









**The Constitutional Bill
Amendment No 2 of 2019 :
Women's Experiences
in the Parliamentary Public
Hearings – A Shadow Report**



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Introduction

On 31 December 2019, the Minister of Justice Legal and Parliamentary Affairs gazetted Constitutional Amendment Bill 2 of 2019 which seeks to amend the Constitution in several key respects. The Constitutional Amendment Bill seeks to introduce 27 amendments to the Constitution of Zimbabwe. In terms of section 141 of the Constitution and of the Standing Orders of Parliament, Parliament ought to seek the views of the public on the contents of the Bill. The portfolio committee on Justice Legal and Parliamentary Affairs publicized the intention to carry out public hearings all around the country. The public hearings were subsequently conducted in different provinces from 15 to 19 June 2020. Further a virtual consultation on the Bill was conducted on the 19th of June 2020 and it was attended by about 200 participants. In total 17 consultative meetings on this Bill were held all over the country.

Women and Law in Southern Africa participated in Radio programmes (social media campaigns) in order to raise awareness of the contents of the Bill and to solicit the views of members of the public. WLSA engaged the communities in consultative meetings as a way of raising awareness and also to hear their views on the proposed amendments, from the findings, WLSA came up with a position paper which was presented to the portfolio committee on Justice Legal and Parliamentary Affairs before the public hearings. Out of the 17 public hearings that were conducted by Parliament on the Constitutional Amendment Bill, WLSA managed to monitor 10 of these and documented the views of women and youth on the proposed extension of the women's quota system and the introduction of youth quota system. This report outlines WLSA's findings from this monitoring exercise with specific focus on the hearings conducted in Gwanda, Marondera, Mutare, Plumtree, Sanyati, Bulawayo, Masvingo, Chinhoyi and Rusape which WLSA had opportunity to monitor.



Graphical presentation of attendances at the public hearings

Fig 1: Percentage of People represented at the public hearings attended by WLSA

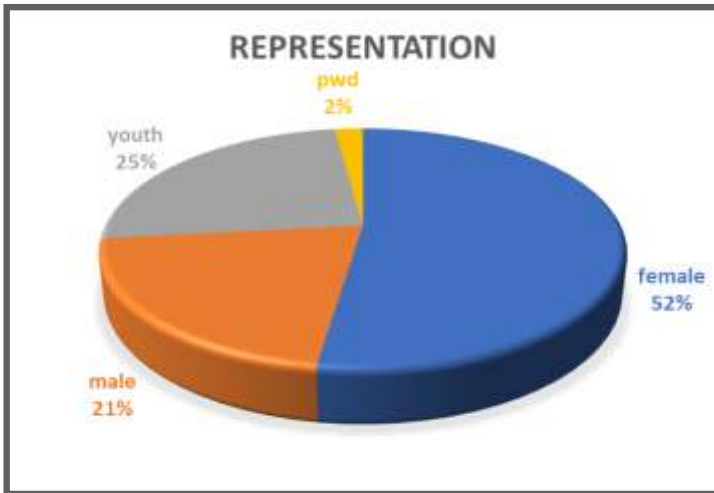
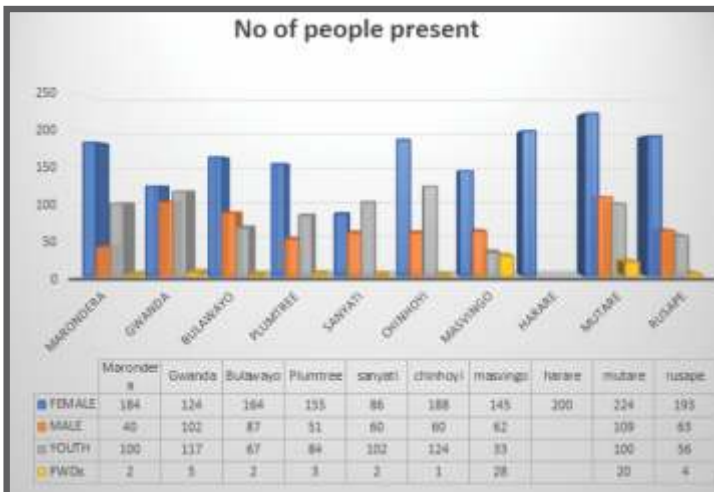


Fig 2: Number of people who attended per province



The bar graph above indicates the number of people who attended public hearings on the constitutional amendment bill at Marondera, Gwanda, Bulawayo, Plumtree, Sanyathi, Chinhoyi, Masvingo, Harare, Mutare and Rusape and WLSA was physically present to monitor these meetings.

At most hearings, the Parliamentarians gave a summary of the bill and did not get into detail in simplifying the bill to the people present at the hearings. Emphasis was made that people were free to air their views since they were enjoying parliamentarian's privileges. In one area where people were told to make their presentations short, the people were not pleased about it and one youth asked *"Why are people being given 2 minutes to present their views, people should be allowed to fully articulate their issues, this is an important meeting, do not limit the people, the constitution is made for the people and it should be by the people. Justice and Legal Parliamentary Affairs committee, when you go back to parliament in Harare, you should not misrepresent the opinions of the public, we will be following the parliamentary report."*



Parliament addressing Mutare community Out Side queen's hall on the 17th June 2020

Gwanda

More than two hundred citizens participated at the meeting held at Gwanda Municipality. 126 women participated in this meeting, also 5 people with disability had an opportunity to engage with the parliamentarians during this meeting. Due to COVID-19 regulations, 4 sessions of 50 participants each were conducted. Participants had their temperatures checked and their hands sanitized. Despite the sitting arrangement outside the hall abiding by the 1 metre physical distancing, there was not much distancing in long queues of participants waiting for their session. Six police officers were at the meeting, maintaining order and encouraging participants to observe physical distancing.

Police officers enforcing the lockdown regulations turned away some of the participants on their way to public hearings citing that they did not have exemption letters, until an officer in charge was engaged to assist the people to attend the meeting.

The meeting started later than planned because the venue was changed from Gwanda Municipal hall (Jaunda Hall) to Gwanda Municipal offices (Park). There were also seemingly, challenges with people accessing the meeting and one participant had this to say *"Why are there heavy roadblocks today whilst there is an important meeting, police officers and soldiers were turning people to go back home, their presence on the roads was intimidating people"*

The majority of the women who participated in the public hearings in Gwanda rejected the proposed amendments on the extension of the women's quota system. Regarding this aspect, one participant opined that *"Instead of reserving seats for women or youths, the political situation should be conducive for them to compete equally with others. Reserving seats opens up room for secondment of people with no capabilities into leadership positions"*



A Gwanda woman making a comment on the extension of the women's quota and the introduction of the youth quota on the 16th June 2020 at Gwanda Municipal (Park).

Marondera

184 women attended public hearings at Marondera and they were 2 people with disability. The majority of the women and youth who participated at the public hearing held at Marondera shared the sentiment that the Constitution should not be amended, with particular emphasis focusing on clause 11 that seeks to extend the woman's quota system.

They were of the view that the constitution must be fully implemented, before it is amended. *“Why would one buy a suit and start patching it before they could even wear it. The constitution is less than a decade, do not amend it. The Constitution of Zimbabwe clearly sets out provisions that encourages women’s equal participation in politics and decision making. Why are we not looking at other countries like South Africa and Rwanda who have a quota system which promote women participation and copy those than to continue with the quota system that is not empowering us as women.”* Said one of the participants whilst the rest of the group agreed with her.



Social distancing observed during public hearings held at Marondera

Mutare

About 300 people participated in the Mutare public hearings held at Queens Hall. 224 participants were women and seven (7) people with disabilities were present and also made their submissions. The majority of the women participants rejected that section 124 of the constitution of Zimbabwe be amended to extend the women quota system. Persons with disability also leveraged on the discourse on the quota system, stressing that it should also disability inclusive. One woman with disability emphasized the importance of this saying, *“When we talk about decision making, it is paramount to make social inclusion its cornerstone, it is high time that we as people with disability be included in all spaces and in decision making. If the government wishes to talk about extending the quota system, they should extend it with people with disability in mind. We are not happy with the current quota system hence it should not be extended”*

Plumtree

In Plumtree, the meeting was attended by 155 women and 3 were people with disabilities. The hearings started at 1030am instead of 10am. No explanation was given to participants on the causes of the delay. Like most of the areas, COVID-19 measures including mandatory temperature checks, sanitizing participants and physical distancing within the Hall were observed. WLSA observed that while a number of people in this area seemed to understand what the Bill was about and were articulate in giving their views, there were also a few people who did not know about the bill completely and the summary given by the parliament did not help much as one speaker was heard making submissions on the Marriage Bill and not the Constitutional Bill. The majority of the women who had an opportunity to make their submissions rejected the amendment on the extension of the women quota system. One participant in their opening statement said, *"We are having drought in the country, but you are using resources to attend to an issue which is in my view not urgent, why should we amend the constitution which we do not even fully know and have not even implemented?"* She continued to ask the parliamentarians, *"We have not seen the work of the women who are in the quota, neither do we know them, what are they doing in parliament and why should we extend the system that is not working?"*

Sanyati

The majority of the women of the community of Sanyati who participated at the public hearings rejected the proposed amendment on the extension of the quota system. The public hearings were held at Nyimo Hall, the venue was not accessible. Social distancing and other requirements were also observed. Most people indicated that the meeting was not adequately advertised therefore only those who managed to be told were able to attend, regardless of the difficulties of getting transport. One participant indicated that *"I was not even aware that there was such an important meeting, I had to ask people who were standing by on what they were waiting for, it is only when they mentioned that it was the meeting with the parliamentarians on the amendments when I decided to await my turn to make my contribution, I know I am not the only one who did not know about this meeting, most people are only concerned about Covid 19 and alleviating poverty and not this bill."*

Chinhoyi

About 300 people participated in the Mutare public hearings held at Queens Hall. 224 participants were women and seven (7) people with disabilities were present and also made their submissions. The majority of the women participants rejected that section 124 of the constitution of Zimbabwe be amended to extend the women quota system. Persons with disability also leveraged on the discourse on the quota system, stressing that it should also disability inclusive

Rusape

In Rusape most of the women who participated in the meeting rejected the proposed amendment on the extension of the quota system. On the 16th of June 2020 uniformed forces were heavily mounting roadblocks, people were being turned back to their homes even if they had their clearance letters or permit. This to some extent had a bearing on the number of people that attended the public hearings held on the 17th June 2020. Social distancing was observed inside the hall whilst outside people who were queued were close to each other. The participants were given short time to make their submissions.

Bulawayo

In Bulawayo most of the women who participated in the meeting rejected the proposed amendment on the extension of the quota system. On the 16th of June 2020 uniformed forces were heavily mounting roadblocks, people were being turned back to their homes even if they had their clearance letters or permit. This to some extent had a bearing on the number of people that attended the public hearings held on the 17th June 2020. Social distancing was observed inside the hall whilst outside people who were queued were close to each other. The participants were given short time to make their submissions.





17th June 2020, Selborne hotel, Bulawayo. Constitutional amendment Bill no 2 of 2019, public hearings.



Proposed Amendment	Current Constitution	Participants Views
<p>Clauses 2, 3, 4, 5, 6, 7 and 8</p> <p>Clauses dispense with the "running-mate" concept of the Vice-Presidency. Instead, the 2 Vice-Presidents will be chosen on the President's own authority. Vice-Presidents will also be removed on the President's own authority.</p>	<p>Sections 91-97</p> <p>A Presidential candidate runs for office with two running mates, who will be the Deputy Vice-Presidents. A Vice-President can only be removed from office by Parliament through a laid-out process. NB: Per the Constitution's transitional clauses, this is supposed to become operational in 2023.</p>	<p>Most of the people present in all the meetings WLSA monitored believed this amendment consolidated too much power to the president, they agreed that the vice presidents should be elected together with the president, and the process to remove them should be guided as it is currently.</p> <p>Some of the people said the president should be allowed to nominate his vice presidents.</p>
<p>Clauses 9</p> <p>Clause adopts the transitional provisions of paragraph 14 of the 6th Schedule to the Constitution and makes them substantive. If the person elected President in any election dies, resigns or is removed from office, the Vice-President or, where there are two Vice-Presidents, the Vice-President who was last nominated to act as President, acts as President until a new President assumes office. The vacancy in the office of President must be filled by a nominee of the political party under which she was elected. In the case of a person who was not elected under a party ticket, the Vice-President or, if there are two Vice-Presidents, the Vice-President who was last nominated to act, assumes office as President.</p>	<p>Section 101</p> <p>If President ceases to hold office for any reason, first Vice-President assumes office, and second Vice-President assumes role of first Vice-President until expiry of term of office of President.</p> <p>If first Vice-President ceases to hold office for any reason, second Vice-President becomes first Vice-President, and President must appoint new second Vice-President until expiry of first Vice-President's term.</p>	<p>Not discussed</p>
<p>Clause 10</p> <p>The President may appoint up to 7 (instead of 5) Ministers from outside Parliament.</p>	<p>Section 104</p> <p>President can appoint up to 5 non-Members of Parliament to be Cabinet Ministers.</p>	<p>The majority were of the view that it is unnecessary this amendment will introduce an increase in government expenditure, and that will be felt by the tax payers, therefore they argued the parliamentarians not to amend that clause.</p>

		<p>Others however said that the president should actual have 10 more ministers and not 7, and those ministers should be representing each province in Zimbabwe.</p>
<p>Clause 11</p> <p>Clause extends the provision for the 60 party-list women members of the National Assembly by another two extra Parliamentary terms (from 2 to 4 terms), and makes provision for the party-list proportional representation of youths (10) in the National Assembly. The youth are defined as “persons aged from twenty-one to thirty-five years of age”, and these 10 shall be made up of one from each of the country's provinces.</p>	<p>Section 124</p> <p>Creates 60 seats for women elected to Parliament on a proportional representation party-list system, until the end of the 9th session of Parliament (2023).</p>	<p>There was consensus in all the areas, that there should be gender balance and gender equality in decision making. They agreed that the number of women should not be limited to 60, but should be equal to that of men just like in senate.</p> <p><i>“There should be guidelines given to the parliamentarians in the quota system, so as to guide them on what exactly their mandate is, because if they do not know what they are supposed to be doing, they will not be able to represent us the women who are independent, and actually most of us who do not have any political parties will never benefit from the quota system as we do not have resources or the capacity to campaign on our own”</i></p> <p>Youths agreed that they should make up at least 60% seats in parliament as they make up a large portion of the population.</p> <p><i>“We are the ones who bear the brunt of the decisions made in all spaces, be in politically or in social spaces. Selection of youth member representation should not be limited to party proportions as some youths stand for youths outside politics.”</i></p>
<p>Clause 12</p> <p>This clause de-couples ZEC's delimitation function from the population census held every 10 years.</p>	<p>Section 161(1)</p> <p>ZEC carries out a delimitation exercise once every 10 years immediately after the national census.</p>	<p>Not discussed</p>

<p>Clause 13</p> <p>This is the second time this clause is being amended. This clause will allow the President acting on the recommendation of the JSC to appoint sitting Judges to vacancies in the higher courts (Supreme and Constitutional Courts), without subjecting them to the public interview procedure.</p> <p><i>“On the recommendation of”</i> means the JSC’s proposals to the President are not binding, in the sense that the President may ask for another recommendation.</p>	<p>Section 180:</p> <p>Requires all Judges other than the Chief Justice, Deputy Chief Justice and Judge President of the High Court to be interviewed by the JSC in a public process, and then a list of 3 candidates is submitted to the President, from which he may appoint, or request for another list if unsatisfied. President cannot appoint outside the list.</p> <p>The Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court are appointed by the President <i>“after consultation”</i> with the Judicial Service Commission. This means he is at liberty to appoint anyone he so chooses, even if such appointment(s) is/are not recommended by the JSC.</p>	<p>The three alms of the government should be independent.</p> <p><i>“Everyone knows the saying ‘know where your bread is buttered’, if a judge is appointed by the president their judgments will be compromised, they will be biased. Those public interviews made us believe in the justice system, do not remove them”</i></p>
<p>Clause 14</p> <p>Clause will allow Judges of the Constitutional Court and Supreme Court to extend their tenure after reaching the age of 70 annually for up to 5 years, subject to a favourable medical report as to the mental and physical fitness of the Judge so to continue in office, on condition the President approves <i>“in consultation”</i> with the JSC.</p> <p>Allows Judges of Supreme Court to have their service extended beyond retirement age for up to 5 years, on condition the President approves <i>“in consultation”</i> with the JSC. Further, allows Judges of the Supreme court to be appointed for a fixed term, in</p>	<p>Section 186</p> <p>Justice of the Constitutional Court are appointed for a non-renewable term of 15 years, and must retire if they reach the age of 70 years earlier. All Judges of the High and Supreme Courts must retire at age 70, whether appointed indefinitely or for a fixed term.</p>	<p>All communities in expressing their views indicated that this amendment should not be done.</p> <p><i>“The world is moving very fast, new ideas are coming up, other countries have even moved to artificial intelligence, when as Zimbabweans are we going to embrace technology in the country if we keep on extending the years of old people in the justice system, this amendment should be done away with, young, energetic lawyers are supposed to also be allowed to be judges.”</i></p> <p><i>“ I am a civil servant and soon I will have to retire, why should the judges get that preference, in our culture we all know that as a person gets old they slowly return to being a child, let the judges retire at 70, do not extend their years, give them opportunity to go and farm too.”</i></p>

<p>which case they can serve up to 75 years. This however does not apply to High Court Judges.</p>		<p>years, give them opportunity to go and farm too."</p>
<p>Clause 15</p> <p>Clause rewords the functions of the "Public Service". Expands the functions to say: <i>"There is a single Public Service to implement the policies of the Executive branch of the Government, to assist it in the administration of Zimbabwe and to deliver public services to the people"</i>.</p>	<p>Section 199</p> <p>Provides for a "Civil Service" whose function is <i>"for the administration of Zimbabwe"</i>.</p>	<p>Not discussed</p>
<p>Clause 16</p> <p>Inserts Clause 204A to the Constitution which provides for the appointment and role of the Chief Secretary to the Office of the President and Cabinet and his or her deputies <i>"after consultation"</i> with the Public Service Commission. The Chief Secretary is the most senior member of the Public Service, and Permanent Secretaries of Ministries shall report to the Chief Secretary on any matter affecting them as a class. The President is given exclusive powers to fix the terms of office and conditions of service of the Chief Secretary to the office of the President and Cabinet and his or her deputies.</p>	<p>Provision non-existent in Constitution</p>	<p>Not discussed</p>
<p>Clauses 17 and 18</p> <p>*<u>Erroneously</u> cites Chapter 13 instead of Chapter 12 of the Constitution, where new provisions, sections 244A and 224B are inserted.</p> <p>These clauses create the office of the Public Protector and the Deputy, who will take over</p>	<p>Section 243</p> <p>The Zimbabwe Human Rights Commission (ZHRC) is created and given powers which includes <i>"to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions"</i>.</p>	<p>The communities expressed their views that they were pleased with the work that the Zimbabwe Human Rights Commission is doing, they also indicated that if another office is created this has an effect on the tax payer's money as that will increase the number of people in offices, therefore they did not</p>

<p>certain functions concerning public maladministration, etc, from the Zimbabwe Human Rights Commission. The Public Protector and the Deputy Public Protector are appointed by the President "after consultation" with the JSC and the Committee on Standing Rules and Orders. This allows the President to unilaterally appoint the Public Protector and the Deputy if he so wishes. There is no process and no interviews stipulated. There are no qualifications stipulated.</p>		<p>want that amendment to sail through.</p> <p><i>"It is not necessary to have another office doing the job already being done by the ZHRC. If there must be a public protector, he/she must be selected by the public, for the public. This amendment however is still rejected."</i></p>
<p>Clause 19</p> <p>Clause provides for the appointment of the Prosecutor-General by the President on the advice of the JSC, without the intervention of a public interview procedure. For the removal from office, the JSC is not involved. Instead, the President decides on the issue of whether the question of removal from office must be investigated, after which the President will constitute a Tribunal. The President then acts "on the recommendation" of the Tribunal.</p> <p>The proposed clause 7f of section 259 proposed under clause 19 of the Bill mentions "Judge" as opposed to "Prosecutor-General". That is just sloppy drafting which is evidence of copy and paste.</p>	<p>Section 259</p> <p>The Prosecutor-General is appointed by the President "on the advice" of the Judicial Service Commission (JSC) following the procedure for the appointment of a judge.</p> <p>"On the advice of", means the President is bound by the decision of the JSC. The Prosecutor-General is publicly interviewed.</p> <p>The Prosecutor-General is removed from office following the procedure of removal of a Judge (with JSC involvement in instigating the process). President cannot initiate process.</p>	<p>The communities in their discussions were of the view that interviews encouraged transparency, and this in turn builds trust in the justice system.</p> <p><i>"This amendment should not be made; I do not see how one can be able to prosecute properly if they are nominated."</i></p>
<p>Clauses 20, 21, 22 and 25</p>	<p>Sections 268 and 269</p>	<p>Not discussed</p>

This is revival of the office that was known as the Ombudsman's Office, which existed prior to 2013 and was abolished with the adoption of the current Constitution. Section 107 and 108 of the Constitution of Zimbabwe (1979) provided for an Office of the Ombudsman. The office was established in 1982 by the Ombudsman Act.

"On the advice of", means the President is bound by the decision of the JSC. The Prosecutor-General is publicly interviewed. The Prosecutor-General is removed from office following the procedure of removal of a Judge (with JSC involvement in instigating the process). President cannot initiate process.



<p>Clauses 20, 21, 22 and 25</p> <p>These clauses remove Members of Parliament from the membership of Provincial Councils, merges the provisions relating to Provincial and Metropolitan Councils by removing the special provisions relating to the latter (they will no longer be chaired by mayors, but be elected by each Provincial Council at its first sitting, and provide for the election of 10 of the members of Councils by a system of party-list proportional representation.</p>	<p>Sections 268 and 269</p> <p>Members of Parliament in each province are members of the province's Provincial Council, and the same applies to metropolitan councils. In the two Metropolitan Councils (Harare and Bulawayo), the Mayor is the Chairperson.</p>	
<p>Clause 23</p> <p>Replaces the term "foreign organisations or entities" with the term "international organisations" which term is defined in the Constitution.</p>		<p>Where this clause was discussed the participants indicated that if an amendment was made the country will have debt and it is taking away parliamentarian's powers.</p> <p>"As Zimbabweans we are tired of being kept in secret. We have a lot of resources and we usually see Chinese coming into our communities and mining and taking away our resources, we are not even being employed neither are we benefiting from those minerals, if more of these agreements continue to be made, this time without you parliamentarians agreeing to it I foresee our country swimming in debt"</p>
<p>Clause 24</p> <p>Repeals the definition of "Civil Service" and replaces it with a definition of "Public Service".</p>		<p>Not discussed</p>
<p>Clause 27 and Schedule</p> <p>Provides for substitution of references to the "Civil Service" or "Civil Service Commission" by references to the "Public Service" and "Public Service Commission".</p>		<p>Not discussed</p>

Challenges, Observations and Recommendations

In general, WLSA observed that in all areas, females attended and boldly expressed their views concerning the extension of the women's quota system. This is an indication that women have zeal to participate in decision making and that they are aware that their voice is equally important. Also notable was the presence and the representation of people with disabilities. Social inclusion is key in decision making. Everyone who was involved shared the same conviction that nothing for the people without the people. Regarding the introduction of the youth quota some of them welcomed the idea while others did not but overall, there was consensus that 10 seats were not enough and that the youth need more seats in parliament and in other sectors as well. Below are some of the major observations and recommendations from WLSA based on the public hearings that it monitored;

1. The 2hrs that were dedicated for the meetings were short as it was evident that the people that attended had a lot of views to say concerning the amendment bill. In areas where the venue was changed for example in Gwanda, the meetings started late and they ended late.

WLSA recommends that parliament dedicates more time for such important public hearings in order to afford ample time and opportunity for all persons who attend such meetings to air their views.

2. In areas such as Bulawayo on the 16th and 17th of June 2020, people were reportedly being turned back by uniformed forces allegedly on account of enforcing the rules and regulations and curbing COVID 19 and it is likely that as a result, a number of people in the city did not manage to attend the hearings.

It is WLSA's recommendation that in observing the rules and regulations for curbing Covid 19, uniformed forces should also be encouraged to relax their demands for permits and mounting of heavy roadblocks in cities to allow people to be free and not feel intimidated by their presence.



1. Some meetings WLSA observed, ended after 6pm. For hearings that started at 2pm, these stretched up to after 6pm and this was not conducive for women who have household chores to attend to.

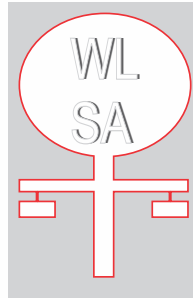
In order to encourage the participation of all persons women included, WLSA urges Parliament to be strategic and considerate with respect to time allocation for such meetings in order to enable women to also freely participate in such meetings without compromising their ability to attend to their expected gender roles and household chores.

2. WLSA also observed that while Parliament gave an outline of the Constitutional Amendment Bill no 2 of 2019, they did not go on to simplify to the attendants what the bill was saying. Most people were rejecting the amendments without proffering solutions.

It is WLSA's considered view that more effort should be put in raising awareness of the public on the contents and import of such Bills as this is critical in ensuring the public's meaningful contribution in the law-making process.

3. The announcement of the dates of the public hearings were made less than a week before these began i.e. on the 9th June 2020. This left very little time for efforts to raise public awareness on the Bill and the upcoming process.
4. WLSA took note of the fact that Parliament held public meetings in the 10 provinces which is commendable but it also noted that the number of people who attended the meetings was small compared to the number of people in each province. Further, the meetings were held in provincial towns meaning that persons from rural areas who could not afford to travel did not have the opportunity to contribute to this critical constitutional reform process.

If we harness the potential of everyone in our society and ensure they have an equal opportunity to achieve positions of influence, we will become better and fairer country. WLSA has noted that raising prior awareness on processes requiring public participation has great impact on the communities. There is evidence that when communities are empowered with responsibilities and knowledge, they come to recognize the importance of being involved in decision making and influencing policy making process. It is important that the government involves communities in participating in policy making and decision making.



Constitutional Amendment Bill Number 2 Parliamentary Hearings



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