sets out the rights and obligations of citizens (Odoki, 1991).

Citizen participation

Citizen participation in the context of constitution making refers to ‘an established trend to build into the process broad participatory mechanisms in order to avoid a constitution that simply divides the spoils among competing factions, and to improve the chances of the new constitution enjoying a high degree of popular legitimacy’(Brandt, Cottrell, Ghai and Regan, 2011:pg 9). Public participation goes beyond simply having citizens participating in the referendum (Brandt et al, 2011pg 9). Instead ‘civic education and media campaigns, public consultation (both on how the process should be undertaken and on the substance of the constitution), national

dialogue, and other creative means' are considered as key elements of public participation in constitution making (Brandt et al, 2011pg 9).

1.9 Delimitations of the study

The study was conducted in Harare and Masvingo provinces and it focused on the period 2008 to 2012. While the contents of a constitution are important, the research will be mainly interested in the process of constitution making.

1.10 Limitations of the study

The major limitation of the study was time given that the researcher was not full time. However, the researcher concentrated in the two provinces where she works and used her professional networks in civil society and at Parliament of Zimbabwe to secure appointments. To fund the study, the researcher used her savings to fund the research.

1.11 Structure of the dissertation

This introductory topic outlined the background of the study, the statement of the problem, the purpose of the study, the research objectives, and the significance of the study, assumptions, definition of key terms, delimitation and limitations of the study.

Chapter Two provides the theoretical underpinning informing the study. The chapter outlines the historical background of constitution making in Zimbabwe. Public policy theories, theories of popular constitution making concept of participation,

experiences of other countries, role of politicians in constitution making and constitution making in post conflict situations are some of the concepts explored on in this section.

Chapter three describes the methodology that was used by the researcher in obtaining her findings. The population, sampling techniques, analysis methods are outlined.

Chapter four provides the key findings of the research. The chapter seeks to answer the research questions that were outlined in chapter 1. In addition an analysis of the data is undertaken a comparison with theory is made.

Finally, Chapter five highlights the conclusions and recommendations that were drawn from the study.

CHAPTER 2 LITERATURE REVIEW

2.1 Introduction

This chapter will provide a historical context of the constitution making process in Zimbabwe. The chapter will also expound the theoretical underpinnings that inform the study as well as the conceptual framework.

2.2 History of Constitution making in Zimbabwe

According to Sachikonye (2011), Zimbabwe has a frayed history in constitution making. The Lancaster House Constitution of 1980 was negotiated under unfavourable conditions and, hence, reflected the balance of forces since it was presided over by Britain (Sachikonye 2011). Mandaza (1986) argues that, the conduct of the Lancaster Conference itself and the concessions made by the liberation movement's representatives achieved lesser results than would have been attained had the liberation movement won outright on the battlefield.

The Lancaster House Constitution was not expected to have any significant amendments in the first 10 years (Sachikonye 2011). Surprisingly, the government did not reflect any urgency post 1990 to review the constitution and to introduce any institutional reform (Sachikonye 2011). According to Sachikonye (2011) the lack of urgency in reform may be attributed to the issue that the President himself was the major beneficiary of the constitutional amendments that took place during this period. For instance, Constitutional Amendment Number 7 of 1987 provided for an

Executive President who had the powers to dismiss Parliament without having to justify his decision and to conduct state affairs without seeking advice from cabinet (Sachikonye, 2011 citing Makumbe and Compagnon, 2000). Therefore, there appeared to be a lack of motivation on him to undertake broad-based constitutional reform. In addition, political positions had 'not yet hardened to become too adversarial' (Sachikonye 2011:p4). This therefore meant that there was a void in terms of a force that could push the President to work towards constitutional reform. As a result, the demand for constitutional reform emanated from civic society. Civil society was concerned that the constitution was now largely serving the interests of the elite in power and in order to address this, there was a need to write a new constitution (Sachikonye 2011). Additional pressure came from the region as South Africa and Botswana come up with progressive constitutions (Sachikonye 2011). This forced the country to have a relook at the issue and to respond to the regional pressure (Sachikonye 2011). The government reluctantly admitted that there was a need for a new constitution (Sachikonye 2011).

As a result, at least three positions on how the constitution was to be drafted emerged at the beginning of 1999. The first position, is the 'Mugabe Way'. Sachikonye (2011) quoting Mugabe, 21 March 1998, noted that

the procedure which all along I thought we would adopt is one which would first enable our party at the provincial and then at Central Committee levels to address the matter and come to some initial conclusions on the various parts of the constitution needing amendment. The views of other organisations will be collected in the process but only for consideration by us and in comparison with our own

In essence, the President's preference at the time gravitated towards a political process and that centred solely on the elites within the ruling party.

Sachikonye (2011), citing Hlatwayo (1998), noted a second process that was suggested during the period, which he termed the "Zvobgo way". The position noted that Zimbabwe African National Union Patriotic Front (ZANU PF) should not monopolise the process, but should allow other players to contribute to the process (Sachikonye 2011). However, the process was intended at ensuring that ZANU PF maintained control of the process (Sachikonye 2011). This process appears to be grounded on the principle of participatory constitution making though there was no explanation on the roles, responsibilities and the extent of influence that other players would be allowed to have.

An alternative to these two processes was suggested by the NCA. The NCA suggested that it was important to have a broader participatory process that would be inclusive and open (Sachikonye 2011). The result of the three suggested processes outlined above was the creation of a situation in which there was general agreement on the need for constitutional reform. However there was polarisation on the process that was to be followed in drafting the constitution (Sachikonye, 2011).

The government proceeded to appoint a commission that consisted of 400 people, of which 150 were parliamentarians (Sachikonye, 2011). The commission gathered views over a period of four months before submitting a report to the President (Sachikonye, 2011). The process was designed in such a way that it provided the

President with considerable powers to amend the draft constitution and this is what happened (Sachikonye, 2011). Subsequently there was general dissatisfaction among the people who felt that the commission had misrepresented some of the public's views. In addition, the public were not amused with the unilateral inclusion of certain provision on land reform in the constitution by the President (Sachikonye, 2011). As a result, the draft constitution was rejected in a referendum in 2001 and was followed with 8 years of stalemate on the way forward.

Following the violence that marred the 2008 elections, Zimbabwe embraced a coalition government, constituted by the three political parties that had representation in government (Dzinesa, 2012). The agreement that gave birth to the coalition government, the GPA dictated that the constitution making process was to be participatory and led by a committee of Parliament. For the first time there appeared to be general consensus on how the constitution was to be drafted (Dzinesa, 2012).

2.3 Recent global trends in constitution making

According to Ghai and Ghalli (2006), there has been considerable activity in the making of constitutions over the past decades. The activity has been necessitated by several factors. One such factor may be 'the commitment to or the pressure for democratization resulting from disillusionment with or the unsustainability of a one party regime or military rule' as in Thailand, Brazil, Argentina and Mozambique (Ghai and Ghalli, 2006: 232). Secondly, the consequence of the settlement of long-standing internal conflicts, where the cost of conflict becomes unacceptably high has

also necessitated the need for new constitution. Countries such as South Africa, Northern Ireland, Afghanistan, Iraq, Bosnia and Herzegovina, and Sudan have been informed by the need to settle protracted conflicts in their countries (Ghai and Ghalli, 2006). Therefore, in recent times, the issue of settling conflicts has been a factor that is considered as crucial in shaping perceptions on the substance and purposes of constitutions (Ghai and Ghalli, 2006). The wave of constitution making has also been accompanied by various models of the process, which vary from the process being a form of negotiation or as the consolidation of social victory or reform (Ghai and Ghalli, 2006). The success of these processes tends to vary as the efficacy of constitutions is uneven (Ghai and Ghalli, 2006).

2.4 Theory of popular constitution making

According to Partlett (2011:p7), the popular constitution-making theory is based on Sieyes's belief that popular sovereignty is the same as 'the unitary concept of the nation'. This is premised on the principle that for the people to truly act, they must do so outside of the ordinary, pre-existing rules or institutional subdivisions inherited from the old regime (Partlett, 2011). Partlett (2011) argues that there must be a deliberate effort for the nation to act as a whole by disregarding pre existing legality and institutions as this creates the basis for a new democratic constitution. Partlett (2011) also postulates that parliamentary constitution-making or adherence to pre-existing constitutional rules may not be the ideal route to take in building democratic constitutions. Instead, new democracies should resort to irregular institutions such as popular referendums and constituent assemblies, which could adequately incorporate

the collective voice of the nation (Partlett, 2011). This assists in fostering the legitimacy of the new constitution and elevating it above ordinary politics.

According to Partlett (2011), citing Jon Elster, constitutions should be written by specially convened assemblies and not ordinary legislatures. A constitution body is more likely to be impartial and focus on deep deliberation needed for constitution making (Partlett, 2011). These constitutional bodies also help shield the process of constitution-making from short-term political bargaining (Partlett, 2011). In addition, Partlett (2011) adds that commissions are also likely to promote the prevalence of reason over interest as the bodies have more pressure to produce impartial arguments as opposed to what ordinary legislature would achieve. In the absence of such commissions, the constitution will lack legitimacy and may be perceived to be a mere bargain among interest groups rather than the outcome of rational discourse regarding the common good (Partlett, 2011).

2.5 Relevance of the Theory to the Study

The theory is relevant to the study as it provides the theoretical grounding regarding how a constitution making process should be conducted. In addition, the theory also argues how the aspect of citizen participation can be fostered by providing a framework regarding how effective participation can be fostered. The theory also suggests limitations to citizen participation which will also be explored in the study.

2.6 Conceptual Frameworks

Concept of participation

Basu (1994) asserts that citizens are indirectly represented as their governments are representative governments. This means that citizens indirectly participate in public policy making. However, this theory is premised on the notion of democratic governments, a situation that may not be reflective of African politics. The theory is useful as it informs the composition of the individuals who make up constitution commissions.

Cloete et al (2006) define community participation as the involvement of members of a community in development activities in an attempt to influence the outcome of those activities. Acceptable participation normally takes place through:

- a) the involvement of legitimate, democratically representatives;
- b) leaders of legitimate organisations who represent different interests and segments;
- c) involvement of opinion leaders; and
- d) direct involvement of ordinary members of the public (Cloete et al (2006).

As such there may not be one acceptable manner of participation that may be regarded as acceptable participation. However, based on the experience and circumstances prevailing in a particular country, participation is shaped to suit these circumstances. The notion of participation emerged from the periphery to the mainstream development discourse in the 1980s (Hickey and Mohan, 2004). As a result, the concept of public participation in constitution making is a fairly novel

concept which was only accommodated in recent times (Ghai and Ghalli, 2006). According to Brandt et al (2011:p9), the concept is premised on the broad principles ‘public participation, inclusiveness (including gender equity) and representation, transparency, and national ownership’.

Public participation

Previously, there was a considerable distrust of the direct engagement of the people and doubts in their ability to understand the complex issues involved in writing constitutions (Ghai and Ghalli, 2006). This is typified by the Philadelphia convention that drafted the United States Constitution or the German Constituent Assembly that drafted the German constitution after World War II. These preferred to use the concept of ‘representative democracy’ to accommodate the participation of people (Ghai and Ghalli, 2006). However, in recent years, many constitution making processes have ensued conflict and have been key in promoting reconciliation among communities previously in conflict. Therefore, constitution making has been crucial in developing a national consensus (Ghai and Ghalli, 2006).

According to Ghai and Ghalli (2006.), the centre of constitution building is the process of drafting and adopting a constitution. Ghai and Ghalli (2006) argue that the process of constitution building has an impact on how the constitution is rooted. Therefore, the design of the process, specifically, the decision making institutions and the methods for making decisions will determine how interests are articulated and which are excluded, how participants views are aggregated, and the similarity of

the text with social realities (Ghai and Ghalli, 2006). The constitution making process also defines the level of participation as well as the benefits and costs of such participation (Ghai and Ghalli, 2006).

In addition, Ghai and Ghalli (2006) assert that participation in constitution making is crucial for ensuring the legitimacy of the constitution as well as the capability of the people to understand its provisions. Further, the constitution making process plays a vital role in promoting a sense of common belonging and national unity (Ghai and Ghalli, 2006). Therefore, a well designed process can play a role in educating and a deliberative and participatory politics that the constitution may call for (Ghai and Ghalli, 2006).

Inclusiveness

Inclusiveness attempts to ensure that various key stakeholders are included in the constitutional negotiations (Brandt et al, 2011). Efforts need to be undertaken to ensure that people from marginalised segments of society such as people with disabilities, women, youth, indigenous groups and the poor are part of the process (Brandt et al, 2011). For instance, countries such as Afghanistan worked towards ensuring that women were represented by at least 25 percent in the constitution making bodies (Brandt et al, 2011). This shows that deliberate efforts needs to be undertaken to ensure full participation of women by coming up with rules of procedure that promote such participation. In addition, gender should also be considered during civic education, public consultations and in lobbying and monitoring the process (Brandt et al, 2011).

Transparency

Participatory constitution making process call for a departure from the elite dominated processes that characterised most processes prior to 1970 where constitutions were written behind closed doors (Brandt et al, 2011). There is now a greater preference for transparent processes that allow for the public, media and civic society to participate and be regularly updated at each stage of the process (Brandt et al, 2011). As a result, media access becomes necessary at appropriate times (Brandt et al, 2011).

National ownership

Efforts need to be undertaken to guard the process from external influence (Brandt et al, 2011). As such, international actors need to be managed so as to reduce influence of foreign agendas that are not supportive of the national objectives for the process (Brandt et al, 2011).

Concept of people

According to Ghai and Ghalli (2006), in most constitution making processes, there is no guarantee that the views of the public will be taken seriously or impartially or will not be distorted during the analysis process. In addition, such processes often lack any form of verification procedures which further complicates an assessment of citizen participation (Ghai and Ghalli, 2006).

Ghai and Ghalli (2006) argue that in order to properly assess the impact of popular participation, the concept of “the people” needs to be disaggregated and there is need to moderate the ‘romanticism about the people’.

There is no such thing as ‘the people’: there are religious groups, ethnic groups, the disabled, women, young people, forest people, pastoralists, sometimes ‘indigenous peoples’, farmers, peasants, capitalists, workers, lawyers, doctors, auctioneers, and practising, failed or aspiring politicians, all pursuing their own agendas (Ghai and Ghalli, 2006).

All these groups provide varying levels of understanding and skills to the constitution making process (Ghai and Ghalli, 2006).

In some instances, the composition or procedure of constituent bodies may give an advantage to one of these groups (Ghai and Ghalli, 2006). In addition, participatory processes may be manipulated by powerful groups (Ghai and Ghalli, 2006). This may result in the process becoming a source of intolerance and deep societal divisions based on ethnicity, language and religious differences (Ghai and Ghalli, 2006). According to Ghai and Ghalli (2006), the various groups that have an interest in constitution making cannot be trusted with the crucial responsibility of coming up with ‘good’ constitution. Moreover, politicians tend to have personal interests and have the potential to dominate the process (Ghai and Ghalli, 2006). On the other hand, Ghai and Ghalli (2006) argue that in general, ordinary people are not best placed to make qualified decisions on constitutional matters which require technical and comparative knowledge. In addition, how public participation is balanced with the contributions of experts and specialist groups is not usually addressed in highly participatory processes (Ghai and Ghalli, 2006). In order to avoid the ‘perils of

spontaneity and populism', issues such as psychological and intellectual preparedness of people needs to be addressed. Therefore, the engagement with the groups needs to be continuous and provide new opportunities to comment on the draft.

Public participation needs to be properly managed if the process is to be successful. Ghai and Ghalli (2006) argue that at times disagreements may be easily reduced if restrictions are put on the number of parties to the process who will also be able to maintain confidentiality.

Constitution Making in Post Conflict

Post conflict situations present challenges to constitution making. Of concern is the participation of groups that have used violence to pursue their objectives (Ghai and Ghalli, 2006). These groups normally use constitution making processes to demand preconditions for peace talks (Ghai and Ghalli, 2006). Conflict situations are further affected by amnesties as these may make others feel that perpetrators of violence may repeat their methods and undermine the peace of others (Ghai and Ghalli, 2006). However, refusal to give amnesties or some accommodation can further complicate the peace process (Ghai and Ghalli, 2006). This therefore means that it is important to have parties involved in constitution making in a position where they are prepared to give and take during the negotiation process.

Politicians and Constitution Making

Ghai and Ghalli (2006) argue that in some countries, politicians are known to have narrow personal or party interests, closely connected to their access to and exploitation of the state and its resources, which they try to advance or preserve through the process (Ghai and Ghalli, 2006). In addition, they may use the process to maintain their leadership positions, disregarding national interest. Ghai and Ghalli (2006) also emphasise that, that the influence of politicians on the constitution should be limited. However, such attempts to reduce that influence are hardly ever successful: in practice it is almost impossible to make a constitution without the full participation, of politicians as they have power over the state resources and the institutions of the constitution-making process Ghai and Ghalli (2006).

Civic Education and constitution making

According to Ghai and Ghalli (2006) civic education plays an important role in priming the public on key constitutional issues so that the public can provide well thought out input during public consultations (Ghai and Ghalli, 2006). Civic education after the preparation of the draft will be mainly aimed at informing the people about the content of the draft (Ghai and Ghalli, 2006). Constitution-making bodies can at times undertake civic education as part of their undertaking of ensuring that the constitution making process is “people-driven” (Ghai and Ghalli, 2006). The process of civic education should be a collective action that may includes various stakeholders such as government bodies, media and civil society (Ghai and Ghalli, 2006).

Effective participation remains a challenge as most people remain accustomed to older forms of governance and are unwilling to challenge authority (Ghai and Ghalli,

2006). Public education programs are essential as they allow people to understand their 'constitution history, and encourage them to assess the past and do an audit of the past governments' (Ghai and Ghalli, 2006: pg 541). The education will provide the public with an opportunity to imagine alternative forms of government thereby rejecting the idea that past systems of government are inevitable (Ghai and Ghalli, 2006).

Civic education in many parts of the world often suffers from lack of resources (Ghai and Ghalli, 2006). Countries normally rely on external funding for civic education. As a result, materials used for civic education are heavily influenced by international norms and the practices of Western states (Ghai and Ghalli, 2006). This may result in little attention being given to national history or culture (Ghai and Ghalli, 2006).

Challenges of participatory processes

Popular participation is crucial in constitution making. A participatory process confers legitimacy to the constitution, even if the public may fail to fully understand the document or the process itself is ceremonial, (Ghai and Ghalli, 2006).

A key challenge of participatory processes is the difficulty of building sufficient consensus which is an essential ingredient for any constitution (Ghai and Ghalli, 2006). Normally, a wide range of issues emerge from the different groups with varying interests seeking recognition. This complicates the process of building

consensus. However, if consensus emerges, this strengthens the legitimacy of the constitution (Ghai and Ghalli, 2006).

Although it has been widely accepted that political elites inevitably have great influence in deciding how to structure a new state, the recent trend has been to place emphasis on how to build into the process broad participatory mechanisms (Brandt et al, 2011). A participatory process plays a role in averting a process that is divisive amongst competing factions. If such a process is undertaken, chances that the new constitution will enjoy a high degree of popular legitimacy are enhanced (Brandt et al, 2011). Therefore, public participation now goes beyond simply voting for constitutional representatives or in a referendum (Brandt et al, 2011). Civic education and media campaigns, public consultation, national dialogue, and other creative means have become critical elements of the constitution making process (Brandt et al, 2011).

Brandt et al (2011) argue that, developments in the international arena in the last quarter of the 20th century, have pointed to a shift towards promoting active participation of people as individuals, communities, or social organizations in constitution making. Countries such as Bolivia, Kenya, Papua New Guinea, Thailand, and Uganda have made attempts to embrace the concept during their constitution making processes (Brandt et al, 2011). This shift has been necessitated by the broadening of the 'concept of people's democratic rights, including public

participation, as reflected in the International Covenant on Civil and Political Rights, and particularly the right of self-determination'(Brandt et al, 2011:p17).

Participatory constitutional making is a political process, with high stakes for many groups in society, especially politicians (Brandt et al, 2011). As a result, the process involves intense negotiations and often it is extremely difficult to control political actors who seek to dominate the process (Brandt et al, 2011). For example, there was general agreement on the design of the Kenyan process that began at the end of 2000. There were attempts made to clearly define the role of experts and to ensure that there was a high degree of public participation. However the agreement dissolved when politicians took charge and tried to exclude others from decision making (Brandt et al, 2011). Furthermore, the process of constitution making may be dogged by spoilers who may appear unexpectedly while other groups who may have been excluded from the process seek recognition. This may result in selective boycott of the process by an interest group or even, intimidation of those who participate as was the case in Iraq and Somalia (Brandt et al, 2011).

Brandt et al (2011) reiterate that negotiations are therefore a significant part of the process and can take place at various stages of the process, whose outcome cannot be predicted. In order for the process to survive, there is need to accommodate the various competing demands and to be flexible enough to accommodate new demands crop up (Brandt et al, 2011).

2.7 Experiences of other countries

There had been a notable trend amongst developing countries for a movement towards developing and adopting constitution in a more open process (USIP, 2003). For instance, the Nicaraguan National Assembly invited comments on the new draft constitution and 100 000 citizens took part in town hall meetings, forwarding 4300 suggestions (United States Institute of Peace, 2003). In 1988, Brazil and Uganda undertook constitution making exercises in which suggestions were received before and after the constitution was drafted (United States Institute of Peace, 2003). This process also received an overwhelming level of response. These experiences indicate that popular constitution making has now become acceptable and widely practised throughout the world.

2.8 Case studies

This section will consider case studies of Kenya and South Africa. The South African example was chosen as it is generally regarded as a positive example of public participation (Dann, Reigner, Vogel and Wortmann, 2011). Kenya was chosen as it had similarities in its political setting with Zimbabwe during the time when the two countries embarked on their constitution making processes.

South Africa

Constitution making in South Africa was followed by the end of apartheid and was dominated by political parties at the inception stage (Dann et al, 2011). Civic society

did not participate for the larger part of the first stage (Dann et al, 2011). Political parties agreed on an interim constitution and elections for the Constituent Assembly were held in April 1994 (Dann et al, 2011). Following the election of the Constituent Assembly, a broad participatory process commenced. The stage adhered to the principles of inclusivity, accessibility and transparency (Dann et al, 2011).

The public were informed about constitutional issues in general, and their right to participate through wide spread educational campaigns (Dann et al, 2011). Various mediums such as newspapers, radio, television, billboards and internet were used to sensitise the citizens on the constitution (Dann et al, 2011). In addition, over 1 000 educational workshops were held throughout the country over a period of 12 months. Citizens were also expressly invited to make submissions (Dann et al, 2011).

Dann et al (2011) argues that one core element of the consultative process was public meetings that provided an opportunity for members of the Constituent Assembly to present their work and provided a space where participants could make their voices heard. Contributions and suggestions made during the meetings were recorded and transcribed (Dann et al, 2011). In addition, thematic subjects such as the bill of rights, the judiciary were tackled in meetings, where about 600 civil society organisations participated (Dann et al, 2011).

A Constituent Assembly radio programme was also aired as part of the process. The program was broadcast in eight languages and reached approximately 10 million people per week (one quarter of the population) (Dann et al, 2011). In total, 13,443

substantive submissions were made by citizens with 90% coming from individuals (Dann et al, 2011). In addition, over 2 million people signed petitions on various issues (Dann et al, 2011). The Constituent Assembly secretariat processed and summarised submissions and made them accessible to the public (Dann et al, 2011). Submissions by organisations or groups with specialised knowledge on particular issues were given special consideration (Dann et al, 2011).

After the publication of the draft constitution, the public again was invited to participate and submit their views on specific issues regarding the draft text (Dann et al, 2011). The submissions were forwarded to the Constituent Assembly for consideration after which final negotiations then took place (Dann et al, 2011). Some observers criticised this stage as they were unhappy that deadlock issues were dealt with behind closed doors and deals were being struck in multi-party meetings (Dann et al, 2011). However, although some groups felt alienated from the constitution making process, Dann et al (2011) argue that the majority of the population had a positive impression and was satisfied with the level of consultation.

Finally, the Constituent Assembly passed the constitution with a majority of 85%. Copies of the constitution were distributed and were in South Africa's 11 official languages (Dann et al, 2011). The copies also included illustrations and cartoons for the illiterate (Dann et al, 2011). According to Dann et al (2011), a preliminary poll showed that the Constituent Assembly's education campaign reached 73% of South African's adult population. The poll also indicated a strong sense of ownership

amongst South Africans, thus rendering the participation process a success (Dann et al, 2011).

Kenya

According to Dann et al (2011), the path towards a new Kenyan constitution like in Zimbabwe passed two milestones. In 2005, the draft constitution failed before the country successfully adopted a new constitution in 2010 (Dann et al, 2011).

Kenya was a one party state for many years before political pressure for democratisation began to mount since early 1990s (Dann et al, 2011). However, a comprehensive constitutional reform only started a decade ago (Dann et al, 2011) with the enactment of the Constitution of Kenya Review Act (Dann et al, 2011). The Act provided the modalities and instruments for broad based public participation (Dann et al, 2011).

A consultative process, which focused on the specific issues to be put on the agenda as well as content of the constitution, was undertaken before drafting (Dann et al, 2011). The Constitution of Kenya Review Commission and the National Constitutional Conference were convened for broad discussion and debate, presented the draft constitution in 2004 (Dann et al, 2011). The draft debated extensively for about one year, but was never enacted by the parliament or presented for a referendum (Dann et al, 2011). Among the contentious issues in the 2004 draft related to executive power (Dann et al, 2011). The draft provided for the post of Prime Minister in an attempt to prevent a situation where the country had a strong

and non-accountable president. However, this system of power sharing was not accepted by the ruling party who went on to amend the provision by providing for a weak prime minister appointed by and reporting to the president (Dann et al, 2011). The amendments were heavily criticised by the opposition and sections of the governing coalition (Dann et al, 2011). The result was that the draft was voted against by 57 % (Dann et al, 2011).

Following the disputed 2008 elections and the violence that followed an agreement to settle the conflict was drafted (Dann et al, 2011). The agreement also provided for constitutional reform (Dann et al, 2011). A Committee of Experts on Constitutional Review (CoE) was established and charged with drafting a new constitution (Dann et al, 2011). The CoE was made up of nine members—six Kenyans and three others from Zambia, South Africa and Uganda (Dann et al, 2011). The committee was guided by the principle that they had to ensure that the people of Kenya would actively, freely and meaningfully participate in the constitution making process (Dann et al, 2011). The committee undertook civic education programmes (Dann et al, 2011). However, the process adopted differed from the 2005 process in that the public only participated after a draft had been produced (Dann et al, 2011). At this stage the public were asked to suggest changes to the draft (Dann et al, 2011). After the consultations, the draft was revised and tabled in parliament. The constitution was adopted by a referendum with an approval rate of more than 67% (Dann et al, 2011).

2.9 The Gap

The literature that is currently in existence is aimed mainly centred on the previous constitution making processes Zimbabwe undertook. Therefore this study provides additional literature regarding the COPAC – led process.

Scholarly debated have also been focussed on whether or not a constitution making process is people driven. These arguments have tended to provide reasons why previous constitution making processes failed. This study goes on to try and interrogate if there is a common understanding in Zimbabwe regarding what popular constitution making entails. By breaking down the various components of the COPAC led constitution making process, this study there interrogates the level of citizen participation and also explores other factors that aided the process.

2.10 Conclusions

In conclusion, this chapter outlined the history of constitution making in Zimbabwe as well as the global trend in constitution making. The key theory guiding the study which is the theory of popular constitution making is also explored. Conceptual frameworks shaping the study which include concept of the people, constitution making in post conflict, the role of politicians and challenges of the participatory processes are also discussed. Case studies of South Africa and Kenya are also outlined in a bid to incorporate the experiences of how other countries in the region and also those which have similar political experiences with Zimbabwe have tackled the issue.

CHAPTER 3 METHODOLOGY

3.1 Introduction

This chapter describes the processes that the researcher undertook in conducting the study. The chapter narrates the population, sampling technique, data collection and data analysis procedures undertaken.

3.2 Research Design

The research design that was used in the study was a descriptive survey where questioners and inervies were used to collect the data. This study is a case study and hence a qualitative study were an interpretive approach to data was used to examine key issues under study in within their context. Qualitative techniques adopted included interviews, focus group discussions and the study of documentation relevant to the study.

3.3 Population

This study focused on a segment of the population classified as Zimbabwean citizens in Harare and Masvingo, political parties in Zimbabwe, members of parliament, COPAC, civic society organisations (including women's groups, groups representing people with disabilities and youths).

3.4 Sampling procedure

The study incorporated rural and urban citizens through the use of quota sampling. The sampling method was selected due to its convenience and due to the low budget nature of the study. Since the research was mainly qualitative in nature, the citizen sample was limited. Interviewers strived to include a diverse range of people by incorporating elements of gender, age and social class in identifying respondents.

Respondents from the civil society interviewed was based on their membership base, profession, experiences during the current and previous constitution making exercises, the size of the constituencies and interest in the constitution making process. The researcher used her experience of working in the sector to identify such organisations using purposive sampling. Snowball sampling was used to identify respondents outside the researcher's scope. Some of the respondents interviewed referred the researcher to other people who had key information on the subject and this proved used in enriching the study.

In addition, politicians and COPAC representatives were identified through purposive sampling techniques. The COPAC Chairpersons and other members of parliament who were involved in the COPAC process were targeted by the researcher as they were considered to have been well exposed to the COPAC process.

Since the study mainly focused on collecting qualitative data, a sample of 50 was considered sufficient to provide the data for the study. In identifying respondents, the researcher endeavoured to include women, men and youths so that the sample would be as representative as possible of the population. Focus group discussions were also used to triangulate the findings from the study. However, for the respondents identified, in Masvingo, there were 3 non responses, giving a response rate of 88%. In Harare, the response rate was 100%. The sample of citizens included total population of citizens included 26 women and 24 men. Of these, 15 of the respondents were youths.

A total of four politicians were interviewed of which two were women. Two politicians from MDC-T and ZANU PF were interviewed. The group also included a co chairperson of COPAC and the chairperson of the Zimbabwe Parliamentary Women's Caucus (ZPWC).

Six people from civic society were interviewed and these represented membership based organisations, a woman's group, a parliamentary strengthening program, a peace building program and a youth organisation. The group also included an outreach team member (worked in Masvingo and Harare during the COPAC outreach). The researcher also interviewed an academic and secretariat of women's group who actively participated in the constitution making process.

Newspaper articles (news items, opinion pieces and interviews), position papers, research papers, the Hansard, COPAC reports and statutes were also reviewed as part of the study.

3.5 Data Collection Instruments

Semi structured interviews

Data was collected through in-depth unstructured interviews for civic society, politicians, COPAC representatives and academics over a period of three weeks by the researcher. Each interview lasted on average one hour and was recorded on a memory card, subject to the consent of the respondent.

Structured questionnaires

Data from citizens was collected using structured face to face questioners were administered by the researcher and a research assistant. Research instruments were pre-tested in Ruwa and adjusted accordingly. The research assistant who administered questionnaires in Masvingo was trained prior to conducting the study. In addition focus group discussions were conducted in Mabelreign, Glen View and Budiriro, Jerera, Rasa and Murinye. The researcher chose to conduct discussions in areas which she is familiar with and which were easily accessible to the researcher. The researcher therefore used her relatives and their neighbours to convene discussions in Masvingo, while church groups were used to convene focus groups comprising women and the youth. On average, the focus groups comprised ten participants.

Literature and Document Analysis

The issue of constitution making in Zimbabwe is an area that has attracted the attention of many researchers and the media. The researcher therefore analysed research papers, newspaper articles and websites which covered the subject. In addition, the Hansard and COPAC publications also informed key findings of the study.

3.6 Ethical Considerations

The researcher sought written consent from all the respondents who were interviewed in the study. The researcher ensured that there was privacy during data collection, which guaranteed that the respondents participated freely in the study. Respondents were also protected by using pseudonyms in the write up.

The respondents identified participated in the study voluntarily: no respondent was forced, deceived or threatened to participate.

The people who participated in the focus group discussions were advised that they were participating in a study before data was collected.

3.7 Limitations of the study

One of the limitations of the study was the issue of generalisability. The research findings were generated in an exploratory qualitative research which therefore entailed the use of a limited number of participants. However, the study produced

relative clarity to specific grounded theory which can be applied to practical experiences.

The other limitation of the study was the issue of the budget which made it difficult to examine the issue of citizen participation on a wide scope as well as over a longer period of time. Therefore some of the issues that were crucial may have not been unearthed soon after the process has ended but may start to emerge later as people reflect more on the consequence of the new constitution.

3.8 Data Analysis

The qualitative data obtained from the interviews and document analysis was analysed to generate typologies and theory.

Conclusion

This Chapter outlined the methodology that was used in the study. The population, sample, research design, ethics, data collection and analysis methods used in the study were outlined in this chapter.

The next chapter will outline the major findings of the study and the discussion of findings

CHAPTER 4: FINDINGS

4.1 Introduction

Chapter 4 provides the results of the data analyses and findings of the study. The major sections that are in the chapter include the operating environment, timing of the process, motivation for a participatory process, brief on COPAC, a synopsis of the process, the need for negotiations, challenges of the process and the role of key players in the process. This section will seek to ascertain the justification for or against the notion that the COPAC process was participatory. As such this chapter will describe the key features of the COPAC process, identify the role of key actors in the process, discuss the facilitators and inhibitors of citizen participation and explore the design of the COPAC process to assess if it facilitated public participation.

4.2 Response Rate

The response rate for the citizens was 96% (48 out of 50). The responses received were considered sufficient to provide the information that was required regarding citizen participation during the constitution making process. Some of the civil society organisations targeted did not manage to participate in the study mainly due to work commitments.

The table below provides information on the people interviewed

Table 1: List of interviewees

Name	Profile	Date/s of Interview
John	COPAC Team Member in Masvingo, works for a civic society organisation	10 April 2013
Ted	Works for Zimbabwe Human Rights Organisation (ZIMRIGHTS)	14 April 2013
Mr Chan	Works for Southern Africa Parliamentary Support Trust	30 March 2013
Rose	A member of the Secretariat to the Zimbabwe Parliamentary Women's Caucus, Academic	20 April 2013
Tsitsi	Member of Parliament and the Zimbabwe Parliamentary Women's Caucus in the 7 th Parliament	20 April 2013
James	Works for Youth Empowerment and Transformation Trust – a youth organisation	17 April 2013

Name	Profile	Date/s of Interview
Rudo	A Legal Practitioner, Holder of a doctorate, sits on the board of three civic society organisations	
Jairos	Member of Parliament in the 7 th Parliament, and was a Member of the COPAC management committee	5 May 2013
Tarisai	Works for Women in Politics Support Unit	19 April 2013
Maidei	Worked for National Association of Societies for the Care of the Handicapped (NASHCO)	22 April 2014
Kaynos	Member of Parliament in the 7 th Parliament, and was a Member of the COPAC management committee	5 May 2013

All names of respondents used in this table and in the write up are pseudo names in order to protect the identity of the respondents.

4.3 Key features of the COPAC process

Background of COPAC

The Parliamentary Select Committee on the new constitution for Zimbabwe (COPAC) was established on the 12th of April 2009 in terms of Article VI of the Global Political Agreement (COPAC, 2013b). COPAC was composed of 25 members drawn from the 7th Parliament of Zimbabwe with a political representation drawn from ZANU PF, MDC –T and MDC-M (COPAC, 2013b). The members were appointed by the Committee on Standing Rules and Orders (COPAC, 2013b). COPAC's mission was 'to ensure the drafting of a new constitution through an inclusive, people driven and democratic process' (COPAC, 2013b).

Management Committee

In order to expedite the work of the Select Committee, the Principals to the Global Political Agreement established a structure known as the Management Committee to give policy and strategic direction to the process as well as serving as a deadlock breaking mechanism (COPAC, 2013a). The Management Committee was constituted by two negotiators from the three parties that are signatories to the Global Political Agreement, the Minister of Constitutional Parliamentary Affairs and the Co-chairs of the Select Committee. Members of the management committee were Hon. Tendai Laxton Biti, Hon. Patrick Antony Chinamasa, Hon. Nicholas Tasunungurwa Goche, Hon. Elton Steers Mangoma, Hon. Jairos, Hon. Adv. Eric Taurai Matinenga, Hon. Edward Thsothso Mkhosi, Hon. Priscilla Misihairabwi-Mushonga, Hon. Douglas Togarasei Mwonzora and Hon. Prof. Welshman Ncube (COPAC, 2013a). An

analysis of the committee indicates that the management committee was mainly dominated by men as there was only one woman in the committee. In addition other key groups such as the youth and people with disabilities were also not included in the committee. The composition of the committee was weak in so far as being representative is concerned of the key groups in society is concerned.

The Process

After its formation in 2009, COPAC held preparatory meetings and seminars before undertaking provincial outreach programmes where COPAC was introduced to the populace (COPAC, 2013a). The meetings also afforded an opportunity to explain the various stages of the process as envisaged in the Global Political Agreement (COPAC, 2013a). The following table summarises the key stages of the COPAC led constitution making process:

Table 2: Key stages of the COPAC- led constitution making process

Date	Stage
April 2009	Appointment of COPAC
July 2009	First All Stakeholders Conference
December 2009	Training of Outreach Members
April 2010	Training of Rapporteurs
June 2010	Outreach Programme
October 2013	Second All Stakeholders Conference
16 March 2013	Referendum
6 – 8 February 2013	Draft Constitution Debated in Parliament

22 May 2013	Presidential assent
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First All Stakeholders' Conference

The First All Stakeholders' Conference, held on 1st of July 2009, was attended by about 4 000 delegates (COPAC 2013a). In an interview with John, a COPAC TEAM member, the conference was chaotic mainly due to certain stakeholders who were against the constitution making process. Hon. Jairos noted in an interview that the conference managed to take off after the intervention of the three principals to the Global Political Agreement who had to convene a press conference. The intervention by the GPA principals is testimony to the fragility of the process.

The conference developed and adopted thematic areas for the constitution (COPAC 2013a). The conference also resolved that COPAC should ensure that all processes had to be represented by 30% political parties and 70% civil society (COPAC 2013a). COPAC was also required to ensure that the principle of equal representation of men and women in all its organs was adhered to (COPAC 2013a).

Training of Outreach Team Members

John noted that the outreach team members and Rapporteurs were all trained between December 2009 and early January 2010. The training ensured that the delegates would understand the methodology for conducting the outreach programme (COPAC, 2013a). Hon. Chan indicated that delegates developed 'Talking Points' from the 17 thematic areas agreed on during the First Stakeholders Conference.

The Outreach Programme

Prior to the outreach program, COPAC identified meeting points where the outreach meetings were to be held. Hon. Robert indicated in an interview that the meeting points were identified with the assistance of various stakeholders in the community. It was also important for the process to be endorsed at the highest level so that the citizens would appreciate the importance and non-partisan nature of the program. For that reason, the programme was launched on 16 June 2010 by the principals to the GPA. The principals reiterated their commitment to the process and assured the citizens that their views would be respected (COPAC, 2013a). On 21 June 2010, COPAC dispatched 70 teams to the different provinces of the country to solicit the views of the public (COPAC 2013a). Each team comprised an average 14 members, of which 70% of the team members were drawn from civil society and 30% from political parties, (COPAC 2013a). In the 95 days that the outreach process took, 4 943 meetings were held in 1 960 wards countrywide (COPAC, 2013a).

The outreach meetings faced a lot of challenges. For example, in Harare, 44 out of the planned 84 meetings were convened prior to the decision by the Management Committee to suspend outreach in the capital following disruptions (COPAC, 2013a). Consequently, COPAC re-convened 40 meetings in Harare on 30 and 31 October 2010 (COPAC, 2013a).

According to COPAC (2011a), a total of 29 401 people attended 92 COPAC outreach meetings held in Harare Province. Of these, 10 061 were female, 10 598 were male, while 155 were people with special needs (COPAC 2011a). A total of 8

599 youths attended the meetings (COPAC, 2011a). A review of the COPAC Meeting Demographics and Atmosphere Summary Report indicated that in general, the meetings were held in a peaceful manner. However, pockets of violence, political intolerance, coaching and intimidation were noted in some areas. This affected the mood and general participation of people in such instances. An analysis of the COPAC Meeting Demographics and Atmosphere Summary Report also indicated that 8% of the meetings held in Harare in may be considered as restrictive in terms of effective participation of citizens.

Generally citizens participated actively during the meetings held in Harare, (COPAC 2011a). The active participation may be attributed to the exposure of citizens to the media, which assisted citizens to be able to actively engage the COPAC teams. In Harare 98% of the people interviewed did not participate in the outreach meetings. The people who did not participate cited the following as reasons why they did not attend the COPAC meetings:

- a) They were too busy to attend
- b) Do not have an interest in politics
- c) Did not have faith in the process
- d) Were afraid of politically motivated violence
- e) They felt that their participation did not matter to COPAC since political positions were more important than views of individuals.

A total of 20 respondents in Harare indicated that they were not interested in the process and were busy with other issues. Such respondents added that they felt that they did not feel that their input was unique or mattered.

In Harare, respondents highlighted that civic education was not appropriately conducted. As such, some of the issues tabled for public input by COPAC were relatively technical and required better technical capabilities. As a result, some respondents felt that the process should have been left to the politicians.

On the other hand, the study noted that none participants in Masvingo mainly stayed away from the process because of fear. However, 15 respondents in Masvingo noted that the constitution making process was not going to help them recover what they lost in 2008 political violence therefore their participation was not meaningless to them.

Ted from Zimrights indicated in an interview that the outreach programme was held within a context of a polarized society. He argued that government should have prioritised peace building programs before the constitution making process because the people were still divided. This argument is supported by findings made by Zimbabwe Peace Project (ZPP) (2010c) which reported that ZANU PF supporters pounced on the over 200 people who had attended a meeting in Mbare and started intimidating and threatening them. This resulted in the meeting being abandoned.

The MDC-T claimed that one of their supporters later died from the injuries that he sustained in the disturbance (ZPP, 2010c).

According to COPAC (2011b) in Masvingo Province, a total of 188 418 people attended the outreach meetings. In total, 80 987 women, 63 784 men and 1 330 people with special needs attended the meetings (COPAC, 2011b). This shows that the meetings managed to have a fair representation of society. Out of the 632 meetings held in Masvingo Province only 3% (20) meetings were held in an environment which was considered by the outreach teams as violent or intimidating to participants (COPAC, 2011b). In addition, John, noted that the outreach teams were able to address communities which speak minority languages especially in the Chiredzi area. COPAC had ensured that at least one team member was conversant in the language. However, John indicated that Talking Points in minority languages were not available. This therefore made the process rely too heavily on the quality of translation which could result in some of the views of the public being distorted. In addition, citizen participation was also affected by the issue of language especially in Chiredzi where there are recorded instances in which an interpreter had to be identified amongst the participants so that people could be able to participate.

However, the study revealed that there was inadequate citizen education that had been carried out. A review of the Meeting Demographics and Atmosphere Summary Report reflected that participants struggled to give plausible responses on some of

the areas especially technical thematic areas such as on commissions and public finance management.

Although the above analysis indicates a relatively conducive environment in which the outreach process was held, the ZPP argues that the atmosphere in Harare and Masvingo was marred with political intolerance, resulting in the postponement of meeting in Harare and Bulawayo that was done in June 2010 (ZPP, 2010a). The disturbances were mainly motivated by the campaigns sponsored by politicians who were aimed at ensuring that their political positions were included in the constitution (ZPP, 2010a).

Ted also argued that in Masvingo Province villagers were coached on what to say during the meetings. In addition, only a few people were selected to contribute whilst the rest would clap and ululate in support of those. As John, a team member who was part of the outreach meetings in Masvingo said in an interview, ‘you could actually see that someone actually has a contribution that they want to make but would constrain themselves.In other instances a person would just freeze in the middle of making a submission....evidence of coaching’.

According to ZPP (2010a) chiefs played a role in intimidating their subjects in Masvingo. Chief Mawarire from Mwenezi threatened to evict villagers who gave opposing views to the ZANU PF position. Incidences of retribution against those who gave views against ZANU PF were also noted (ZPP, 2010b).

Sitting of Thematic Committees

Hon Chan indicated that, following the outreach process, a data uploading exercise was conducted. Thematic committees then considered the data that came from outreach. However, the process was marred by disagreements over the appropriate methodology to be used in analysing the data (COPAC, 2013a). According to Hon. Jairos, some people, especially from ZANU PF preferred the “quantitative method”, which entailed using the number of wards in which an issue was mentioned, as a measurement of the popularity of that issue. MDC-T and the MDC preferred the qualitative method. The qualitative method looked at other issues such the meeting atmosphere and the spread of acceptability of the issue across all provinces. It was eventually agreed that both methods should be used (COPAC 2013a).

Preparatory work for drafting

Hon. Kaynos noted that COPAC was faced with the challenge that there were gaps in the information that they received, which needed to be completed. Issues such as qualifications of judges, removal of judges from office, who can declare a state of emergency and procedure in parliament needed to be considered outside the participatory process.

Drafting

According to Hon. Chan, COPAC appointed Justice Moses Chinhengo, Brian Crozier and Priscilla Madzonga to draft the constitution. These were assisted by nominees from political parties and from the Chiefs Council. The drafters faced criticism regarding their qualifications and competence. Professor Lovemore

Madhuku criticised the drafters as being ‘simply lawyers who cannot appreciate where the constitution is coming or going’ (Newsday, 25 February 2012). Prof Madhuku also noted that due to the incompetence of the drafters, COPAC had to constantly review the draft. Hon. Mangwana, COPAC Co Chairperson was also cited by the media intimating that the drafters were ‘doing a shoddy job’ (Newsday, 25 February 2012). These arguments may just be a reflection of the conflict that existed in the process as none of the drafters was replaced during the process.

In addition to the issue of the drafters, disagreements also arose on issues relating to dual citizenship, devolution, attorney General, the executive and the National Prosecution Authority (COPAC, 2013a). The issues were referred to the management committee and were deliberated on for more than two months (COPAC, 2013a). COPAC finally agreed on a draft which was adopted on 21 July 2012 and was subsequently taken to the second All Stakeholders Conference in October 2012 (COPAC, 2013a).

The Second All Stakeholders Conference

The conference was attended by 1 400 delegates who made recommendations on the draft (COPAC, 2013a). Hon. Kaynos noted that COPAC agreed to adopt some of the recommendations while others were dismissed. An impasse arose on some of the issues. This saw the involvement of the Principals to the Global Political Agreement who established a Committee of Seven on the 25th of November 2012 to try to unlock the deadlock (COPAC, 2013a). The committee was constituted with three Cabinet Ministers, the Co-chairs of COPAC and the Minister of Constitutional and

Parliamentary Affairs as the convener and chair. Initially, the Committee of Seven struggled to convene and members appeared to have challenges in resolving the impasse (COPAC, 2013a). However, the Principals met and resolved the areas of disagreement leading to the finalisation of the draft constitution (COPAC, 2013a).

Referendum

The COPAC draft was then subjected to a referendum in which approximately two million Zimbabweans voted in (Ncube, 18 March 2013). Critics of the constitution making process such as Munyaradzi Gwisai and Lovemore Madhuku noted that people were only given three weeks to read the 170 page draft which was insufficient (Ncube, 18 March 2013). Lovemore Madhuku even took the matter to the High Court in a bid to stop the referendum (Ncube, 18 March 2013). The High Court ruled that the time was sufficient, leading to the holding of the referendum on 16 March 2013. The Zimbabwe Electoral Commission (ZEC) announced that 3 million (92.9%) Zimbabweans voted 'yes' while 179 000 voted 'no' (Ncube, 18 March 2013).

Hon. Jairos indicated in an interview that a lot of resources were channelled towards campaigning for the 'yes' vote. These included using text messages, facebook and other forms of social media.

Tabling in Parliament

Following the referendum, the draft constitution was tabled in Parliament on for debate. The House of Assembly adopted the draft with 10 amendments (Muzulu, 2013, 10 May). The amendments included clarification on how the proportional

representation was to be implemented (Muzulu, 2013, 10 May). In addition, the other changes related to deletions of repetitions (Muzulu, 2013, 10 May).

Signing of the draft constitution into law

The draft constitution was signed into law by President Robert Mugabe on 22 May 2013 (Mushava, 2013, 15 March).

4.4 Role of key actors in the process

Civic society participation in constitution making process

Ted a manager at Zimrights noted in an interview that during the period 2008 to 2012, civic society in Zimbabwe was dogged by various problems. Donor funding was dwindling, mainly due to donor fatigue. Ted noted that civil society was deeply divided during the constitution making process. The cohesion that was in existence during the 1999 constitution making process seemed to be lacking. Civil society organisations were too focused on attracting donor funding to sustain their organisations. This was characterised by focusing on elevating individual organisations' visibility so as to make their projects more attractive to donors. Ted also indicated that some organisations even went on to downplay the work of other organisations. In other instances, viability of platforms created by some membership organisations did not thrive due to this factor. Therefore, it appears that civil society was wounded by lack of funding during this process.

Dwindling donor funding also affected the ability of most organisations to conduct civic education programs during the constitution making process. For instance, Ted noted that the NCA was severely underfunded during the period and this affected its ability to carry out its mandate. However, ZZZICOMP (2010) noted that organisations such as Bulawayo Agenda, Catholic Commission for Justice and Peace (CCJP), Centre for Community Development in Zimbabwe, Crisis in Zimbabwe Coalition embarked on training activities. Due to funding constraints, the civic education was somehow limited and failed to match the magnitude of the outreach program. In addition, ZZZICOMP (2010a) noted that civic society faced a lot of resistance in holding civic education meetings in areas such as in Masvingo. The operating environment for civil society was therefore not suitable for them to undertake effective civic education.

Civic society organisations also grappled with the challenges of defining the scope of their participation during the process. Some sections of civil society such as Zimbabwe Lawyers for Human Rights (ZLHR) felt that civil society was largely sidelined during the constitution making process as they were denied the space to independently and actively participate in the formal processes of COPAC (ZLHR, 2013). In instances where they participated, they did so as appenditures of the three political parties in the Inclusive Government (ZLHR, 2013). ZLHR (2013) therefore believed that such a scenario limited the ability of civil society to give alternative views particularly on matters that may not have been of a greater interest parties. Civic society was also criticised as having lost the plot of being a watchdog of

government in their pursuit for ‘an MDC type of democratic society’ (Magede, 18 March 2013). As such, there appeared to be challenges within civic society for them to exercise an independent mind.

According to Ted, this issue dominated the debate amongst civil society organization as they tried to define how they were going to engage with the process. There were fears that if civil society participated in the COPAC outreach process, the independence of civil society would be compromised (ZLHR, 2013). Civil society was also unhappy with the requirement that each team member in the outreach program was to be seconded by a political party (ZLHR, 2013). There were also concerns that this would give organizations a ‘political tag’ thereby compromising on their independence (ZLHR, 2013). However, Mr Chan a manager at Southern African Parliamentary Trust (SAPST) noted that other organisations such as SAPST felt that constitution making was important for deepening democracy in Zimbabwe. As a parliamentary strengthening program, SAPST believed that the COPAC led process espoused the legislative and representative role of Parliament hence the organisation did not hesitate in the process. These differences in opinions led to a disjointed approach within civic society in which each organisation decided to take its own decision and proceeded as such. Organisations such as ZHLR, ZPP, and ZESN decided to concentrate on monitoring the process under the banner of ZZZICOMP.

The monitoring process had its own challenges: there were reports of assault and arrest of independent monitors for the constitution process. ZZZICOMP reported that three of their 420 monitors were arrested and severely assaulted by suspected ZANU PF militias in Mashonaland West while two more monitors were arrested in Mutare North (ZZZICOMP, 2010). Further incidences of monitors being denied access to meetings in Mwenezi West, Goromonzi South and Bindura North by the local leaders on the grounds that they were not residents of the area were also noted. This was despite the accreditation of these observers by COPAC that had initially objected the monitoring of the constitution making process by civic society. This is a reflection of a departure from the concept of participation as suggested by Brandt et al (2011) who argue that participation is premised on the principles of inclusiveness, representation, transparency, and national ownership.

In an interview, Ted noted that civil society was also not happy with the conditions that were set by COPAC after the final draft was published as they were required to agree to campaign for a 'Yes' vote as part of their civic education. Civil society was reluctant to participate in civic education after the final draft was published. As a result public sensitisation after the draft constitution was not very visible. Ted noted that most people voted for a constitution, whose contents were not known to them.

Participation of Women

The struggle for space for women to participate in decision making has been a protracted one. In an interview, Rose, a gender activist and secretariat to Zimbabwe Parliamentary Women's Caucus, noted that in 1979 only one woman participated in

the Lancaster House Conference. Rose argued that the woman's role was only limited to looking at the upkeep of men. Rose also noted that a similar situation ensued during the 2001 constitution making process where women's issues were not considered a priority. The topical issues during that that were given more prominence were mainly on Executive Powers. Rose argued that such a context became the wakeup call for women as they realised that they needed to fight to have their rights in the constitution.

The failure of the 2000 constitution may be considered as a blessing in disguise for women and this was crucial in exposing the gap in women's issues. Rose also argued that this gap gave birth to the formation of the Women's Coalition (WCoZ). WCoZ was created as a forum to engage in collective activism on issues affecting women and girls in Zimbabwe. Women's Coalition therefore fought hard to ensure full participation of women during the constitution making process.

During the initial stages of the constitution making process, Rose noted that women's organisations were working to advance gender equality. One such example noted by Rose was that the Zimbabwe Parliamentary Women's Caucus (ZPWC) was involved in public sensitisation one hand while the WCoZ was working with civil society organisations. As a result, the two fronts ended up omitting provinces due to this uncoordinated approach.

According to Hon. Tsitsi, women's groups were generally unhappy from the onset with the structure of COPAC itself. The three Co Chairs were all men and this was a situation which was resisted by women's groups. As a reaction to this, the ZWPC drafted and presented a position paper to the three principals of the GPA. The paper petitioned advocated for gender balance in the structure of to the COPAC. According to Rose, this was not welcome amongst certain sections who viewed such actions as aimed at sabotaging the process. However, the issues took time to be addressed. Women strongly felt that the constitution making process was a once in a lifetime opportunity for women to have their issues addressed. WCoZ embarked on a campaign entitled 'Text e'm campaign' where members were tasked to send at least one text message to one of the COPAC co chairpersons protesting the exclusion of women in the COPAC structure. The campaign targeted to send 1000 protest messages a day and some were even sent at night. As a result, Jairos highlighted that COPAC decided to create the posts of Co Vice Chairpersons in order to address this anomaly.

Rose also highlighted that, prior to the outreach program, women organisations, notably WCoZ and ZWPC embarked on educational campaigns. The campaign included sensitisation workshops in provinces, dissemination of materials, radio and television programs as well as monthly newspaper advertisements. These efforts increased the visibility of the issues which the women were advancing.

According to Hon. Jairo, during the outreach process, women were quite visible and were able to articulate their issues. To augment this, civic society organisation submitted position papers to COPAC of how they wanted women issues to be addressed in the constitution.

However, during the drafting stage, the women's movement grew increasingly uncomfortable and saw the need to continue to advocate for their issues. This led to the formation of the Group of 20 (G20). The grouping comprised influential women, among them activists, senior politicians, parliamentarians and academics (UN Women, 2013). The group was involved in lobbying, drafting constitution provisions, and sending them to the drafters. Tarisai who works for Women in Politics Support Unit, noted that the G20 assisted the women's movement to approach the constitution making from a more coordinated approach. Women in key positions would alert their colleagues each time they felt that the process was about to be subverted. Hon. Tsitsi noted that the group adopted some clandestine methods to get to the Co chairpersons and drafters so that their issues could be adequately addressed. These included frequenting places where the drafters would eat and going to the co chairpersons' houses to lobby them on women's issues.

The activities of the women's caucus are reflective of group theory as it is articulated by Dye (2002). The success that was realised by the women's groups may be an indication of the response of COPAC to the pressures from the influential women's group. The negotiating which the women did is reflective of the group theory. The

engagement of the women's groups at every stage of the process also feeds into the arguments of Ghai and Ghalli (2006) who note that engagement with influential groups in constitution making needs to be continuous so as to provide an opportunity to the groups to comment. The post 2001 era provided the women with time to agree on their issues and to unite that they wanted in a new constitution. Therefore, this gave the women the ability to challenge the older form of governance and imagining alternatives.

Role of parliament

According to ZZZICOMP (2010) citing Hon.Mwonzora, although parliamentarians led the process and were allowed to debate the constitution, debate on the draft would not amend the provisions of the draft. Therefore Parliament would only focus their debate on whether the draft properly reflected what was in the national report. This may therefore point out that the oversight role of Parliament was limited and hence the space for having a watchdog was restricted. This was worsened by the weakened footing of civil society as highlighted above.

The role of parliament during the constitution making process was compromised during the process. Although Mr Chan argued that Parliament had a place in the constitution making process through its representative and legislative role, it appears that there was no significant referee to the process. Since civil society was arguably weakened as highlighted above, a strong parliament needed to play oversight role on the process.

The media and the constitution making process

According to Hon. Jairos, the media took a negative slant on the process. This was worsened by the demand for COPAC to pay commercial rates to the national broadcaster for COPAC programs. Thus there was limited quality reporting on the content of the constitution (ZZZICOMP, 2010). The lack of information also affected effective participation of citizens in the process (ZZZICOMP, 2010) as citizens were not well informed on the process. In addition, ZZZICOMP (2010) noted that there was an apparent media blackout on the progress on the constitution making process. This meant that the process was shrouded in a lot of speculation and public trust on the process also suffered. Therefore, this impacted negatively on the key component of citizen participation of transparency.

Political Parties

Political parties in the GNU appeared to have an upper hand in the COPAC process. Ted noted that, the political parties in the GNU conveniently neglected civic education because they wanted to sell their own party positions. As such ZANU PF embarked on a campaign entitled “Operation Chimumumu” whereby a few people were assigned to participate during the constitution making process by highlighting the ZANU PF position. According to Jairos, ZANU PF did a good job in sensitising their membership on the issues that they needed to articulate during the outreach program. However, this strategy was criticised by ZPP (2010b) which noted that this process violated a key component of citizen participation of freedom of expression. As such this practice by ZANU PF was also violating the principles of citizen participation as articulated by Ghai and Ghalli (2006). On the other hand, MDC-T

also attempted a similar process sensitisation campaign. However, the party did not have a generic document that captured the party position. In some instances, the membership relied on word of mouth from Members of Parliament. This lack of a coordinated approach, coupled with the intimidation especially in rural areas resulted in the MDC-T supporters failing to adequately influence sway of the debates. This then became the basis of the problem that arose during the data analysis stage where there was conflict on whether or not to use a quantitative or qualitative approach.

Minorities and the Youth

According to Sokwanele (2012), youth participation during the constitution making process, was limited as youths avoided the process. Respondents in Masvingo, noted in the focus group discussions that, the youths in the area were limited as most of them are now working in South Africa. Most of these were carrying out menial jobs in South Africa, hence, which may not have been able to access the COPAC website and emails which were the major means of obtaining input from the Diaspora. Sokwanele (2013) also noted that the youths were used during the process to garner support for party positions. This therefore reflects that the participation of the youths was restricted during the process.

During the outreach process, Hon. Jairos noted that COPAC did not make use of social media to gather views of citizens. These platforms are normally popular with the youths. In an interview, James highlighted that youths in urban areas do not normally attend meetings but instead prefer using social media such as facebook,

whatsapp, short message service and twitter to participate. This therefore may mean that the participation of the youths especially in Harare may have been affected by this. In addition, the constitution may have been improved by the participation of the youths by capturing their hopes and aspirations regarding how they want to be ruled. This is therefore a general criticism on the outreach process that the restricted medium of participation affected some participants especially in urban areas who may not have been able to go to the venues of the meetings.

People with disabilities

In an interview with Maidei, National Association National Association of Societies for the Care of the Handicapped, in order to capture the views of people with disabilities, COPAC convened special outreach meetings for them. This allowed people with disabilities to participate in the process. Maidei stressed that this was only done after associations representing people with disabilities had threatened to veto the process if the views of people they represent were not incorporated in the constitution. However, Maidei indicated that COPAC materials were not available in Braille and COPAC had not taken into account having team members who understand sign language so that they could assist those with sight and hearing impairments.

People living in the diaspora

Hon Jairos noted that people in the diaspora managed to send their views through the website and email addresses provided by COPAC. In addition, input from

Zimbabweans in the Diaspora was also received with 2,200 responses being submitted (COPAC, 2013). However, during the focus group discussions held in Jerera and Murinye participants noted that their relatives working in South Africa and Botswana were left out of the process because the means of sending views were not easily accessible to them since a large number are doing menial jobs.

4.5 Inhibitors and facilitators of citizen participation

Operating Environment

In order to bring into context participation in Zimbabwe during the period 2008 to 2012, it may be necessary to consider the political landscape during the period. Rudo, a legal practitioner noted that the legislative environment acted as an inhibitor to the process. Repressive legislation, such as Access to Information and Protection of Secrecy Act and Public Order and Security Act, limited freedom of assembly, association and movement. These limited the active discourses amongst the population on the alternatives of how they wanted to be governed. The repressive legislation was occasionally enforced to limit internal discourses especially amongst members of the Movement for Democratic Change (MDC) (ZZZICOMP, 2010). Civic society organisations also faced similar resistance especially in Mashonaland Central, Manicaland and Masvingo provinces (ZZZCOMP, 2010). As a result, such a scenario was not suitable for public education.

Violence and intimidation also characterised the period. According to ZZZICOMP (2010), ZANU PF was the major perpetrator of the violence as they campaigned for the adoption of the Kariba draft.

Timing of the process

The study noted that the timing of the process, though it has its own challenges, proved to be the ideal time to produce a constitution. According to Macdonald Lewanika,

Imagine a constitution being written when ZANU PF is in total control – do you think MDC supporters would have their interests covered? Or the other way round if the MDC was in total control – do you think broad ZANU PF interests would have been covered. (Mushava, 2013, 15 March)

Hon. Jairos shared the same sentiments during an interview. He noted that a constitution is all about capturing the various values of the people. Therefore,

We would not have had a better constitution had it not been for now. The best time was when not one of the parties dominated the sway. Everything had to be agreed to. I think this is a lifelong document. The parties had to agree to any change. Parties represented the diverse views of our society. Everybody could identify themselves with the processes.

The constitution making process also appeared to have been influenced by historical experiences and as such, people were cautious not to be overcome by the same ‘mistakes’ that they made in 2000. One such group was the women. According to United Nations (UN) Women (2013), quoting Perpetua Bwanya, “[Women] dropped the ball in the last process and had to wait almost 10 years before getting a chance again”. As such during the COPAC process, instead on engaging in the ‘politics of boycott’, women chose to engage in the ‘politics of engagement’ (UN Women,

2013). This may therefore reflect the fears which the group had and therefore decided to participate fully in the process. Similar sentiments were also raised by Morgan Tsvangirai in Chan (2005). Tsvangirai noted that the 2000 constitution making process was a ‘lost opportunity’ which with hindsight should have been averted. The same sentiments were shared with Rudo added that “there was nothing wrong with that constitution. If I could vote again, I would vote for it today”. This reflects that with hindsight, the 2000 constitution referendum was used as a proxy for public dissatisfaction with the government in light of the deteriorating economic conditions (Sokwanele, 2012).

This historical background brings into context the thinking which shaped the thought process of most citizens during the COPAC led process. Even if the COPAC process may have failed to satisfy the key components of a participatory process, a minimalistic document would have been accepted so that the country would not lose another opportunity to reform Zimbabwe’s constitution.

Pre Outreach Stage Challenges

The pre outreach stage was characterised by serious fighting as trust and acceptance had not been laid (Biti in Parliamentary Debates, 8 May 2013). The meetings were painted with acrimony and it took the leadership of the Co-Chairpersons to steer the process. The GPA negotiators who set the modalities for the process went through a process of intense negotiations to the extent that there were times when the feelings of abandoning the process arose (Biti in Parliamentary Debates, 8 May 2013).

Funding challenges

The constitution making process was held at a time when the government had meagre resources and was operating in a deficit. According to COPAC (2013a), the process was funded by donors through a basket fund managed by the United Nations Development Programme (UNDP), Zimbabwe Institute (ZI) and the government. The process consumed a total of \$50.73 million with government contributing \$28.61 million while donors weighed in \$22.14 million (COPAC, 2013a). According to Dzinesa (2013), the acceptance of donor funding by COPAC was quite striking and a departure from ZANU PF's usual stance on donor interference with the sovereignty and autonomy of domestic politics. However, delays in the disbursement of the funds hindered COPAC from moving at the pace at which it intended, (Dzinesa, 2013).

Trust amongst key stakeholders

The historical context of Zimbabwe's politics is surrounded by 'deep rooted polarisation which explains the fractiousness and mistrust' that characterised the COPAC led constitution making exercise (Sachikonye, 2011:15). For instance, Ted noted that, at the beginning of the process, NGOs contemplated boycotting the process. This was mainly caused by the decision by COPAC to admit participants to the stakeholder conferences and outreach process based on political parties. Ted highlighted in the interview that this decision was not well received with civic society who believed that doing so would affect their independence. However, the organisations decided to go along with the process though they expressed their reservations. Civil society also faced the same problems at the second stakeholder

conference. These were however addressed as COPAC agreed to allow civil society to nominate representatives amongst themselves.

Even when they decided to participate, the NGOs also faced other challenges. For instance, there was general resistance of NGOs to the participation as observers during the process. According to Sokwanele (2012), citing Hon. Mangwana, NGOs were accused for having a 'hidden agenda' and aiming to discredit the outreach process. Hon. Mangwana was reported to have said that "These people from non-governmental organisations must be arrested. They are peddling lies about the process... Why should we be monitored? We believe they have a hidden agenda to tarnish the process" (Sokwanele 2012, p31). In addition, Hon. Rugare Gumbo, ZANU PF spokesperson, was also cited by Sokwanele as having stated that NGOs were seeking to undermine the process on behalf of the West. The presence of monitors was also criticized by Hon. Josaya Hungwe as being intimidating for people (Sokwanele, 2012). Therefore, there were demands made that such monitors needed to be ejected from monitoring the process. In addition, Hon. Josiah Hungwe refuted the NGO reports that the process was marred by violence as to be causing unnecessary panic because they were not happy with what was taking place.

The need for negotiations

The COPAC process attracted more than 1.1 million people (COPAC 2013a). These people brought in diverse views hence negotiations needed to be done (COPAC 2013a). Explicitly, negotiations needed to be done due to the inconclusiveness of the

data that was gathered (COPAC 2013a). In addition, the contradictory nature of some of the data also presented challenges (COPAC 2013a). The diverse views that were gathered and the need to benchmark the draft to international best practice also brought in the need for negotiations (COPAC 2013a).

The Leadership factor

Hon. Jairos noted that the success of a participatory process is heavily dependent on the leadership of the process. As such leadership played a key role during the COPAC led constitution making process. Hon. Jairos explained that the information that was gathered during the outreach process represented the diverse opinions, expectations, hopes and dreams. It was therefore necessary to have champions who could facilitate process of aggregating the various views and achieving consensus so that the constitution could be acceptable to the different interest groups. Although group theory notes that policy making process requires balancing the opinions of various interest groups, it is also necessary to identify the champions of the process. During the constitution making process, the key champions were identified as the COPAC chairpersons. Hon. Jairos argues that, the process of reaching consensus was not easy. However, Hon. Jairos and Hon. Kaynos agreed from the start of the process that they were going to work hard to deliver on the key task that the nation. As such, particularly the two co Chairpersons strived to build a strong relationship. Over the period, they became very close at personal level such they developed trust for each other, a component that was missing amongst the other key stakeholders in the process. Hon. Jairos highlighted that, they became so close to the extent that their political parties at one time became uncomfortable with their relationship. This

however proved to be crucial especially during the times when parties to the process reached a deadlock. Hon. Jairos noted an instance in which all members of the Committee of Seven walked out on the negotiations and Hon. Jairos and Hon. Kaynos were the only ones who remained in the room to write the final memos of how the constitution making process died. However, because of their determination that such a process should not die, the co chairpersons decided to go back to their parties to convince them to reengage. Eventually, the Principals to the GPA had to intervene.

The general criticism of the constitution making process by ZHLR (2013) was that the process was hijacked by the politicians. However, within the context of the GPA, politicians played a crucial role in ensuring the success of the process. Firstly, politicians represent a constituency that voted them into power. This put politicians under pressure to ensure that the demands of their constituencies were accommodated. As such Hon Priscilla Misihairambwi Mushonga noted that some of the most radical provisions on women's rights were actually pushed by the men during negotiations (Priscilla Misihairambwi Mushonga in Parliamentary Debates, 2013). However some organisations such as the Youth Forum were unhappy with the role in which politicians played in the process. Youth Forum (2013) argued that the three political parties (ZANU PF, MDC-T and MDC) made the constitution making processes a party event thereby excluding the voice of the people in the process. The Youth Forum (2013) argued that the process lacked genuine public participation as social inclusion, civic education, personal security and good channels of

communication at all levels of society were lacking. Therefore, the process was viewed as conforming to the elitist theory as a few elites decided what needed to be put in the constitution. This argument does not then go on to describe how the varying views of the people could be collated and aggregated. It seems to fail to recognise the concept of the people which note that the public is comprised of different interest groups. Therefore, such an argument fails to offer alternatives of on the actual process of drafting.

4.6 Design of the process and public participation

Motivation for a participatory constitution making process

The design of the constitution making process was informed by Article V1 of the Global Political Agreement that stipulated that the constitution making process had to be a people driven. An interview with Honourable Jairos, Co Chairperson of COPAC, the culture of participatory process had since become part of Zimbabwean politics. This assertion is supported by the example of the 2000 constitution making process was participatory though on a smaller scale than the COPAC – led process. The culture may have been in response to the advocacy of civil society organisations, under NCA.

Notwithstanding this argument, the assertion by Hon. Jairos does not explain or justify why political parties took the decision to exclusively negotiate a constitution on a boat in Kariba. Admittedly, Hon. Jairos acknowledged that such a decision created a headache for political parties as the Kariba draft faced legitimacy issues

since there was no ownership of the draft by the people. Therefore, people had to be involved. Had politicians been left to their own devices, they could have easily resorted to the Kariba draft. However, the nature of the inclusive government made it extremely uncomfortable for some sections in the inclusive government to go back and sell the Kariba draft to their constituencies. Particularly, the MDC and MDC –T could have suffered a serious backlash from civil society.

Acceptability of the process

Although sentiments were rife that the process was ‘in the hands of politicians’, the process was generally accepted as McDonnald Lewanika in Mushava (2013, 9) argued:

a constitution is supposed to be a democratic document that is hard to come up with democratically. It is will always the subject of intense negotiation between different political parties in society, but ultimately the penning of it cannot be done but ultimately the penning of it cannot be done by everyone and ultimately the political powers have to assent to it. There is no way that everything that everyone said would have been covered. The notion of “the people’s views” being ignored, presupposes wrongly that the people are a homogenous unity- they are not. Their heterogeneous views had to be negotiated by some authority, leading some people’s views that are considered either dominant or reasonable being adopted. Thinking that certain sections of the population are people presupposes that others are not people. We have made our bed of political compromise, now we have to lie in it. The good thing is that it is not bad at all, actually it is a bit good

Alternative to the process

One major critique of the COPAC led process was Lovemore Madhuku (Langa, (2013, 15 March). He offered an alternative process which would be centred on embarking on a comprehensive consultation of the people in an environment which guarantees of freedom of expression. Madhuku proposed that the collection of the

views and the collating process would be an inclusive process which includes all stakeholders including government representatives, labour, Parliament, civic society, business and the church with a gender and minority balance. Madhuku further proposes that the process needed to be led by an All Stakeholders Commission with clear terms of reference. Ultimately, the national referendum of any draft constitution should be embraced by the people as they identify with the views in the constitution. The process has also been criticised for being too expensive. He argued that politicians made huge financial gains while the majority of the population was suffering. The funding could have been channelled to other critical needs.

4.7 Discussion of findings

The route taken to use COPAC instead of a broader commission did not conform to the thinking of Partlett (2011) who argued that parliamentary constitution-making or adherence to pre-existing constitutional rules is not the ideal route to take in building democratic constitutions. Instead, countries should set up commissions that can assist in ensuring that constitution making processes are elevated above ordinary politics (Partlett, 2011). However, Cloete (2006) argues that in general acceptable participation also includes the involvement of legitimate, democratically elected representatives. From this argument, members of parliament may be regarded as suitably qualified to lead constitution making processes. Having said that, it is also critical to interrogate if in practice members of parliament in Zimbabwe are considered as being representatives of the people who elected them into office or they represent interests of their political parties. Mr Chan, a parliamentary

strengthening practitioner noted in an interview that members of parliament in Zimbabwe were affected by the whipping system which then restricts the extent to which they can represent the people who voted for them. This becomes more apparent in a situation in which constituency demands are not in line with the thinking of their political parties or themselves.

On the COPAC process itself, another issue which differs with the case studies of Kenya and South Africa was the point at which public consultations were done. In Kenya, public consultations and debates started to take place after the CoE had published a draft. On the other hand, in South Africa, public consultations were done before and after the draft had been produced. In Zimbabwe, public consultations were only done during the outreach program but the draft was not made widely available to the public for further deliberation before a referendum was done. This therefore reflects that the participation of the public was not adequate.

Although COPAC made an attempt to ensure that all the people were afforded a platform to air their voice, civil society was clearly sidelined and yet it could have made substantive input into the process. In addition other groups such as the women were clearly not adequately incorporated into the COPAC structure hence the challenge they faced in forwarding their views to COPAC.

The constitution making process took place just after election related violence and this shaped the environment in which the process took place. The concept of constitution making in post conflict as proposed by Ghai and Ghallli (2006) was

noted as some groups which had resorted to violence as a means of advancing their demands attempted to use the same methods. This was particularly especially during the early stages of the process as violence was noted during the First Stakeholders Conference. In addition, in Masvingo some respondents interviewed indicated that they had no interest in the process as they felt that their demands for reparation had been ignored.

Civic education is another key component identified by Ghai and Ghalli (2006). The study noted that civic education was not properly done since the various stakeholders such as government bodies, media and civil society did not adequately do their share of public education. Resources and the legislative environment were noted to be the major limitations. This therefore provided an explanation on why there were gaps in the constitution which needed experts to decide on.

4.8 Summary

In this chapter, the major findings of the study were discussed. The key features of the COPAC process were outlined and the key actors were also identified. The chapter also discussed the key factors that inhibited and facilitated the process. The design of the COPAC process was also explored and an assessment was made on whether the process facilitated public participation or not.

CHAPTER 5: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter summarises the key findings of the study. It recaps on the historical perspective of the study. A recap of the theories underpinning the study which include group theory, elitist theory, theories of citizen participation in constitution making process are also revisited in this chapter. Salient findings of the study are further explored in the section. Therefore conclusions and recommendations informed by the study will be presented.

5.2 Summary

The study noted that the theoretical frameworks and the examples drawn from other country experiences. Therefore any for any constitution making process, it may not be possible to come up with a perfect participatory process. This is mainly driven by the importance that is placed on a constitution by key political centres of power. Therefore, a constitution process becomes a hugely contested space as each centre of power seeks dominance of the process. As such group theory takes centre stage and in Zimbabwe, this stage was manifested in the form of coaching of citizens by politicians, intimidation of participants and violence before and during the outreach exercise. These practices may be construed as attempts by politicians to assert their power and display their power base and hence the legitimacy of their positions.

On the other hand, it may also be noted that despite the negative issues that characterised the constitution making process, there is a general feeling that COPAC discharged its core mandate of ensuring a participatory making process. Despite the role which politicians took in the process, their role was generally accepted by individuals though there is a feeling that the process could have been improved in ensuring more participation.

Indeed the constitution making process also brought out that civic education especially for rural areas was inadequate. This therefore resulted in some communities failing to effectively contribute as some of the issues were beyond their scope. Trust amongst Zimbabweans is still an issue that is lacking. Political parties still struggle to engage with a nationalist objective, hence political space is a heavily contested terrain.

5.3 Conclusions

The study noted that, the culture of engaging citizens on policy issues is a practice that is now generally accepted amongst politicians in Zimbabwe. However there appeared to be reluctance especially on the urban professionals to embrace the process. This may indicate that people in Harare still have a long way to go in being able to participate in policy processes.

COPAC statistics showed that the meetings were held in a relatively peaceful environment. However, the COPAC assessments excluded the general atmosphere in

the area, hence may not have been totally reflective of the environment. This fact is supported by civil society reports indicate that that intimidation was noted during the period. This may have therefore affected effective participation of citizens especially taking into account the fact that communities still bore the scars of the 2008 elections. Therefore, it may be concluded that the process failed to capitalise on deeper dialogue, richer consensus and more cohesion that could have been achieved if violent methods were not used in advancing group interests.

The gaps that were noted by COPAC on some of the talking points were a reflection that citizen education was not adequately conducted. There appeared to be more effort on political parties to ensure that the citizens would regurgitate party positions. This defeats the whole purpose of citizen participation as education should actually afford the general populace an opportunity to give thought into their values, belief systems and determine how they want to be governed. Therefore, lack of adequate citizen participation may have reduced the benefits which could have accrued from the process especially in relation to building national dialogue.

It may also be noted that although the political parties in government had attempted to come up with internal structures to deal with deadlocks, the structures were constantly tested throughout the process and would at times fail. At the end, pre existing state structures had to be co opted into the process. This saw the three principals to the GPA being called in to resolve disputes that arose. Although such a

scenario served its purpose, it may appear to have undermined citizen participation were citizen views are given due consideration in constitution making.

It may also be concluded that the constitution making process may have been an opportune moment for Zimbabwe to undertake a constitution making exercise. The fact that no single party had a notable upper hand in the process may have actually ensured that diverse opinions managed to find space in the constitution.

Several issues that came from the process reflect the general lack of trust among Zimbabweans. Zimbabweans especially in Harare still struggle to trust politicians, worse their own representatives who they have elected to make laws on their behalf. The decades of corruption and abuse of power in government may have contributed to this. However, such lack of trust affects citizen engagement and should be addressed if citizen participation can be deepened. State-civic society relations remain strained.

The constitution making process also unearthed the divisions within civic society. The sector showed weakness and the loss of common purpose on policy issues. This may therefore mean that the balance of power in the governance matrix has been affected. This may be a reflection of the negative impact which lack of donor funding may have on Zimbabwe. The question which may need to be considered here is: Could the Inclusive Government have weakened civil society?

The repressive legislation in Zimbabwe remains a challenge for any meaningful engagement in Zimbabwe. As repressive legislation was an inhibitor of the process especially civic education. In addition, the media could have done better in informing and educating the public. However non cooperation by state media on such an important national issue may have limited the benefits which could have been accrued from an informed citizenry.

The idea of having parliamentarians leading a process may have been unacceptable especially to the NCA. However, it would have been difficult if not impossible for an independent body to lead the process. Given the challenges faced by COPAC, the process could have not succeeded. The COPAC process showed that there was need for political support during the process. It may be argued that the drivers of the process were not only fighting for their personal interests, they may have also been fighting to protect the brand of their political parties. Such determination surely acted as a cushion against failure. Therefore the feasibility of the Madhuku process is highly questionable especially given the governance framework that was in existence at this particular point.

Several groups were advancing their demands in the process. However, the women managed to learn from their experience in 2000 and come up stronger and better coordinated strategy. The strength that was shown by the women's movement during the period is a reflection of the potential which women have to advance gender issues in policy mechanisms. Such coordinated mechanisms need to be further harnessed in

future processed so as to ensure that gender continuous to be considered in policy formulation.

A major learning point that was realised from the process is that in as much as a process is inclusive; there is a need for a strong, inclusive and balanced leadership that can drive a process. Conflict which characterise such a highly contested process needs to be properly managed by the leadership. It therefore matters in a process to ensure that the leadership trust each other and have a unity of purpose.

Although the process was marred by a multitude of challenges, the process was generally acceptable and the constitution was generally acceptable. Although the process utilised arguably excess resources to complete, this may be considered as the price which Zimbabweans has to pay in order to rebuild the walls that had been broken in 2009. The process actually helped to signify hope and the renewed purpose on something.

5.4 Recommendations

The area of civic education needs to be deepened. There is a need to ensure that the citizens especially in urban areas can participate in policy process. The benefits of embracing the participation of citizens will not be fully realised in people continue to shy away from the processes. Therefore media campaigns may be undertaken to close the gap. In addition the use of social media and other forms of information

technologies which are accessible to the urban people may be used to address this issue. In addition laws which restrict meetings and freedom of expression may need to be revised so as to ensure effective participation. There is also a need for peace building programs so that the wounds from previous conflicts can heal as communities once again start thinking of engaging and advancing the development agenda in a peaceful environment.

Mechanisms that were used to break deadlocks during the constitution making process should be promoted. Leaders of political parties will need to continue to engage even after the life of the Inclusive Government. This may be necessary so as to prevent conflict from degenerating into violence. Civic society needs to redefine its role in the governance discourse. The lack of coordination may be a reflection of a need for renewal and refocus. There may be a need for new leaders to emerge that can assist civil society to readjust to the prevailing political environment.

Women's groups showed that they are now realising the fruits of the advocacy work that goes back many years. It is therefore important that such advocacy continues to be channelled to other issues such as maternal health so that women's issues are given due consideration in policy discourses.

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Appendix A: Clearance Letter



INSTITUTE OF PEACE LEADERSHIP AND GOVERNANCE

P.O. BOX 1320, MUTARE, ZIMBABWE - TEL.: (263-20) 66788/60075/60026/61611 - FAX: (263-20) 66788/61785 - E-MAIL: iplgsec@africau.ac.zw

5 April 2013

TO WHOM IT MAY CONCERN

Re: Permission to Undertake Research for Dissertation at Africa University

Merjury Mhlanga student registration number **118441** is a student at Africa University. She is enrolled in a degree program in Public Policy and Governance and is currently conducting research for her project, which is required for completion of the program in June 2013. The research topic is **"Citizen Participation during the Constitution Making Process 2008 to 2013"**. Merjury is expected to undertake this research during the period January- April 2013 before the dissertation can be submitted to the Faculty in May 2013.

The student will share with you the results of this research after its approval by the Institute.

We thank you for your support and cooperation regarding this research.

Yours sincerely


Dr. P. Machakanja
Director

Appendix B: Questionnaire

Citizen Participation during the COPAC - Led Constitution - Making Exercise

My name is Merjury Mhlanga and I am a student at Africa University. I am carrying out a research on the role of citizens during the COPAC led constitution making exercise. The research is for academic purposes only. I will be grateful if you could complete the questionnaire and return it as soon as possible

1 Age

18 -25 ☐ 26-40 ☐ 41-65 ☐ 66+ ☐

2 Sex Male ☐ Female ☐

3 Location

Masvingo ☐ Harare ☐

4 Disability Yes ☐ No ☐

5 Did you participate in the constitution making exercise?

Yes ☐ No ☐

6 If your answer in 5 is YES go to 7 if your answer in 5 is NO go to 13

7 In which way(s) did you participate in the constitution making process?

COPAC outreach process ☐ Through My Church ☐
Through my elected representative

Stakeholders' conference ☐ other civic grouping ☐
Referendum

Other (specify)

.....

8 Was the environment friendly for you to participate (Explain)

Yes ☐ No ☐

.....

.....

.....

9 In your view was your participation important to COPAC (Give reasons)

Yes ☐ No ☐

.....

.....

10 Do you think that your participation contributed to the content of the constitution? (Explain)

Yes ☐ No ☐

.....
.....
.....

11 In your view, did COPAC understand their obligation to facilitate participation? Explain

Yes ☐ No ☐

(GO TO 13)

12 What were your reasons for not participating?

.....
.....
.....

13 In your opinion should citizens participate in constitution making (Give Reasons?)

Yes ☐ No ☐

.....
.....

14 What sort of additional/ improved participation opportunities would you have wanted to have during the constitution making exercise?

.....
.....

END

Appendix C: Participant Consent Form

A CRITICAL ANALYSIS OF CITIZEN PARTICIPATION IN THE CONSTITUTION MAKING PROCESS IN 2008 TO 2012. A CASE OF HARARE AND MASVINGO PROVINCES IN ZIMBABWE

Researcher: Merjury Mhlanga

Supervisor's name: Dr. W. Kachere

	Yes	No
I have been informed of and understand the purposes of the study		
I understand I can withdraw at any time without prejudice		
Any information which might potentially identify me will not be used in published material		
I agree to participate in the study as outlined to me		
I understand and I agree to be audio taped during the interview		

Signed (Research participant)

Print name

Date