



Gender Equality and Equity Analysis of Zimbabwe's Constitution and Commission Legislation

MAY 2017

Contents

1. Introduction.....	1
2. Comparison of Gender Equity Provisions in the New Constitution of Zimbabwe and the Constitutions of Botswana, Kenya, and South Africa.	1
2.1 Summary of Gender Equity Analysis.....	1
2.1. <i>Work and Labour Relations:</i>	1
2.1.2 <i>Family and Marriage:</i>	2
2.1.3 <i>Reproductive Health:</i>	2
2.1.4 <i>Education:</i>	2
2.1.5 <i>Elected and Appointed Government Positions:</i>	2
2.1.6 <i>Discrimination:</i>	3
2.1.7 <i>Customary or Religious Courts:</i>	3
3. The 2013 Constitution of Zimbabwe	3
4. The 1966 Constitution of Botswana	4
4.1 Background	4
4.2 Bill of Rights	4
4.3 Government Representation.....	5
5. The 2010 Constitution of Kenya.....	5
5.1 Background	5
5.2 Bill of Rights	5
5.3 Government Representation.....	6
6. The 1997 Constitution of South Africa.....	9
6.1 Background	9
6.2 Bill of Rights	9
6.3 Government Representation.....	10

GENDER EQUITY ANALYSIS OF ZIMBABWE'S CONSTITUTION AND COMMISSION LEGISLATION

1. Introduction

In 2013, Zimbabwe enacted a new Constitution, including strong gender equality provisions that outlaw discrimination against women. The new Constitution promotes women's full participation in all aspects of society and abolishes all "laws, customs, traditions, and practices" that infringe upon women's rights and equality with men. But the Constitution's mandate for gender equality is not necessarily reflected in Zimbabwe's existing laws or practices. An initial step to address gender inequality and obtain tangible benefits for women and girls is to ensure that laws and policies meet the requirements of the new Constitution.

The Research & Advocacy Unit (RAU) undertook an analysis of the gender equality provisions under Zimbabwe's new Constitution and compared these provisions to those constituted by select countries in the region.

This document sets forth the analysis by providing:

- A comparison between the gender equity provisions of the Constitution of Zimbabwe and those of Botswana, and Kenya, and South Africa.

2. Comparison of Gender Equity Provisions in the New Constitution of Zimbabwe and the Constitutions of Botswana, Kenya, and South Africa.¹

2.1 Summary of Gender Equity Analysis

2.1. *Work and Labour Relations:*

- Zimbabwe's Constitution exceeds that of Botswana, Kenya, and South Africa in gender equity of work and labour relations.
- Zimbabwe's government must ensure measures are taken to create employment for everyone—but especially for women and youth—and to implement family care and other related measures that allow women a real opportunity of employment.
- Zimbabwe's Constitution also provides the right to equal pay and maternity leave benefits. In contrast, Kenya's and South Africa's Constitutions only provide that everyone has the right to "fair labour" practices.

¹ A much more detailed paper is available on request: info@rau.co.zw

2.1.2 Family and Marriage:

- Zimbabwe's Constitution calls for the adoption of measures to assist mothers and others who take care of children. South Africa only provides for the right to family care, and Botswana raises the issue only as it relates to pensions.
- Zimbabwe's Constitution is the only one that calls upon the government to enact measures to prevent domestic violence.
- Zimbabwe's Constitution also calls for "appropriate measures" to protect children and spouses in death and divorce. South Africa only provides a right to social security for individuals who cannot support themselves, but it does not provide for specific protections.

2.1.3 Reproductive Health:

- The Constitution of Zimbabwe provides a qualified right to make decisions regarding reproduction but also effectively outlaws abortion, except in rare cases, by requiring that an act of Parliament be made to protect the lives of unborn children. In contrast, Kenya effectively bans abortion, while South Africa explicitly provides an unqualified right to make decisions regarding reproduction.

2.1.4 Education:

- Only Zimbabwe's Constitution specifically states that girls are to be afforded the same opportunities as boys.

2.1.5 Elected and Appointed Government Positions:

- Ministry appointments in Zimbabwe must be guided by considerations for regional and gender balance. None of the other three countries have a similar provision.
- Election lists in Zimbabwe must list male and female candidates alternately, with women being listed first. Electoral laws provide for proportional representation and in filling vacancies, require them (with one exception) to be filled in the same gender as the persons who previously filled the seats. Kenya's electoral law provisions are similar to Zimbabwe. For the most part, the Constitutions of Botswana and South Africa only make use of personal pronouns in provisions on membership composition and appointments.
- Botswana, Kenya, and South Africa have constitutional provisions to ensure that its elections are conducted properly, freely, and fairly, but Zimbabwe expands these assurances to require the State to take measures to ensure that all eligible citizens are registered as voters.

- Zimbabwe and Kenya use quotas to ensure that a certain number of government positions are held by women. Botswana and South Africa have no such quotas.
- Zimbabwe’s Constitution encourages the State to have even numbers of women and men in elective or appointed government bodies. Kenya’s Constitution directs the State to “take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

2.1.6 Discrimination:

- Zimbabwe, Botswana, Kenya, and South Africa all prohibit unfair discriminatory laws on the basis of sex, albeit in different ways. South Africa’s Constitution also includes a provision to redress past imbalances.
- Of all the constitutions, Zimbabwe’s Constitution includes specific provisions that seek to elevate and empower women and to safeguard gender equality and women’s rights.

2.1.7 Customary or Religious Courts:

- The Kenyan Constitution allows its provisions on equality to be “qualified to the extent strictly necessary for the application of Muslim law” in special courts that may exert jurisdiction over matters relating to personal status, marriage, divorce, and inheritance.

3. The 2013 Constitution of Zimbabwe

Zimbabwe adopted a new constitution in 2013. In terms of family law and women’s rights, the 2013 Constitution has much to recommend it—the new Constitution provides women more rights, guarantees, and protections than ever before. It not only includes strong provisions on women’s rights and gender equality and equity, the Constitution contains a bill of rights that attempts to address existing harmful cultural and discriminatory practices. The Constitution also establishes a Gender Commission to expedite the implementation of constitutional provisions related to women. The commission is tasked with investigating violations of women’s rights, recommending actions to address gender discrimination, conducting research, advising on gender equality, and recommending affirmative actions to promote gender equality.

Zimbabwe’s Constitution contains provisions wholly dedicated to the rights of women and to gender equity.² For example,

- Chapter 2 identifies national objectives for women’s rights in the areas of development, empowerment and employment creation, work and labour

² Zimbabwe Constitution, Ch. 2, § 17, Ch. 4, § 80.

relations protection of the family, education, prevention of domestic violence, and marriage.³

- Chapter 4—the bill of rights—addresses women’s rights in the areas of criminal justice, reproductive rights, equality and nondiscrimination, labour rights, maternity leave, and health care.⁴
- Chapter 6 requires certain quotas be met for the National Assembly.
- Chapter 8 requires that gender be taken into account for judicial appointments.

These provisions are discussed more fully in the following sections that compare Zimbabwe’s Constitution to those of Botswana, Kenya, and South Africa.

4. The 1966 Constitution of Botswana

4.1 Background

The Constitution of Botswana came into effect in 1966, and since then its main provisions have remained virtually unchanged. It is considerably shorter than the other constitutions reviewed in this report: 50 pages compared to roughly 200 pages. Not surprisingly, its gender-equity provisions are limited; the Constitution does not even use the terms woman, women, girl, female, or gender.

Botswana’s bill of rights is no different. Specific provisions protecting the rights of women are very limited, or nonexistent. Unlike other African nations, there are also no built-in quotas or other methods of guaranteeing women’s participation in government.

4.2 Bill of Rights

The Botswanan bill of rights provides for fundamental rights and freedoms of life, liberty, security of the person and protection of the law regardless of sex.⁵ Although one’s sex cannot be used to deny a person the protection of fundamental rights and freedoms, that right is not extended to all areas of the law.⁶ Most notably, Botswana exempts “personal law” from the constitutional restraints imposed on discriminatory laws. In other words, laws that have a direct effect on women’s rights in the areas of “adoption, marriage, divorce, burial, devolution of property on death”⁷ can have a discriminatory effect and still not violate the Constitution.

So unlike the Constitution of Zimbabwe, Botswana’s Constitution does not include any provisions wholly dedicated to the rights of women and gender equality (other than providing

³ *Id.*, Ch. 2, §§ 13(3), 14(2), 24(2)(d), 25(a), 26, 27(a), 27(b).

⁴ *Id.*, Ch. 4, §§ 48(2)(d), 52(b), 56(2), 65(6), 65(7), 76(1).

⁵ Botswana Constitution, Ch. 2, § 3(a).

⁶ *Id.*, Ch. 2, § 3(a).

⁷ *See id.*, Ch. 2, § 15(4)(c).

that widows are entitled to pension benefits of public officers).⁸ Nor does it provide for any state institutions, similar to the Zimbabwe Gender Commission, that are tasked with promoting and developing gender equality and protection.

4.3 Government Representation

Botswana's Constitution does not contain any provisions that explicitly guarantee the presence of women in various government offices. In fact, the only evidence that the Botswanan Constitution envisions female participation in government is its use of both pronouns "he" and "she" when addressing various governmental positions.⁹ And unlike the Constitutions of Zimbabwe, Kenya, and South Africa, the Constitution of Botswana makes no provision for quotas to ensure women's representation in publicly-elected bodies at any level of the government.¹⁰

Botswana's Constitution includes provisions to ensure that its elections are conducted properly, freely, and fairly.¹¹ Zimbabwe expands on these assurances to require the state to ensure that all eligible citizens are registered as voters.¹²

5. The 2010 Constitution of Kenya

5.1 Background

The Constitution of Kenya was promulgated in 2010. In general, its gender-specific provisions are less progressive than those of Zimbabwe. Its strongest gender equity guarantees cover female representatives in all branches of government, but its bill of rights contains fewer explicit gender equity protections than Zimbabwe.

The different approaches of the two constitutions are exemplified in how they define their core values and principles. While Zimbabwe separates out "gender equality" as a specific founding value, Kenya provides a more general list of "patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized" as its national values.¹³ Both countries direct the State to recognize the women's rights and rectify discrimination.¹⁴

5.2 Bill of Rights

Kenya's bill of rights does not have the same gender equity protections as the Zimbabwe's. As noted, the Constitution of Zimbabwe explicitly mentions the rights of women in Chapters 2 and 4 covering national development, empowerment and employment creation, work and labour relations, education, death penalty, labour rights, and maternity leave. Moreover, Zimbabwe's Constitution contains provisions wholly dedicated to the rights of women and to gender balance, which have no analogue in Kenya's Constitution.

⁸ *Id.*, Ch. 7, § 116(5).

⁹ *See id.*, Ch. 4.

¹⁰ *See id.*, Ch. 5.

¹¹ *See id.* Ch. 5, § 65(a)(12).

¹² *See Zimbabwe Constitution*, Ch. 7, § 155.

¹³ *Id.*, Ch. 1, § 3(1)(g); *Kenya Constitution*, Ch. 2, § 10(2).

¹⁴ *Compare Zimbabwe Constitution*, Ch. 1, §§ 3(2)(i),(iii) *with Kenya Constitution*, Ch. 4, § 21(3).

But there is some overlap in gender equity guarantees in the bills of rights of the two countries. This is most evident in the equality and nondiscrimination provisions, which the two constitutions match word for word: “women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres.”¹⁵ Other similar provisions include further sections of the equality and nondiscrimination clause,¹⁶ the right to health care,¹⁷ the protection of the family clause,¹⁸ and the right to consent to marriage.¹⁹

There are some gender equity provisions which, while present in both constitutions, appear to be more progressive in Zimbabwe’s than Kenya’s, particularly on the subject of reproductive health. For instance, Zimbabwe has a clause on the right to personal security, which states that “every person has the right to bodily and psychological integrity, which includes the right—subject to any other provision of this Constitution, to make decisions concerning reproduction.”²⁰ In contrast, Kenya’s Constitution states that “abortion is not permitted unless, in the opinion of a trained health professional, there is a need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.”²¹

A similar contrast is seen in right to life provisions. While Zimbabwe’s Constitution states that “an Act of Parliament must protect the lives of unborn children and that Act must provide that pregnancy may be terminated only in accordance with that law,” Kenya’s Constitution provides that “the life of a person begins at conception.”²² The Kenyan clause is more direct and less subject to interpretation than that of Zimbabwe’s. Both constitutions use similar unambiguous language in limiting marriage to people of the opposite sex.²³

Unlike in Zimbabwe, Kenya explicitly provides for existence of Kadhis courts, which apply Muslim law in matters relating to personal status, marriage, divorce, and inheritance.²⁴ Moreover, Kenya’s Constitution directs that its provisions on equality shall “be qualified to the extent strictly necessary for the application of Muslim law” in these courts. Another provision contained in the Kenya’s Constitution but not in Zimbabwe’s is affirmative action—Kenya explicitly permits affirmative action programmes designed to redress past discrimination.²⁵ Zimbabwe has no analogue provision.

5.3 Government Representation

Kenya and Zimbabwe have structured their governments slightly differently, which makes a direct comparison of their constitutional provisions on government representation complicated. Both countries, however, dedicate themselves to having female public servants, which

¹⁵ Compare Zimbabwe Constitution, Ch. 4, § 56(2) with Kenya Constitution, Ch. 4, § 27(3).

¹⁶ Compare Zimbabwe Constitution, Ch. 4, § 56(3) with Kenya Constitution, Ch. 4, §§ 27(4)-(5).

¹⁷ Compare Zimbabwe Constitution, Ch. 4, § 76(1), with Kenya Constitution, Ch. 4, § 43(1)(a).

¹⁸ Compare Zimbabwe Constitution, Ch. 2, § 25(a), with Kenya Constitution, Ch. 4, § 45(1).

¹⁹ Compare Zimbabwe Constitution, Ch. 2, § 26(a), with Kenya Constitution, Ch. 4, § 45(2).

²⁰ Zimbabwe Constitution, Ch. 4, § 52(b).

²¹ Kenya Constitution, Ch. 4, § 26(4).

²² Compare Zimbabwe Constitution, Ch. 4, § 48(3) with Kenya Constitution, Ch. 4, § 26(2)(d).

²³ Compare Zimbabwe Constitution, Ch. 4, § 78(3) with Kenya Constitution, Ch. 4, § 45(2).

²⁴ Kenya Constitution, Ch. 4, § 24(4).

²⁵ See *id.*, Ch. 4, § 27(6).

both accomplish primarily by setting quotas. Zimbabwe's Constitution appears to be more progressive, since its gender equity clause states that:

- (b) "the State must take all measures, including legislative measures, needed to ensure that—
 - (i) both genders are equally represented in all institutions and agencies of government at every level; and
 - (ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament...."²⁶

In contrast, the Kenyan Constitution directs the State to "take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."²⁷ Of course, under Kenya's provision, it is possible for women to make up 75% of a government body, whereas Zimbabwe would limit their number at 50%, although neither has yet been achieved.

Both Zimbabwe and Kenya include the equality of women and men in their values and principles of public service.²⁸ Similarly, both instruct that a chairperson and vice or deputy chairperson of a committee cannot be of the same gender.²⁹ As of March 2016, the most recent date for which information could be found, this requirement was followed by almost all constitutional commissions in Zimbabwe, but only some of the commissions in Kenya.³⁰

²⁶ Zimbabwe Constitution, Ch. 2, § 17(b).

²⁷ Kenya Constitution, Ch. 4, § 27(8).

²⁸ Compare Zimbabwe Constitution, Ch. 9, § 194 with Kenya Constitution, Ch. 13, § 232.

²⁹ Compare Zimbabwe Constitution, Ch. 18, § 320 with Kenya Constitution, Ch. 15, § 250(11).

³⁰ As of March 2016, this requirement was followed by almost all constitutional commissions of Zimbabwe: the Gender Commission, the Human Rights Commission, the Media Commission, and the Anti Corruption Commission. The Electoral Commission violated this requirement because both its chairperson and deputy chairperson are female. The National Peace and Reconciliation Commission constituents are not yet selected. See Cyril Zenda, *Zimbabwe struggles with gender parity*, The Financial Gazette (March 24, 2016), <http://www.financialgazette.co.zw/zimbabwe-struggles-with-gender-parity/>. Similarly, this requirement is followed by some Kenyan constitutional commissions, such as the Law Reform Commission, the Parliamentary Service Commission, the Salaries and Remuneration Commission, the National Land Commission, the Commission on Human Rights, and the Public Service Commission. See *Commissioners*, Kenya Law Reform Commission, <http://www.klrc.go.ke/index.php/management/commissioners>; *Parliamentary Service Commission*, Parliament of Kenya, <http://www.parliament.go.ke/parliamentary-service-commission>; Steve Nguru, *Salaries and Remuneration Commission SRC*, *Constitutions of Kenya* (Sep. 2015), <http://www.ustawi.info.ke/index.php/government/commissions-and-independent-offices/salaries-and-remuneration-commission-src?hitcount=0>; *Commissioners*, National Land Commission, <http://www.landcommission.go.ke/about-nlc/commissioners>; *Current Commissioners*, Kenya National Commission on Human Rights, <http://www.knchr.org/Aboutus/Structure/Commissioners/CurrentCommissioners.aspx>; *Commissioners*, The Public Service Commission, <http://www.publicservice.go.ke/index.php/about-psc/governance-structure/commissioners>.

Both constitutions provide for the creation of a Human Rights Commission.³¹ Zimbabwe, however, also provides for the creation of a separate Gender Commission, “to monitor issues concerning gender equality to ensure gender equality as provided in this Constitution.”³² In contrast, Kenya includes gender equality issues as part of the work for its Human Rights Commission, instructing it “to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development.”³³ Zimbabwe and Kenya include gender balance as an interest that should guide policy on agricultural land.³⁴

The Constitutions of Zimbabwe and Kenya also contain explicit quotas for women in governmental bodies. For instance, the Zimbabwean National Assembly is required to have [60 women](#), while the Kenyan National Assembly must have 47 women.³⁵ The electoral law in both countries also reserves seats for female representatives.³⁶ In fact, in selecting members of the Judiciary, Kenya’s Constitution has gender quotas for members of the Judicial Service Commission and is directed to promote gender equality.³⁷ Zimbabwe’s Constitution, however, has no such analogue.

The Constitution of Kenya is also more progressive when it comes to provincial and metropolitan councils, as it provides that only two thirds of the representatives for these bodies can be of the same gender.³⁸ In contrast, the Constitution of Zimbabwe only provides that in provincial council elections, “male and female candidates are listed alternately, every list being headed by a female candidate.”³⁹ Similarly, while Kenya’s Constitution sets quotas on female Senate membership,⁴⁰ Zimbabwe’s Constitution only provides that male and female candidates are to be alternately listed on the party list.⁴¹

Zimbabwe’s Constitution does, however, have some provisions on gender equity in government work that have no analogue in Kenya. These provisions include the appointment of ministers and deputy ministers, public access to and involvement in parliament, metropolitan councils, and the establishment of the Zimbabwe Land Commission.⁴² But Kenya’s Constitution refers to gender equality in its provision on the Parliamentary Service Commission, which has no analogue in Zimbabwe.⁴³

³¹ Compare Zimbabwe Constitution, Ch. 12, § 243 with Kenya Constitution, Ch. 4, § 59.

³² Zimbabwe Constitution, Ch. 12, § 246.

³³ Kenya Constitution, Ch. 4, § 59.

³⁴ Compare Zimbabwe Constitution, Ch. 16, § 289 with Kenya Constitution, Ch. 5, § 60(1)(f).

³⁵ Compare Zimbabwe Constitution, Ch. 6, § 124 with Kenya Constitution, Ch.8, § 97(1)(b).

³⁶ Compare Zimbabwe Constitution, Ch. 7, § 157 with Kenya Constitution, Ch. 7, § 90.

³⁷ Kenya Constitution, Ch. 10, §§ 171-72.

³⁸ *Id.*, Ch. 11, § 175 (c).

³⁹ Zimbabwe Constitution, Ch. 14, § 268.

⁴⁰ Kenya Constitution, Ch. 8, § 98(1).

⁴¹ Zimbabwe Constitution, Ch. 6, § 120.

⁴² Zimbabwe Constitution, Ch. 5, § 104(4); Ch. 6, § 149; Ch. 14, § 269; Ch. 16, § 296.

⁴³ Kenya Constitution, Ch. 8, § 127(2).

6. The 1997 Constitution of South Africa

6.1 Background

South Africa's Constitution came into effect in 1997, after the fall of apartheid. It has been amended 17 times since its adoption.

Both Zimbabwe and South Africa explicitly include gender equality and nonsexism as founding values of each state. For example, in the founding provision of Chapter 1, the South African Constitution makes clear that the South African state is founded on several values, including “[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms, [n]on-racialism, and non-sexism.”⁴⁴ Likewise, the Constitution of Zimbabwe's founding values and principles include respect for “fundamental human rights and freedoms;...recognition of the inherent dignity and worth of each human being; recognition of the equality of all human beings; [and] gender equality...”⁴⁵

Zimbabwe's bill of rights, however, is much more progressive than South Africa's when it comes to gender equality. Similarly, Zimbabwe's Constitution is much more progressive in guaranteeing women's participation in government.

6.2 Bill of Rights

South Africa's bill of rights explicitly prohibits both private and public discrimination on the basis of gender, sex, pregnancy, and marital status. The government is entitled to pass national legislation to prevent private discrimination.⁴⁶ In contrast, Zimbabwe's bill of rights does not include an explicit prohibition on private discrimination, although it does provide both that “women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres” and “every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their... sex, gender...”⁴⁷

Overall, however, Zimbabwe's Constitution makes more explicit references to gender equity in its bill of rights than South Africa's Constitution. For example, the Zimbabwean Empowerment and Employment Creation clause provides that “at all times the State and all institutions and agencies of government at every level must ensure that appropriate and adequate measures are undertaken to create employment for all Zimbabweans, especially women and youths,” while South Africa's Labour Relations clause merely provides that “everyone has the right to fair labour practices.”⁴⁸

⁴⁴ South Africa Constitution, Ch.1, § 1(a)(b).

⁴⁵ Zimbabwe Constitution, Ch. 1, §§ 3(c), (e)-(g).

⁴⁶ South Africa Constitution, Ch. 2, § 9.

⁴⁷ Zimbabwe Constitution, Ch. 4, §§ 56 (2)-(3).

⁴⁸ *Compare* Zimbabwe Constitution, Ch. 2, § 14(2) *with* South Africa Constitution, Ch.2, § 23(1).

Similarly, Zimbabwe devotes a number of gender equity provisions in Chapters 2 and 4 addressing national development, work and labour relations, protection of the family, marriage, education, prevention of domestic violence, death penalty, equality and nondiscrimination, labour rights, maternity leave, and health care, including reproductive services.⁴⁹ South Africa does not address gender equity in its comparable provisions. Moreover, the Constitution of Zimbabwe includes provisions wholly dedicated to the rights of women and to gender balance,⁵⁰ which have no analogue in South Africa's Constitution.

Both Zimbabwe and South Africa explicitly provide for reproductive rights and bodily and psychological integrity,⁵¹ but only South Africa provides an unqualified right. Zimbabwe provides a qualified right, subject to other provisions in the Constitution, including a provision calling on the state to protect the lives of the unborn. Unlike Zimbabwe, South Africa does not appear to have comparable provisions that protect the lives of unborn children,⁵² or prohibit same sex marriage.⁵³

6.3 Government Representation

South Africa's Constitution expressly recognizes that its government representatives include women by using both pronouns and including provisions such as "the National Assembly must elect a woman or a man from among its members to be the President."⁵⁴ But unlike Zimbabwe, South Africa does not use quotas on female members of the National Assembly or other government bodies.⁵⁵ Neither does it have comparable election rules like Zimbabwe's in which female and male candidates need to be listed alternately on election lists.⁵⁶

Similar to Zimbabwe's provision that the judiciary must reflect society, South Africa's Constitution requires that the judiciary "reflect broadly the racial and gender composition of South Africa."⁵⁷ Similarly, racial and gender composition needs to be reflected in the appointment of members to the South Africa Electoral Commission.⁵⁸ On its face, South Africa's Commission for Gender Equality has the power (presumably by national legislation) to monitor, investigate, research, educate, lobby, advise, and report on issues concerning gender equality and other powers prescribed by national legislation.⁵⁹ This goes beyond the functions of Zimbabwe's Gender Commission.⁶⁰ But South Africa does not require that its members be chosen for their

⁴⁹ Zimbabwe Constitution, Ch. 2, §§ 13(3), 24(2)(d), 25(a), 26, 27(a), 27(b); Ch. 4, §§ 48(2)(d), 56(2), 65(6), 65(7), 76(1).

⁵⁰ *Id.*, Ch. 2, § 17; Ch. 4, § 80.

⁵¹ *Compare* Zimbabwe Constitution, Ch. 4, § 52(b) *with* South Africa Constitution, Ch. 2, §§ 12(2)(a)-(b).

⁵² Zimbabwe Constitution, Ch. 4, § 48(3).

⁵³ *Id.*, Ch. 4, § 78(3).

⁵⁴ South Africa Constitution, Ch.5, § 86(1).

⁵⁵ Zimbabwe Constitution, Ch. 6, § 124.

⁵⁶ *Id.*, Ch. 6, § 120.

⁵⁷ *Compare* Zimbabwe Constitution, Ch. 8, § 184 *with* South Africa Constitution, Ch. 8, § 174(1).

⁵⁸ South Africa Constitution, Ch. 9, § 193.

⁵⁹ *Id.*, Ch. 9, § 181(1)(d).

⁶⁰ *See* Zimbabwe Constitution, Ch. 12, § 246.

integrity and understanding of gender issues, like the members of Zimbabwe’s Gender Commission.⁶¹

The South African Human Rights Commission has even more powers than the South African Commission for Gender Equality because the Human Rights Commission must seek appropriate redress of human rights violations.⁶² Additionally, the South African Human Rights Commission must “require” the State to provide the Commission with information on the measures that they have taken towards the “realisation” of rights concerning housing, health care, food, water, social security, education, and the environment.⁶³ In contrast, Zimbabwe’s Human Rights Commission’s powers are more limited: the Commission can promote, ensure observance, recommend measures to Parliament, and conduct research into human rights issues.⁶⁴

On gender equality, Zimbabwe provides that when there is a chairperson and a deputy chairperson serving on a commission, they must both be of different genders.⁶⁵ No such provisions are provided for under South Africa’s provisions on gender equality.

⁶¹ *See id.*, Ch. 12, § 245.

⁶² South Africa Constitution, Ch. 9, §184.

⁶³ *Id.*

⁶⁴ Zimbabwe Constitution, Ch. 12, § 243.

⁶⁵ *Id.*, Ch. 18, § 320.