

Constitution-Making Process in Tanzania (2011-2014): A New Era for Women Political Participation?

Alexander Makulilo

makulilo.alexander@udom.ac.tz

University of Dodoma

Victoria Lihiru

victorialihiru@gmail.com

The Open University of Tanzania

ABSTRACT

Constitution-making as a public policy process requires substantive participation of all citizens in determining the content of the constitution. In Tanzania, unlike the colonial and post-colonial constitution-making legal framework and processes, the 2011-2014 constitution-making process was a critical juncture for it was governed by the Constitutional Review Act, CAP 83 R.E 2012 which for the first time contained provisions allowing citizens including women to participate and influence the content of the 2014 Proposed Constitution. This article examines two interrelated questions notably the extent to which women were involved in the constitution-making process, and how such participation impacted the content of the Proposed Constitution in terms of protection and promotion of women political participation in the country. It is argued that the legal framework facilitated meaningful participation of women in each step of the constitution-making process. Consequently, women managed, for the first time in history, to secure constitutional guarantees of equality and non-discrimination in political life.

Keywords: *Tanzania, constitution, gender, Constitutional Review Commission, Constitutional Review Act, CAP 83 R.E. 2012*

INTRODUCTION

Globally, participation in the constitution-making process is emerging as a legal right. For the constitution to have legitimacy and to fulfil the notion that the government is ‘of the people, by the people, and for the people,’ all citizens, both men and women, should be substantially – in determining the content of the constitution.¹ The United Nations

¹ Hart Vivien 'Democratic constitution-making' (2003)- Module 4_5.1A.pdf. (n.d.), available at http://www.constitutionnet.org/files/Module%204_5.1A.pdf accessed on March 21, 2019.

Human Rights Committee (UNHRC)² through General Comment No. 25³ expounds the meaning of the right to take part in the conduct of public affairs, and confirms participation in constitution-making process as a legal right in line with Article 25 of the International Covenant on Civil and Political Rights (ICCPR).⁴ The UNHRC asserts that citizens participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral processes conducted in accordance with paragraph (b) of Article 25 of ICCPR. Specifically, women's rights advocates infer women the right to participate in constitution-making from Article 7(b) of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).⁵ Article 7 (b) of CEDAW provides rights for women to participate in the formulation of government policy, its implementation, to hold public office and perform all public functions at all levels of a government. Also, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁶ requires state parties to take specific measures to ensure women are equal partners with men at all levels of development and implementation of state policies and development programmes. The inclusion of the word participation in the formulation and implementation of public policy provides clear guidance and better inference of constitution-making as a public policy process necessitating public participation including that of women.

² The Human Rights Committee is established by Article 28 of the ICCPR 1966.

³ UN Human Rights Committee (HRC) 'CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' 12 July 1996, CCPR/C/21/Rev.1/Add.7, available at [RefWorld](http://www.refworld.org/docid/453883fc22.html)<http://www.refworld.org/docid/453883fc22.html> accessed 16th October 2019.

⁴ International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, came into force on 23 March 1976. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights. Available at FAQ: The Covenant on Civil & Political Rights, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> accessed on 15th October 2019.

⁵ CEDAW is often referred to as the 'women's bill of rights.' It is one of the core international human rights treaties of the United Nations treaty system, which requires member states to undertake legal obligations to respect, protect, and fulfil human and women's rights. CEDAW was adopted and opened for signature and accession by the United Nations General Assembly Resolution 34/180 on 18 December 1979. Tanzania ratified CEDAW in 1985, Kenya in 1984, and Rwanda in 1981.

⁶ Article 66 of the African Charter on Human and Peoples' Rights provides for the making of special protocols or agreements where necessary to supplement the provisions of the African Charter. This gave power to the Assembly of Heads of State and Government of the Organization of African Unity in its Thirty-First Ordinary Session in Addis Ababa, Ethiopia, in June 1995 to endorse by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa.

Inspired by CEDAW, the Maputo Protocol and the general world trends some countries have pioneered the incorporation of participation in constitution-making process as a legal right in national constitutions and laws. For instance, the Constitution of the Republic of South Africa⁷ specifies under Sections 59(1)(a), 72(1)(a) and 118(1)(a) that the National Assembly should ensure government by the people under the Constitution by facilitating public involvement in the legislative and other processes of the Assembly. The recent constitution-making processes in East Africa exemplified by the process towards the making of the 2010 Kenyan Constitution, was also guided by the Constitution of Kenya Review Act,⁸ containing detailed legal framework guaranteeing peoples participation in the constitution-making process. In Tanzania, especially after the long existence of the 1977 Tanzania's Constitution coupled with several ad hoc amendments, and persistence of peoples' demand for the new Constitution, the process of reviewing the constitution occurred from 2011 to 2014. This epoch was the only historic moment that Tanzania as a country endeavoured to engage in a participatory constitution-making process. This article examines two interrelated questions notably the extent to which women were involved in the 2011-2014 constitution-making process, and how such participation impacted the content of the 2014 Proposed Constitution in terms of protection and promotion of women political participation in the country. It is argued that the legal framework facilitated meaningful participation of women in each step of the constitution-making process. Consequently, women managed, for the first time in history, to secure constitutional guarantees of equality and non-discrimination in political life.

Many modern constitutions, including that of Tanzania, were originally written by men at a time when women were systematically denied the right to take part in decision-making spaces.⁹ Women were excluded in three tiers, first in identifying constitutional issues, second in the process of defining constitutional priorities, structures and rules, and third as citizens participating in these structures and enjoying the rights at the

⁷ Constitution of South Africa, 2014.

⁸ The Constitution of Kenya Review Act Chapter 3A Revised Edition 2009 (2008) Published by the National Council for Law Reporting with the Authority of the Attorney General. Lancaster constitutions were negotiated at independence by the British upon handover of state powers to newly independent states. Peter Kasanda, Teresa Parkes and James Pius 'Tanzania Constitution Review – President announces date for referendum' (2014) Clyde & Co LLP.

⁹ Hari P. Bhattarai & Jhalak Subedi (ed) 'Democratic constitution making experiences from Nepal, Kenya, South Africa and Sri Lanka' (2007), *International IDEA* ISBN: 978-99933-838-4-0.

same level as men.¹⁰ As large groups of women were not part of the freedom and the independent constitution negotiations, their will and wishes did not feature in the 1961 Independence Constitution.¹¹ As a result, the Tanzania's Parliament contained only six women by 1965.¹² Yet, the constitutional amendments in Tanzania commenced as the required two-thirds majority of all members of the Assembly to support and pass any alteration of the Constitution was achieved. These legal provisions allowed the Government and the Legislative Assembly to be the main constitution-making organs, and no public consultations were required by law.¹³ As a result, a few political elites dominated and spearheaded the onward Constitutional Amendments. For example, soon after independence, Tanganyika African National Union (TANU)¹⁴ nominees formed a Constituent Assembly and revised the 1961 Constitution,¹⁵ which gave birth to the 1962 Republican Constitution and established a strong presidential system.¹⁶ In 1965, the Republican Constitution was modified by a group of a few government officials to cater for the 1964 Union between Tanganyika and Zanzibar.¹⁷ This led to the adoption of the Interim Constitution of the United Republic of

¹⁰ Ibid.

¹¹ In 1961, the Tanzanian Independence Constitution was based on the traditional Lancaster style, imposed by British colonialists, without a Bill of Rights and public participation.

¹² United Nations Economic Commission for Africa (2005-09) *Tanzania Gender Networking Programme (TGNP): Report on African Gender and Development index (AGDI)-the Tanzania Report* (2005) Addis Ababa © UN. ECA, available at <http://hdl.handle.net/10855/3777> accessed on 15 December 2019.

¹³ HWO Okoth Ogendo *Constitutions without Constitutionalism: Reflections on an African Political Paradox*. New York American Council of Learned Societies.

¹⁴ Geoffrey Ross Owens 'The secret history of TANU: Rumor, historiography and Muslim unrest in contemporary Dar Es Salaam' *History and Anthropology* (2005) 16:4, 441-463, DOI: 10.1080/02757200500399107.

¹⁵ 'Key Historical and Constitutional Developments' available at <http://www.kituoachakitaba.org/sites/default/files/legal-resources/Tanzania%20Key%20Historical%20and%20Constitutional%20Developments.pdf> accessed on 9 October 2019. The 71 elected members of the national assembly, all elected members of TANU passed a law that allowed them to convert the national assembly into a constituent assembly with powers to adopt the new constitution.

¹⁶ Ibid. The new President of Tanzania was granted the prerogatives of both former roles, Governor General and First Minister, serving as the head of state as well as commander in chief of the armed forces. He was granted the right to designate the vice president and Ministers, and the right to dismiss the Parliament under certain circumstances. The President also inherited security-related, repressive powers that were formerly of the Governor General, with the addition of new ones; the Preventive Detention Act, for example, gave the President the right to detain any person without trial. Under the 1962 constitution, the president inherited all the powers of the governor by the colonial legislation such as the Deportation Ordinance, the Collective Punishment Ordinance, the Emergency Powers Order in Council to which the independent government added its own repressive laws such as the notorious Preventive Detention Act, which gave the president powers to detain a person without trial. An existing national assembly which converted to a constituent assembly by an Act of parliament passed the new Republican Constitution.

¹⁷ Ibid. In 1964, Tanganyika and Zanzibar merged into the "United Republic of Tanzania" that same year. The Union was constituted by signing of a treaty called the Articles of Union by the respective heads of state Mwalimu Nyerere and Abeid Amani Karume. It was ratified by the respective legislative bodies and became part of the municipal law called the Acts of Union). These agreements had been ratified under the name "Articles of Union", and became part of the new constitution as "Acts of Union."

Tanganyika and Zanzibar.¹⁸ The constitution was again amended in 1965 to abolish the multi-party political system and formalise a one-party state system.¹⁹ The process for enacting the 1965 Tanganyika Interim Constitution was through an ordinary Act of Parliament, without involvement of the people.²⁰ The 1965 Tanganyika Interim Constitution, under Article 51, provided the procedure for amendment of the Constitution. The procedure required any Bill intending to alter the Constitution to be supported and approved by no less than two-thirds of votes of members of Parliament. Further, after the 1964 Union of Tanganyika and Zanzibar,²¹ Articles vii (a) and (b), of the Article of the Union of Tanganyika and Zanzibar²² provided a procedure for the adoption of a permanent constitution.²³ According to the Articles of the Union, the permanent constitution was to be proposed by a constitutional commission, which would then send it to the constituent assembly for deliberation and adoption.²⁴ The permanent constitution was supposed to be adopted within a year.²⁵ After twelve years, the President of the United Republic of Tanzania appointed a 20-person joint party committee to propose a new Constitution.²⁶ However, within a short time, the committee made and sent proposals to the National Executive Committee (NEC) of the ruling party which adopted them in a day and in camera.²⁷ In 16 March 1977, the President appointed the Constituent Assembly on the same day as the Committee, to discuss and enact the new constitution.²⁸ The Bill for the new Constitution was published seven days before the Constituent Assembly met to discuss it and enacted the

¹⁸ The most notable feature of the Acts of Union as incorporated in the Union Constitution was the establishment of the double government structure that is also part of Tanzania's current constitution. This structure included one government for the Union and one largely autonomous independent government for Zanzibar. Zanzibar's government included its own Parliament and President. The President of Zanzibar also served as vice president of the Union. The constitution of 1964 was adopted as *interim*. The Acts of Union themselves included directions on steps to take to elaborate a definitive constitution, to be elaborated by a constituent assembly comprising representatives of both TANU and ASP. This procedure was initiated but was later suspended.

¹⁹ This was coherent to the double government structure defined in 1964; the 1965 Constitution identified two government parties, TANU for the Union and AfroShirazi Party for Zanzibar. The Constitution of TANU was made a schedule to the Constitution thus legally endorsing the emergence of a party state.

²⁰ 'Key Historical and Constitutional Developments' op cit note 22.

²¹ Challa M Future Generation Learning Resources, NGL Resources, available at <https://johnchalla.wordpress.com/2017/06/06/the-reasons-of-the-union-between-tanganyika-and-zanzibar/> accessed on 9th October 2017.

²² 'Key Historical and Constitutional Developments' op cit note 27.

²³ Ibid. First Schedule of the Union of Tanganyika and Zanzibar Act No. 22 964 on 7/01/2019.

²⁴ Ibid. The Constituent Assembly was supposed to be composed with representatives of both Tanganyika and Zanzibar.

²⁵ Ibid.

²⁶ 'Key Historical and Constitutional Developments' op cit note 29. The committee was headed by Thabit Kombo.

²⁷ Ibid.

²⁸ Ibid.

Constitution in three hours after it was presented.²⁹ Both the Constitutional Commission and Constituent Assembly were formed albeit in a fashion that side-lined public participation.³⁰ In 1977, the fourth and permanent Constitution, namely the 1977 Constitution of United Republic of Tanzania³¹ was adopted. Generally, the independent constitution and the subsequent amendments were silent on how marginalized groups, such as women, could participate in decision-making processes. As such, Tanzania was not legally obliged to involve women in decision-making positions, including in the constitution-making activities. This is despite the great role women played during the anti-colonial struggles.³²

TANU as the supreme organ of the state, co-opted the autonomous associations that participated in the nationalist struggles, including the political party's women's wings namely *Umoja wa Wanawake wa Tanzania* (The Union of Tanzanian Women).³³ The use of parliament as a rubber stamp for new constitutional amendments pushed women away from engaging in the constitution-making processes. It is noted that, a shift from a multiparty to a single-party political system resulted in the number of women in the Tanzania's Parliament dropping from 10 to 8.5 per cent.³⁴

It is noted however that, the ratification of ICCPR, CEDAW, and the African Charter on Human and Peoples' Rights (the African Charter)³⁵ started to influence constitution-making processes especially from the year 1980. For instance, the amendment to the 1977 Permanent

²⁹ Ibid.

³⁰ Ibid. The public was never consulted and did not have the opportunity to debate the needs, structure and division of power of the Union and other key governance matters.

³¹ (Cap 2 R: E 2002).

³² Tanganyika had the largest percentage of women in any African parliament in 1960 with 10 percent (six) of the seats held by women. All these seats belonged to the Tanganyika African National Union (TANU), which won the election, and was the dominant party in the post-election legislature. Among African countries, it was believed that TANU had strong belief in gender equality and involvement of women in government structures. See, Aili Mari Tripp 'Women and Politics in Africa Subject' (2017) Women's History DOI:10.1093/acrefore/9780190277734.013.192

³³ Ibid. Women political wings agendas, finances and leaders were controlled by the ruling party. It is noted that sometimes women roles in the ruling parties were reduced to providing entertainment and cooking for visiting party and government dignitaries.

³⁴ Ibid.

³⁵ On 27 June 1981, at its 18th General Assembly Meeting in Nairobi, Kenya, the Heads of State and Government of the OAU adopted the African Charter on Human and Peoples' Rights. It came into force on 21 October 1986. The African Charter promotes and protects human rights and basic freedoms in the African continent. A protocol to the Charter was subsequently adopted in 1998. Articles 2 and 3 of the ACHPR provides that the enjoyment of the rights and freedoms recognised in the Charter apply equally without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any opinion, national and social origin, fortune, birth or other status.

Constitution in 1984³⁶ was an exception particularly on the area of public participation. Despite that, Article 98 of the 1977 Constitution required support and approval from two-thirds of the members of the parliament; several debates were conducted for one year to allow for the collection of public views on the Constitution. The opening of constitution-making process to the public led to the inclusion of the Bill of Rights under part III of the Constitution.³⁷ Public debates convinced the Party and Government that the constitutional exercise would be incomplete without a Bill of Rights in the Constitution. It was for the first time, the Government agreed to the public demands even with the silence of the 1977 Tanzania Constitution on people's participation in constitution-making process.

It is further noted that, due to the opening of a political space for civil society actors, freedom of press, and greater donor interventions, multiparty system was reintroduced in Tanzania. In 1991, the Nyalali Commission³⁸ was established with instructions to collect people's views on whether Tanzania should continue with a single party or adopt a multiparty system. The Nyalali Commission's recommendations included the need to amend both the Union and Zanzibar's Constitutions to reflect the will and wishes of the Tanzanian people.³⁹ Based on recommendations from the Commission, the Eighth Amendment to the 1977 Constitution reinstated a multiparty political system in May 1992.⁴⁰ Alongside the introduction of a multiparty system, change in women's political participation was witnessed in the 1990s, especially after women's temporary measures were provided by Article 4 (1) of CEDAW and the African Charter,⁴¹ and on a larger scale after the 1995 UN Fourth Conference on Women in Beijing.⁴² The Beijing Conference adopted a

³⁶ United Nations Department of Public Information, op cit note 58. The amendments were based on the 1983 proposals which were drawn up by the Executive Committee of ruling party to correct certain anomalies, and shortcomings highlighted in the Party's 1981 guidelines. The National Executive Committee looked at the political situation in Tanzania and the need to provide for democratic safeguards within the context of a one-party democracy and also to guarantee the socialist goals to which Tanzania is committed. There were three main areas which were pointed out for analysis and possible reform, namely-the powers of the Presidency, the supremacy of Parliament, and a participatory democracy.

³⁷ Ibid. As a result of the debate there demands for more autonomy of Zanzibar which threatened the party and led to announcing a "pollution of political atmosphere" forcing the then leadership of Zanzibar to resign.

³⁸ The commission constituted of 22 Commissioners, with equal membership, that means ten members each from both Tanzania Mainland and Zanzibar. The Commission was chaired by the late Chief Justice Francis Nyalali.

³⁹ Ibid. In May 1992 the Eighth Amendment was adopted reinstating multi-party-political system of governance.

⁴⁰ Ibid.

⁴¹ Temporary special measures are provided under Article 2 of African Charter which require state-parties to "take corrective and positive action in those areas where discrimination against women in law and fact continues to exist."

⁴² To accelerate women participation in decision-making article 4 (1) of CEDAW requires 'adoption by States Parties to practise positive discrimination by adopting temporary special measures to accelerate de facto equality between men and

Plan for Action encouraging member states to ensure women's equal access to and full participation in power structures and decision-making processes.⁴³ As a result of the Beijing Plan for Action, the Eighth Amendment to the 1977 Tanzania's Constitution introduced a quota of 15 per cent special seats for women in the Parliament. Consequently, the number of women in the Tanzania's Parliament increased to 16.5 per cent after the 1995 election.

In addition, following the 1986 *Donald Marshall v Canada*⁴⁴ precedent and the UNHRC General Comment no. 25 in 1996, participatory constitution-making was accepted as a legal right falling within the interpretation of the wording 'public affairs' referred to in Article 25 of ICCPR.⁴⁵ The UNHRC Comment no. 25 provided for a twenty-year-long awaited clarification on the applicability of Article 25 of ICCPR, requiring states to involve the public when making their constitutions. With the onset of the UNHRC General Comment no 25, changes on how constitutional amendments were undertaken was observed in Tanzania.

In response to demands by members of opposition parties who wanted the Constituent Assembly to be set up and draft the new constitution, the Government issued a White Paper⁴⁶ in 1998 that contained a list of demands from stakeholders, including the need for a new constitution.⁴⁷ The White Paper also outlined the Government's position on each demand. In response to public demands, the President appointed a 16-member committee to hear the people's views on the future constitution and make necessary recommendations.⁴⁸ The committee sought the views of more than half a million Tanzanians from across the country. This was

women. CEDAW requires state parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country, and to ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies. United Nations Publication 'Women Rights are Human Rights' (2006) hr/pub/14/2, SALES NO. E.14.xiv.5 ISBN 978-92-1-154206-6 e-ISBN 978-92-1-056789-3.

⁴³ Ibid. To accelerate the implementation of action in these areas, the Commission on the Status of Women, at its forty-first session in 1997, adopted Agreed Conclusions (1997/2), which emphasized that attaining the goal of equal participation of men and women in decision-making was important for strengthening democracy and achieving the goals of sustainable development. The Commission reaffirmed the need to identify and implement measures that would redress the under-representation of women in decision-making, including through the elimination of discriminatory practices and the introduction of positive action programmes.

⁴⁴ U.N. Doc. CCPRC/43/D/205/1986 (Dec. 3, 1991), available at <http://wwwl.umn.edu/humanrts/undocs/html/dec205.html>.

⁴⁴ [1994] 3 S.C.R. 627.

⁴⁵ U.N. Human Rights Comm., *Marshall v. Canada*, 5.3, U.N. Doc. CCPRC/43/D/205/1986 (Dec. 3, 1991), available at <http://wwwl.umn.edu/humanrts/undocs/html/dec205.htm>.

⁴⁶ White Paper, No. 1 of 1998.

⁴⁷ Key Historical and Constitutional Developments' available at <http://www.kituoachakitiba.org/sites/default/files/legal-resources/Tanzania%20Key%20Historical%20and%20Constitutional%20Developments.pdf> accessed on 9 October 2019.

⁴⁸ Ibid. The committee was led by Justice Kisanga.

the first time in history where public views were sought to inform the Constitution.⁴⁹ One of the committee's recommendations required the Government to open up political spaces for women in line with international conventions.⁵⁰ The Tanzania's Government responded to the committee's recommendations with the 13th and 14th Amendments to the 1977 Constitution which among other things, increased the number of special seats for women to 20 per cent in Parliament,⁵¹ and later to 30 per cent in 2000 and 2005 respectively. After the fourteenth amendments were undertaken to the 1977 Constitution, Tanzania began a process to obtain a new Constitution in the year 2011.

METHODOLOGY

This work employed documentary review. Reports, statutes, constitutions as well as previous studies were reviewed in order to ascertain positions of women in the constitution making processes and the actual gains contained in the proposed constitution. This method is useful since the process took place more than five years ago. Retrieving data for the purpose of this study could better be obtained from documents. Moreover, data analysis was done qualitatively to allow in-depth understanding of realities during the constitutional making process in Tanzania.

FINDINGS AND DISCUSSION

The 2011 Constitution-Review Process

As a departure from the colonial and post-colonial constitution-making legal framework, the 2011 was governed by the Constitutional Review Act (CRA) which for the first time contained legal provisions for citizen participation in constitution-making as a legal right. Section 4 of the CRA called for a mechanism to allowing the public to participate widely and freely in expressing and transmitting public opinions on matters relating to the constitution. The key constitution-making organs with roles and responsibilities to guide main steps for constitution-making processes were legally established. The CRA established the Constitutional Review Commission (CRC) as the body responsible for consulting, collecting public opinions and finally providing Tanzanians with a new constitution.⁵² As such, the CRA obliged the CRC to regulate

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ 33.3 percent on local councils. The amendment further, prohibited Sexual discrimination under Paragraph (5) of Article 13 of the 13th and 14th Amendments to the 1977 Constitution of United Republic of Tanzania

⁵² The commission was responsible for coordinating and collection of public opinions on the Constitution; to examine and analyse public opinions; to provide for fora for constitutional review; to provide for preparation and submission of report on

constitutional fora, prepare and submit reports on the public opinions, convene the constituent assembly, and conduct a referendum. Section 6 (7) of the CRA required the President to consult widely with the political parties, civil societies and other institutional stakeholders in appointment of the commission's members.⁵³ After wide consultation, the President appointed thirty members - fifteen from Zanzibar and fifteen from Tanzania Mainland to lead the constitutional review process.⁵⁴

To ensure effective public participation of both men and women, the CRA stipulated several approaches that the commission could use, such as conducting awareness programmes, holding of public meetings, and assemblies.⁵⁵ One of the notable weaknesses of the CRA is that it doesn't mention the educational role of the CRC on specific substantive constitutional issues.⁵⁶ However, the Commission resolved to undertake sensitisation and awareness-raising while collecting the public views on the new constitution.⁵⁷ This was a critical decision since most Tanzanians were not aware of the constitution, let alone understand their role in the constitution-making process.⁵⁸ The commission allowed those who were unable to present their views during the public meetings to do so by filling in a special form. These modalities were useful in reaching a significant number of people including women. A minimum of three public meetings were held in each district and a total number of 1,365,337 people attended about 1,942 meetings.⁵⁹

the public opinions; to provide for the procedure to constitute the Constituent Assembly, the conduct of referendum and to provide for related matters.

⁵³ They were invited to nominate two candidates from their institutions. It was reported by the Government that there was a total of 550 names proposed by political parties, religious institutions, NGOs and other interested parties. See Jesse James 'The constitution-making process in Tanzania,' (2013) Legal and Human Rights Centre.

⁵⁴ As per section 6 (7) the President paid regard to equality of the two parts of Tanzania, namely Tanzania mainland and Zanzibar, experience, gender, age and social groups representation as key factors when the President was appointing the members to the CRC.

⁵⁵ According to section 17 (1) (2) (3) and Section 17 (9), the Commission could ask any person willing to appear before it for discussion, orally or by production of document, on any constitutional matter which the Commission considered relevant to the constitutional review process.

⁵⁶ Jesse James op cit note 64.

⁵⁷ Ibid.

⁵⁸ In the first five months, the Commission went around the country to collect views from the people about the new constitution. The first round started from 2nd July 2012 and was completed on 30th July 2012. It marked the beginning of the views collection. The Commission spent almost one month to collect the views from the citizens in this round. The Commission visited eight regions which were marked as the zone. These were Pwani, Dodoma, Manyara, Kagera, Shinyanga, Tanga, Southern Unguja and Southern Pemba. The Commission successfully collected the views in all eight (8) regions. See Speech by the Chairman of the Constitutional Review Commission on launching a Draft Constitution, on 3 June 2013.

⁵⁹ See Speech by the Chairman of the Constitutional Review Commission on launching a Draft Constitution, on 3 June 2013.

Women Participation in the 2011-2014 Constitution Review Process

Participatory constitution-making should ensure that the constitution-making legal framework facilitates participation of all marginalized groups such as women, youth, elders, the hard-to-reach population and persons with disabilities.⁶⁰ For the purpose of this paper, analysis is based on how the Tanzania's Constitution-making legal framework facilitated meaningful participation by women in each step of the constitution-making process by providing specifically for, a) women's right of participation in constitution-making processes; b) the composition of women in constitution-making structures; c) women's key-constitutional demands; d) participation of women's special constituency assemblies; and lastly e) how women participated in the referendum.

Legal Provisions for Women's Participation in Constitution-Making

Reaching out to all strands of people and collecting their views on the new constitution was one of the key deliverables of the Constitution Review Commission (CRC). In order to ensure effective public participation of both men and women, the Constitution Review Act (CRA) requires the CRC to use several approaches such as conducting awareness programmes and holding of public meetings and assemblies.⁶¹ However the CRA does not contain specific provisions for promoting women participation in constitution-making process but it uses a neutral language allowing all people to participate. Gender is only mentioned as a key criterion for the selection of members of the CRC under Section 6 (3) of CRA. In addition, Section 9(2) obliges the CRC to pay attention to the principle of equality before the law and respect of human rights while drafting the constitution. Further, the CRA requires the CRC to facilitate the full participation of women in the process at different levels.⁶² The commission organised women-only opinion collection sessions and encouraged women to organise their own meetings throughout the country to discuss women's key priorities for the new constitution.

⁶⁰ Guidance Note of The Secretary-General 'United Nations Assistance to Constitution-making Processes' (2009).

⁶¹ According to section 17 (1) (2) (3) and Section 17 (9), the Commission could ask any person willing to appear before it for discussion, orally or by production of document, on any constitutional matter which the Commission considered relevant to the constitutional review process.

⁶² The CKRA included names of the women organizations such *Maendeleo ya Wanawake* Organization (MYWO); National Council of Women of Kenya (NCWK); and Federation of Women Lawyers (FIDA) to be among the organizations to choose representatives to form the Reference Group in providing technical support, researched and factual information on gender and women issues to be covered by the new constitution.

After President Kikwete announced the launch of the new constitution-making process, women organised themselves and formed the *Wanawake na Katiba*⁶³ Coalition (Women's Coalition on the Constitution) hereinafter referred as the Women Coalition, to streamline priorities, lobby and ensure that the new constitution would be inclusive of women's political, social, and economic rights. Due to strategic positioning of the Women Coalition,⁶⁴ the CRC invited the coalition several times to share women's views, priorities, and issues with regard to the new constitution. Members of the CRC were impressed by clear articulation of the women's issues and further requested the women's coalition to engage on issues beyond those affecting women only.⁶⁵

Women's Participation in the Constitutional Review Bodies

The presence of women in constitution-making bodies is important in influencing inclusion of gender specific provisions in the new constitution.⁶⁶ The constitution-making legal framework must contain specific provisions that facilitate the presence of women in constitution-making bodies.⁶⁷ Section 6(c) of the CRA requires adherence to the principle of gender equality in the appointment of the CRC members.⁶⁸ Despite the use of the word equality by section 6(c) of the CRA women in the CRC did not exceed thirty percent. Among 30 members, only ten were women. In addition, the positions of the CRC chairperson, vice chairperson, secretary and vice-secretary were all occupied by men.⁶⁹

⁶³ Translated as Women and the Constitution Coalition.

⁶⁴ This Coalition has 65-women member organizations who are defenders of Human Rights, especially women's and Children's rights, with multiple and variable experiences equitably distributed country-wide. These organisations forming Women and Katiba Coalition are, Tanzania Media Women Association(TAMWA), Women Fund Tanzania (WFT), Tanzania Women Cross Party (TWCP)-ULINGO, Tanzania Gender Networking Programme (TGNP), Tanzania Women Lawyers(TAWLA), Equality for Growth (EfG), Haki za Wanawake (HAWA), Kilimanjaro Women Information Exchange and Consultancy Organization (KWIECO), Shirikisho la Vyama vya Walemavu Tanzania (SHIVYAWATA), Tanzania Union Congress Tanzania (TUCTA), Tumaini Women Development Association (TUWODEA), Women Legal Aid Centre (WLAC), Zanzibar Gender Coalition(ZGC), individual feminists and activists, among others. See Ruth Meena 'Gender analysis of the proposed constitution of the United Republic of Tanzania: Gains and Challenges' (2014) available at <http://womenfundtanzania.nl/wp-content/uploads/2014/12/28Oct14-ENGL.GENDER-ANALYSIS-GAPSCHALLENGES.pdf> accessed on 2nd January 2019.

⁶⁵ Ibid.

⁶⁶ Guidance Note of the Secretary-General op cit note 72.

⁶⁷ Ibid.

⁶⁸ Section 6(c) of the CRA.

⁶⁹ Among the 15 commissioners nominated from Tanzania mainland 6 were women and 9 men; in Zanzibar among the 15 nominated members 4 were women and 11 men. The former Prime Minister of Tanzania and Attorney General, Hon. Judge Joseph Sinde Warioba was appointed as the Chairperson. The retired Chief Justice of Tanzania, Hon. Augustino Ramadhan was appointed the Vice Chairperson. The President appointed Mr. Assaa Ahmad Rashid (from Zanzibar) as the Commission's Secretary and Mr. Casmir Sumba Kyuki (from Mainland) as Commission's Vice-Secretary.

Women's Demands in the New Constitution

The CRA recognizes and promotes women's participation in constitution-making. However, after several consultative processes among the members of the Women Coalition, twelve key demands were identified.⁷⁰ The demands encompassed among other things, the need for the new constitution to provide for equal representation between men and women to engage in all levels of decision-making processes.⁷¹

Women's Participation in the Constitutional Foras and in Special Constituency Assembly

After collection of public views and issuance of the draft constitutions, the next step was for deliberations of the draft constitutions by the national assembly before the referendum. In February 2013, after collection and analysis of the public opinion, the CRC produced the First Draft Constitution.⁷² The draft contained among other things, key gains of the twelve areas of priority identified by women.⁷³ Relating to matters pertaining to women political participation, the First Draft Constitution suggested significant change in the electoral system by abolishing parliamentary special seats for women and provided that for every constituency, each political party should field a man and a woman as candidates. As such voters will vote for a man and a woman of their choice from any political party as their representatives in that particular constituency. This provision implies that women would be elected democratically, and will be accountable to their voters and their own electoral constituencies, thus addressing challenges associated with the women's special seats arrangement.⁷⁴

⁷⁰ These priorities were: women's rights to be spelt out in the constitution; prohibiting all laws, regulations and practices which discriminate against women; women's rights to dignity to be protected by the constitution; the international instruments and standards to be respected and translated into laws; constitution to guarantee equal rights for women in decision making organs; spelling out the age of the child (to protect girl children against early marriages); women's rights to access, control and benefit from national resources should be spelt out in the constitution; women's rights to maternal health services to be spelt out; women's rights to access and benefit from basic services to be spelt out; the rights of women with disabilities to be spelt out; a commission to monitor and oversee implementation of these rights to be provided as one of the accountability instruments for gender equality; a family court to be provided for in the constitution.

⁷¹ Article 66 (1)(b) of the 1977 Constitution of the United Republic of Tanzania established the Special Seat system which provides for a 30% quota for women which is subject to criticisms.

⁷² The Draft Constitution ("titled in Kiswahili— *Rasimu ya Katiba ya Jamhuri ya Muungano wa Tanzania*, 2013") contains 240 Articles. It is long compared to the current Constitution of 1977 which has only 152 Articles.

⁷³ Ruth Meena 'Gender analysis of the proposed constitution of the United Republic of Tanzania: Gains and Challenges' (2014) available at <http://womenfundtanzania.nl/wp-content/uploads/2014/12/28Oct14-ENGL.GENDER-ANALYSIS-GAPSCALLENGES.pdf> accessed on 2nd January 2019.

⁷⁴ 'Draft Constitution in Tanzania proposes gender equality in electoral system' available at <https://demofinland.org/draft-constitution-in-tanzania-proposes-gender-equality-in-electoral-system/?lang=en> accessed on 2 January 2018.

It is noted however that, the fact that the First Draft Constitution was only available in English posed a serious challenge, as less than 20 per cent of Tanzanians speak English and it made it difficult for the majority of the population, particularly women, to understand the content of the draft constitution without assistance.⁷⁵ The Women Coalition took immediate efforts to translate the draft constitution in Swahili, but financial constraints hindered the dissemination of the translated version to majority Tanzanians especially those in remote areas. Therefore, it affected how the majority people provided feedback to the commission on the content of the draft constitution.

After issuing the first draft constitution, the formation and operation of constitutional fora was the second step for constitution-making.⁷⁶ The Commission, in line with section 18 of CRA, allowed reactions from the public through district constitutional fora, direct meetings, letters, petitions, and memoranda.⁷⁷ The fora were tasked to review the first draft constitution and make comments with a view to improve it before it went to the Constituent Assembly.⁷⁸ There were two types of fora. The first type was managed by the Commission⁷⁹ while the second was managed by organisations or institutions.⁸⁰ The Women's Coalition made a great effort to influence the first draft by translating, reading, analysing and commenting on how it responded to the women's twelve priorities. The Coalition also identified gaps, provided alternatives on how they could be addressed, and compiled its report and submitted the proposed recommendations to the Commission for further consideration in the Second Draft.⁸¹ The women's coalition and other civil society organisations, such as the Legal and Human Rights Centre, launched a

⁷⁵ 'New Constitution: Civil society has taken an active role,' Available at <http://www.kepa.fi/jasensivut/jasenblogi/12992> as accessed on 3 October 2019.

⁷⁶Section 18 of the CRA.

⁷⁷As per section 18 (6), it says for the purpose of this section, the Commission may allow organizations, associations or groups of persons to convene meetings in order to afford opportunity to its members to air their views on the Draft Constitution and forward such views to the Commission.

⁷⁸ This phase started officially in June 2013 and was completed on 31st August 2013.

⁷⁹ Ibid. These were constituted under the level of District. The Commission was directly responsible to supervise them. Election of members to these fora started from village (in rural area) or mitaa (in urban areas) and then at ward level and finally at district level. People were invited to apply within their village or mitaa to be elected by residents of those areas. Those who were elected in each village or mitaa went to the ward level to compete with others elected from other villages or mitaa. Elections were also done at the ward level and those elected went to the district to constitute the District forum.

⁸⁰ Ibid. These were formed by organisations or institutions which wanted to do so. So, political parties, various institutions, religious organizations, professional clubs, civil society organizations and any groups of persons with the same interests formed their own independent fora. These types of fora were not supervised by the Commission. They were self-supervising. They were required to present their views to the Commission after their meetings on or before 31st August 2013.

⁸¹ Ruth Meena op cit note 85.

countrywide campaign through constitutional fora to educate remote populations including women, on the content of the draft constitution and the extent to which women's rights had been catered for and what they could do further to attain progressive gender provisions.⁸²

There were issues pertaining to how the constitutional fora were operated, which posed doubts on key areas such as inclusivity, viability and acceptability of the fora's deliberations. At first, the formation of the fora was to be democratic and transparent. People who wanted to be forum members in the villages, streets and ward levels were requested to apply and be elected.⁸³ However, the elections were marred by violence, and the voting of the members were influenced by political, tribal and religious forces.⁸⁴ Members were screened by Ward Development Committees (WDCs) of which the majority of its members were dominated by councillors from ruling party, Chama Cha Mapinduzi (CCM). This led to perception that the views and deliberations from the constitutional fora were unduly influenced by the dominant party, causing challenges in acceptability of the constitutional fora as platforms for gathering views for genuine enrichment of the First Draft Constitution.⁸⁵

After compilation and analysis of the public opinion on the first draft constitution from the constitution fora, the commission prepared and released the Second Draft Constitution.⁸⁶ The Women Coalition found the Second Draft Constitution to have systematically incorporated women's key priorities except for a few identified gaps.⁸⁷ Just like the First Draft,

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ A total of 19,378 constitutional fora members were elected all over the country. In Tanzania Mainland, a total of 18,180 members were elected to form the constitutional fora. Zanzibar had 1,198 members of the fora of whom 1,005 were elected from all Shehia. Each shehia was represented by three members. And, all 193 councillors joined the for a as members.

⁸⁵ *Ibid.* Another challenge was on the closer look of section 17 and 21 (3) of the CRA which states that: "Any person or organization wishing to conduct awareness programmes on constitutional review must register under the relevant laws and must disclose sources of his/their funds. Failure to do so constitutes an offence punishable by a fine of not less than Tzs.5, 000,000/= and not exceeding Tzs. 15, 000,000/= or imprisonment for a term of not less than three years

⁸⁶ *Ibid.*

⁸⁷ Ruth Meena op cit note 93. Further, in its preamble, the proposed draft constitution commits among other things to build a society which is free from all forms of discrimination including gender. In defining discrimination, the draft constitution affirmed that purposeful acts to rectify the historical imbalances in the society shall not be deemed to be discrimination. The draft considered gender equality as one of governance issues, and its overall goal included the principle of equality generally, while specific social, economic and political objectives included gender equality goals. The draft constitution directs that goals and specific objectives spelt out in this draft constitution will guide the interpretation and implementation of the constitutional principles. The draft constitution established the principle of supremacy of the constitution, hence declares all practices, traditions and cultural beliefs which contradict the constitutional principles null and void. The second draft constitution also affirmed respect for all international and regional standards which the country is a party to such standards including CEDAW, CRC, and the Maputo Protocol.

the Second Draft Constitution endorsed the women's demand for the provision of equal representation between men and women in the decision-making processes by providing that each electoral constituency should have one male and one female candidate from each political party.⁸⁸ The second draft allowed independent candidates and provided for non-registration of political parties that had not taken gender equality principles into consideration.⁸⁹ Allowing independent candidates was a great gain for women in the Second Draft Constitution. It was expected that it would allow women who were not interested to be members of political parties, but have political ambitions to still stand as candidates.⁹⁰

After the issuance of the Second Draft Constitution, the CRA provided for a Constituent Assembly as the third step of the constitution-making process.⁹¹ The President, in agreement with the President of Zanzibar, appointed members and convened the Constituent Assembly. As per the CRA, the President appointed 201 different governmental and non-governmental organisations to join the existing members of parliament and together they formed the Special Constituent Assembly (SCA).⁹² The President considered the qualifications and experience of the nominees as well as the gender factor.⁹³ Before he appointed members of the SCA, the Women's Coalition took the initiative to consult and influence the then President Jakaya Mrisho Kikwete to observe equal representation between men and women when appointing the SCA's members. This was the greatest move by the Women's Coalition and a major success for women, as the President appointed 101 men and 100 women, almost in

⁸⁸ Ibid. This is likely going to reduce the financial burden which individual women have to incur when contesting for electoral position. It is also more likely that such modality will reduce electoral corruption and build a more gender responsive electoral culture. In the final analysis, electoral resources will be used in a more equitable manner, reduce corruption and finally the nation will benefit by getting legislatures who are more accountable; who will adhere to ethical standards.

⁸⁹ Ibid. This is a first time in the history of this country that demands are made on political parties to address gender equality and non-discriminative practices in decision-making organs. For women movement, this is a great gain, as political parties are gate-keepers in defining and determining who gets in or who is out in political participation in electoral processes.

⁹⁰ Ibid.

⁹¹ Ibid. After releasing the second draft constitution, the CRC submitted the report and the Second Draft Constitution to the President who published it in the Gazette and other local newspapers with a statement that the Second Draft Constitution was to be presented to the Constituent Assembly for enactment as the proposed Constitution.

⁹² As per section 22.-(1) A Constituent Assembly consisted of the following members: (a) all members of the National Assembly of the United Republic; (b) all members of the House of Representatives of Zanzibar; (c) one hundred and sixty six members drawn from the following: (i) Non-Governmental Organisations; (ii) Faith Based Organisations; (iii) all fully registered political parties; (iv) institutions of higher learning; (v) groups of people with special needs; (vi) Workers Association; (vii) an association representing farmers; (viii) an association representing pastoralists; and (ix) any other group of persons under whatever name having common interest.

⁹³ The President consulted the interest groups and selected names from their lists of nominees to be members of the SCA. Ruth Meena op cit note 99.

parity. Further, due to the great role of the Women Coalition in the constitution review process, six of its members were appointed to be part of the SCA. In total, there were 620-members in the SCA⁹⁴ of whom 256 were women, comprising 41.3 per cent of the entire Assembly.⁹⁵ Before the CSA began its work, there were leadership positions that needed to be filled. In the election for the Interim Chairperson of the SCA, only one out of four candidates were a female, and a male candidate won. During the election of the deputy SCA Chairperson, only two candidates were women, and a woman won.⁹⁶ The pattern is also reflected at the SCA Committees level, where women chaired four out of fourteen committees, and ten out of fourteen vice chairpersons were female. This suggested that it was easy to accept women as deputies but not at the helm of the assembly or respective committees.⁹⁷

As the CSA began its work, the Women's Coalition also started to empower all members of SCA on the twelve women's priorities for the new constitution.⁹⁸ Through the coalition's experts and consultants, the Coalition produced a deeper analysis of the second draft constitution from a gender perspective by comparing it with best practices from other jurisdictions with progressive constitutions such as Rwanda, Kenya, and South Africa.⁹⁹ The Women's Coalition provided the female members of the CSA with well-researched, factual and evidence-based recommendations on what should be discarded, retained or added to the second draft constitution. This was in addition to enhancing the coalition's capacity to identify male champions who were willing to support the women's agenda during the whole process.¹⁰⁰ The Women Coalition also intervened through the media in various TV and radio programmes and through the issuance of press releases whenever anything occurred that was likely to be detrimental to obtaining a gender-sensitive constitution.¹⁰¹ Further, the Coalition conducted a national convention in the capital city, Dodoma, as a parallel or shadow SCA with

⁹⁴ Comprising 365 ordinary members of parliament, 54 members from the Zanzibar House of Representatives and 201 presidential appointees from civil society and other non-governmental organisations' members charged with the task of reviewing the second draft constitution. Jesse James op cit note 121.

⁹⁵ Ruth Meena op cit note 105.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ruth Meena op cite note 108.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid. The women coalition lobbied for about 10 different TV spaces to utilise whenever a need arise, they issues various new papers articles and social media press releases.

rural women to enhance their understanding of the constitution-making processes. They were reminded of women's priorities versus the content of the Second Draft Constitution, and jointly, strategies to influence the remainder of the constitution-making process were devised.¹⁰²

Women's Participation in a Referendum

After the Special Constituency Assembly completed its work and produced the 2014 Proposed Constitution, the new constitution was supposed to be put to a referendum. The CRA provided for a referendum to be conducted by the Electoral Commission of the Union, and that of Zanzibar. The Constitution should have been approved by a 'Yes' or 'No' vote.¹⁰³ The Women Coalition started preparation for the referendum by strengthening the Coalition and analysing other existing related laws in the new constitution. The Coalition informed women of the gains obtained from the Proposed Constitution, and on why they should vote 'Yes' during the referendum. The referendum was initially announced to take place on 30 April 2015 but was later postponed until further notice.¹⁰⁴

Women's Achievements in the Proposed New Constitution

In determining the extent that the final content of the Proposed Constitution provides, promotes and protects women's participation in decision-making processes, guidance from criteria deduced from Article 7 (a) and (b) of CEDAW is sought. It provides that: -

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

The UNWOMEN and International IDEA Guidance Note on Women's Human Rights and National Constitutions, Leadership and Political

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

Participation¹⁰⁵ expound Article 7 of CEDAW and require scrutiny of the final content of constitutional provisions in relation to how they provide for i) the general guarantees of equality and non-discrimination; ii) a favourable electoral system and modalities for women's participation in decision-making processes; iii) regulation of political parties; iv) the role of the electoral management body in protection and promoting women participation in elections; v) institutions to safeguard women's rights; vi) procedure for amending the new constitutions, and vii) the new constitutions as a basis for progressive electoral reforms.¹⁰⁶ These criteria are discussed below in understanding the level of women's influence and gains they obtained as a result of their participation in the making of the 2014 Proposed Constitution of Tanzania.

Constitutional General Guarantees of Equality and Non-Discrimination in Political Life

For women to have meaningful participation in decision-making processes, principles of equality and non-discrimination against discriminatory traditions among other things, must be established in the nation's constitution. This is because in countries such as Tanzania, customs, traditions, and public attitudes not only determine how many women are considered and nominated for office, but also they have a direct and indirect influence on how many female candidates win a general election.¹⁰⁷ During the 2011-2014 constitution-making process in Tanzania, women consistently demanded for prohibitions of discriminatory customs and traditions, which for a long time, have placed them on unequal footing with men, particularly in the decision-making arena.

Equality Guarantees

The use of gender-neutral language has been widely recognized as being hugely important in the struggle for gender equality and normalisation of women being equal in social, economic, and political spheres.¹⁰⁸ The use of gender-neutral language, such as 'each person', 'both men and women', 'every person' or 'every citizen' features across the wording of

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ International Institute for Democracy and Electoral Assistance, Constitution Assessment for Women's Equality, ISBN: 978-91-7671-049-4, (2016), available at <https://www.idea.int/sites/default/files/publications/constitution-assessment-for-womens-equality.pdf> accessed on 5th February 2019.

¹⁰⁸ Suzannah Weiss '7 Gender-neutral terms we should all be using', available at <https://www.bustle.com/p/7-gender-neutral-terms-we-should-all-be-using-9565996> accessed on 15 July 2018.

the 2014 Proposed Constitution. The Proposed Constitution also covers the general principles of equality before the law. Paragraph 1 of the Preamble of the 2014 Proposed Constitution commits the Government to build a nation guided by principles of human dignity, freedom, human rights, equality of persons and gender equality. Gender equality is stated as a governance principle under Article 6 (g)¹⁰⁹ and it runs through the political, economic, and social development sections.

Furthermore, under equality guarantees criteria, the national constitutions are required to include equality as one of the key principles in applying and interpreting the constitution and other laws, and in making or implementing any policy decisions. The 2014 Proposed Constitution stipulates development of the economy to be guided by principles of equity and equal opportunities to all citizens as provided for under Article 8. The use of gender neutral language and recognition of equality principles in the 2014 Proposed Tanzania's Constitution is a major constitutional gain for women. Gender equality principles in the constitution help in shifting the mind set about the role of women in the society and provide a strong foundation for women to take a first step to their greater participation in all sectors of life, including in decision-making processes.

Non-discrimination Guarantees

Equality guarantees are often followed by a non-discrimination provision and contain a list of grounds on which discrimination is prohibited, including gender. The Committee on the Elimination of Discrimination against Women¹¹⁰ has consistently recommended that state parties incorporate the definition of 'discrimination against women' into their constitutions from Article 1 of CEDAW, which provides: -

“For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective

¹⁰⁹ Also, the development of the economy is supposed to be guided by principles of equity & equal opportunities to all citizen as provided for under Article 8 (e & g) of the Proposed Constitution.

¹¹⁰ The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW Committee consists of 23 experts on women's rights from around the world. 'The Committee on the Elimination of Discrimination against Women (CEDAW)' available at <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>, accessed on 10 February 2019.

of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The 2014 Proposed Constitution includes critical elements of Article 1 of CEDAW in defining discrimination against women as seen in Article 33 (5). Articles 12 (a) and 33 of the 2014 Proposed Constitution of Tanzania prohibit all forms of discrimination including sex. Also, Articles 8 and 14 (b) of the Proposed Constitution require national authorities to provide equal opportunities to both women and men, without discrimination. Hence, the 2014 Proposed Constitution successfully provides and protects the women’s rights to political participation, by including non-discrimination provisions that are important to safe-guard women against discriminatory traditions, customs and beliefs that for a long time have kept women away from electoral decision-making spaces. Changing discriminatory practices takes a long time, but the constitutional provisions to that effect are important to kick start the transition within the Tanzanian societies towards freedom from discriminatory practises against women.¹¹¹

Prohibitions of Harmful Customs and Traditions

As noted in the preceding paragraphs, part of the strategy for the attainment of meaningful participation of women in political leadership lies in the explicit prohibition of customary law practices or harmful customs that have been discriminating negatively against women’s ability to participate in electoral politics.¹¹² Article 8 (1) of the 2014 Proposed Constitution obliges the state and its organs to direct their policies and duties to ensure dignity and respect, and all other human rights are preserved and maintained considering regional and international agreements consented to by the United Republic of Tanzania. Customary law has limited women’s spaces to participate in decision-making for centuries.¹¹³

Specific Provision for Women’s Rights

The women’s rights clauses are important tools for advancing gender equality. In equality and non-discrimination guarantees, constitutions

¹¹¹ As in 2014 percentage of females was measured at 50.09 in Rwanda, 50.03 in Kenya, 50.05 in Tanzania, 50.03 in Uganda according to the World Bank Group, available at <https://data.worldbank.org/indicator/sp.pop.totl.fe.zs> accessed on 13 March 2019.

¹¹² Kadaga R ‘Women’s political leadership in East Africa with specific reference to Uganda’ Tenth Commonwealth Women’s Affairs Ministers Meeting ‘Women’s Leadership for Enterprise’ Dhaka, Bangladesh, 17-19 June 2013.

¹¹³ Ibid.

should contain provisions dedicated to setting out women's rights only in addition to every right elsewhere in the constitution that also applies to women.¹¹⁴ Article 54 of the Proposed Constitution guarantees every woman the right to: i) be respected, valued and their dignity recognised; ii) protection against discrimination, harassment, abuse, violence, sexual violence and harmful traditional practices; and iii) participate in elections and all stages of decision-making without discrimination.¹¹⁵ Specific provisions for women's rights provide for active measures to improve the position of women, which is usually lower in the society; to enable them to achieve gender equality through women's social, economic and political empowerment.

Gender Equality and Constitutional Status of International Law

The advancement of gender equality is more likely to occur if constitutions incorporate international law, including aspects of international human rights standards.¹¹⁶ The kinds of constitutional provisions that are most favourable to the full enforcement of international human rights law are those which give international law direct effect and make them take precedence over domestic law in case of conflict or where the international law instruments are more rights-protective.¹¹⁷

In Tanzania, signing or ratification of any international convention does not automatically place it at the same level as the Constitution or any other national laws. However, Article 14 (1) of the 2014 Proposed Constitution ensures that human dignity is preserved and maintained in accordance with the customs, traditions and regulations of the Universal Declaration of Human Rights and other international conventions adopted by Tanzania. Further, Article 8 (1) of the Proposed Constitution obliges the state and its organs to direct their policies and duties to ensure that dignity, respect and all other human rights are preserved and maintained considering different agreements to which the United Republic of Tanzania has consented. The Foreign Policy of the United Republic of

¹¹⁴ The UNWOMEN and International IDEA Guidance Note on Women's Human Rights and National Constitutions, Leadership and Political Participation, (2012), available at <http://www.unu.edu/eh/wp-content/uploads/2016/06/Womens-Human-Rights-and-National-Constitutions-Guidance-Note.pdf> accessed on 6 November 2017.

¹¹⁵ In women only clause, the 2014 Tanzania Proposed Constitution, continued providing under Article 54: (d) get employment opportunity and be paid the same salary as a man; (e) protection for her employment while she is pregnant and after delivery; (f) get quality medical services including safe reproductive health; and (g) own property.

¹¹⁶ The UNWOMEN and International IDEA Guidance Note op cit note 132.

¹¹⁷ *Ibid.*

Tanzania aims to safeguard national interests and full state sovereignty and requires that the policy shall be implemented with transparency in order to respect international laws, observe international and regional treaties which are beneficial to the United Republic, and to resolve international conflicts through dialogue.¹¹⁸ Article 62 (1) also requires the judiciary or any other agency to observe international laws and human rights in interpreting the provisions of the Constitution regarding human rights. The recognition and consideration of the international conventions in the national jurisdiction depict the great influence these conventions can have on the conduct of state, civil, and political affairs. However, proper respect and implementation of international conventions or covenants call for their automatic application in national jurisdiction. It remains important that, the recognition and application of international law and standards in the 2014 Proposed Constitution will be paramount to counter laws, policies, customs and traditions that have side-lined women's participation in decision-making processes for ages.

Electoral System and Women's Participation in Decision-Making Organs

The Tanzanian women's priorities for the new constitutions include, among other things, the need for specific constitutional stipulations that would facilitate the realisation of equal representation of men and women in all decision-making processes. It was named as the fifty-fifty agenda calling for a constitutionally stipulated process that will lead to equal numbers of men and women in all decision-making processes. In line with women recommendations, the 2014 Proposed Constitution included political rights and civil liberties, specifically providing for voting rights and the right to stand for election. Also, through equality and non-discrimination provisions, the constitution has set a broader context for political gender equality and participation in the parliament. Despite the broad consensus in the literature that the proportional representation electoral system creates less obstacles to women's representation,¹¹⁹ the 2014 Proposed Constitution provides for the first-past-the post electoral system to govern presidential and parliamentary elections.¹²⁰ In a bid to promote more women in the parliament, the Proposed Constitution did

¹¹⁸ Article 21 (1) of the 2014 Proposed Constitution.

¹¹⁹ *Ibid.* Party list can be either closed, where voters vote only for a particular party, and parties determine who will fill the seats that they have been allocated. Party list can also be open where voters have some degree of choice among individual candidates, in addition to voting for entire parties.

¹²⁰ King C 'Electoral Systems' (2000), available at http://faculty.georgetown.edu/kingch/Electoral_Systems.htm accessed on 13 November 2019

away with the parliamentary quota system popularly referred as women special seats, which was introduced in Tanzania in 1985 by the 1977 Constitution of United Republic of Tanzania. As an alternative to a parliamentary quota, the 2014 Proposed Constitution called for equal representation of men and women in determining the composition of the Parliament through Article 124 (4). Astonishingly however, Article 124 (4) limits the intention to realize equal representation of men and women in decision-making processes only in the parliament. Article 124(4) is not applicable to determine the composition of men and women in other decision-making organs or positions. Further, Article 124(4) is silent on which modalities will be used to facilitate the attainment of equal representation of men and women, but obliges the Parliament under Article 124 (6) to enact legislation to classify the procedure of implementation of Article 124.¹²¹

It is noteworthy that, before rewriting the 2014 Proposed Constitution, the 1977 Constitution had under-gone several amendments, which contributed to an increase in the number of women in the Parliament but did not lead to realisation of equal representation of men and women. For example, the first post-independence Tanzania's Parliament (1962-1965) contained only 7.5 per cent of women, the number was maintained below 10 per cent until 1985.¹²² In 1985, constitutional reform introduced a parliamentary quota system comprising of 15 per cent and 25 per cent of seats in the Parliament and local councils respectively.¹²³ This constitutional amendment increased the percentage of women in parliament to 16.5 after the 1995 election. The Beijing Declaration¹²⁴ and the Southern African Development Community (SADC) Declaration¹²⁵

¹²¹ The explanation from the Constitutional Review Commission entails that each party will have to have both male and female candidates in a constituency, hence once that party wins, both male and female candidate have won. On the other hand, the 1977 Constitution of Tanzania uses the mixture of both first-past-the-post electoral system in the presidential and parliamentary elections and Proportional representation which is used to allocate women seats; the seats for women are distributed among the political parties in proportion to the total number of votes they received as a party. To qualify to offer a special seat candidate, the political party must have at least five per cent of the total parliamentary votes. See Meena R 'Women participation in positions of power and influence in Tanzania' available at http://www.redet.udsm.ac.tz/documents_storage/2009-8-19-11-34-23_womenparticipationinpositionsofpower.pdf accessed on 14 March 2016.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ 'Fourth World Conference on Women in Beijing China' available at <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm> accessed on 27 May 2016.

¹²⁵ SADC signed the Declaration on Gender and Development on 8th September 1997 at Blantyre, Malawi to promote closer regional cooperation and collective action as a means of fostering gender equality. Available at https://www.sadc.int/documents-publications/show/Declaration_on_Gender_Development_1997.pdf accessed on 15 February 2019.

required a benchmark of 30 per cent female representation in parliaments. To comply with the SADC Declaration, Tanzania amended its constitution to increase the parliamentary percentages of special seats to 20 per cent in 2000 and later to 30 per cent of women in 2005.¹²⁶ The 2005 elections increased the percentage of women in the Parliament from 21.5 per cent to 30.3 per cent, which increased to 35 per cent after the 2010 election.¹²⁷ The number further increased to 37.18 per cent after the 2015 election, where 30 per cent of women were appointed through special seats while 7.1 per cent were from constituencies after winning competitive elections.¹²⁸ Therefore, despite facing some challenges, special seats arrangement has helped Tanzania become a keen promoter of female political participation with more than 37.2 per cent in the current parliament.¹²⁹

Finally, another way an electoral system can promote women's political participation is by allowing independent candidates. In Tanzania, the Women's Coalition pressed strongly for independent candidates given the male dominated nature of Tanzanian political parties.¹³⁰ As a departure from the 1977 Constitution, Article 135 of the 2014 Tanzania's Proposed Constitution also allows independent candidates. This is an important gain for women as it opens more doors for candidacy in electoral positions and it diversifies political parties as the only option and gatekeepers in determining electoral candidates.

Responsibility of Political Parties to Advance Gender Equality

Political parties are the 'gatekeepers' for anyone to be elected to office. Therefore, how they function internally and whether women can gain leadership positions within parties is crucial.¹³¹ Although women play important roles in campaigning and mobilising support for their parties, they rarely occupy decision-making positions in political party

¹²⁶ Article 66-1(b) of the 1977 Constitution of United Republic of Tanzania.

¹²⁷ *Ibid.*

¹²⁸ 30 per cent came from special seats arrangement and only 7.18 per cent were directly elected. See the United Republic of Tanzania Bunge (National Assembly), available at <http://archive.ipu.org/parline/reports/2337.htm> accessed on 1 May 2019.

¹²⁹ 'Women in national parliaments as in December 2018', available at <http://archive.ipu.org/Wmn-e/world.htm> accessed on 5th January 2019.

¹³⁰ Meena R op cit note 56.

¹³¹ United Nations Division for the Advancement of Women (DAW), Department of Economic and Social Affairs (DESA), Economic Commission for Africa (ECA), Inter-Parliamentary Union (IPU) 'Equal participation of women and men in decision-making processes, with particular emphasis on political participation and leadership' (2005) Report of the Expert Group Meeting Addis-Ababa Ethiopia 24 – 27 October 2005. Available at <http://www.un.org/womenwatch/daw/egm/eq-men/FinalReport.pdf> accessed on 17 November 2019.

structures.¹³² The constitution may regulate political parties through a prohibition on sex discrimination in parties' membership, a requirement to include women in party decision-making structures, and nomination and candidates lists.¹³³ For parties to fulfil their critical functions of aggregating and expressing the political interests of different public spectrums, women must be able to take part in setting the priorities and agendas of parties.¹³⁴

In Tanzania, for the first time, the 2014 Proposed Constitution requires political parties to adhere to the gender equality principle in leadership positions as a condition for registration.¹³⁵ The constitutional regulations for political parties are important in influencing the behaviour of political parties, which in many ways are the gatekeepers of who gets the constituency candidacy. Having women in the top leadership positions of the political parties will have a multiplier effect on how nomination rules facilitate more women as electoral aspirants and candidates.

The Role of Independent and Supportive Electoral Commission

A nation electoral commission should be mandated to oversee compliance regarding guarantees of women's participation in electoral politics.¹³⁶ For the electoral commission to facilitate women's participation in electoral politics, it must adopt gender sensitive guidelines and rules to govern the conduct of elections. The composition of the members of a commission and staff must also reflect equality.¹³⁷ Article 211 of the 2014 Proposed Constitution establishes the Independent Electoral Commission. However, Article 211 is silent on the promotion of women's participation in terms of composition of the members of the commission and in elections. In Tanzania, the 2015 elections observed the National Election Commission (NEC) and the Zanzibar Election Commission (ZEC) incorporating gender policies in the election observer guidelines, voter

¹³² Many parties have women's units (women's wings), and although they can play a role in the party, their influence on party decisions can be limited. Women should also be integrated into party structures, including key decision-making bodies. International Institute for Democracy and Electoral Assistance op cit note 34.

¹³³ United Nations Division for the Advancement of Women (DAW), Department of Economic and Social Affairs (DESA), Economic Commission for Africa (ECA), Inter-Parliamentary Union (IPU) op cit note 149.

¹³⁴ Ibid.

¹³⁵ (see Article (224) (2)(e).

¹³⁶ For example, Article 91(g) of the Constitution of the Republic of Burundi 2005 requires the independent national electoral Commission to "assure the respect for the provisions of this Constitution relative to multi-ethnicity and to gender and to take cognizance of the claims in this respect." In addition, constitutions may provide for gender balance in the staffing of such commissions.

¹³⁷ The UNWOMEN and International IDEA Guidance Note op cit note 134.

education guidelines, and the code of ethics for political parties.¹³⁸ Additionally, it is worth noting that ZEC adopted and committed to implement gender inclusion strategy that was developed in coordination with other promoters of women's participation in electoral politics stakeholders.¹³⁹ The political parties guidelines and code of ethics were useful documents for NEC and ZEC to think more systematically about the inclusion of women by political parties in elections.

Institutions to Safeguard Women's Rights

The new constitutions should incorporate additional enforcement mechanisms or bodies tasked to mainstream, promote and enforce women's rights, including political rights.¹⁴⁰ The 2014, Proposed Constitution provides for the duties and functions of the Commission for Human Rights and Good Governance to include the sensitisation of the public about the preservation of human rights. The Constitution further provides for duties to the public to promote, protect, and monitor implementation of gender equality.¹⁴¹ In some other countries such as Rwanda, there is an independent body to oversee women's rights while in Tanzania, women's rights are promoted through the Human Rights and Good Governance Commission. This commission helps to promote gender equality through promotion of public policy that effectively responds to women's demands and interests.¹⁴² It is noted, however, that while women's rights are human rights, there is a danger for women's rights to be monitored by the body that generally oversees human rights. When this happens, women's rights though may get its share in the planning sessions they may suffer implementation oversight.¹⁴³

CONCLUSION

This article was set out to examine two interrelated questions notably the extent to which women were involved in the 2011-2014 constitution-making process, and how such participation impacted the content of the 2014 Proposed Constitution in terms of protection and promotion of women political participation in the country. For the first time in

¹³⁸ With support from the Democratic Empowerment Project, NEC managed to entrench gender provisions in the key election guidelines, 'International Republic Institute, Tanzania National Elections Gender Assessment'(2016) available at https://www.iri.org/sites/default/files/wysiwyg/tanzania_gender_report.pdf accessed on 16 February 2018.

¹³⁹ *Ibid.*

¹⁴⁰ The UNWOMEN and International IDEA Guidance Note op cit note 155.

¹⁴¹ Article 232 (1) of the 2014 Proposed Constitution.

¹⁴² Chauve C op cit note 37.

¹⁴³ The UNWOMEN and International IDEA Guidance Note op cit note 158.

Tanzania, the 2011-2014 constitution-making process allowed citizen participation in the formulation of the 2014 Proposed Constitution. Despite the observed challenges, the constitution-making process depicted satisfactory levels of women's involvement in all stages. The final product of the constitution-making process namely the 2014 Proposed Constitution guarantees participation of men and women in political life. Also, it contains key provisions on the general guarantees of equality and non-discrimination. The turning point on protection and promotion of women political participation is seen under Article 124(4) of the 2014 Proposed Constitution which provides that, 'the basis of composition of the Parliament shall be on equal representation of female and male parliamentarians.' It is noted however that Article 124 (4) limits the intention to realize equal representation of men and women in the parliament only. Article 124(4) is not applicable to determine the composition of men and women in other decision-making organs or positions.

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