TOWARDS REVERSING DISCRIMINATION IN LAW

Mapping and Analysis of the Laws of the Republic of Zimbabwe from a Gender Perspective
DISCLAIMER

This study was commissioned by UN Women Zimbabwe on request by the UN Women East and Southern Africa Regional Office as part of a regional initiative to research the level of discrimination in legislation in selected countries in the region. The contents of this report are the sole responsibility of the Consultant and do not necessarily reflect the views of UN Women.

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Cover page:
Elisabeth Hammargren, UN Women, March 2021
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<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>BEAM</td>
<td>Basic Education Assistance Module</td>
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<td>CCZ</td>
<td>Constitutional Court of Zimbabwe</td>
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<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>HHC</td>
<td>Harare High Court</td>
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<td>Human Rights Council</td>
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UDHR      Universal Declaration of Human Rights
UNDP      United Nations Development Programme
UN Women  United Nations Entity for Gender Equality and Women’s Empowerment
UPR       Universal Periodic Review
WLSA      Women and Law in Southern Africa (Research and Education Trust)
WWDs      Women with Disabilities
ZEC       Zimbabwe Electoral Commission
ZGC       Zimbabwe Gender Commission
ZIMCHE    Zimbabwe Council for Higher Education
ZLC       Zimbabwe Land Commission
ZRP       Zimbabwe Republic Police
ZWLA      Zimbabwe Women Lawyers Association
EXECUTIVE SUMMARY

The Republic of Zimbabwe (Zimbabwe) has made considerable efforts towards promoting and protecting women and girls’ rights, including ensuring the elimination of discrimination based on sex, gender, marital status, pregnancy, and other factors that have a disproportionate impact on women and girls. The passing of the 2013 Constitution was a critical milestone in this regard, as the Constitution requires that all laws, customs, practices, and conduct must be consistent with it. In this regard previous laws, customs, practices and conduct that had the effect of discriminating against women and girls have been rendered unconstitutional. The country has also ratified several global, regional and sub regional human rights instruments on the protection of women and girls from discrimination. In addition, Zimbabwe has submitted periodic reports on progress being made to implement the human rights standards to the appropriate treaty monitoring bodies to ensure that the available protections are implemented and enjoyed by women and girls in practice.

However, despite these efforts, significant gaps in the protection of women and girls from discrimination still exist in law and in practice. This assessment/research comprehensively examines the laws of Zimbabwe and concludes that a number of legislative actions must be taken to bring the laws of Zimbabwe in conformity with its obligations under international law. These legislative interventions are necessary across the spectrum of all sectors in Zimbabwe, including marriage and family law, the political environment, business and commercial settings, justice delivery, the education sector as well as social, religious and cultural/customary settings and institutions.

The report furthermore concludes that the judiciary has played an important role in efforts to eliminate discrimination against women and girls, applying the Constitution and international human rights law to promote the principles of equality and non-discrimination. There are nevertheless situations in which judges have been unable to hand down gender responsive decisions due to existing gaps in the law. In such situations, they have used the occasion to deliver judgements or rulings which call for legislative interventions to address the lacunae in law in relation to the elimination of discrimination against women and girls. The Legislature and the Executive have taken the mantle in such instances, although the processes have been slow. Legislative actions by Parliament and the Executive have been tied to efforts to align the country’s laws with the 2013 Constitution. Given that there are many laws that require alignment, new laws aimed at addressing the rights of women and girls have not been given priority, hence the continued gaps in this regard. It is therefore hoped that the Government will put in place the necessary measures to accelerate both the alignment process and enactment of new laws in order to secure the full domestication of relevant global and regional human rights norms and standards.

To ensure the effective and efficient implementation of the resultant laws, this report identifies the need for social policy and related actions to support the legislative process and the utility
of the resultant legislation. These actions include the development of implementation frameworks for all laws to be promulgated to address discrimination against women and girls, the implementation of the constitutional requirements on devolution of responsibility to local government institutions to improve access to service delivery by women and girls, close collaboration with the country’s academia to ensure that government laws and policies are informed by state of the art research and evidence, and promoting awareness of rights among women and girls. The Government must also resource key institutions dealing with women and girls’ issues, provide adequate and efficient legal aid to women and girls, develop a victim-centred justice delivery system, consider the codification of customary law, and ensure that the Ministry of Women’s Affairs and Gender is a cabinet level standalone Ministry to safeguard its efficiency and effectiveness so as to defend, protect, promote and enforce women and girls’ rights.
SUMMARY OF FINDINGS

Whilst the Constitution of Zimbabwe (Amendment No. 20) Act of 2013 (Constitution of Zimbabwe/Constitution/2013 Constitution) has substantially changed and improved the legal position of women in the country, most of the laws in the country have not been aligned with it. From a legal perspective therefore, women’s rights are protected by the Constitution in that any legal provision that infringes the protected constitutional rights is void to the extent of the infringement.\(^1\) This implies that the offending laws and provisions can be challenged in the courts and women and girls can claim their rights and challenge discrimination based on constitutional provisions.

In practice however, bureaucrats and citizens alike are more likely to use Acts of Parliament and Statutory Instruments (SIs) as points of reference when implementing the law and not the Constitution. As a result, women could still face discrimination, regardless of the protections afforded by the Constitution, unless such unconstitutional laws or practices are challenged in the courts or by sheer serendipity, those responsible for implementing the law are acquainted with women’s rights. Not many women are able to challenge bureaucracy, hence the need for the law to clearly and unequivocally spell out the protections that are available to women, including their right to be treated on the basis of equality with men, as provided in the Constitution and international human rights law.

This research concluded that to end discrimination against women and girls in law, the following needs to be achieved:

Twenty-eight (28) laws need attention to address de jure discrimination against women and girls. Of these 27 laws, six must be repealed (one must be repealed outright and five need replacement with improved laws), seven laws should have major amendments and 15 laws require minor amendments. In addition, five new laws must be enacted to address existing gaps in the promotion of equality and non-discrimination in favour of women and girls.

\(^{1}\) Sec 80 (3) of the Constitution.
METHODOLOGY

Two main methodologies were used for this study: literature review and key informant interviews (KIIs). To a large extent, the literature review focused on the primary sources of law in order to understand the “letter of the law”\(^2\) with regards to laws that discriminate against women in Zimbabwe. These included the Constitution, Acts of Parliament, Statutory Instruments, and case law. The primary sources of law were reinforced by other legal texts that interpret the application of the laws on the ground and the impact of the law on different categories of citizens so as to appreciate the “law in action”. International instruments (both soft\(^3\) and hard\(^4\)) addressing women’s rights, gender equality, and non-discrimination were also assessed together with reports submitted by Zimbabwe to relevant international treaty and charter bodies such as the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the Committee on the Rights of the Child (CRC Committee) and the Universal Periodic Review (UPR) of the Human Rights Council (HRC) and the corresponding concluding observations and recommendations from such bodies to Zimbabwe.

KIIs were held with key organisational and individual stakeholders with specialized knowledge of women’s rights and gender equality as well as human rights in the Government of Zimbabwe (GoZ), civil society organisations (CSOs), international organisations, the academia and the country’s citizenry. The interviewees and their institutions were chosen on the basis of their knowledge of or programmes relating to women and girls’ rights, gender equality and human rights issues in Zimbabwe and internationally. The diversity of individuals and organisations targeted for interviews allowed the research to benefit from a diversity of views and proposals on key legal and policy frameworks and their application on the ground. Engagements with key informants focused on:

- Their understanding of the current legal framework and its effectiveness, or otherwise, in addressing women and girls’ rights and preventing discrimination;
- The purpose of and appropriate provisions/contents and structure of a revised legal framework on women and girls’ rights and gender equality in Zimbabwe; in other words, their recommendations for appropriate provisions in any new laws or policies that the government may develop, and for revisions and amendments in existing laws; and
- The best strategies to be employed to ensure the implementation of existing and any new laws that may be promulgated on women’s rights and gender equality.

The assessment also benefited from the input of key stakeholders during the national stakeholder validation meeting, which was held on the 19th of November 2020, with a view to soliciting input on the draft report.

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\(^2\) What the law says, which however must be juxtaposed against principles of equity, equality, fairness, justice and non-discrimination amongst others. Strict application of the letter of the law without considering these principles may lead to injustice.

\(^3\) Not enforceable.

\(^4\) Enforceable.
The research focused on analysis of laws selected based on their impact on women and girls across a spectrum of social, economic, political and cultural settings.⁵ These were identified as the major pieces of legislation across these spectra that could assist in reflecting the everyday legal realities of women and girls within their families, in schools and institutions of higher learning, in the workplace and other economic spaces, in political spaces, in their private lives as individuals and in the communities that they live in. Some of the identified laws were also impinged by the decisions of the various courts in the country, calling on the State to amend or repeal the laws so as to protect the rights of women and girls from discrimination. Lastly, addressing the gaps in the identified laws will assist the Government of Zimbabwe in the implementation of recommendations/concluding observations of the various charter and treaty bodies that Zimbabwe has reported to over the years, including the Universal Periodic Review, the CEDAW Committee and the Committee on the Rights of the Child.

⁵ See Annex A: Legislative Documents Reviewed.
INTRODUCTION

The Constitution of the Republic of Zimbabwe (Zimbabwe) defines the country as a “unitary, democratic and sovereign republic”6 and upholds the supremacy of the Constitution by stating that “any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.”7 The Constitution is anchored in nine (9) founding values and principles: the supremacy of the Constitution; the rule of law; fundamental human rights and freedoms; the nation's diverse cultural, religious and traditional values; recognition of the inherent dignity and worth of each human being; recognition of the equality of all human beings; gender equality; good governance; and recognition of and respect for the liberation struggle.8 With these provisions, the Constitution of Zimbabwe is regarded as one of the most progressive constitutions in Africa, especially given that it subordinates culture, customary law and social norms to constitutional principles.

The previous Constitution (the Lancaster House/Independence Constitution) allowed for discrimination on the basis of personal and customary law.9 Before the promulgation of the 2013 Constitution, these provisions had over the years been the basis for some of the most egregious forms of discrimination against women by the courts, law making processes and the State generally.10 With the new progressive Constitution in place it is necessary to call for the alignment of laws and practices with it in order to address the challenges of discrimination against women and girls in law. This analysis is therefore guided by the principle of constitutional supremacy and seeks to determine the alignment of all legislative frameworks with the Constitution in as far as the Constitution provides for the enjoyment of human rights, the right to equality, and the right to freedom from discrimination for women and girls. In addition, the analysis includes an examination of Zimbabwe’s international and regional obligations and the extent of their reflection in the Constitution, laws, and judicial decisions and in policy and practice in general.

To date, government has made efforts to align the country’s laws with the 2013 Constitution, although progress has been slow, or has not adequately integrated an analysis of the laws with a discriminatory impact in the alignment agenda.11 In this regard, in October 2013, Government set up the Inter-Ministerial Committee (IMC) to spearhead the alignment of the country’s laws with the Constitution.12 The committee continues to work on the alignment process, and despite slow progress, it remains an important mechanism to work with in law reform and development in the country. The proposed process under this assessment should therefore be linked to the

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6 Constitution of Zimbabwe, 2013, sec 1.
7 Constitution of Zimbabwe, 2013, sec 2, sec 3 (1) (a).
8 Constitution of Zimbabwe, 2013, sec 3.
9 Constitution of Zimbabwe, 1980, sec 23 (3) (a) and (b).
10 For example, the Supreme Court decision in the case of Magaya v Magaya SC 210/92.
11 During the validation meeting for this report held on 19 November 2020, participants agreed that whilst Government has made progress in aligning laws with the Constitution, this was in relation to certain law clusters and that the cluster addressing women and girls’ rights and gender equality was not receiving adequate attention and priority.
12 According to its website, the Inter-Ministerial Committee “consists of legal advisors, senior state counsels, representatives from all Government Ministries and is chaired by the Attorney General” (See Inter-Ministerial Taskforce – Facilitating Alignment of Legislation to the Constitution (imt.gov.zw)).
IMC for better coordination and quicker buy-in from government, parliament, and related stakeholders, as a strategy to achieve results.

Geographically, Zimbabwe is a land locked country located in Southern Africa and bounded by South Africa to the South, Zambia to the North, Mozambique to the East and Botswana to the west. The country is 390,757 square kilometres in size, with a population of 13,572,560 according to the country’s 2017 inter-censual demographic survey. Women and girls constitute 52% of the population indicating the population that is impacted by the laws under assessment.

The country’s nominal Gross Domestic Product (GDP) was estimated at $20.563 Billion (United States Dollars) in 2020. The agricultural sector produces the bulk of raw materials required in the country’s industrial sector. The country’s second biggest export product is tobacco, and in 2019 earned the country US$18.1 million and contributed 19.2% to the total export earnings. Other important agricultural exports during 2019 included sugar and sugar confectionary, cotton, fruits and nuts and these played an important role in helping to prop up an ailing economy and a country reeling from foreign exchange shortages. Land is important for the majority of the citizens, especially the poor and marginalised who depend on land and agriculture for their subsistence. The Food and Agricultural Organisation (FAO) of the United Nations estimates that about 86% of women in Zimbabwe depend on land for their livelihoods and for food production for their families. The World Bank estimates that in 2019, agriculture employed 66.54% of the formally employed population in the country.

The mining industry is highly diversified with estimates showing that the country has close to forty (40) different minerals. Gold is the major export mineral commodity at $1.96 billion United States Dollars. The bulk of the gold comes from small scale artisanal mining and although the numbers remain low, more and more women are participating in this sector. Between mining and agriculture, women are ultimately key contributors in the country’s formal economy. Women are similarly present in the country’s informal sector. In 2020, just before

13 http://www.zw.one.un.org/unin/zimbabwe/zimbabwe-country-profile
15 Ibid.
19 The International Monetary Fund predicted that the economic would shrink by 7.2% in 2019 and would shrink by a further 7.4% in 2020, with COVID 19 exacerbating the economic challenges (see https://equityaxis.net/2020/04/15/zim-economy-to-shrink-7-4-in-2020-imf/).
24 See details below under analysis of the Mines and Minerals Act [Chapter 21:05].
the outbreak of COVID-19, the United Nations Development Programme (UNDP) in Zimbabwe estimated that about 2.2 million people were employed in the informal sector (the majority of them being women and youths), supporting 76% of working Zimbabweans.\textsuperscript{25}

BACKGROUND TO THE STUDY

This report is prepared for the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in line with the requirements of a project titled “Comprehensive Assessment of the Discriminatory Laws to Women in Zimbabwe.” This work in Zimbabwe is part of a broader international strategy by key organisations including UN Women titled “Equality in law for women and girls by 2030: A multi-stakeholder strategy for accelerated action” which has the objective of eliminating laws that discriminate against women and girls in identified countries. Zimbabwe has been selected as one of the countries to participate in this initiative. The report is an identification, mapping, and analysis of the laws of Zimbabwe from a gender perspective, looking at the social, cultural, economic, and political context underpinning the current state of affairs. It examines the content of these laws, their interpretation by the judiciary, and implementation by the executive, in line with international human rights norms and standards pertaining to women and girls.

Observations and recommendations of treaty bodies play an important role in ensuring that the country’s laws are in alignment with international human rights standards on promoting equality and non-discrimination for women and girls. In this regard, this study also captures the most recent observations by the CEDAW Committee, UPR and the CRC Committee that are relevant for the protection of women and girls from discrimination as detailed below:

In March of 2020, the CEDAW Committee issued the following Concluding Observations and Recommendations to the Government of Zimbabwe:

“...the Committee is concerned by the long delays in amending legislation subsidiary to the Constitution and by the remaining discriminatory provisions in the legislative framework of the State party, including provisions on marriage and property rights and on the minimum age of marriage.

10. In the light of its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the Committee recommends that the State party amend or repeal, without delay, all remaining sex-discriminatory provisions, including those on marriage and property rights and on the legal minimum age of marriage, with a view to bringing them into compliance with the Constitution and the Convention.

11. The Committee notes that the Constitution contains references to the principle of non-discrimination and gender equality and a comprehensive bill of rights, including women’s rights. However, the Committee notes with concern the absence of a specific gender equality law enshrining the principle of equality of women and men and containing a definition and prohibition of all forms of discrimination against women, including direct and indirect discrimination in the public and private spheres, as well as intersecting forms of discrimination, in line with article 1 of the Convention.

12. The Committee recommends that the State party, in line with articles 1 and 2 of the Convention, adopt, without delay, a law on gender equality, covering all prohibited grounds of discrimination and encompassing direct and indirect discrimination in both the public and private spheres, as well as intersecting forms of discrimination against women.

Legal status of the Convention
13. Although the Convention has been incorporated into the Constitution and some provisions of the Convention have been incorporated into legislation, the Committee remains concerned that the State party has not fully incorporated the Convention into its national law. The Committee also notes that the State party has not ratified the Optional Protocol to the Convention.  

In 2016, the Universal Periodic Review (UPR) gave a total of 260 recommendations to Zimbabwe urging the country to align its laws with the 2013 Constitution and international human rights frameworks. The UPR also urged Zimbabwe to fully operationalise and capacitate the different institutions supporting democracy and human rights as established by Chapter 12 of the Constitution. Many of the UPR recommendations related to the elimination of discrimination against women and girls. The Committee on the Rights of the Child (CRC) made a number of recommendations relevant to the promotion of non-discrimination against girls in response to the Republic of Zimbabwe’s 2nd periodic report which was submitted in 2016. The recommendations generally covered legal and policy reform concerning child marriage; participation; birth certificates and legal guardianship; sexual violence, exploitation and abuse; disabilities; health care; and education. Using a rights-based approach, the above Concluding Observations and Recommendations of the three bodies serve as foundational entry points for this review.

The objective of this assessment is to identify and analyse laws with a discriminatory impact on women and girls in Zimbabwe and provide recommendations for repeal or revision of such laws as an important part of a broader legal reform agenda that supports the achievement of gender equality. This broader legal reform agenda and context seeks to ensure the elimination of all discriminatory legislation by 2030 in Zimbabwe as part of an international Multi-stakeholder Strategy for Accelerated Action as a roadmap for the elimination of laws that discriminate against women and girls worldwide. The assessment uses the national constitution and international legal frameworks as benchmarks.


28 See Annex B: UPR Conclusions/observations Accepted by the Government of Zimbabwe.

29 See Annex C: Excerpt of Recommendations from the Commission on the Rights of the Child.
ZIMBABWE’S LEGAL HISTORY

The colonial history of Zimbabwe has shaped the laws and law-making processes in the country. Colonialism resulted in a plural legal system that has endured to date. The sources of law in Zimbabwe can be divided into five; legislation, common law, custom, authoritative texts and case law/precedent. All these have been instrumental in one way or another in framing the country’s laws, including those that impact women and girls’ rights to equality and non-discrimination.

Sec 192 of the Constitution of Zimbabwe recognises the law as contained in the Independence (Lancaster House/1980) Constitution as the law of Zimbabwe. The Independence Constitution provided such law as customary law and “law in force in the Colony of the Cape of Good Hope on 10th June 1891, as modified by subsequent legislation having in Zimbabwe the force of law.” The law in force in the Colony of the Cape of Good on the 10th of June 1891, generally known as Roman-Dutch Law, is therefore the common law of Zimbabwe. The country’s common law has over the years been influenced by legislation to address the exigencies of any given time, including in the area of women’s rights and gender equality as Parliament sought to address issues as they arose. Similarly customary law provisions on issues such as marriage and inheritance have also been influenced by legislation, in particular the constitutional provisions that sought to eliminate discrimination against women on the basis of customary law or personal law. Case law and precedent are as equally important in shaping “…the common law or the customary law, taking into account the interests of justice and the provisions of [the] Constitution.” Therefore, put together, Zimbabwe’s common law and customary law as developed through legislation and case law/precedent form the mainstay of the country’s current legislative framework that determines whether and how women and girls are discriminated against in the country’s economic, social, political and cultural systems. For the purposes of this report, the focus will be on legislation and case law/precedent, as informed by international human rights standards.

The country has a robust just delivery system, with a multi-tiered court system that gives citizens the right to appeal from lower courts to higher courts, with the Constitutional Court at the apex of the judicial system. The courts have over the years played an important role in interpreting human rights principles and shaping jurisprudence around the principles of equality and non-discrimination, including in relation to the application of these tenets in the protection of women and girls against discrimination.

31 Constitution of Zimbabwe, 1980, Sec 89.
33 Constitution of Zimbabwe, 2013, Sec 176.
ZIMBABWE’S GLOBAL AND REGIONAL GENDER EQUALITY COMMITMENTS – AN OVERVIEW

Zimbabwe is signatory to a number of conventions that seek to improve the position of women and girls and eliminate sex and gender-based discrimination. The country ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the 13th of May 1991 and without any reservations. CEDAW enjoins State Parties:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.\(^{34}\)

The Convention also requires State Parties to “eliminate discrimination against women in all matters relating to marriage and family relations”\(^{35}\) and seeks to ensure equality between men and women.\(^{36}\) This is to be achieved by ensuring the same legal capacity in civil matters, such as concluding of contracts, administration of property, equal recognition before the law and in legal proceedings, equal rights in relation to laws on movement of persons and the freedom for women to choose their residence and domicile, and equal rights in relation to custody and guardianship of their children, amongst other provisions.

In line with these provisions, Zimbabwe has made the necessary constitutional amendments to give effect to legally unfettered equality between the sexes. Yet, it needs to go further and effect the necessary adjustments to all other legislation to make legal equality a reality for women and men. Thereafter, the state must take the necessary practical measures in relation to social, political, economic, and cultural practices to ensure that equality is a reality in women and girls’ lives.

Zimbabwe ratified the African Charter on Human and People’s Rights (ACHPR) on the 30th of May 1986.\(^{37}\) Article 18 of the Charter is particularly pertinent with regards to family law and the rights of women within families. It recognises the family as the natural unit and basis of society, and that the family must be protected, including through taking care of the family’s physical and moral health. Article 2 places a duty on the State to assist the family as the custodian of morals and traditional values recognised by the community. This provision is qualified by Sub-Article 3 which expressly addresses the obligations of the state in removing discrimination against women by stating that:

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

\(^{34}\) Article 5.  
\(^{35}\) Article 16.  
\(^{36}\) Article 15.  
\(^{37}\) See African Commission on Human and People’s Rights Ratification Table available at: https://www.achpr.org/ratificationtable?id=49.
This is reinforced by Article 2 of the Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol), which Zimbabwe ratified on the 15th of April 2008. The Protocol equally makes provision for the elimination of discrimination against women. Article 2 (1) (a) states that:

State parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures, and in this regard they shall:

(a) Include in their national Constitutions and other legislative instruments if not already done, the principle of equality between women and men and ensure its effective application.

Article 2 (1) (c) of the same Protocol encourages states to integrate a gender perspective in their policy decisions, legislation, development plans, programmes, and activities and in all other spheres of life. As highlighted above, and as will be detailed throughout this report, Zimbabwe has made efforts to incorporate these provisions in the Constitution and national laws, despite the existence of gaps that still need to be addressed.

Zimbabwe is party to the Convention on the Rights of the Child (CRC) which it ratified on the 11th of September 1990. The CRC provides that children must not be discriminated against on the basis of sex,38 that a child has a right to preserve his or her identity, including nationality,39 that children must be protected from illicit transfer and non-return of children abroad,40 abduction, sale or trafficking for any purpose or in any form,41 and that they have a right to know and be cared for by both parents.42 Children of working parents must be accorded the right to benefit from child care services and facilities for which they are eligible.43 Article 28 stipulates that State Parties must ensure the child’s right to education on the basis of equal opportunity, a key provision in ensuring that both boys and girls have access to the same quality of education and opportunities. States are also required to protect the child from all forms of sexual exploitation and sexual abuse.44

The African Charter on the Rights and Welfare of the Child (ACRWC) is a unique instrument on the protection of children in Africa in that it recognises the distinctive, socio-economic and cultural challenges faced by African children.45 It therefore situates children in the African context and seeks to protect their rights based on their lived realities. Law reform in Zimbabwe targeting the protection of girls from discrimination therefore stands to benefit from this inimitably African focus on the rights of the child. The SADC Protocol on Gender and Development is a similarly regional level focused instrument that provides for the protection

38 Article 2.
39 Article 8.
40 Article 11.
41 Article 35.
42 Article 7.
43 Article 18.
44 Article 34.
45 The African context is captured in the Preamble of the Charter with clauses that state that “NOTING WITH CONCERN that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity he/she needs special safeguards and care…” and “TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child…”
of women and girls from discrimination. As a relatively new instrument, the Protocol addresses emerging issues affecting women and girls such as their rights to participate in the Information Communication Technology (ICT) and digital space and their participation and representation in the media.\(^\text{47}\)

All three regional instruments enjoin state parties to eliminate gender-based discrimination in law and in practice, including sex-based discrimination amongst children.\(^\text{48}\)

As will be detailed later, Sec 3 of the Education (Amendment) Act, 2019 (amending Sec 4 [2] of the Education Act) is the first Act in the country to prohibit discrimination against children in line with all the non-discrimination provisions outlined in Sec 56 (3) of the Constitution, including sex, gender, pregnancy and whether or not a child was born out of wedlock. Despite some improvements that are still required in the Education Act, this remains an important step in complying with international human rights law on the rights of the child.

The International Labour Organisation (ILO) has developed four key conventions on gender equality. These are the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family Responsibilities Convention (No. 156) and Maternity Protection Convention (No. 183).\(^\text{49}\) In 2019, the ILO also passed Convention 190, the Violence and Harassment Convention, which recognises gender-based violence (GBV) as harassment in the world of work.\(^\text{50}\) This Convention further acknowledges that GBV in the world of work disproportionately affects women and girls and prevents them from accessing, remaining, and advancing in the labour market.\(^\text{51}\) This framework is reinforced by resolutions of the International Labour Conference, the ILO’s highest decision-making body, with a view to ensuring the protection of women in the world of work.

Despite the slow progress in some areas, the country is making considerable efforts in complying with international law in promoting gender equality and the protection of women and girls from gender-based discrimination. What is required is to support these efforts to ensure accelerated law reform and law-making as well as implementation of any new and amended laws that may come into force.

\(^{46}\) Article 31.

\(^{47}\) Article 30.

\(^{48}\) Article 4 (1) of the SADC Protocol on Gender and Development, Article 2 of the Maputo Protocol and Article 21 (b) of the ACRWC.

(last accessed 19 September 2020).

\(^{50}\) Article 1 (a).

\(^{51}\) Preamble.
A LEGAL ANALYSIS OF DOMESTIC LAWS

The Constitutional Framework

The Constitution of Zimbabwe, 2013 clearly provides for women’s rights and gender equality and provides a solid basis for the elimination of discriminatory laws, policies and practices and ensuring that the legal framework in Zimbabwe is in consonance with international laws and standards in this regard.

The equality and non-discrimination clause (Sec 56 [3]) prohibits discrimination on the basis of sex, gender, pregnancy, and marital status, amongst other factors. The Constitution in Sec 17 requires the State to promote full gender balance in Zimbabwean society whilst Sec 80 provides for the rights of women, and in particular their right to be treated on the basis of equality with men. Provisions on work, and labour relations and rights (Sec 24 and 65), protection of the family (Sec 25), marriage (Sec 26 and 78), citizenship (Sec 35-43) and allocation and distribution of agricultural land (Sec 289) all recognise the need for gender equality and the protection of women’s rights. The Constitution also provides for the rights of girls specifically and their rights as children.52

Sec 34 of the Constitution provides that the State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law. Sec 46 (1) (c) states that a court, tribunal, forum, or body must take into account international law, and all treaties and conventions to which Zimbabwe is a party when interpreting the declaration of rights. Sec 326 (2) further provides that:

When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation inconsistent with that law.

Put together, these two constitutional provisions buttress the role of international law in Zimbabwe’s constitutional and legal order and the importance of observing international law as part of national efforts to protect and promote human rights, including women and girls’ rights and eliminate discrimination. To this end, Zimbabwe has since the adoption of the new Constitution made efforts to domesticate international treaties through the promulgation of national laws. Good examples include the domestication of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime which Zimbabwe adopted through the Trafficking in Persons Act in 2014 and the Education Amendment Act 2019, which seeks to domesticate some of the provisions of the CRC, ACRWC and the 2016 recommendations from the 2nd periodic report to the CRC Committee.

52 For example, Sec 81 of the Constitution provides for the rights of children, that is to say boys and girls and Sec 27 (2) requires the State to “take measures to ensure that girls are afforded the same opportunities as boys to obtain education at all levels.”
Gender Representation in Parliament

The constitutional provisions on women’s equal representation in the legislature have solicited intense national debate, hence the need to specifically highlight this issue in this assessment. To buttress the importance of this issue in the national discourse, stakeholders who participated in the development and validation of this report emphasised the importance of women’s equal representation in Parliament as a key strategy in ensuring the promulgation of laws that protect women and girls from discrimination and the repeal of laws that have a discriminatory effect on them as this assessment seeks to achieve. The expectation is that women parliamentarians will spearhead and champion the development of such laws and the repeal of discriminatory laws. To this end, the country should fully implement the constitutional provisions on women’s equal representation in Parliament as a priority strategy in ensuring women and girls’ rights to equality and non-discrimination.

In an effort to increase the number of women in Parliament, Sect 124 (4) of the Constitution provides for “an additional sixty women members, six from each of the provinces into which Zimbabwe is divided, elected through a system of proportional representation based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces.” This means that after the election of the country’s 210 constituency-based parliamentarians, the results are used to add 60 women to Parliament, with each political party nominating its MPs based on its popular vote in each of the country’s 10 provinces. The challenge with this provision is that whilst it helps in increasing the number of women in Parliament, it does not lead to compliance with the constitutional requirement on gender balance and the 50/50 gender parity requirement in all elective bodies. As history has shown, over the years more men than women have been elected to Parliament as constituency representatives.

Sec 17 of the Constitution is dedicated to gender equality and urges the State to promote full gender balance in Zimbabwean society and in particular to ensure that “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.” This is supported by Sec 56 (2) which provides that “Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.” However, the interpretation of Sec 124 (4) has often resulted in discrimination and political violence against women in that in practice its implementation seems to be exclusive of Sec 17 and 56. Focus is on the inclusion of the 60 women MPs from the quota system, and not necessarily ensuring that the Parliamentary system facilitates the participation of women in elective

53 It is acknowledged that the achievement of gender parity in Parliamentary representation on its own will not automatically lead to the promulgation of laws that protect women and girls from discrimination or the repeal of offending laws and provisions. It is however a good strategy to ensure progress towards this result.
54 Sec 160 (1) of the Constitution divides Zimbabwe into 210 Parliamentary constituencies.
55 Constitution of Zimbabwe, Sec 17 (1) (b) (ii).
56 For example, In the 2013 elections (8th parliament), only 34 women made it to parliament on an elective basis out of the 210 elective parliamentary seats, while in the 2018 (9th parliament) elections, 26 women out of 210 made it to parliament as elected MPs.
57 Constitution of Zimbabwe, Sec 17 (1) (b) (ii).
58 This may be because Sec 17 is under the chapter on National Objectives in the constitution, and arguments exist to the effect that national objectives and directive principles of State policy in a constitution are not justiciable.
processes to ensure gender parity in Parliament. The result is an increase in the number of women in Parliament but a failure to meet the constitution’s gender parity provisions.

In this regard, Sec 124 does not promote equal representation of women in parliament as aimed by both Sections 17 and 56. Sixty MPs (60) as envisaged by this provision are not adequate to provide for a 50% threshold of women in decision making and elective bodies as contemplated by Sec 17 of the Constitution and to ensure equality and non-discrimination for women as contemplated in Sec 56 (3) of the Constitution.

An unintended negative result of Sec 124 has been that women who have benefitted from the 60 seats quota provision have been shunned and discredited even when presenting valid ideas in Parliament. They are viewed as window dressing and incompetent MPs because they were not directly voted into Parliament. As a result, various stakeholders, including CSOs and both male and female MPs have called for the amendment of Sec 124 of the Constitution in order to ensure the realisation of gender parity in Parliamentary representation.

Recommendations

- To ensure effective representation and participation by women and gender parity in Parliament, the country should adopt the recommendation of CSOs and MPs and replace the quota system with a provision which explicitly requires that at least 50% of MPs are women as contemplated by Sec 17 and 56 of the Constitution.
- There is need for strategic litigation to get judicial guidance on the justiciability of Sec 17 of the Constitution and its implementation in relation to parliamentary/legislative representation for women given that it is contained in the National Objectives Chapter of the Constitution which is often considered as non-justiciable.
- If it is considered that Sec 17 is non-justiciable, weight must be given to Sec 56 (3) of the Constitution in relation to parliamentary representation and the provisions of Sec 17 must be moved to the Bill of Rights.

Laws Requiring Repeal

Vagrancy Act [Chapter 10:25], 1960

The purpose of the Act is “to prevent vagrancy and to deal with vagrants”. The current Act is steeped in the 1930s colonial Rhodesia and the colonial State’s apprehension over the “moral threat” supposedly brought by migration of black women into urban areas. The Act was therefore seen as a way of dealing with this “moral threat” (see Jocelyn Alexander, 2013). The current Vagrancy Act of 1960 repealed the similarly named 1935 Act.

59 For example, they have been derogatorily referred to as “BACOSSI MPs” in reference to a 2008 Reserve Bank of Zimbabwe programme that sought to assist citizens with basic commodities but the commodities supplied under the programme were generally viewed as substandard (see https://africanarguments.org/2018/07/11/boys-allowed-7-faces-zimbabwe-patriarchy/).
The Act provides for the arrest, trial, imprisonment, and detention of “vagrants” in reception centres and re-establishment centres. This has the effect of interfering with the affected individuals’ rights of freedom of movement given the excessive powers that are given to the police in the Act to arrest the “vagrants.”

The Act can be used in a heavy-handed and abusive manner to clamp down on street children, as well as the homeless – particularly those with mental disabilities, including women. The Act therefore effectively criminalizes poverty and homelessness and shifts the responsibility of social welfare and rights protection for such citizens from the government to the same clearly incapacitated citizens. It can also effectively disproportionately impact women as some of the poorest and most marginalised people in the country by criminalising activities such as vending and begging, which are often their only sources of livelihood. They are also often unable to afford legal representation and are likely to be detained for lengthy periods without trial or to be convicted on and detained for what are essentially petty offences under the Act because of lack of legal representation. The Act may also be used to clamp down on commercial sex workers, often giving the police unfettered arresting and detention powers outside of human rights principles that recognise the right to be treated as innocent until proven guilty.

The law must therefore be repealed in its entirety and protection of the homeless who are targeted by this Act be provided for in the Social Welfare Assistance Act [Chapter 17:06).

**Recommendations**

- Repeal the Vagrancy Act in its entirety.
- The Social Welfare Assistance Act must be amended to make specific provisions for the rights and protection of the homeless who may end up living on the country’s streets.

**Termination of Pregnancy Act [Chapter 15:10], 1977**

*N/B: This should be cross referenced with Sec 60 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] which criminalises abortion except if such abortion is in terms of the Termination of Pregnancy Act amongst other provisions.*

The purpose of the Act is to define the circumstances in which a pregnancy may be terminated and to provide for related matters.

In terms of Sec 4, a termination of pregnancy (abortion) can only occur under the following circumstances:

1) where the continuation of the pregnancy so endangers the life of the woman concerned or constitutes a danger of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health;
2) where there is serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he [she] will be seriously handicapped; and
3) Where there is reasonable possibility that the foetus is conceived because of unlawful intercourse.
A magistrate must give permission in writing for a pregnancy to be terminated on the grounds of unlawful intercourse (which includes rape and incest).\(^\text{61}\) In the case of termination on the grounds of physical health of the mother or physical or mental health of the foetus, such state of health must be certified by two medical practitioners.\(^\text{62}\) In all instances, after all the certifications, the medical superintendent of a designated institution must give permission for the termination to be effected, and such termination can only occur at a designated institution. A designated institution is defined in the Act as “State hospital or such other institution as may…be declared to be a designated institution for the purposes of this Act.”\(^\text{63}\)

The Act, by and large, fails to recognize a number of rights that women should be accorded such as the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction and the right to security in and control over their body. Access to safe termination of pregnancy services also contributes to the right to reproductive health through the reduction of maternal morbidity and mortality which can also affect the right to life.

Research in Zimbabwe has shown that many women and girls have resorted to exercising their right to bodily integrity through abortions, even in situations where they are considered illegal and dangerous. This has caused many maternal related deaths and health complications due to unsafe abortions. It has been reported that there are between 60,000 and 80,000 unsafe abortions that take place in Zimbabwe annually\(^\text{64}\) and that 20% of all maternal deaths in the country are as a result of unsafe abortions.\(^\text{65}\) The harsh economic conditions, general poverty and poor service delivery for pregnant women has led many women to resort to illegal termination of pregnancy, given the rigidity of the law and the limited circumstances under which pregnancy can be legally terminated in the country.

The requirements for certification by a magistrate, and permissions by a medical superintendent, take decision making away from the woman and places such responsibility in the hands of third parties. In addition, the fact that such termination can only occur at a designated institution renders accessibility of the service difficult as it takes away other lawful and certified medical institutions from the list of service providers resulting in a need for women to travel long distances to access the service, or complete failure to access the services.

There is therefore need for a legal framework that makes it easy for women to make a choice to terminate pregnancy without unnecessary hindrances. The legal framework should also facilitate women’s access to termination of pregnancy services, post termination care, and necessary information for decision-making on how to access the requisite services amongst other provisions. A new Act or legal framework to address termination of pregnancy in the country must however be in line with Sec 48 (3) of the Constitution on the Right to Life which

\(^{61}\) Sec 5 (4).
\(^{62}\) Sec 5 (2).
\(^{63}\) Sec 2 (1).
\(^{65}\) Zimbabwe – “Address unsafe abortions now (undated). Available at: https://www.safeabortionwomensright.org/zimbabwe-address-unsafe-abortions-to-reduce-maternal-deaths/ (accessed 21 October 2020).
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”.

**Recommendations**

- Adopt a new Act that recognizes women’s rights as accepted internationally and domesticate these in local legislation particularly the rights to bodily integrity, access to reproductive healthcare and rights to decide freely and responsibly on the need or otherwise to terminate a pregnancy.
- Provide for the right of access to information, education and means to enable women to exercise their rights to terminate a pregnancy.
- The elaborate requirements for women to terminate their pregnancies, including certification from a magistrate and medical practitioners and permission from a hospital superintendent must be removed to ensure that such a decision to terminate a pregnancy is made by the concerned woman or girl alone, subject to professional assistance to ensure safety and health.
- Provide guidelines on timelines to be followed by those responsible for facilitating the termination of a pregnancy to avoid delays that may present physical and mental complications for a woman in undertaking a termination if it is delayed beyond certain levels; or may lead to a woman giving birth to an unwanted child.
- Given that these provisions form the essence of the Act, it is necessary that the whole Act be repealed and be replaced by a new Act that recognizes women’s bodily autonomy and integrity, their reproductive health rights and the right to terminate a pregnancy.
- The Act must also provide for information on termination of pregnancy services and health issues as well as make it easier for such services to be physically accessible by allowing such termination to take place at any registered medical facility that is certified, in terms of facilities and personnel to provide such services.
- The Act must conform to the provisions of Sec 48 (3) of the Constitution.

**Citizenship of Zimbabwe Act [Chapter 4:01], 1984**

The purpose of the Act is to provide for Zimbabwean citizenship and related or connected matters.

Citizenship continues to be a highly contested and politicised issue in Zimbabwe. The Act is regularly misused against Zimbabweans to deny or revoke citizenship, and in many instances has led to statelessness, which is prohibited under international law. Citizenship issues do not only affect the civil rights of an individual, such as freedom of movement and ability to participate in governance issues, but they also have a deleterious knock-on effect on issues such as registration of births, education, access to health, housing, state welfare, and one of the long-lasting impacts can be statelessness.

The Constitution allows women to confer citizenship to their children under the same conditions as men. Sec 36 (1) (a) of the Constitution states that “Persons are Zimbabwean citizens by birth if they were born in Zimbabwe and, when they were born … either their mother or their father was a Zimbabwean citizen.” Sec 36 2 (a) and (b) state that “[p]ersons born
outside Zimbabwe are Zimbabwean citizens by birth if, when they were born, either of their parents was a Zimbabwean citizen and ... ordinarily resident in Zimbabwe; or ... working outside Zimbabwe for the State or an international organisation.” Sec 37 states that “persons born outside Zimbabwe are Zimbabwean citizens by descent if, when they were born ... either of their parents or any of their grandparents was a Zimbabwean citizen by birth or descent; or ... either of their parents was a Zimbabwean citizen by registration ... and the birth is registered in Zimbabwe in accordance with the law relating to the registration of births.” Both parents and grandparents have equal citizenship conferment rights on their children/grandchildren. These provisions are equally important for the protection of children’s inheritance of land and other immovable property in the country where citizenship determines access, control, and ownership of such property.

The Constitution also recognizes that a female national can confer citizenship to her non-national spouse under the same conditions as a male national. Sec 38 (1) states that “[a]ny person who has been married to a Zimbabwean citizen for at least five years, whether before or after the effective date, and who satisfies the conditions prescribed by an Act of Parliament, is entitled, on application, to be registered as a Zimbabwean citizen.”

In terms of Sec 42 (e) of the Constitution, Parliament may make a law prohibiting dual citizenship in respect of citizens by descent or registration. This effectively means that citizens by birth can acquire dual citizenship.

Despite these constitutional provisions, the Citizenship of Zimbabwe Act is premised on the provisions of Sec 4-7 of the Independence Constitution and therefore fails to capture these progressive provisions in the 2013 Constitution. The inconsistencies are numerous and staggering and include an outright prohibition of dual citizenship. The Act also fails to categorically provide for the rights of women to be treated on the basis of equality with men in conferring citizenship to their children, spouses and grandchildren. This is despite the constitutional provisions to this effect. The citizenship of Zimbabwe Act therefore requires repeal and replacement by a new law that is anchored on the provisions of the new Constitution.

NB: A Bill for a new Act regulating citizenship was drafted and posted on the Ministry of Justice Website in 2018 but never gazetted.

**Recommendations**

- Abolition of prohibition of dual citizenship for citizens by birth.
- Establishment of the Citizenship and Immigration Board as provided in the Constitution to ensure that decisions on citizenship and immigration are not left to individuals, whilst ensuring gender parity in the composition of the Board.
- Provide for equal rights of men and women to confer citizenship on their children/grandchildren.
- Provide for equal rights of men and women to confer citizenship on their spouses.
- The Act must be anchored in the principles provided for in the 2013 Constitution as opposed to the current position, where the Act is based on and promulgated in terms of the 1980 Constitution.
Marriage Act [Chapter 5:11], 1964 Customary Marriages Act [Chapter 5:07], 1917

The Marriage Act provides for the solemnisation of civil marriages and the requirements for a valid marriage under that Act. The Customary Marriages Act provides for the solemnisation of customary marriages, regulation of related issues, including requirements for a valid marriage under the Act and also seeks to prevent the pledging of children in marriage.

The reform of these two Acts of Parliament forms the basis of the marriage law reform efforts that are currently underway in the country. A Marriage Bill that collapses the two Acts into one, amongst other reforms is currently before Parliament.

Put together, the two Acts have the effect of legalizing discrimination on the basis of the type/category of marriage that a person contracts, with women in civil marriages [Chapter 5:11] enjoying better protections than women in customary marriages [Chapter 5:07]. In this regard, the Customary Marriages Act [Chapter 5:07] entrenches parental control over the marriages of African women, including adult women. The woman’s parent (usually male) or guardian must consent to the marriage, must (or his deputy/representative) be present during the solemnization of marriage and can be asked questions by the marriage officer about their approval of the marriage, which can have the effect of determining whether the marriage solemnization proceeds or not (Sec’ s 5-7 and 12). The schedule to the Act (form/certificate of customary marriage) even provides for the inclusion of the woman’s guardian on the marriage certificate, despite that such guardian is not party to or legal witness to the marriage.

The current marriage framework also discriminates against all people generally on the basis of race. Monogamous marriages under the Marriage Act [Chapter 5:11] are available to all persons in Zimbabwe, whilst polygamous marriages under the Customary Marriages Act, [Chapter 5:07] are available only to those who are styled as Africans in terms of Sec 3 of the Interpretation Act [Chapter 1:01]. The law also provides for unregistered customary law unions that are sanctioned and recognised by family and society but are only exercisable by those to whom customary law is applicable, that is members of the "African" ethnic groupings. Cohabitation also takes place, where couples of other races “elect” not to marry but end up in what are marriage like arrangements in which there are a variety of social, financial, emotional, and reproductive commitments that may need to be dealt with, if and when the relationship terminates either through separation or death. Unregistered customary law unions, unlike cohabitation arrangements, are obtaining a growing level of recognition and are already formally recognised as valid for civil purposes and in terms of Sec 3 (5) of the Customary Marriages Act [Chapter 5:07] in matters relating to the status, guardianship, custody and rights of succession of children of such marriages. Partners in an unregistered customary law union are however not entitled to inherit from each other.

The marriage regime in Zimbabwe therefore discriminates against women on the basis of sex and gender and from an intersectional perspective, on the grounds of race, ethnicity, and culture.

The marriage regime at customary law also perpetuates sex and gender-based discrimination because only men can lawfully contract simultaneous unions with more than one spouse at a
time, whether the marriages/unions are registered or not. True racial, sex and gender equality can only be achieved if there is no discrimination permitted in the forms of marriages that are recognised as lawful marriages by the State and the law.

The Marriage Act, Chapter 5:11 provides for circumstances under which a minor may marry as Sec 21 states that the marriage of a minor without consent is voidable. Section 22 states that no boy under the age of 18 years and no girl under the age of 16 years shall be capable of contracting a valid marriage except with the written consent of the Minister.66 These provisions discriminate against girls on the basis of gender because they allow a child under the age of 18 to marry. This is against the dictates of Sec 78 (1) of the Constitution which only recognizes marriages between people of the opposite sex who have reached the age of 18 years, and therefore clearly outlaws child marriage. The Act also give adults the authority to consent to marriage on behalf of minors. Of even greater concern is that the Customary Marriages Act does not provide for an age of marriage at all, meaning that at customary law, children can get married at an even younger age than 16, as long they have reached puberty.

Sec 22 (1) states that minors shall not be capable of contracting a valid marriage except with the written permission of the Minister, which he may grant in any particular case in which he considers such marriage desirable. Sec 22(2) of the Act states further that if a girl or boy goes on to contract a marriage without the consent of the Minister, such marriage can be considered as desirable and in the interests of the parties, and the Minister may validate it in writing. In other words, the Minister may retroactively validate a marriage involving a minor or minors.

These provisions sanction the marriage of minors and should therefore be repealed, and the law should categorically outlaw child marriage without exception.

The current marriage and partnership regime in the country does not recognise civil partnerships. This has placed women in a disadvantaged position in situations of separation or death of a partner. Many women in civil partnerships have lost properties as they are not legally recognized as partners with the same rights as those in registered customary marriages or civil marriages. This is because of power dynamics in the largely patriarchal society that Zimbabwe is. The marriage laws should therefore be amended to recognise as marriage, a partnership in which the parties have stayed together as partners for a period of at least 5 years as is being proposed in the Marriage Bill. Whilst the non-recognition of partnerships is gender neutral and can affect both men and women, in reality women are more vulnerable economically and socially. As result, they end up bearing the brunt of dispossess of property, or failure to get maintenance upon separation or inheritance in the event of death.

The proposed Marriage Bill generally addresses some of the above challenges, in particular the abolition of child marriages, equal treatment of all marriages and the recognition of civil partnerships. Certain issues remain unaddressed by the Bill, including the issue of discrimination on the basis of race, the discriminatory impact of polygamy and the easy accessibility of marriage and divorce services.

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66 Refers to the Minister responsible for the administration of the Act.
**Recommendations**

- There is need to harmonise the marriage laws in Zimbabwe and for the country to have a composite (single) marriage law (It is recognised that the country is currently in the process of developing a composite Marriage Act and the Bill is currently before Parliament).

- The Customary Marriages Act still has extensive reference to guardians of a woman contracting a customary marriage, implying that the woman has no agency in the marriage contract but is being “guided” by the guardian. This has the effect of maintaining the concept of perpetual minority of women regardless of their age. Any marriage laws should therefore remove the requirement for guardianship when a woman contracts a marriage.

- All valid marriages, including registered and unregistered customary marriages must be given full legal recognition, including full spousal and children’s rights. These include full protection of spouses’ rights during the marriage and at its dissolution (by death or divorce), equal guardianship rights of both parents over their children, and the rights of all children to be looked after by both parents and to inherit from both parents regardless of the type of marriage that the parents had, and whether they are/were married or not.

- There should be compulsory registration of marriages, but where this is not done, the marriages should be recognised if they meet set minimum requirements, particularly at customary law.

- The marriage register and national registration process should be electronically linked to a searchable national identity registration database for marriage officers and the parties to a prospective marriage to confirm the marital status of parties before solemnizing a marriage.

- Child marriage must be outlawed without exception and therefore any provisions that allow for the marriage of a boy or girl below the age of 18 years must be repealed and no authority of any kind, including from the Minister as stated in the Marriage Act, or a father/guardian (as stated in the Guardianship of Minors Act) should be given to sanction the marriage of a child under the age of 18 regardless of the circumstances.

- Only parties to the marriage should give their consent to a marriage and no consent from third parties should be required.

- Civil partnerships should be given legal recognition after the parties have stayed together for a period of at least 5 years, particularly for purposes of the partners’ and their children’s rights during the subsistence of the partnerships and at its dissolution, either through separation or death.

- Ideally polygamy should be outlawed by the country’s marriage laws.\(^{67}\)

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\(^{67}\) Article 16 (c) of the Maputo Protocol encourages monogamy as the preferred form of marriage although emphasising the need for the protection and promotion of the rights of women in polygamous marriages. The CEDAW Committee in General Recommendations Number 21 concluded that polygamy violates Article 16 of CEDAW on equality in marriage and family relations. It noted that “Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited” and that such marriages cannot be justified on the basis of customary or personal law.
Disabled Persons Act [Chapter 17:01], 1992

The Act provides for the welfare and rehabilitation of disabled persons, provides for the appointment and functions of a Director for Disabled Persons’ Affairs and the establishment and functions of a National Disability Board and related matters.

Sec 5 of the Act provides for the functions of the National Disability Board (NDP). These functions include the issuance of adjustment orders for buildings to ensure accessibility and functionality for persons with disabilities (PWDs).

However, the NDP cannot issue adjustment orders to state hospitals, clinics, and nursing homes without the consent of the Minister responsible for health. Similarly, the NDP cannot issue adjustment orders to:

- Any school or educational or training institution controlled or managed by the State or registered in terms of the Education Act [Chapter 25:04], or the Manpower Planning and Development Act [Chapter 28:02], except with the consent of the Minister responsible for the administration of the institution or Act concerned.

These provisions have the effect of diminishing the power of the NDP and may result in delays in the issuance of adjustment orders and the implementation of the necessary adjustments. Requiring ministerial consent effectively renders adjustment dependent on the political will of the government. This leads to justifications for non-compliance based on arguments about lack of resources and that the rights concerned will be realised progressively.

The Act only makes provision for adjustment orders relating to already constructed buildings and does not place the requirement to have new buildings accommodating the needs of PWDs.

These limitations and lack of accessibility are likely to impact women and girls with disability more, given the intersectional discrimination that they suffer on the basis of both their gender and disability. These include double exclusion of women and girls with disabilities from participation in decision-making, consultations and from planning procedures based on their gender and disability. The result is that they are unable to access basic and other services if facilities where such services are located are inaccessible. Lack of disability friendly infrastructure in schools impacts girls disproportionately, particularly in terms of access to hygienic requirements associated with menstruation.

The Act also needs to be aligned with the Convention on the Rights of Persons with Disabilities and the Constitution of Zimbabwe to ensure a rights-based approach in addressing the needs of PWDs. This includes the recognition of the diversity of PWDs, ensuring their human dignity, equality and non-discrimination, including gender equality and other principles as set out in the Convention. Sec 22 of the Constitution recognizes the rights of persons with disabilities to be treated with respect and dignity and to participate in various activities to the best of their

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68 Sec 5 (1) (a).
69 Sec 7 (7) (a).
70 Sec 7 (7) (b).
71 Sec 7 (2).
72 Article 3.
abilities. This is particularly important given that women and girls with disability are likely to suffer from intersectional discrimination based on their gender and disability and therefore bear the brunt of the challenges faced by people with disabilities. A national law on the rights of persons with disabilities must therefore be focused on the promotion and protection of the rights of PWDs, taking into account constitutional and international human rights principles.

**Recommendations**

- The current Act must be repealed and replaced with a similarly worded Act that fully encapsulates the rights of PWDs and the attendant provisions to protect women and girls with disabilities against discrimination.
- The National Disability Board should be entrusted with issuing infrastructural adjustment orders without ministerial consent to ensure autonomy and decision-making and enforcement of its orders.
- The NDP should be allowed to issue adjustment in relation to both new and old buildings and infrastructural developments, based on their own monitoring or as a result of investigations of complaints from citizens and other interested parties.
- There is need to domesticate the Convention on the Rights of Persons with Disabilities fully in Zimbabwe and this should be done through a total repeal and replacement of the Disabled Persons Act [Chapter 17:01].

**Laws Requiring Major Amendments**

**Births and Deaths Registration Act [Chapter 5:02], 1986**

The purpose of the Act is to provide for the registration of births and deaths in Zimbabwe.

Sec 11 of the Act provides that the primary duty of registering the birth of a child falls on the father or the mother of the child.

However, whilst the law makes no provision for it, married women are compelled by the Registrar General (RG) officials registering births, deaths and marriages and those issuing passports to change their identity documents to reflect their husband’s surname as their official surname when they seek to acquire these documents for themselves or their children. Although resistance to this compulsion does produce eventual acquiescence by the officials, those who are unaware of their legal right to retain their natal identity often comply with this illegal requirement. The result is that women's identities are merged with those of their husbands.

CEDAW, in Article 16 (g), accords the same personal rights as husband and wife, including the right to choose a family name.

The issue of changing family names after marriage may seem unimportant, yet it presents major challenges for women. Men do not change their names on marriage, and they continue to be traceable from birth to death; whereas women are often lost as individuals after marriage and get subsumed under their husband’s identity. Women who lose their identity in this way, may have to spend endless hours having documents changed, such as IDs, passports, and similar documents into their husband's name. In the event of divorce, they also have to go through the
same lengthy processes to revert to their natal names or the name of the new husband if they remarry.

Professional women may also fail to be identified with their professional achievements made prior to marriage, such as academic achievements, publications, artistic achievements and breakthroughs in science and research. There is therefore need for an amendment of the Act to ensure that it clearly provides that women are not compelled to change their surnames after marriage or be compelled to be issued with and accept registration documents bearing their husbands’ names after marriage.

Married women who are separated from their husbands but are not legally divorced face problems in acquiring birth certificates for their children if they have children with other men due to the *pater est quem nuptiae demonstrant* rule. The rule relates to the presumption of paternity and that all children born in wedlock belong to the husband of the mother. On the other hand, a man is able to register the birth of any of his children without this challenge because he can simply present himself at the Registrar General’s Office and confirm paternity despite the existence of another marriage.

Sec 12 (2) (a) of the Act provides that:

A registrar shall not enter in the register the name of any person as the father of a child born out of wedlock, except—

(a) upon the joint request of the mother and the person acknowledging himself to be the father of the child

This means that a married woman who brings along a man other than her husband to acknowledge paternity for purposes of birth registration should be allowed to do so, just as a married man who accompanies a woman other than his wife should be allowed to register the birth of the child and acknowledge paternity. However, in reality, married women are not allowed to do so because of the regulations of the Registrar General’s Office which require a married woman intending to register the birth of a child to bring along the following documents:

1) Both parents’ identity documents; and
2) Marriage certificate, amongst other documents.  

This follows that unless she is going to register the out of wedlock child in the name of the husband, the married woman would find it difficult to register the birth of such a child.

There are many instances in which spouses separate but never formalise the divorce. This is exacerbated by the country’s dispersed diaspora, which has led to former spouses living in different countries and therefore leaving the divorce procedures unsettled. The RG’s office should therefore allow both married men and women who present with people other than their spouses as the biological parents of their children to acquire birth certificates for their children. The insistence on registering a child of a married woman in the name of her mother’s husband

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73 Requirements for initial birth registration on the Registrar-General’s website ([Department of The Registrar General - Birth and Death Certificates](https://www.gov.mt/)).
despite contrary representations regarding the paternity of the child by the mother is not only discriminatory but an extra-legal requirement by the RG’s Office.

**Recommendations**

- The Registrar General's Office must adhere to the formal law of Zimbabwe and refrain from imposing its own extra-legal administrative policies on the women and children of Zimbabwe.
- Married women who require their children to be registered in the names of men other than their husbands should be allowed to do so.
- Women should not be compelled to change their surnames after marriage, and particularly for purposes of acquiring national identity cards, passports or birth certificates for their children or themselves (also refer to national registration Act).
- That women be specifically informed at the time of marriage, and in interactions with the RG’s office that they are free to retain their natal surnames after marriage, if they so desire.

**Communal Land Act [Chapter 20:04], 1982**

The purpose of the Act is to provide for the classification of land in Zimbabwe as Communal Land and for the alteration of such classification; to alter and regulate the occupation and use of Communal Land and provide for related matters.

The Communal Land Act gives excessive land acquisition powers on the Minister, including powers to decide what is beneficial to communal land inhabitants in relation to land use. Sec 10 (2) provides that:

> Subject to this section, after consultation with any rural district council established for the area concerned, the Minister may set aside any land contained within Communal Land, other than land referred to in subsection (1), for any purpose whatsoever, including a purpose referred to in subsection (1), which he considers is in the interests of inhabitants of the area concerned or in the public interest or which he considers will promote the development of Communal Land generally or of the area concerned.

Before setting aside communal land for compulsory acquisition, the Minister is required to publish a statutory instrument describing the land concerned, purpose for the acquisition, date of acquisition and ordering all persons or class of persons the Minister may specify in the notice “to depart permanently with all their property from the land concerned within such reasonable period as the Minister shall specify in the notice” (Sec 10 (3) [d]). Any person who fails to depart from the land after the publication of the notice to depart shall be guilty of an offence and subject to a fine or to imprisonment for a period of up to one year. The Minister is not required to engage with the inhabitants of the affected land but only to ensure that the statutory instrument stating the compulsory acquisition and eviction has been brought to their attention. These provisions highlight the insecurity of communal tenure and the fact that there is no

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74 Refers to Minister responsible for the administration of the Act.
consultation with or participation by communal land inhabitants regarding their land and livelihoods once their land has been identified for compulsory acquisition.

This is against the 2013 Constitution’s provisions on protection of property rights, including land rights. Sec 71 (3) states that “no person may be compulsorily deprived of their property” except in terms of a law of general application and when the deprivation is necessary for stated reasons. Where a person is deprived of their property in terms of these provisions, they are required to be given reasonable notice of intention to acquire the property or land, to be paid fair and adequate compensation before the acquisition of the property or within a reasonable time after acquisition and to approach the courts for redress if the acquisition is contested (Sec 71 (3) (c).

Although the Act provides for compensation to be paid, in reality such compensation is either never paid, or is inadequate when communal land inhabitants are evicted from their land. These are the provisions that have been used to evict citizens from their land, for example in the Chivi area for the Tokwe-Mukosi Dam construction, Marange area for the Chiadzwa Diamond Mine and the anticipated eviction in Chiredzi East and South for the proposed Dendairy Lucerne Project. These have been implemented with limited participation or compensation and without providing the affected communities with suitable alternative land or accommodation. This is against the provisions of Sec 71 of the Constitution on protection of property rights and Sec 74 of the Constitution on freedom from arbitrary eviction. In addition, the preamble to Chapter 14 of the Constitution on Provincial and Local Government recognizes the need for “the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas.”

An Act providing for acquisition of communal land should therefore provide for adequate consultations with and participation of affected communities, and clear and detailed procedures for such consultations and participation in decision making. This should include the application of the principle of Free Prior Informed Consent (FPIC). To this extent, the Communal Land Act is unconstitutional and infringes on the rights of communal land inhabitants and must therefore be amended accordingly. Given that the majority of communal land inhabitants in Zimbabwe are women (80% of the female population)[75], such unconstitutional practices have a disproportionate impact on women who depend on the land for their livelihoods and those of their families.

The Communal Land Act must also be amended to ensure that occupation of customary land is not based on discriminatory customary practices. Sec 8 (2) of the Communal Land Act requires communal land to be occupied where appropriate, having regard to customary law relating to the allocation, occupation and use of land in the area concerned. Whilst the Constitution of Zimbabwe prohibits discrimination on the basis of gender and sex, and whilst customary law is required to conform to these constitutional dictates, in reality customary law as applied by communities at the local level often discriminates against women with regards to access to land. For the avoidance of doubt, this provision must therefore be amended so that it

explicitly provides that such customary law and its application must not discriminate against women in terms of allocation and occupation of customary land.

Land plays an important role in achieving gender equality, eradicating poverty and the enjoyment of attendant rights by women. These include the right to food, housing, water, development, livelihood, and work amongst others. Land therefore plays an important role in ensuring that these other rights as enshrined in national and international law are enjoyed and realised by women. The United Nations already acknowledges the link between access to land by women and their right to equality, to an adequate standard of living, their own needs and those of their families, global food security, sustainable economic development and even the fight against HIV and AIDS (United Nations, 2013). It also notes that land is not merely a commodity, but an essential element for the realisation of many other rights. Article 14 (g) of CEDAW calls on State Parties to ensure equal treatment of women in land and agrarian reform as well as in land resettlement schemes. Tenure security and equal access to land for women are therefore important pre-requisites that government must recognise and, in this regard, must be equally captured in this Act.

Recommendations

- Sec 10 (2) must be amended to provide for appropriate and gender-inclusive public consultations, by the Minister or any other State or non-State entity as part of the compulsory land acquisition process for communal land.
- Sec 10 (3) of the Act must be repealed to remove the provisions on forced eviction, and provide that communal land inhabitants can only be removed from compulsorily acquired land after they have been compensated or when an appropriate compensation agreement with timeframes has been reached and when suitable alternative land and accommodation has been provided for affected citizens.
- Sec 8 (2) must be amended to explicitly provide that customary law and its application in the allocation, use and occupation of communal land must not discriminate against women in terms of allocation and occupation of such land.
- The Act must provide that allocation of land in communal areas, including through agrarian reform and land resettlement schemes must ensure the treatment of women on the basis of equality with men, to reflect the importance of land in the lives and livelihoods of Zimbabwean women.

Criminal Law (Codification and Reform) Act [Chapter 9:23], 2004

The purpose of the Act is to amend and consolidate the criminal laws of Zimbabwe. It amends and repeals a total of twenty-six pieces of legislation, including the repeal of the Sexual Offences Act. Many of the previous provisions of the Sexual Offences Act were therefore transposed into and refined in this Act, and these provisions form the basis of the analysis in this section.

Sec 61 (1) of the Act defines a young person as a person under the age of 16 for purposes of sexual offences. It means that a child above the age of 16 can consent to sexual intercourse
with any person regardless of the age of that person and the predatory nature of that sexual relationship or intercourse.

Conversely Sec 64 creates sexual offences for having sexual relationship with a child below the age of 16, regardless of how close in age the other person is or the fact that both may actually be children (for example, where one child is 17 and the other one is 15). In this regard, Zimbabwe does not have a close-in-age exemption. Close in age exemptions, commonly known as "Romeo and Juliet laws" in the United States, are put in place to prevent the prosecution of individuals who engage in consensual sexual activity when both participants are significantly close in age to each other, and one or both partners are below the age of consent.

In addition, because a child under the age of 16 years cannot consent to sexual intercourse at law, it is then presumed that a child under 16 years does not need contraceptives or other sexual reproductive health services. The law on age of consent is there to protect children from sexual exploitation by adults not to control adolescent sexuality.

Sec’s 64 (3), 71 and 72 of the Act use derogatory language against persons with mental disabilities by using the term “mentally incompetent”. Such terms indirectly create stigma towards PWDs and often instigates offenders to take advantage of women with such disabilities. In other words, the terminology promotes discrimination against PWDs and suggests a certain level of inequality. In Zimbabwe like in any Southern African country, women are more prone to sexual and gender-based violence (SGBV) than men and in the same vein and despite limited data on WWDs specifically, it can be safely concluded that WWDs suffer more from SGBV that men with disabilities. 

76 Derogatory terminology fuels abuse against WWDs. The Section must therefore be amended to use language that is in line with the Convention on the Rights of Persons with Disabilities and the Constitution and use the term “mental disability” or related terms.

In Sec 65 (2), rape of a PWD/WWD is not taken into account as an aggravating factor by a judge or magistrate when considering an appropriate sentence for an accused under the Act. Different impairments hinder WWDs from defending themselves from perpetrators and most offenders take advantage of this factor. General Recommendation 35 of the Convention on the Rights of People with Disabilities (CRPD) on gender-based violence (GBV) states that “Women’s rights to a life free from gender-based violence is indivisible from and interdependent with other human rights.” WWDs are a vulnerable group that is susceptible to GBV and need further and specific protection by the law, including harsher sentences for abusing them.

Section 78(1) of the Constitution of Zimbabwe provides that only persons who have attained the age of 18 have the right to found a family. This was tested and confirmed in a landmark Constitutional Court case of Mudzuru and Anor v Minister of Justice and Ors to mean that children below the age of 18 cannot enter into a marriage contract.

The Zimbabwean Constitution defines a child as anyone who has not attained the age of 18 years. The law does not specifically set the age of consent but section 64 (1) of the Criminal Code criminalizes sexual intercourse with a young person. A young person is defined in section 61 of the Criminal Code as anyone below the age of 16 years. A child below the age of 12 is deemed incapable of consenting to sex or sexual acts and therefore any sexual intercourse, anal sexual intercourse or other sexual conduct with such a child is either rape, aggravated indecent assault or indecent assault. Similar sexual activities with a child between the ages of 12 and 14 are treated the same way unless there is evidence to show that such a child was capable of giving such consent and that he/she in fact gave such consent.

If there is sexual intercourse, anal sexual intercourse, or other sexual act with a person between the age of 14 and 16, with the consent of such child, the competent charge is that of sexual intercourse with or performing an indecent act on a young person. The law does not set any minimum mandatory sentence for these crimes and in many cases, offenders are not given custodial sentences. The light sentences given to offenders do not deter men from sexually exploiting children, and girls in particular.

Although it is illegal to have sexual intercourse with a child below 16 years, in all instances, children between 16 and 18 years are not protected by the law if they consent to the sexual intercourse or other sexual act. In cases like these, parents often resort to marrying off their children to the perpetrator, and this encourages child marriages.

Restrictions on freedom of movement and residence have manifested in various ways. Most recently, loitering “laws” (or soliciting as stated in the Act) have been misused to arrest and detain women found in certain parts of cities (usually alone) at night. This, in effect, imposes unofficial “curfews” on women, and restricts their freedom of movement and personal safety.

**Recommendations**

- The minimum age of consent to sex should apply to both girls and boys and should be set at 18 to ensure their protection from sexual abuse by adults. This will help in aligning the Code with the constitutional protections of the rights of the child and the proposed reforms to the marriage laws. The current lack of coherence in the laws with regards to age of sexual consent, age of consent to marriage and age of majority leads to an increase in child marriages and this mainly affects the girl child.
- Consensual adolescent sexual activity should not be criminalized. In this regard, the Act should put in place measures to prevent the prosecution of children who engage in consensual sexual activity when both participants are significantly close in age to each other, and both partners are below the age of consent (or are children).
- The Act should protect children from sexually exploitative relationships by outlawing sexual intercourse between adults and all children below the age of 18.

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77 Sec 61 (1).
78 Sec 61 (2) (a) and (b).
79 Sec 70 elaborates on the different offences.
80 There is often reference to a crime of “loitering for the purposes of prostitution” in Zimbabwe but in reality, there is no such provision in the Criminal Code. Sec 81 (2) of the Code instead refers to a crime of “solicit[iting] another person for the purposes of prostitution.”
• Sec 64 (3) of the Act should be amended by the removal of the term “mentally incompetent” and replaced with “mental disability” or a related term. The Section should also be amended to provide specific protection to women with disabilities (WWDs) from gender-based violence (GBV) and in this and other ways be aligned to the Convention on the Rights of People with Disabilities (CPRD).

• There is need for review of Sec 81 on soliciting, to prevent selective and discriminatory application against women for loitering, and to ensure that it does not restrict free movement of women.

• Sec 65 (2) must be amended to specifically include rape of PWD/WWD as an aggravating factor in sentencing for a crime of rape or other sexual offences.

Electoral Act [Chapter 2:13], 2004

The Electoral Act provides for various election related issues, namely:

1) The terms of office, conditions of service, qualifications and vacation of office of members of the Zimbabwe Electoral Commission;
2) The procedure at meetings of the Zimbabwe Electoral Commission and the appointment of the Chief Elections Officer;
3) The registration of voters and for the lodging of objections thereto;
4) The preparation, compilation and maintenance of voters rolls;
5) Prescribing the residence qualifications of voters and the procedure for the nomination and election of candidates to and the filling in of vacancies in Parliament;
6) Elections to the office of the President;
7) Local authority elections;
8) Offences and penalties, and for the prevention of electoral malpractices in connection with elections;
9) Establishment of the Electoral Court and provide for its functions;
10) The hearing and determination of election petitions
11) And any other related matters.

The Electoral Act as amended on the 25th of October 2016 captures the constitutional provisions on gender representation in the Senate and provides for the 60 women’s quota MPs in the National Assembly. However, as argued under analysis of the Constitution on women’s representation in Parliament, these constitutional and legal provisions, without embracing the gender equality and women’s rights provisions in Sec 17, 56 (3) and 80, have not and will not lead to equal representation of women in the National Assembly and the Senate. The quota system is also confined to the National Assembly and does not extend to local government structures. To conform to the constitutional provisions on women’s equal representation in elective bodies, the Electoral Act must make provisions for the election of councillors for urban and rural councils (local government) on a gender equal basis. It is therefore necessary that guidelines and legislative enactments be made to ensure effective implementation of the 50/50 gender-parity provisions in the Constitution in relation to local government elections.

For effective implementation, the Act must be amended to allow ZEC to reject political party lists if they do not conform to the 50/50 gender parity provisions.
The requirement for citizens to prove their constituency residency status has discriminatory effects against women. Sec 23 (4) provides that “The [Zimbabwe Electoral] Commission (ZEC), any voter registration officer or any officer of the Commission may demand from any voter who is registered on the voters roll for a constituency proof of identity or proof of residence in that constituency or both of the foregoing.” Over the years, this provision has been shown to discriminate against women and youths who do not own property or pay bills, as the most widely accepted proofs of residency in Zimbabwe are rates and utility bills. Whilst the Commission may accept other forms of proof such as an affidavit from a landlord or an employer confirming tenancy, such proofs have not been easy for many to obtain. The requirement must therefore be totally repealed as it places the burden of participating in democratic elections on the citizens and not the State and also discriminates against women, the youth, and the poor who do not own moveable property or are unemployed.

**Recommendations**

- The Electoral Act must be amended to ensure that provisions of Sec 17, 56 (3) and 80 of the Constitution on women’s rights, gender equality, non-discrimination and equal representation in elective bodies are captured in national elections and electoral processes.
- The Act must in addition to provisions on women’s election and equal representation in Parliament (Senate and National Assembly) provide for women’s equal representation in local government election and equal representation in rural and urban local authorities.
- Sec 23 (4) requiring proof of residence must be repealed and the Electoral Commission must use other means of ascertaining the identity of voters, such as national identity numbers.
- The Act must be amended to allow ZEC to reject political party lists if they do not conform to the 50/50 gender parity requirement.

**Labour Act [Chapter 28:01], 1985**

The Preamble to the Labour Act, states that the purpose of the Act is to declare and define the fundamental rights of employees, amongst other purposes. In this regard, the Act has an extensive non-discrimination clause (Sec 5) which, amongst other things, prohibits discrimination on the basis of gender and pregnancy. The Act also calls for the advancement of persons who have been historically disadvantaged by discriminatory laws or practices, including on the basis of gender (Sec 5 [7] [c]). However, provisions on maternity leave as provided for in Sec 18 of the Act do not meet these principles or provide adequate protections to women during pregnancy and when they give birth; a time when they need more resources for themselves and the new baby and need time to rest and look after the baby at the same time. The Act provides that a woman who has worked for an employer for less than 12 months is not entitled to paid maternity leave (Sec 18 [2]), and that a woman cannot be granted more than three periods of paid maternity leave with one employer (Sec 18 [3]). It states further that an employee cannot be granted more than one paid maternity leave period within a period of 24 months. All these provisions have the effect of limiting women’s reproductive rights choices,
and the right to found a family as they are forced to choose between pregnancy, child birth and child care, and the need to retain an income.

Sec 2 of the Act states that “a female employee may proceed on maternity leave not earlier than the forty-fifth day and not later than the twenty-first day prior to the expected date of delivery.” There is failure in this provision to recognize any symptoms of miscarriage, premature delivery or any complications relating to pregnancy as matters of urgency which cannot fit within the 45 and 21-day requirement for one to go on maternity leave. It is common that unexpected/unplanned events can happen during a pregnancy. Women are prone to strain themselves due to fear of being forced to go on unpaid leave or dismissal in the workplace and, as a result, they tend to hide pre-birth conditions and complications. These can cause further harm to the mothers or babies. These rights are protected in ILO Convention 183 – Maternity Protection Convention, 2000 (No. 183) – and should be similarly protected in the country’s labour legislation.

The legal framework for eliminating gender-based discrimination in employment law should also be anchored in the Bill of Rights in the Constitution (Section 65 [6] and [7]) which prohibit discrimination in employment on the basis of gender and pregnancy.

The Act focuses on people who are in formal employment and fails to address the rights of people, mostly women in informal employment, the care economy, those who are self-employed and the burden of unpaid care work which falls on them. Unpaid care work means that women provide labour that is not considered in today’s society to have an economic value. At the same time, the unpaid care that they preform makes it difficult for them to get paid employment in the formal economy, while it facilitates the participation of others, particularly men, in the paid economy. The Labour Act must therefore make financial provisions for care work, or alternatively require Government to provide for care facilities in order to free women from the burden of unpaid care work and allow them to seek paid employment outside the home. This is in line with Sec 24 (2) (d) of the Constitution which compels the state to implement “measures such as family care that enable women to enjoy a real opportunity to work.”

Related to this is a need for a provision on family responsibility leave to allow employees to attend to urgent or emergency situations such as injury or illness involving their close relatives such as children, spouses, parents, or siblings. This allows both men and women in formal employment to take time off to attend to these responsibilities. In the absence of such provisions, women are the ones forced to take unpaid time off to attend to the responsibilities thereby diminishing their earning capacities.

The Labour Act does not define sexual harassment. Sec 8 (g) refers to actions that would constitute sexual harassment simply as “unfair labour practices.” The effect is to lump sexual harassment with all other forms of unfair labour practices despite the gravity of the actions and how they affect women’s inclusion and effective participation in the workplace. The result is that penalties for sexual harassment are generalized and lumped together with all other acts of unfair labour practices with Sec 6 (2) stating that “Any person who contravenes…shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a
period not exceeding two years or to both such fine and such imprisonment.” The Act must therefore define and strengthen provisions on sexual harassment to promote equality and non-discrimination and protect women from such discrimination in the workplace. The Act does not have any specific provisions on workplace violence and harassment except to the extent that a form of such harassment may constitute an unfair labour practice, and this should be rectified.

Finally, the Act does not provide for paternity leave and this discriminates against fathers whose presence, support, and participation is required during child birth and to provide care responsibilities afterwards. This also assists in providing a support structure for the mother and the new baby.

**Recommendations**

- Sec 2 of the Act must be amended to recognise symptoms of miscarriage, premature delivery or any complications relating to pregnancy and a duty should be placed on the employer to treat such situations as emergencies and provide the affected employee with paid maternity or sick leave for defined periods.
- There is need to amend the Labour Act to allow women to exercise their full rights to reproduce and found a family according to their own plans whilst getting a full income. Sec 67 of the Constitution on maternity leave guarantees a right to maternity leave to all female employees without the limitations provided in the Labour Act. Sec 18(1) and (3) of the Labour Act and Sec’s 39 (1), (3), and (4) of the Public Service Regulations however set conditions for the enjoyment of the right thereby discriminating against women in the following ways:
  - Newly employed women cannot benefit from paid maternity leave;
  - Women have to wait for a period of 24 months or more before they can get paid maternity leave from the same employer; and
  - Women can only have three pregnancies whilst employed by the same employer or they will be forced to either have unpaid maternity leave or seek a different employer and wait 12 months with the new employer before going on maternity leave in order to have paid maternity leave for a fourth pregnancy.
- The Act should be amended to provide for paid care work, including family responsibility leave or alternatively enjoin the state to provide care facilities so as to free women, in particular, from unpaid care work and allow them to seek paid employment.
- The Act should be amended to provide for paternity leave.
- There is need for a new act to specifically address the issue of violence in the workplace, including addressing gender-based violence, in line with the provisions of the ILO Violence and Harassment Convention (ILO Convention 190).
- The Act should define sexual harassment and provide for remedies that are specific to sexual harassment as well as procedures for claiming remedies and relief.
Mines and Minerals Act [Chapter 21:05], 1961

The Mines and Minerals Act is one of the oldest pieces of legislation in Zimbabwe, having been enacted in 1961. It, as would be expected of such an old law, fails to capture contemporary issues, including women’s participation in the mining sector, and to elaborate on the role of the small-scale artisanal mining sector in the country’s economic development. It seeks to consolidate and amend the law relating to mines and minerals. As a result, it is a long and elaborate Act that focuses on access to and administration of the country’s mineral resources with an emphasis on the economy and limited attention to contemporary issues associated with mining such as women’s rights and gender equality.

The Act provides for the creation of key institutions such as the Mining Affairs Board (MAB) but there are no provisions in the appointment of the board for women’s inclusion and gender equality. The Act also fails to recognise Small Scale Artisanal Mining (SSAM) yet it is the backbone of the mining sector in Zimbabwe. It is also a backbone of the economy, coming in only second to agriculture in terms of foreign currency earnings and contribution to the country’s Gross Domestic Product (GDP). In 2017, small-scale mining operations were responsible for nearly half of the 24.8 tonnes of gold produced in Zimbabwe81 showing its importance to the country’s economic development and the role that it can play in the economic empowerment of women.

The SSAM has become the mainstay of the country’s mining activities, especially in the gold mining sector. The sector has also seen some relative participation by women. According to Pact, women make up 10% of Zimbabwe’s 535,000 artisanal and small-scale miners.82 Although this shows women’s participation in the sector, the level of such participation remains low. For a number of years, women were making inroads into the sector. However, the violence that has gripped the sector through the “Mashurugwi”83 phenomenon over the past few years has had and will continue to make it difficult for women to participate in or join the sector. The mining laws must therefore address these emerging issues, including increasing security in the small-scale mining sector to ensure the participation of women. Without addressing these challenges, women will continue to be marginalised and discriminated against in this important economic sector.

The Mines and Minerals Amendment Bill, 2015 which seeks to address some of the challenges of the current mining legislative framework has stalled, with no indication of when the Bill is likely to be passed into law. It is however an important Bill that seeks to comply with some of the provisions of the 2013 Constitution, especially in as far as the language recognises the participation of both men and women in the country’s mining sector. It also provides for protection of children from child labour, which is a real challenge in the SSAM sector. Such activities expose children, including girls, to dangerous physical working conditions, harmful mineral processing chemicals, deprive them of their right to education, and expose them to

83 This is a term that is used in Zimbabwe to describe the machete wielding gangs that have invaded the small-scale artisanal mining sector over the past two years, causing considerable violence and killing many people in the country.
physical and sexual violence and early/child marriages. The protection of children, including girls, from such harmful practices therefore needs to be adequately captured in the country’s mining laws.

The proposed Sec 403B (1) in the Bill states that:

The Minister shall reserve the right to revoke, cancel, or withdraw any mining right or title once [a miner] contravenes the provisions of the Labour Act [Chapter 28:01] 40 in relation to child labour.

In addition to the criminal penalties that are provided for child labour in the Labour Act, the additional punishment of withdrawing the mining rights or mining title play an important deterrent role and helps in addressing issues of child labour which are rampant in the mining sector in the country.

However, other than these provisions, even the Bill fails to capture the issue of gender equality and the participation of women in the mining sector and gender equality and equity in the allocation of mining rights, titles, and licences to ensure improved participation in the sector by women.

In addition, the Mines and Mineral Amendment Bill proposes the amendment of Sec 7 of the Mines and Minerals Act to ensure gender balance in the appointment of members of the Mining Affairs Board.

The Bill also proposes the establishment of the Cadastre of Mining Rights and Titles. This includes the establishment of a Cadastre System and Cadastre Register for mining rights and titles. This is an important provision given that the SSAM Sector has been beset with disputes over claims and lack of transparency in the awarding and processing of claims. The disputes and uncertainties over claims have been accompanied by violence and criminality, which normally push women out of their claims and the sector. An efficient Cadastre System and the keeping of a comprehensive, transparent, and accessible Cadastre Register will therefore help in ensuring the protection of and participation of women in the country’s mining sector.

**Recommendations**

- The Act must be amended to specifically provide for gender equality and the rights of women in the mining sector, including the protection of women from GBV in this sector.
- The Act must be amended to provide for and elaborate on the role and place of small-scale artisanal mining given that it is an area in which more women are participating compared to the traditional large scale mining sector.
- Section 7 of the Act must provide for gender equality in the composition of the Mining Affairs Board.
- The Act must be amended to provide for the Cadastre Registration to ensure certainty of claims and the protection of women who have borne the brunt of the violence, illegality and mining rights and claims grabs due to the uncertainty around these rights.
- As proposed by the Bill, the Act should ensure protection of children from child labour in the SSAM sector.
Administration of Estates Act [Chapter 6:01], 2002

The Act provides for the administration of deceased estates in the country. Sec 68 in particular was included in the Act through the Administration of Estates (Amendment), Act Number 6 of 1997 which sought to provide for the administration of estates governed in terms of customary law.

Sec 68C provides for the appointment of an heir at customary law. Heir is defined in the section as “‘heir’ … means his heir at customary law” However, in line with the customary law of most Zimbabwean communities, such an heir is invariably male. There is seemingly therefore a failure in the Act to recognize the cultural aspect which leads to the appointed heir being male in most, if not all circumstances. Whilst the provision does not specifically state that the “heir” is male, the reality is that unless one mounts a challenge, families will, at customary law always appoint a male “heir”. There is therefore a need to specifically provide for a non-discrimination clause in the appointment of heirs at customary law.

While the Act in Sec 68E suggests that the inheritance plan should be approved by the Master of High Court before it is administered, in practice, women are not allowed into decision making spaces at customary law and hardly have the power to contest the devised inheritance plan before or after its submission to the Master of the High Court. Since, in customary law, women are not considered as heirs, this renders them powerless when it comes to the development and preparation of an inheritance plan. Most feel obliged to accept the plan as is without contestation. History has shown how women have been robbed of their inheritance particularly from their husbands’ estates. There is therefore need for the Act to specifically provide for processes of participation by eligible women in the development and approval of an inheritance distribution plan.

Sec 68F (2)(b)(i) of the Act fails to recognize the constitutional right to equality of women. The provision states that the first/senior wife is entitled to two shares of the deceased husband’s estate, with the other wife/wives being accorded the remainder. This is the case regardless of their contribution towards the acquisition of the matrimonial property, the husband’s property, or his and the family’s wellbeing and development. It perpetuates the customary position of Vahovisi (senior wife), who is accorded with certain privileges’, and respect at all times. This fails to recognise the reality of polygamous marriages in Zimbabwe today, where different wives may make different contributions, including monetary contributions. In addition, although an unregistered customary law union is recognised as a marriage for purposes of inheritance, wives in such unions have sometimes found it difficult to prove their status at the death of a husband, as relatives, including the senior wives may deny that a customary marriage took place.

The Act recognizes, for purposes of inheritance, that if a man is married under customary law to A, then without dissolving it goes on to marry B in terms of the Marriage Act Chapter 5:11, (civil marriage), then both marriages are valid. However, if a civil marriage is contracted first, then any marriage that comes after is not recognised. Sometimes “wives” who are “married” after the solemnization of a marriage in terms of the Marriage Act are unaware that the “husband” they are marrying is already married and at his death, they are not entitled to inherit,
regardless of the length of their “marriage” or their contribution towards the marriage, acquisition of the husband’s property, wellbeing of the family etc.

Sec 68F (2) (c) (i) and Sec 68F (2) d (i) state that the wife, or wives if they are more than one, should inherit or get a usufruct over the “the house she lived in at the time of the deceased person’s death, together with all the household goods in that house.” The requirement that the wife/spouse should inherit the house that she was living in at the time of the death of the husband is prejudicial where there is another house or other houses that the wife/wives can inherit without interfering with the rights of other heirs and beneficiaries. In such situations, the wife/wives should be given an option to choose the house that they want to inherit if it is more beneficial for them compared to the matrimonial home.

**Recommendations**

- Heir is defined in the Act as “heir at customary law”. There is need to reconsider and change the interpretation of the term “heir” as used in this Act and Zimbabwean laws in general to ensure that both men and women, boys and girls are clearly recognised as heirs as appropriate.

- There is need for review of the law to ensure equality in administration of estates and the inheritance rights and benefits of wives in a polygamous marriage. In particular, the inheritance rights of women in a polygamous marriage should not only be based on seniority but other considerations, and in particular contribution towards the acquisition of the property, the wellbeing of the husband and the wellbeing of the family.

- If the surviving spouse/s and the deceased had more than one house, the surviving spouse should be allowed to select the house that she/he wants to inherit, instead of being confined to the matrimonial home, even in situations where such confinement is prejudicial to the surviving spouse’s interests.

- There is need to define a child to mean any child of the deceased. This will make it possible for children born out of wedlock to inherit under general law without unnecessary contestations. This position has already been clarified through case law in the case of *Bhila v The Master of the High Court* but should also be reflected in the Act.

- The law should be amended to allow relatives of a woman married under customary law to give evidence of the ‘lobola’ (bride price) payment and to allow other evidence such as ‘lobola’ list as proof of existence of a customary law marriage.

- The Magistrate’s Court or the Master of the High Court should be empowered to conduct an inquiry into whether or not a woman who “marries” a man who is already married under Chapter 5:11 was not aware of the existence of another marriage. If it can be proved that she was not aware, then she should also be entitled to inherit, instead of the current position that places a blanket debarment.

- The law should provide that, subsequent customary marriages should be entered into with the consent of the first or existing wives as the case maybe. This is line with Zimbabwean customary law relating to polygamy, and helps in removing contestations around the existence of such a marriage upon the death of the husband.
Laws Requiring Minor Amendments

Deceased Estates Succession Act [Chapter 6:02], 1929

The Act provides for intestate succession, including the benefits accruing to the spouse of a person who dies intestate.

Sec 3A reads: “the surviving spouse of every person who, on or after the 1st of November 1997 dies wholly or partly intestate shall be entitled to receive from the free residue of the estate – the house or domestic premises in which the spouses or surviving spouse as the case may be lived immediately before the person’s death.” As with the provisions in the Administration of Estates Act above, the requirement that the spouse should have been living in the house for her/him to inherit the house is prejudicial where there is another house or other houses that the spouse can inherit. In such situations, the spouse should be given an option to choose the house that they want to inherit if it is more beneficial for them compared to the matrimonial home.

There is also a likelihood of disinheriting a spouse who was living apart at the time of death for reasons such as separation because of domestic violence and other factors, or in instances where a man/woman separates with their spouse but are not divorced and the wife/husband proceed to cohabit with another person in the matrimonial home. Some women flee their matrimonial homes because of violence and other factors which make the home inhabitable.

Although Administration of Estates (Amendment) Act Number 6 of 1997 sought to remedy the right of entitlement to the matrimonial home upon the death of a spouse at customary law, provisions such as this can detract from the enjoyment of such rights. As such they should be clarified and elaborated to ensure that they are more beneficial for the intended beneficiaries.

Recommendation

- Sec 3 of the Act should have the provision “… lived immediately before the person’s death” repealed so as to give rise to a peremptory provision that recognises the right of a surviving spouse to inherit.
- Where there are two or more houses, and the situation permits, the surviving spouse should be given an option to choose the house that they want to inherit, which may not necessarily be the house that they were living in with the deceased as the matrimonial home.

Guardianship of Minors Act [Chapter 5:08], 1961

The purpose of the Act is to provide for the guardianship and custody of minors in different circumstances. These include situations where minors are born in or out of marriage, in the event of divorce of parents, when one or both parents are deceased and when guardianship or custody is otherwise given to a person who is not a parent of the child.

Sec 3 of the Act provides for the duty of a father to consult a mother on question of guardianship of a minor. It states as follows:

Where the parents of a minor— (a) are living together lawfully as husband and wife; or (b) are divorced or are living apart and the sole guardianship of the minor has not
been granted to either of them by order of the High Court or a judge; the rights of
guardianship of the father shall be exercised in consultation with the mother, and if a
decision of the father on any matter relating to guardianship is contrary to her wishes
and in her opinion likely to affect the life, health or morals of the minor to his
detriment, the mother may apply to a judge in chambers, who may make such order in
the matter as he thinks proper.

The import of this provision is to restate the common law position that automatically gives
guardianship of children born in wedlock to the father, thereby discriminating against the
mother.

Sec 4 of the Act also states that the parent with guardianship rights duties “shall include the
power to consent to a marriage.” This is against the constitutional provisions on the rights
of children and age of consent to marriage as it means that a minor can get married with the
consent of a parent exercising guardianship over that child. The provision must therefore be
repealed to ensure that only adults above the age of 18 can consent to marriage and that no
adult including a guardian can consent to a marriage on behalf of a child.

Recommendations

- There should be clear application of the principle of the best interests of the child in the
  Act as an overall guiding factor in all processes that affect the child.
- Sec 3 of the Act must be amended to clearly state that during the subsistence of a
  marriage, both a mother and a father have equal custody and guardianship rights over a
  child, and that upon divorce, the rights will be determined by the courts of law. Such
  rights should be exercised in the best interests of the child.
- Sec 4 must be amended to remove the provision that authorises a parent with
  guardianship rights over a child to consent to the marriage of such a minor.

Matrimonial Causes Act [Chapter 5:13], 1985

The Act provides for legal issues related to marriages, judicial separation and nullity of
marriages. It also provides for consequential aspects including sharing of property on divorce.

Although the Matrimonial Causes Act is ostensibly gender neutral in its construction, its effect
is that women almost invariably lose out in the actual division of the matrimonial assets. This
is particularly the case in situations where the court distributing the property places greater
emphasis on direct (monetary) contributions towards the acquisition of matrimonial property
compared to indirect contributions (Sec 7 [4] [e]). In the Zimbabwean context, it is often the
husband who is formally employed, is in business or makes more money. The husband would
therefore ordinarily be the one making monetary contributions/greater monetary contributions
towards the acquisition of matrimonial property whilst the wife contributes in-kind by looking
after the home and the family.

Although divorcing couples with civil marriages and registered customary law marriages go to
different courts for divorce and ancillary matters to be determined, the property distribution
pursuant to a divorce for both forms of marriage is determined by Sec 7 of the Matrimonial
Causes Act. The sharing of property in terms of this section of the Act is however not based on
equality but on the discretion of the court. The decisions that have come out of the courts over
the years have shown that this power has been exercised more in favour of monetary
contributions than in kind contributions, with the spouse seeking an equal share on the basis of
in-kind contributions rarely getting 50% of the matrimonial assets. The 2020 case of Mhora v
Mhora was an exception with the court awarding a 50% share of the value of a matrimonial
home to the wife on the basis of in-kind contributions. This will be elaborated in later sections
of the report.

The provisions of sharing of property in terms of the Act do not currently apply to unregistered
customary law unions. It is important that these provisions be extended to these unions to
ensure protection of women (and also men) in such relationships.

**Recommendations**

- Sec 7 of the Matrimonial Causes Act should be amended to provide for sharing of
  property at divorce on the basis of equality of spouses. The courts should therefore give
  increased recognition to in kind contribution as opposed to placing such significance
  more on monetary contributions (this should be linked to the recommendation to have
  all marriages in Zimbabwe in community of property).
- The sharing of property at divorce under the Act, must include the sharing of property
  for partners in unregistered customary law unions at the dissolution of the union. In this
  regard, the country must borrow from South Africa’s Recognition of Customary
  Marriages Act to ensure the protection of women in customary marriages/unions,
  including polygamous ones.

**Married Persons Property Act [Chapter 5:12], 1928**

Although passed in 1928, the law came into effect on the 1st of January 1929. Its purpose is to
regulate the property rights of married persons. It also sets the “out of community of property”
regime as the default marriage regime unless the parties sign an ante-nuptial contract opting
out of this regime.

The law is gender neutral in its reading but discriminatory in its import. Sec 2 of the Act
provides that the marriage regime in Zimbabwe is out of community of property, except for
marriages entered into before 1 January 1929. Those who wish to enter into in-community of
property marriages must sign an ante-nuptial contract to that effect. However, the major
impediment is that of the excessive marital power that is bestowed on the husband during the
subsistence of an in-community of property marriage. During the subsistence of an in-
community of property marriage the husband exercises marital power over the marital property
with the wife having limited administrative authority over matrimonial property. It is therefore
prudent for the law to exclude marital power from an in-community of property marriage
regime to encourage women to enter into marriage in-community of property. This would mean
that both wife and husband have equal power over their assets during the subsistence of a
marriage.

The out of community property regime is equally disadvantageous in that during the
subsistence of the marriage, each party is the exclusive owner of the property that they would
have acquired and registered in their sole name. This has been particularly disadvantageous to women who may not have the same financial resources as their husbands, who on the other hand more often have the financial resources to acquire and register property in their names. This means that a husband can acquire and sell property without the consent or even knowledge of his wife. This legal position has been used by husbands in Zimbabwe to sell or encumber/mortgage matrimonial property, including matrimonial homes without the knowledge or consent of their spouses.

The courts have confirmed that at law, a wife cannot stop a husband from selling matrimonial property, including the matrimonial home, as long as the property is solely registered in the name of the husband (see Muswere v Makanza 2004 [2] ZLR 262 [H]). However, at divorce, the sharing of property is determined by sec 7 of the Matrimonial Causes Act [Chapter 5:13] which recognizes non-monetary contributions towards the acquisition of matrimonial property. In essence a spouse does not have control or authority over the other’s property during the subsistence of a marriage but has benefits in that property at divorce or death. Effectively, given these two scenarios, a recommended property regime in Zimbabwe would be an in-community of property regime that excludes the marital power of the husband to ensure that both spouses have control over the marital property during the existence of the marriage and at its dissolution as provided for in the Constitution and international women’s rights frameworks.

**Recommendations**

- The Married Persons Property Act must be amended to provide for a default in-community of property marriage regime that excludes marital power.
- Alternatively, all property acquired during the subsistence of a marriage must be registered in the names of both spouses regardless of whether the marriage is in or out of community of property.
- In polygamous marriages, the contribution of each spouse would determine whether one or more of the spouses will be co-registrants on the property.

**Public Health Act [Chapter 15:17], 2018**

The purpose of the Act is to provide for public health, conditions for improvement of the health and quality of life and the health care for all people in Zimbabwe, to provide for the rights, duties, powers, and functions of all parties in the public health system, to provide for measures for administration of public health and related matters.

In terms of Sec 73 (1) (a)-(d), a medical practitioner attending to a patient and treating such a person for a sexually transmitted disease is required amongst other things to:

a) direct the attention of the patient to the infectious nature of the disease and to the penalties prescribed by this Act for knowingly infecting any other person with such disease; and
b) counsel the patient to notify their sexual partner(s) and refer them for treatment;
c) warn the patient against engaging in sexual activities unless and until he or she has been cured of such disease or is free from such disease in a communicable form; and
d) give to the patient such information relating to the prevention and treatment of sexually transmitted disease and to the duties and responsibilities of persons infected therewith as may be supplied to the medical practitioner by the Ministry.

Whilst the provisions in subsection (a) and (b) play an important role in the management of sexually transmitted diseases, the good health seeking behaviour of women compared to men in the country often means that they are the first ones in a relationship to seek medical attention for sexually transmitted diseases and not their male partners. The result is that they are then presented as carriers of the infection and the ones that ‘wilfully’ infected their partners. Similarly, the requirement to notify partners of the infection often lead to gender-based violence (GBV) as women are accused by their partners of infecting them with sexually transmitted diseases. The warning to stop engaging in sexual activities similarly impacts women negatively and disproportionately as they may be forced to engage in sexual activity by their partners despite the warning and may therefore be prosecuted in such circumstances. It is therefore important for the Act to be anchored on principles that protect women from prosecution, and from gender-based violence when they communicate their infection with a sexually transmitted disease to their partners.

Recommendations

- Sec 73 (1) (a) needs to be reviewed to remove provisions criminalising wilful transmission of sexually transmitted infections to prevent discrimination, arbitrary application of such laws and violence against women.
- Sec 73 (1) (b) requiring a person with a sexually transmitted disease to notify their partner must clearly provide for the protection of women from GBV as well as how and where they can seek assistance in case of such violence and prosecution of a partner who perpetrates violence or other abuse as a result of receiving such notification. This will encourage disclosure and protect women from GBV.
- Sec 73 (1) (c) requiring a medical practitioner to give a warning to stop engaging in sexual activities by a person diagnosed with or under treatment for a sexually transmitted disease must be amended so that in addition it criminalises forced sexual activity by a partner who knows that their partner is under treatment for a sexually transmitted disease.

Customary Law and Local Courts Act [Chapter 7:05], 1990

The Act seeks to provide for the application of customary law in the determination of civil cases, provide for the constitution and jurisdiction of local courts, provide for appeals from the decisions of such courts and incidental matters.

Sec 16 of the Act provides that local courts (customary courts) do not have jurisdiction to deal with cases relating to guardianship or custody of minor children. However, Sec 5 states that “in any case relating to the custody and guardianship of children, the interests of the children concerned shall be the paramount consideration, irrespective of which law or principle is applied.” This gives a conflicting position which seems to suggest that local courts can in fact deal with cases of guardianship and custody of minor children as long as they observe the principle of the best interests of the child in applying customary law to the case. This provision
should be removed, and the Act should clarify that local courts do not have jurisdiction to deal with issues of guardianship or custody of minor children. Under customary law, the father has superior rights to his children over those of the mother. This is linked to the payment of *roora/lobola*, leading to the notion that the wife’s reproductive capacity has been acquired from her natal family by the *roora/lobola* exchange. Under customary law the children very often remain with the father and women find it socially and financially difficult to pursue their children’s custody. Giving local courts jurisdiction to deal with custody and guardianship issues will therefore likely lead to discrimination against women.

Sec 16 also provides that local courts do not have any jurisdiction to dissolve any marriage. Sec 16 (1) (d) however provides further that “a community court may adjudicate upon marital relationships which, though recognized by customary law (unregistered customary law unions), have not been solemnized in terms of the Customary Marriages Act.” This brings into sharp focus, the issue of the differentiated treatment of different marriages in the country, and the fact that some marriages are given more respect and better protections than others. Unregistered customary law unions form 84% of the marriages in Zimbabwe.84 As such, the creation of a hierarchy of marriages and failure to accord these marriages similar and adequate protections lead to discrimination and violation of rights of many women, in particular the poor, marginalized and those who live in communal areas, including a violation of their right to equal protection of the law. In essence all marriage relationships should be adjudicated on by the same courts.

The traditional leaders who preside over local courts are governed under the Ministry of Local Government, Public Works and National Housing, yet one of their biggest functions is judicial in nature and they play an important role in this regard in the lives of the marginalized people in Zimbabwe’s rural communities. It is important to ensure that the Ministry of Justice plays an important and clear oversight role over traditional leaders’ judicial functions, including ensuring that they get adequate judicial and human rights training to enable them to properly and adequately administer justice. Such training, especially in human rights and constitutional law must be provided first before a traditional leader is allowed to preside over customary law cases. Currently the judicial function performed by traditional leaders is not the best place for upholding women’s rights because it is patriarchal in nature and often upholds discriminatory customary practices and is therefore discriminatory towards women.

**Recommendations**

- Sec 16 (1) on dissolution of customary law unions must be amended to ensure that such unions are presided over by the same courts that preside over registered marriages.
- Sec 5, which suggests that local courts/customary courts can preside over cases involving guardianship and custody of minor children, must be repealed, and replaced with a provision that categorically states that these courts do not have jurisdiction to deal with such cases.

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• The law must provide for direct supervision of traditional leaders’ judicial function by the Ministry of Justice, Legal and Parliamentary Affairs to ensure that traditional leaders perform their functions in terms of the law, the Constitution, and international human rights standards.
• The law must provide for judicial training and certification of traditional leaders before they can be allowed to preside over cases. An individual’s assumption of a traditional leadership position should not automatically qualify them to be a judicial officer unless it can be certified that they have grasped constitutional and human rights protections on equality and non-discrimination.

Domestic Violence Act [Chapter 5:16], 2007

The purpose of the Act is to make provision for the protection and relief of victims of domestic violence.

Section 3 (1) (l) of the Domestic Violence Act (DVA) lists harmful cultural or customary practices or rites that have the effect of discriminating against or being degrading towards women. These are:

1) forced virginity testing;
2) female genital mutilation;
3) pledging of women or girls for purposes of appeasing spirits;
4) forced marriage;
5) child marriage;
6) forced wife inheritance; and
7) sexual intercourse between fathers-in-law and newly married daughters-in-law.

The problem is that the wording of the provision suggests that the list is exhaustive and therefore that there is no room to add any other harmful cultural or customary practices or rites. The provision must be amended to ensure that any other customary, cultural, and religious practices or rites that are identified as harmful can be deemed criminal and prosecutable if committed.

Despite the adoption of the DVA in 2007 and other reforms through the Criminal Law Codification and Reform Act in 2006, violence against women, particularly domestic violence, remains widespread and perpetrators continue to benefit from impunity. Some of the reasons for this state of affairs include the lack of training of law enforcement personnel, the lack of public awareness (including by women) on women’s human rights and gender equality and the fear of social stigma, reprisals and retribution for reporting domestic violence; contributing towards the ineffectiveness of such laws.85 For example, since the criminalisation of marital rape in 2010, only one case of marital raped had been tried in the courts by 2017.86 It is therefore important for the State to put in place measures to ensure effective and efficient implementation of the law. This includes providing the Ministry of Women Affairs, Community, Small and Medium Enterprises Development, the Anti-Domestic Violence

86 Ibid.
Council, the Zimbabwe Gender Commission, the ZRP Victim Friendly Unit, the Judiciary and the NPA with the necessary material and financial resources to carry out their mandate.

Recommendations

- Section 3 (1) (l) of the DVA must be amended and expanded to recognise other forms of harmful cultural, customary, and religious practices and rites and clarify that the list is not exhaustive.
- Provide adequate resources to institutions tasked with ending domestic violence including the Ministry of Women’s Affairs, Community, Small and Medium Enterprises, the Zimbabwe Gender Commission (ZGC) and the Anti-Domestic Violence Council, Zimbabwe Republic Police (ZRP) Victim Friendly Unit, the Judiciary, and the National Prosecuting Authority (NPA)
- Compel the State and identified institutions to provide information on DV to citizens including information on what constitutes DV, prevention and where and how to obtain assistance in the event of experiencing violence.

Deeds Registries Act [Chapter 20:05], 1959

The Act makes provision for the establishment of deeds registries in Zimbabwe and for the appointment of registrars of deeds and makes provision, for the registration of deeds and conventional hypothecations and related matters.

Sec 15 of the Deeds Registries Act states that “a married woman shall be assisted by her husband in executing any deed or document required or permitted to be registered in any deeds registry; or produced in connection with any deed or document […] if, by virtue of her marriage, she has no legal capacity to execute such deed or document without the assistance of her husband.” This relates to marriages in community of property where the doctrine of marital power applies. This is discriminatory in that the husband is given power, which prevents the wife from executing certain functions, including registration of property without the consent or assistance of the husband.

While marriages in community of property play an important role in protecting the property rights of men and women in marriage, such marriage must be entered into without the marital power that is given to the husband to ensure that both spouses have power over and can administer marital property on the basis of equality.

Recommendation

- Sec 15 of the Deeds Registries Act must be repealed and replaced with a provision that recognises the right of both spouses to deal with and administer marital property, provided they have the authority of their spouse to do so.

Legal Aid Act [Chapter 7:16], 1996

The purpose of the Legal Aid Act includes to provide for the granting of legal aid to indigent persons, the establishment and functions of a Legal Aid Directorate and the establishment of a Legal Aid Fund amongst others.
The Act is silent about the need for gender equality and the promotion of women’s rights in accessing legal aid and accessing resources from the Legal Aid Fund. Yet, it is likely that women in the country would be more in need of legal aid and attendant assistance than men, given the general lower economic status of women in the country compared to men.

The work of women’s rights and legal aid organisations, including the Zimbabwe Women Lawyers’ Association (ZWL A), Legal Resources Foundation (LRF) and Women and Law in Southern Africa Research Trust (WLSA), has shown the high demand for legal aid services for women for pressing but common family law related legal issues such as applications for maintenance, protection orders, divorce orders and child custody amongst others. It is therefore important for the Act to specifically provide for gender equality in access to legal aid and the resources from the Legal Aid Fund to ensure that women’s rights to protection of the law and access to justice are realised.

The Act also still uses the pronoun “he” in reference to all persons that are the subject of the Act; from the Director of the Legal Aid Directorate, the legal aid officers and the persons seeking to access legal aid amongst others. The wording must be changed to reflect that this is a law that seeks to benefit both men and women, boys and girls in the country.

**Education Act [Chapter 25:04], 1987**

The purpose of the Act is to provide for the declaration of the fundamental rights to, and objectives of, education in Zimbabwe, provide for the establishment, maintenance and regulation of Government schools and other Government educational facilities, provide for the establishment and administration of non-governmental schools, and for the registration and control thereof. It also seeks to provide for the registration and control of correspondence colleges and independent colleges and for the establishment of an advisory council for such colleges, make financial provision for schools and to provide for the transfer of teachers to the Public Service.

Sec 4 of the Education Act was amended through the Education (Amendment) Act of March 2020, to include non-discrimination on the grounds of pregnancy, sex and marital status, the main bases for gender-based discrimination in admission to and remaining in school for girls. Previously, and from a gender discrimination perspective, the Act only prohibited direct discrimination on the basis of gender. The new provision is now in alignment with Sec 56 (3) of the constitution, regarding equality and non-discrimination. The new Sec 68C (1) specifically provides that no child shall be expelled from school on the basis of pregnancy. This is a new and commendable development, that must however be expanded to provide for the resources and facilities to allow pregnant girls or those with children to continue with their education in practical terms.

Sec 4 of the Act has also been amended to provide that “the State shall ensure the provision of sanitary ware and other menstrual health facilities to girls in all schools to promote menstrual health.” This is an important provision in relation to the sexual and reproductive health rights (SRHR) of girls. However critical issues, such as the provision of contraceptives to school children remains a controversial issue and has not been included in the amendment despite calls by civil society and girls’ rights advocates for this inclusion. Cultural, religious, and moral
considerations have overridden the reality regarding this issue. Children are becoming sexually active at young ages and failure to provide these services affect girls’ rights in particular, due to teenage pregnancies, sexually transmitted infections and often early, forced and child marriages if they fall pregnant.

Section 5 of the Act previously provided for compulsory primary education as an “objective” of Zimbabwe. The amendment however now provides for an “entitlement” to “compulsory basic state funded education.” This is also a progressive provision in that making basic state funded education a right can play an important role in facilitating access to education rights that are often denied many children from poor families. These provisions must however be assessed in the context of the grounded realities in Zimbabwe, especially in light of the current economic challenges and how in the past, girls were easily marginalised compared to boys in access to education when resources are limited. The failure by the government to fully fund and operationalise the Basic Education Assistance Module (BEAM) programme has contributed to the failure by girls from poor families to access their right to education. The provision must therefore be amended to match state funded basic education with unequivocal provision to the effect that Government should provide the resources as opposed to a “progressive realisation of this right.”

The provision must also clearly provide that access to basic education does not only relate to physical access to a school by a child but that the school must have adequate infrastructure, teachers and that a child whose basic education is State funded must be entitled to receive other resources that enable the child to effectively learn and participate in school activities, including school uniforms, books, sporting equipment and balanced and nutritious meals.

The new 68B (1) of the Act provides that “Every registered school shall provide infrastructure, subject to availability of resources, suitable for use by pupils with disabilities.” Whilst the provision is progressive in terms of providing for the needs of pupils with disabilities, there are two issues of concern that still need to be addressed, namely:

1) That the Act places the responsibility to provide the infrastructure on the school and not the government; and

2) The school is not compelled to provide the infrastructure but can only do so subject to availability of resources.

The net effect therefore is that there is no compulsion and urgency in providing the infrastructure and it may indeed be long before this is implemented in the country. The impact on girls with disabilities is therefore going to be disproportionate given the known intersectional discrimination that women and girls with disability face on the basis of their gender and disability. Lack of such infrastructure may for example also disproportionately affect girls with disabilities in terms of access to menstrual hygiene when they are at school.

The conclusion that can be drawn is that the Education Amendment Act is a positive development but only the beginning of many efforts that need to be made in order for gender

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87 Statistics from the national statistical agency (Zimstats) however show that in 2017 “about 65 percent of males and 61 percent of females in the age group 3 to 24 years were attending school” and there is general improvement in the number of girls and women attending primary, secondary and tertiary education (see Women and Men in Zimbabwe Report, 2019).
discrimination and discrimination on the basis of disability to be fully addressed in the county’s schools and education system.

**Recommendations**

- Sec 68C (1) must be expanded to provide for the resources and facilities to allow pregnant girls or those with children to continue with their education in practical terms.
- Sec 4 must be expanded so that the provision of SRHR extends to the provision of contraceptives to school children, in addition to sexual and reproductive health and rights education that children must receive in schools.
- Sec 5 must be amended to match State funded basic education with unequivocal provisions requiring government to provide the resources as opposed to a “progressive realisation of this right.” The provision must also clearly state that access to basic education does not only relate to physical access to a school by a child but that the school must have adequate infrastructure and teachers. In addition, a child whose basic education is state funded must be entitled to receive other resources that enable the child to effectively learn and participate in school activities, including school uniforms, books, sporting equipment, and balanced and nutritious meals.
- Sec 68B (1) must be expanded to ensure that the provision of infrastructure for children with disabilities at schools is made a government responsibility, is compulsory, and must be achieved within set time limits.

**Political Parties Finance Act [Chapter 2:11], 2001**

The purpose of the Act is to provide for the financing of political parties by the State, to prohibit foreign donations to political parties and candidates and address related matters.

The provisions on women’s equal representation in elective bodies must be reinforced by the Political Party Finances Act [Chapter 2:11]. Currently the Act favours the dominant political parties and there is no deliberate action to support the marginalised, including women and smaller political parties. It is trite that women aspirants to political office are often hampered in their quest for such office because of lack of funds for campaigning, both as members of political parties and independent candidates. The Act should therefore provide for funding for women to enable them to participate on an equal footing as political office candidates at both national and local government level.

**Recommendation**

- The Act must be amended to provide for specific political financing for women standing as political party candidates in both local government and national elections; and
- Provide for funding to women who stand as independent electoral candidates and as political party candidates of small political parties.

**Public Entities Corporate Governance Act [Chapter 10:31], 2018**

The Act seeks to provide for the governance of public entities in compliance with Chapter 9 of the Constitution, provide a uniform mechanism for regulating the conditions of service of members of public entities and their senior employees and provide for related matters.
Sec 6 of the Act provides for the functions of the Corporate Governance Unit. Currently none of the functions relate to the need to advise public entities and line Ministers on ensuring and implementing gender equality and non-discrimination provisions in the Act and the Constitution. Such a function should be added to the current list of functions of the Unit.

Sec 11 (7) (a) provides that “A line Minister shall ensure that, so far as practicable, there are equal numbers of men and women on the board of every public entity for which he or she is responsible”. The use of the term “as far as practicable” means that the provision is not peremptory, and an appointing Minister can justify failure to comply with the provision on the basis that appointing an equal number of men and women was not practicable. The provision must therefore be amended to make it peremptory for the line Minister to ensure gender parity in the appointment of board members of public entities as is required by the Constitution.

**Recommendations**

- Promotion of gender equality in public entities must be included in the Act as a function of the Corporate Governance Unit.
- The Act must compel line Ministers to ensure gender parity in the composition of public entity boards and not give them a discretion.

**Wills Act [Chapter 6:06], 1987**

The purpose of the Act is to provide for matters relating to the execution, validity, interpretation and protection of wills and the disposal of property by will as well as related matters.

The discriminatory impact of the Act on women was highlighted in the Supreme Court Case of Chigwada v Chigwada passed on the 28th of December 2020, the details of which are provided later in this report.

Sec 5 (1) (a) of the Act gives a testator the right to make provision for the transfer, disposal, or disposition of the whole or any part of his estate. The Act further provides that:

> A will shall not be invalid solely because the testator has disinherited or omitted to mention any parent, child, descendant or other relative or because he has not assigned any reason for such disinheritance or omission.\(^{88}\)

Using these provisions, the Supreme Court ruled in the *Chigwada* case that a testator has the right to bequeath his or her property to whosoever he or she wishes and was not compelled to bequeath such property to a spouse.

It is therefore important for the Act to be amended to protect the inheritance rights of spouses, in particular in relation to the matrimonial home and household goods and effects as is done in the case under intestate succession. In addition, where a will disinherits a spouse, inquiries similar to those that are made at divorce to determine the contribution of a spouse towards the acquisition of matrimonial property must be made by the courts to determine whether in fact the bequeathed property belongs solely to the testator or all or part of it must be allocated to the surviving spouse. The provisions of the Act are gender neutral but are discriminatory.

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\(^{88}\) Sec 5 (2).
against women in import given that women/wives are likely to be disinherited through wills as most valuable property, including matrimonial homes are often registered in the names of their husbands who can easily bequeath such property to people other than their wives. This can leave the wives homeless and destitute as a consequence.

Recommendations

• The Act must be amended to limit freedoms of testation in relation to the matrimonial home and household goods and effects, and provide that where there is a surviving spouse, these can only be bequeathed to the surviving spouse, subject to reasonable limitations.
• The Act must also be amended to provide that where a will disinherits a surviving spouse, the courts should be compelled to make an inquiry on the contribution of the spouses towards the acquisition of the property in question (through both direct and indirect means) to determine whether any of the property should be allocated to the surviving spouse.


The Act provides for the establishment of the Zimbabwe Council for Higher Education to register and accredit institutions of higher education and related matters.

A related matter in this regard is the promotion of equity in access to higher education through the provision of student assistance programmes (sec 6 [h]). There is however no provision on promoting gender equality in terms of such student assistance programmes. The Act is generally silent about women and girls’ rights to education and access to resources, facilities and learning environments that promote their full participation in higher education. The only reference to gender equality is in relation to the composition of the Council for Higher Education to be established in terms of sec 3 of the Act. Whilst this is important in ensuring gender representation, the objects of the Council, including in relation to access to funding for higher education should specifically acknowledge and address the challenges faced by women and girls in accessing higher education and attendant funding.

The Act also fails to provide for the protection of women and girls from sexual harassment in institutions of higher learning despite a realisation that there are high levels of sexual harassment in these institutions. A study by the Female Students Network Trust in 2015 revealed that a staggering 94% of students in institutions of higher learning in Zimbabwe reported experiencing sexual harassment. Lack of policy direction on the issue was blamed for these high incidence levels. The ZIMCHE Act must therefore clearly address these challenges.

Recommendations

• Sec 6 of the Act must be amended to provide for gender equality in access to resources for higher education and promote access to higher education by women and girls.
• The Act must be amended to specifically provide for the protection of women and girls from sexual harassment in institutions of higher learning given the prevalence of such harassment in the country’s higher education institutions.

Zimbabwe Land Commission Act [Chapter 20:29], 2018

The Zimbabwe Land Commission Act seeks to provide for operationalisation of the Zimbabwe Land Commission established by section 296 of the Constitution, provide for the acquisition of State land and the disposal of State land and provide for the settlement of persons on, and the alienation of, agricultural land. It further seeks to provide for the control of the subdivision and lease of land for farming or other purposes, provide for limiting of the number of pieces of land that may be owned by any person and the sizes of such land and related matters.

It provides that existing law on the devolution of property on marriage, dissolution of marriage and death, shall apply to partially alienated State land (A1 and A2) except when a different law provides otherwise (Sec 36 [5]). For the majority of marriages in Zimbabwe, which are out of community of property, this means that the spouse in whose name the land is registered is considered to be the rights holder of the property (alienated State land remains State land and therefore cannot be owned). The non-signatory spouse’s rights will likely be considered in light of his or her direct or indirect contribution towards the acquisition of the rights in the land or improvement of the land. Given that women in Zimbabwe acquired only 18 % of A1 land and 12 % of A2 land during the land reform programme, it follows that the bulk of land in the country was allocated to men. As the Government starts the process of issuing permits and 99-year leases for the land, joint registration for married people and those in partnerships will ensure that women are also registered as joint co-rights holders of the land.

Agricultural Land Settlement (Permit Terms and Conditions) Regulations, S.I 53/2014 makes provision for this. In terms of Sec 10 (1), if a permit holder is married to one or more spouses at the time the permit is issued, his or her spouse(s) shall be deemed to hold an equal joint and undivided share in the allocated land. The S.I also recognises both registered and unregistered customary law marriages for this purpose but fails to recognise partnerships. This S.I however only applies to A1 land not large scale A2 land. The Zimbabwe Land Commission Act must therefore be amended to require joint registration for large A2 land, or alternatively an instrument similar to S.I 53/2014 must be promulgated to regulate land rights under A2 allocations. This is particularly important given that A2 land is more valuable than A1 land, and in terms of the above statistics, even fewer women acquired land under this tenure system.

Joint registration and the provision of joint and undivided shares between and amongst spouses in that land will therefore improve the rights of women to that land during and at the dissolution of a marriage. Although no law compels the registration of a partner on 99-year leases, as a matter of practice, the Ministry of Lands, Agriculture, Water and Rural Resettlement requires

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a married, 99-year lease beneficiary to register the partner as a co-lease holder.\footnote{Interview with an Officer of the Ministry of Lands, Land Reform and Rural Resettlement.} This must however be specifically provided for in law to ensure certainty and rights claiming should there be failures in implementation. In addition, both the S.I and the Zimbabwe Land Commission Act must also provide for the rights of life partners to land allocated as part of the country’s land reform programme.

**Recommendations**

- The Zimbabwe Land Commission Act must be amended to provide for joint registration of A2 land; alternatively, a SI similar to SI 53/2014 must be promulgated to address rights and responsibilities over A2 land, including spousal rights and responsibilities, which must be on the basis of equality.
- Both the Zimbabwe Land Commission (ZLC) Act, and SI 53/2014 must be amended to recognise rights and responsibilities of unmarried partners in the allocation, use and occupation of A2 land.
ROLE OF THE JUDICIARY IN ENFORCING GENDER EQUALITY

Introduction

In line with the constitutional provisions for the judiciary to interpret the law and develop both common and customary law in the country, the courts in Zimbabwe have played an important role in enforcing gender equality norms and standards, and in developing the law on gender equality and women’s rights. There are a number of judgments that have been passed in this regard. In many instances, whilst the laws have been changed through the courts, Parliament has been slow to amend the offending laws or to promulgate new ones to comply with the court decisions. This explains in part, why the legal position on various issues in the country is at variance with the provisions of the Acts of Parliament. The process of amending laws in the country to eliminate all discriminatory practices is therefore an important step in ensuring the alignment and accessibility of accurate and complete laws as reference points for citizens.

Progressive legal protections that are given by the courts through court decisions may not be enjoyed by the intended beneficiaries if the laws are not promulgated or amended to specifically provide for such rights. This is because many citizens are not aware of court judgments that may have been passed to protect them. Experience with government institutions has shown that bureaucrats often cling to laws and practices that would have been outlawed by the courts, and only relent when a citizen points out the illegality of such practices. In such situations, the clearer the provision is in a legislative instrument, the better the chances of citizens knowing about the law and referring to such provisions. Conversely, even fewer citizens would refer to a court judgment as a basis for claiming their rights.

There are also instances, as provided in some of the cases below, where courts have interpreted the law in ways that led to discrimination against women. In such instances, there is need for the legislature to change the offending laws to ensure the protection of women. In the case of Chigwada v Chigwada below, the Supreme Court whilst acknowledging that the law relating to testamentary dispositions might lead to discrimination against women, highlighted the need for the State to put in place the necessary legislative measures to protect women.

Some examples of the precedent setting judgments that have been passed by the courts over the years are provided below.

Examples of Cases from the Constitutional Court

**Margaret Dongo v The Registrar General and Anor Judgment No. SC 6/10, Const. Application No. 292/08**

The case was heard in the Supreme Court sitting as a Constitutional Court in terms of the 1980 constitution. The applicant was married under the Customary Marriages Act [Chapter 5:07]. In January 2006, the applicant approached the offices of the first respondent (Registrar General – RG), seeking to obtain a passport for a minor child. She was turned away on the basis that she could not assist the minor child to obtain a passport as she was not the natural guardian of the
minor child. This was because the child was born in wedlock, the father was still alive and that
the mother had not be given legal guardianship of the child by a court, which act would have
allowed her to perform juristic acts on behalf of the minor child. Her husband, as the natural
guardian of the minor child, was therefore the only one who could assist the minor child in
applying for the passport (as the RG considered the act of applying for a passport to be a juristic
act).

The matter was referred to the Constitutional Court by consent of the applicant and first
respondent for the Court to decide whether the common law position (which was restated in
part by Sec 3 of the Guardianship of Minors Act) discriminated against the applicant and
women in her position on the basis of customary law, gender, and marital status.

The arguments advanced were that by giving guardianship of minor children born in wedlock
to the fathers and not the mothers:

- The applicant faced discrimination as a married woman, as the common law recognises
  unmarried women and widowed women as the natural guardians of their minor children
  but did not so equally recognise the applicant, a married woman;
- African customary law relating to the guardianship of children born in a customary law
  union is discriminatory of women and offends against the provisions of equality and
  non-discrimination; and
- As regards her husband, she suffered discrimination on the basis of her gender. The
  husband is automatically imbued with rights of guardianship over their joint children
  on account of being the father, while she, an equal parent to the minor children, has
  none at common law, and can only be content with the limited right granted her by
  statute to be consulted by the father regarding the juristic affairs of the minor child.

The above issues where however not determined by the Court after the Court ruled that the act
of applying for a passport was not a juristic act and as such a guardian was not required in order
for a minor child to apply for a passport. Whilst the issues where not determined, the application
brought to the fore the issue of gender-based discrimination, discrimination against women on
the basis of marital status and their discrimination on the basis of customary law. Whilst these
issues have been resolved constitutionally in their entirety with the promulgation of the 2013
Constitution, Sec 3 of the Guardianship of Minors Act still needs to be amended to reflect this
constitutional position.

**Mudzuru and Anor v. Minister of Justice, Legal and Parliamentary Affairs,
and Ors CCZ 12/2015**

In this case, two young women aged 19 and 18 years respectively approached the Constitutional
Court in terms of Sec 85 (1) of the 2013 Constitution, 92 complaining about the infringement of

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92 Sec 85 (1) of the Constitution has expanded *locus standi* in Zimbabwe and allows any person acting on their own behalf, on
behalf of another person who cannot act for themselves, acting in the interests of members of a group or class of persons,
acting in the public interest or an association acting on behalf of its members to approach a court to protect or promote
fundamental rights or freedoms protected in the Bill of Rights.
the fundamental rights of girl children subjected to early marriages and sought a declaratory order in the following terms:

1) That the effect of Sec 78 (1) of the 2013 Constitution is to set 18 years as the minimum age of marriage in Zimbabwe;

2) That no person, male or female in Zimbabwe may enter into any marriage including an unregistered customary law union or any other union including one arising out of religion or a religious rite before attaining the age of eighteen (18);

3) That Section 22 (1) of the Marriage Act [Chapter 5:11] is unconstitutional (The section sets the minimum age limit for marriage at 18 for boys and 16 for girls); and that

4) The Customary Marriages Act [Chapter 5:07] is unconstitutional in that it does not provide for a minimum age limit of eighteen (18) years in respect of any marriage contracted under the same.

The Constitutional Court agreed with the applicants in all respects, and granted a declaratory order as prayed for. This decision has partly informed government efforts to promulgate the Marriages Bill, which is currently before Parliament.

Examples of Case Law from the Supreme Court

**Mildred Mapingure v Minister of Home Affairs and 2 Others Judgment No. SC 22/14, Civil Appeal No. SC 406/12**

On 4 April 2006, the appellant was attacked and raped by robbers at her home in Chegutu. She immediately lodged a report with the police in Chegutu and requested that she be taken to a doctor to be given medication to prevent pregnancy and any sexually transmitted infection. Later that day, she was taken to hospital and attended to by a Dr Kazembe. She repeated her request, but the doctor only treated her injured knee. He said that he could only attend to her request for preventive medication in the presence of a police officer. He further indicated that the medication had to be administered within 72 hours of the sexual intercourse having occurred. She duly went to the police station the following day and was advised that the officer who dealt with her case was not available. She then returned to the hospital, but the doctor insisted that he could only treat her if a police report was made available.

On 7 April 2006, she attended the hospital with another police officer. At that stage, the doctor informed her that he could not treat her as the prescribed seventy-two (72) hours had already elapsed. Eventually, on 5 May 2006, the appellant’s pregnancy was formally confirmed. Thereafter, the appellant went to see the investigating police officer who referred her to a public prosecutor. She indicated that she wanted her pregnancy terminated but was told that she had to wait until the rape trial had been completed. In July 2006, acting on the direction of the police, she returned to the prosecution office and was advised that she required a pregnancy termination order. The prosecutor in question then consulted a magistrate who stated that he could not assist because the rape trial had not been completed. She finally obtained the necessary magisterial certificate on 30 September 2006. By that stage, the hospital matron who was assigned to carry out the termination felt that it was no longer safe to carry out the
procedure and declined to do so. Eventually, after the full term of her pregnancy, the appellant gave birth to her child on 24 December 2006.

The Appellant lodged a claim with the High Court for damages in the sum of US$10,000 for physical and mental pain and US$41,904 for maintenance in respect of her minor child, alleging negligence by State authorities for failure to prevent her rape and the subsequent failure to terminate her pregnancy, resulting in the birth of a child from the rape. The case was dismissed in its entirety by the High Court but was partially successful on Appeal in the Supreme Court, which concluded that the authorities failed to prevent the Appellant’s rape and also failed to provide her with reasonable assistance to prevent the pregnancy. However, once the pregnancy was confirmed, the Supreme Court concluded that it was wholly within the Appellant’s hands and her responsibility to ensure that the pregnancy was terminated.

The case however brought to the fore the difficulties associated with the Termination of Pregnancy Act, with the Court highlighting that the provisions of the Act in this regard were not clear. The court stated that:

It is apparent from the foregoing that s 5(4) of the Act is ineptly framed and lacks sufficient clarity as to what exactly a victim of rape or other unlawful intercourse is required to do when confronted with an unwanted pregnancy. The subsection obviously needs to be amended. In particular, it is necessary to specifically identify the “authorities” that are referred to in the provision and to delineate their obligations with adequate precision. It is also necessary to systematically spell out the procedural steps that the complainant herself must follow in order to obtain the requisite magisterial certificate to terminate her pregnancy.

In addition to the issues raised by the Court, the Act also needs to be amended to ensure that the procedures and authorisations required for termination of pregnancy where the pregnancy is as a result of unlawful intercourse are not unnecessarily cumbersome, making it difficult for a woman or girl to obtain the necessary termination of pregnancy within a reasonable time. It is partly in light of these considerations that the recommendations for the repeal of the Termination of Pregnancy Act or alternatively the proposed amendments provided above are given.

Chombo v Chombo (SC 41/18, Civil Appeal No. SC 326/14) [2018] ZWSC 41

The parties were husband and wife and during the subsistence of the marriage, a 99-year lease to fast-track land (A2) was issued in favour of the husband as part of the country’s fast track land reform programme (FTLRP). They subsequently had an order of divorce granted by consent, but a dispute arose regarding the parties’ rights to the farm. The case was brought before the High Court to decide on two issues relating to this dispute, namely:

1) Whether the wife was entitled to any rights in the farm; and

2) What constitutes a fair and equitable distribution of those rights?

The High Court held that where a 99-year lease for fast-track land is in the name of one partner in a marriage relationship, the lease holder had the exclusive right over the leased land to the exclusion of the other partner and that at divorce, such rights could not be shared. The Court
also held that a lease agreement conferred personal and not real rights and in that sense the lease agreement was only enforceable between the lease holder and the Government and that the farm did not form part of matrimonial property because it was owned by the Government and not the parties. At this point, this decision reinforced the need for married parties to have 99-year leases registered in both their names to ensure equality and protection of their rights and interest to such land during the subsistence of the marriage and at its dissolution.

The wife however appealed against the decision of the High Court in the Supreme Court, and on appeal, two issues were under consideration, namely:

1) Whether in terms of the Matrimonial Causes Act, the parties’ rights in the leased farm could be distributed on divorce; and

2) If they could be distributed what would be a fair and equitable distribution of those rights.

In allowing the appeal and remitting the case to the court a quo (High Court) to distribute the parties’ interests and rights in the 99-year lease, the Supreme Court made the following conclusions:

1) Even though the court could not distribute or share the farm, which was the preserve of the Executive as the farm belonged to government, the spouses’ rights in the 99-year lease were an asset of the spouses, which needed to be distributed in terms of sec 7 (4) of the Matrimonial Causes Act;

2) That, according to the 99-year lease agreement, the farm was allocated and subsequently leased to the respondent for his and his family’s benefit. On page 1 of the lease agreement the word “lessee” was defined as follows: “In relation to any person who holds land under this lease, lessee shall mean that person and his spouse or spouses jointly”. The Court therefore concluded that the lease was granted for both spouses’ benefit; and

3) The Supreme Court urged the court a quo to take into account all the provisions of the Matrimonial Causes Act in distributing the rights and interests of the parties in the 99-year lease, including the fact that the wife had contributed both directly and indirectly in the acquisition of the 99-year lease, given that it was awarded during the subsistence of the marriage.

Mhora v Mhora SC 89/2020, Civil Appeal SC. 617/2018

The parties were married in 1970 in terms of an unregistered customary law union. In 1971, they solemnised their marriage in terms of the Customary Marriages Act and subsequently registered the marriage in terms of the Marriages Act in 2005. In 2010, the wife issued summons for divorce and distribution of property amongst other ancillary relief.

In terms of the distribution of property, at issue was an immovable property which the husband argued, although acquired during the subsistence of the marriage, he had acquired without any financial contribution of the wife and therefore there was no basis for the distribution of the property on an equal basis. He argued that since he was married to the wife out of community of property, he had no duty to tell her about his financial affairs when it emerged that he had
other immovable proprieties. The High Court however, shared the property on a 50/50 basis arguing that the wife had contributed both financially through a sewing venture and indirectly by being the main caregiver to the husband, and 9 children including 3 that were born to a second wife (who was brought in to stay in the same house with her but later divorced the husband) and two that were born out of wedlock. The High Court also concluded that Sec 7 (4) of the Matrimonial Causes Act must be interpreted in line with constitutional provisions on gender equality and international human rights law.

The husband appealed this judgment to the Supreme Court, arguing amongst other things that the “court a quo misdirected itself by proceeding as if it was determining a gender equality issue when the only issue before it was about the distribution of the matrimonial asset and purely on the weight of each party’s contribution”.

In dismissing the appeal, the Supreme Court considered Sec 26 (c) and (d) of the Constitution and Article 16 (1) of the Universal Declaration of Human Rights (UDHR) with regards to spouses’ equality in rights and obligations during the subsistence of a marriage and at its dissolution. The Court also noted that the concept of gender equality in this era cannot be overemphasised and that “the longer the duration of the marriage, the lesser the weight to be attached to direct contributions and the value of indirect contributions increases as the duration of the marriage increases”.

This is a 2020, Supreme Court case, and therefore shows the progress that has been made by the courts in interpreting the 2013 Constitution and international human rights law regarding gender equality and non-discrimination in marriage and attendant property rights.

**Chigwada v Chigwada and Ors SC 188/20, Civil Appeal Number 397/17**

The facts of the case were that the first respondent was the widow of one Aaron Chigwada, who died testate (the deceased). In his will, the deceased had bequeathed his half share of the matrimonial home to his son from a previous marriage. The matrimonial home was registered in the names of both the deceased and the first respondent (his widow)

The first respondent first filed an application at the High Court challenging the will, in particular the fact that the deceased was not entitled to bequeath the matrimonial home or share thereof to any person other than herself as the surviving spouse. The High Court agreed with her and nullified the will. The son appealed the matter to the Supreme Court. The matter for determination on appeal to the Supreme Court was whether the law governing the property rights of married persons, or the law of testamentary disposition of estates, binds a testator to bequeath his or her right in the estate to the husband or wife.

The Supreme Court ruled that the law governing the property rights of married persons in Zimbabwe is the Married Persons Property Act [Chapter 5:12], which provides that since 1929, marriages in Zimbabwe are out of community of property, entitling parties to own and dispose of property in their individual capacity. The court ruled further that the law of testamentary dispositions in Zimbabwe recognises the doctrine of freedom of testation, does not oblige a testator to bequeath his or her property to the surviving spouse but gives such testator the
freedom to bequeath his or her property to whosoever he or she chooses, and therefore upheld the appeal.

Whilst the decision of the Supreme Court is technically correct, the impact of this decision, and the current legislative position disproportionally affects women. As counsel for the respondent in the case argued, whilst the law is gender neutral, it affects women disproportionately given that most property of value, including matrimonial homes in Zimbabwe are registered in the names of the husbands. With this current legal position as enunciated by the Supreme Court, such husbands can bequeath that property, including the matrimonial home to other people, disinherit their spouses, thereby rendering them destitute.

The Supreme Court in its decision correctly pointed out that as provided for in international law, the State needs to take measures, including legislative to ensure the protection of women in such situations. However, as the legal position currently stands, such protective measures are missing. It is therefore necessary for Parliament to put in place measures to limit freedom of testation as currently provided for in the Wills Act [Chapter 6:06] to prevent the total disinheritance of surviving spouses. In particular the matrimonial home and household goods and effects in testate estates must be given the same protections that they have in intestate estates as provided for in sec 3A of the Deceased Estates Succession Act [Chapter 6:02] and the Administration of Estates Act [Chapter 6;01]93

In addition, considerations similar to those that are made at divorce to determine ownership of property should be made in testate estates to determine whether a testator is in effect disposing of property that solely belongs to him or her. In divorce cases, courts make determination of ownership of, or shares in property based on the parties’ direct and indirect contribution towards the acquisition of the property in line with the out of community property regime. Similarly, at death, a spouse should not be deemed to be the owner of property simply because the property is registered in his or her own name without considering the contributions of the spouse (or spouses in a polygamous marriage) towards the acquisition of that property. A will that gives away matrimonial property to persons other than the spouse/s must therefore be challenged on the basis that such property may not necessarily be the sole property of the testator simply because it is registered in his or her own name. The Wills Act must therefore be amended to address these anomalies which clearly have a disproportionate impact on women in the country, and limit freedom of testation to that extent.

Examples of case law from the High Court

Muswere v Makanza 2004 (2) ZLR 262 (H)

The facts of the case are that the husband sold immovable matrimonial property acquired during the subsistence of their marriage but registered in the husband’s sole name without the consent of the wife. When the wife approached the courts for relief, the Court stated that the law in Zimbabwe as it currently stands gives the husband the right to sell matrimonial property registered in his sole name without consulting the wife.

93 Sec F (3) (c) and (d).
The Court noted that under Zimbabwean law of property, the right of ownership over property of whatever nature confers the most complete and comprehensive control that one can have over property. It further stated that it is a cornerstone of the law of property that ownership of land is proved by way of registration of title, and thus whoever has his or her name endorsed on the deed conveying title is at law prima facie recognised as the owner of the land with the most complete and comprehensive control over that land. This therefore gave incontrovertible rights to sell such property, including a spouse selling property acquired during the subsistence of a marriage without the consent of the other spouse.

The Court noted that the individualistic approach and clear-cut principles of property law are not realistic in a marriage which is the union of two people and in most cases, the merging of their wealth generation capacities for mutual benefit. It was further elaborated that in marriage, even where the parties are married without executing an ante-nuptial contract creating community of estate, it is common parlance to refer to property acquired during the marriage as “joint” property during the subsistence of the marriage. Upon the termination of such a marriage through either divorce or death, the principles of both family law and the law of inheritance recognise the joint matrimonial estate, which is then distributed as between the spouses regardless of in whose name the property is titled. The court further noted that family law and the law of inheritance in Zimbabwe recognised the existence of joint matrimonial estate upon the dissolution of marriage by death or divorce in that matrimonial property is distributed on the basis that both parties contributed towards the acquisition of the property whether directly or indirectly.

Whilst acknowledging the disjuncture between property law and marriage laws in the country in this regard, the Court held that the husband had the right to sell the property as he did, because this was the correct legal position.

**Madzara v STANBIC Bank Zimbabwe Ltd & Others (HH 546-15) [2015] ZWHHC 546**

The applicant and her husband, the second respondent, had married under customary law in 1997 and the marriage was converted to a registered civil marriage in 2002. The matrimonial home was acquired in 2000. As the applicant and her husband did not have a registered marriage at the time, a mortgage bond was taken out by her husband and the property registered in his name. She claimed to have paid the deposit on the loan and to have serviced the loan, enabling the development of the house. Along the way, the husband took a loan and mortgaged the matrimonial home against a loan to Stanbic Bank Zimbabwe. After failing to service the loan, the Bank issued a writ of execution and bond of indemnity against the husband. The wife approached the Court to have the writ and mortgage against the property cancelled.

It was asserted that she was guaranteed constitutional rights to the property by virtue of Sec 26 of the Constitution of Zimbabwe which provides that “the State must take appropriate measures to ensure that there is equality of rights and obligations during marriage and at its dissolution.” She also relied on Sec 56 (1) which guarantees equality before the law; Sec 56 (2) on equal treatment, including equal opportunities in the economic, cultural, and social sphere; and Sec 80, which provides that “all customs and traditions which infringe on the rights of women
conferred by the constitution are void to the extent of that infringement.” It was argued that the common law should be developed in favour of the property rights of spouses who do not hold title by casting real rights in relation to matrimonial property against these constitutional rights.

The Court dismissed the application on various grounds, including that the content of the law accords the person with registered title full legal rights to that property. In this regard, the bank was within its rights to issue a writ against the husband in relation to the property because he was the registered owner of the property. As in the Muswere case above, the Court acknowledged the unfairness of this legal position when it comes to rights over matrimonial property, noting that the effect was gendered and that women suffered more than men in practice. However, because this was the legal position, the Court dismissed the application whilst stating that there is a lacuna in the law which needs to be addressed legislatively in terms of spelling out the exact parameters of the protection of the matrimonial home. The Court went further to state that the legislature already has measures in place that articulate what should happen to property rights on divorce or on death in the context of marriage. However, there is less legislative detail articulating property rights during marriage.

This therefore is an area of law that requires reform, in particular the need for all marriages in the country to be in community of property, minus the marital power or for matrimonial property to be jointly registered in all instances.

**Bhila v The Master of the High Court & Ors HH-549-15**

The applicant was married to a man under civil law (Marriage Act: Chapter 5:11). They had four children. The husband then died intestate. After his death it was found that he had three other children born out of wedlock. These children, the third to fifth respondents, sought to inherit a child’s share each from their late father’s estate. The applicant argued that they were not entitled to inherit *ab intestato*, being born out of wedlock. She had, in terms of Sec 3A of the Deceased Estates Succession Act [Chapter 6:02] received the matrimonial home.

The Court held that the common law position of excluding children born out of wedlock violated the constitutional rights to protection of the law and freedom from discrimination. These rights had always been in the 1980 Zimbabwean Constitution and have been more pronounced by the wording in the 2013 Constitution. Sec 56 (3) of the Constitution provided that “Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as […] marital status…whether they were born in or out of wedlock.” The Court also interpreted the use of the word “descendant” in the Deceased Estates Succession Act which allowed such a descendant to inherit *ab intestato* to include every child whether born out of or in wedlock.

The court decision removed ambiguity with regards to *ab intestato* inheritance by children born out of wedlock and significantly removed discrimination on the basis of marital status where previously children’s inheritance from the father was based on the marital status of their mother.
RECOMMENDATIONS OF THE LEGAL ANALYSIS BY ACTION AREAS

Laws and Provisions to be Repealed (and Replaced)

Customary Marriages Act [Chapter 5:07]
A Marriage Bill to repeal the Customary Marriages Act is currently before Parliament. The purpose of the Bill (Act) is to have one marriage law governing all marriages in the country, to address/remove unconstitutional and discriminatory provisions in the current Act, and to provide for better protections for women and children. The enactment and implementation of the principles set out by the Constitutional Court in the case of Mudzuru and Anor v. Minister of Justice, Legal and Parliamentary Affairs and Ors CCZ 12/2015 to prevent child marriages should be achieved through this proposed law.

Marriage Act [Chapter 5:11]
The Marriage Bill to repeal the Marriages Act is currently before Parliament as stated above. The repeal of the Marriages Act through this Bill will address and provide for the issues stated above as well.

Vagrancy Act [Chapter 10:25]
The law must be repealed in its entirety and protection of the homeless, as sought by the Act must be provided for in the Social Welfare Assistance Act [Chapter 17:06].

Disabled Persons Act [Chapter 17:01]
The Act must be repealed and replaced with a similarly worded or adjusted Act, with the objective of domesticating the Convention on the Rights of Persons with Disabilities.

Termination of Pregnancy Act [Chapter 15:10]
The Act must be repealed and replaced by a new Act that recognizes women’s bodily autonomy and integrity and their reproductive health rights. The Act must also provide for information on termination of pregnancy services, post-termination care and place the decision to terminate a pregnancy predominantly on the woman or girl concerned. It should make it easier for such services to be physically accessible by allowing such termination to take place at any lawful medical facility that is certified to undertake such procedures and has the facilities and personnel to provide the services.

Citizenship of Zimbabwe Act
The current Act which is premised on the 1980 constitution needs to be repealed and replaced by a new Act that is based on the provisions of the 2013 Constitution. The proposed new Act must give both men and women the right to enable access to citizenship to their spouses, children and grandchildren as provided for in the Constitution.
A Bill was prepared and published on the Ministry of Justice, Legal and Parliamentary Affairs website in 2018 but it doesn't seem to have been gazetted and therefore must be revived and improved.

**Laws and Provisions to be Revised/Amended**

**Guardianship of Minors Act [Chapter 5:08]**

Section 3 of the Act which gives legal guardianship of children born in wedlock to the father only must be repealed and replaced with a provision that gives equal rights of guardianship to both parents. Sec 4 of the Act must be amended to remove the provision that guardianship duties “shall include the power to consent to a marriage” of the minor to ensure that no child is married before the age of 18, even with parental consent.

**Administration of Estates Act [Chapter 6:01]**

The definition of “heir” in Sec 68 (1) must be amended to recognise clearly that both men and women, boys and girls can be heirs at customary law. Section 68F (2) (b) (i) must be amended to recognise the treatment of wives in a polygamous marriage on the basis of equality, fairness and equity when inheriting from a deceased husband.

Section 68F (2) (c) (i) and (d) (i) must be amended to allow the wife/wives/surviving spouse to choose the house they want to inherit or have usufruct over in situations where there is more than one house, and the situation permits them to make such a choice.

**Matrimonial Causes Act [Chapter 5:13]**

Sec 7 of the Act must be amended to provide for sharing of property at divorce on the basis of equality as opposed to the current provision which bases such sharing on contribution. Even though non-monetary contribution such as domestic or housework is considered, the approach by the courts has mostly been to give greater consideration to monetary contribution rather than in kind contribution, except in exceptional circumstances.

**Married Persons Property Act [Chapter 5:12]**

Sec 2 of the Act must be amended to provide that the default marriage regime in Zimbabwe is in community of property in order to provide stronger protections to spouses’ property rights during a marriage and at its dissolution, either by death or divorce.

**Public Entities Corporate Governance Act [Chapter 10:31]**

Sec 6 of the Act must include gender equality promotion and advisory services as a function of Corporate Governance Unit. Sec 11 (7) (a) of the Act must compel line Ministers to ensure gender parity in the appointment and composition of public entity boards and not give them a discretion.

**Criminal Law (Codification and Reform Act) [Chapter 9:23]**

Sec 61 (1) which defines a young person as “any person below the age of 16” must be repealed and replaced with “any person below the age of 18” and the age of sexual consent must accordingly be raised from 16 to 18 in line with the Constitution. Sec’s 64 (3), 71 and 72 of the
Act should be amended by the removal of the term “mentally incompetent” and replace it with “mental disability” or a related term. The Act should provide for a close-in-age provision to prevent prosecution of children who engage in sexual intercourse with one another. Similarly, the Act must provide for prosecution of adults who engage in sexual activity with any child, including a child between the ages of 16 and 18. Sec 65 (2) of the Act must be amended to include rape of a PWD/WWD as an aggravating factor in sentencing. Sec 81 (2) on solicitation for purposes of prostitution has been used by the police to target women walking alone, particularly in certain locations and has had the effect of limiting women’s rights to freedom of movement. It is therefore discriminatory against women and must be repealed.

**Labour Act [Chapter 28:01]**

Sec 2 of the Act must be amended to allow women who experience pregnancy related complications such as miscarriages to be given paid maternity leave. Sec 18 (2) and (3) of the Labour Act must be amended to remove limitations on the number of times and situations under which women are entitled to paid maternity leave to give women the autonomy to decide on when to have to children and on the number of children to have. The Act must also be amended to provide for paternity leave and parental/family responsibility leave to allow mothers and fathers to balance their work responsibilities and child-care needs.

The Act must be amended to ensure that there is a definition for sexual harassment, provide specific remedies for sexual harassment in the workplace, and clear procedures for seeking and obtaining such remedies. The Act must also provide for the protection of workers in the informal economy or those who are self-employed.

**Public Health Act [Chapter 5:17]**

Sec 73 (1) (a), (b) and (c) must be amended to provide protections, including from GBV for a partner who notifies the other of a diagnosis with a sexually transmitted disease (STD) and remove the criminalisation of “wilful” transmission. These requirements can disproportionately affect women. There should be provision for prosecution of a partner who forces his/her partner to have sexual activity when the partner has been diagnosed with an STD, are on treatment and have not been fully treated.

**Customary Law and Local Courts Act [Chapter 7:05]**

Sec 5 of the Act must be amended to clearly state that local courts have no jurisdiction to deal with cases of child custody and guardianship and Sec 16 (1) must be amended to state that traditional leaders have no authority to dissolve customary law unions to ensure that all marriages in the country are dissolved by the same courts as a way of removing the stratification of marriages. The Act must also be amended to clearly provide for the supervision of traditional leaders by the Ministry of Justice, Legal and Parliamentary Affairs in their judicial functions and for the training of traditional leaders as judicial officers before they can assume judicial functions.

**Births and Deaths Registration Act [Chapter 5:07]**

Sec 12 (2) (a) must be amended to specifically provide that a married woman must be allowed to obtain a birth certificate for her child even when she presents a man other than her husband
as the father of her child. The Act must also be amended to clearly provide that married women are not compelled to change their natal names in order to get birth certificates for their children (or other documents such as passports for themselves and their children). The Act must be amended to provide for easier access for birth and death registration services, including the provision of such services at localised levels, such as villages, wards, banks, and post offices.

**Domestic Violence Act [Chapter 5:16]**

Section 3 (1) (l) of the DVA must be amended and expanded to recognise other forms of harmful cultural, customary, and religious practices and rites and in addition state that the list is not exhaustive.

**Deeds Registries Act [Chapter 20:05]**

Sec 15 of the Act must be amended to remove the provision requiring a husband’s authority for a wife to deal in property if they are married in community of property.

**Communal Land Act [Chapter 20:04]**

Sec 10 (2) of the Act must be amended to provide that any compulsory acquisition of communal land must be done in consultation with communal land inhabitants and that the interests of the communal land inhabitants must be considered in the process. This includes the application of the principle of Free Prior Informed Consent (FPIC).

Sec 10 (3) (d) of the Act must be amended to ensure that any eviction from communal land is done in line with the provisions of Sec 71 (3) of the Constitution. Sec 8 (2) must be amended to provide that customary law relating to the occupation of communal land must not be discriminatory on the grounds of sex or gender as provided for in Sec 56 (3) of the Constitution.

**Zimbabwe Land Commission Act: Chapter 20:29**

The Act must be amended to provide for joint registration of A2 land; alternatively, an SI similar to SI 53/2014 must be promulgated to address rights and responsibilities over A2 land, including spousal rights and responsibilities. Both the Act, and SI 53/2014 must be amended to recognise rights and responsibilities of life partners in the allocation, use and occupation of agricultural/fast track land.

**Legal Aid Act [Chapter 7:16]**

The Act must be amended to reflect the need for gender equality and the promotion of women’s rights to access legal aid and financial resources from the Legal Aid Fund.

**Mines and Minerals Act [Chapter 21:05]**

The Act must be amended to specifically provide for gender equality and the rights of women in the mining sector, including the protection of women from GBV in this sector, gender equality in the composition of the Mining Affairs Board, recognition of SSAM and cadastre registration and the prohibition of the child labour in the SSAM sector.
Sexual Offences Act [Chapter 9:21]
The Act must be amended to define a child as “a boy or girl under the age of 18”, so as to protect children between the ages of 16 and 18 from sexual exploitation.

Electoral Act [Chapter 2:13]
The Electoral Act must be amended to ensure that provisions of Sec 17, 56 (3) and 80 of the Constitution on women’s rights, gender equality, non-discrimination, and equal representation in elective bodies are captured, including equal representation in electoral processes at the local government level.

The Act must also be amended to streamline the provisions for a citizen to produce proof of residence in order to register as a voter as this prejudices women, the youth and the unemployed/formally employed, who over the years have struggled to access such proof of residence. The Act must be amended to allow ZEC to reject a political party list if it fails to comply with 50/50 gender representation provisions.

Political Parties Finance Act [Chapter 2:11]
The Act should be amended to provide for funding for women to enable them to participate on an equal footing as political candidates at both national and local government level, and regardless of whether they stand as independent or political party candidates.

Education Act: Chapter 25:04
Sec 68C (1) must be expanded to provide for the resources and facilities to allow pregnant girls or those with children to continue with their education in practical terms. Sec 4 must be expanded so that the provision of SRHR extends to the provision of contraceptives to school children. Sec 5 must be amended to match state funded basic education with unequivocal and compulsory provision for government to provide the resources as opposed to a “progressive realisation of this right”. Sec 68B (1) must be expanded to ensure that the provision of infrastructure for children with disabilities at schools is made a government responsibility, is compulsory and must be achieved within set time limits.

Zimbabwe Council for Higher Education Act (ZIMCHE) Act [Chapter 25:27]
The Act must be amended to prohibit gender discrimination in access to higher education resources and must specifically outlaw sexual harassment in institutions of higher learning.

Proposals for New Laws

Workplace Violence and Harassment Act
To domesticate ILO Convention 190 on Violence and Harassment. This will include gender-based violence and harassment in the world of work.

Gender Equality and Women’s Rights Act
To provide for guidance on and elaboration of constitutional provisions on women’s rights and gender equality in all aspects of life. Alternatively, all legislation must have a section on
women’s rights and gender equality to provide for how the particular piece of legislation will address the issue in its implementation. This can be done along the lines of Sec 9 of the National Peace and Reconciliation Commission Act [Chapter 10:32].

**Devolution Act**

Sec 264 (1) of the Constitution provides that:

> Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively.

Sec 265 (3) of the Constitution states further that:

> An Act of Parliament must provide appropriate mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils, and local authorities.

In line with this constitutional provision, in October 2020, the High Court ordered the Government to enact a devolution law within six months of the judgement, i.e., by 31 March 2021. Such an Act would be important for the promotion of women’s rights and gender equality, given that local level/devolved implementation and provision of services is more accessible and addresses local level realities. Accessibility of services and local level implementation is important for women who often face challenges in accessing these when they are centralised in the major cities or just the capital cities.

**Forensic Evidence Act**

A Forensic Evidence Law must be passed to ensure that evidence in criminal trials is not solely or mainly dependent on witnesses. In the context of this study, this is particularly important in sexual violence cases where corroboration may be difficult or impossible or where victims might not be in a position to give evidence due to trauma, fear or other impediments. A bill has already been drafted and its finalisation needs to be expedited.

**Sexual Harassment Act**

Participants in this study\(^{94}\) have noted that whilst there are efforts to address sexual harassment in the world of work, there are no adequate legislative protections addressing sexual harassment in other social, political, and economic settings in the country. This includes providing protections in institutions of higher learning, in religious settings, in political institutions and in the community generally.

As such, whilst individual provisions may be made in sectoral laws such as labour laws and higher education laws, it is necessary for the country to have a broader and standalone law that addresses the issue of sexual harassment holistically.

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\(^{94}\) This issue was raised during stakeholder consultations and debated at length during the National Validation Meeting for the report held on 19 November 2020.
Social Policy and Related Actions

In addition to the promulgation of laws to protect women and girls from discrimination, Government must also put in place and implement social policies and actions to support the implementation of the laws. Some of the proposals in this regard are provided below.

Development of Implementation Frameworks for Laws

Government must put in place an implementation framework for all the laws to be enacted or amended as part of the harmonisation of laws process. A lot of effort by Government, Parliament, civil society, and individual citizens goes into law-making. However, the laws will remain paper successes if they are not effectively and efficiently implemented. For example, the Education Amendment Act which came into effect in March 2020 allows girls back in school after giving birth. However, in reality, implementation is going to be problematic unless Government puts in place a framework to guide schools, parents, the children and other stakeholders on how to effect this change. This includes looking at issues such as ensuring that the girl fits back into the same school, is relocated if appropriate, facilities/resources for looking after the new child whilst the mother goes back to school are provided and that education/awareness for school authorities, fellow students, parents, and communities on the importance of this legal position is provided.

Devolution

Government must expedite the process of enacting the devolution law, and in the meantime must ensure that women and girls are able to access services at a devolved level. This includes services like access to documentation (birth, marriage and death certificates, passports etc), reproductive health services, and access to justice (courts) for all services, including those that are only currently available at the High Courts in the main urban areas. The devolution process must create linkages and coordination with central government to ensure supervision and maintenance of standards. In the process, local authorities must be strengthened and capacitated to make by-laws that address issues of gender equality and the protection of women and girls from gender-based discrimination, including gender responsive budgeting at the local authority level.

Accessibility of the Law

There is need for the Government to simplify and translate the law into local languages to make it user friendly and accessible to women. This includes the Constitution and key legislation that impacts women and girls. For a long time, such efforts have been left to civil society. Simplification and accessibility will help in ensuring that women and girls can trust the law. At the moment, they see the law as an abstract instrument, are not comfortable to engage with the law, and will only engage with it if there is no other option. Yet, the law should be one of the first options for any injured or aggrieved citizen.

In addition, there is limited citizen participation in the law-making process. Whilst Parliament has been on the ground to consult citizens during the law-making process (in line with sec 194 of the Constitution), effective participation has been limited due to a number of reasons, including lack of resources on the part of both Parliament and citizens, and limited effective
communication and information dissemination on the content of the proposed laws and the utility and benefits of participation by citizens. The IMC and Parliament should unpack some of the key Bills ahead of such consultations and engage citizens through radio programmes and accessible platforms such as social media. The citizen consultation process by Parliament should not only be for purposes of complying with the law but must be effective and meaningful.

**Resourcing of Key Institutions**

Linked to the issue of implementation is the need for Government to adequately resource key institutions that play a role in ensuring gender equality and the promotion of women and girls’ rights in the country, including through effective use of the gender responsive budgeting process. These institutions include the courts (including lower courts), the Zimbabwe Gender Commission, the Anti-Domestic Violence Council, The ZRP Victim Friendly Unit, the National Prosecuting Authority and the Ministry of Women Affairs, Community, Small and Medium Enterprises Development, amongst others. There is also a need to fund practical measures/initiatives to protect women and girls’ rights, including provision of one-stop-centres for key services and building and equipping shelters for victims of domestic violence. The institutions must also be resourced with skilled personnel and be provided with skills building to ensure that gender equality is entrenched and practiced in society and by different stakeholders.

**Embracing the Role of Academia in National Development**

There is a lot of research that is happening in the academic field in the country, which can be channelled towards addressing the key social, economic, and political issues of the day, many of which have a direct impact on women’s rights and gender equality. Government must therefore put in place a deliberate policy effort to harness and link academic work and research to national development in areas of law and policy formulation and implementation. There is also a need to ensure interaction between decision makers and the academia, including judges, Members of Parliament, and cabinet ministers to strengthen their work and ensure that their decision-making is informed by research on key national issues.

**Promoting Access to Legal Aid**

In terms of the Legal Aid Act, the Legal Aid Directorate plays an important role in providing legal aid to poor citizens, including women in the country. However, the Legal Aid Directorate is one of the most neglected and underfunded institutions in the country. For a long time, the Directorate had offices in Harare and Bulawayo only and over the past two years, Government has made efforts to open offices in Masvingo, Chinhoyi, Mutare and Gweru. This makes the services extremely inaccessible, especially given that they are meant to serve the poor with no resources for transportation and other costs associated with commuting to far away urban centres.

The Directorate also lacks adequate and experienced staff members due to poor conditions of service. Often it is staffed by young lawyers who use it as a training ground, and rarely with a desire to establish long term careers within the institution. Government efforts in ensuring that
the Directorate is properly and efficiently functioning will therefore go a long way in ensuring that women have access to legal aid and that in the process, their rights to equality and non-discrimination are promoted and protected. Otherwise, the law reform process would not achieve much if the laws are not utilised by citizens who should benefit from them.

**Need for a Standalone Ministry of Women’s Affairs and Gender**

Over the years, the Ministry responsible for women’s affairs and gender has been lumped together with many other mandates, including youth, community development, small and medium enterprises etc. The current Ministry is called the Ministry of Women Affairs, Community, Small and Medium Enterprises Development. As such the Minister and Permanent Secretary have three mandates to implement. The result is that they have divided attention and the women and gender portfolio can be neglected or may fail to get adequate attention. The lumping of the Ministry with community affairs, and small and medium enterprise development also creates stereotypes about the kind of issues that women and gender equality should be associated with and inhibits a bigger picture approach to addressing gender equality and promoting non-discrimination. To ensure effective and concerted attention to gender equality and non-discrimination, the Ministry should therefore have only two mandate areas: women’s rights and gender equality.

**Codification of Customary Law**

It is appreciated that this is a contentious issue, given that the flexibility of customary law can be both beneficial and disadvantageous to women. However, over the years, it has been clear that leaving the interpretation of customary law to individual traditional leaders can lead to miscarriage of justice. Government, civil society, and citizens must therefore start a national discussion on the need or otherwise for codification of customary law, if not to standardise, then to create a framework that can be used in interpreting customary law based on the Constitution.

**Victim-Centred Criminal Justice System**

The case of *Mapingure v Minister of Home Affairs and 2 Ors* exposed the gaps in our criminal justice system with regards to the agency and role that is given to the victim. This is because in criminal cases, including sexual violence cases such as rape, the State ostensibly represents the interests of the victim, leading a victim to be a by-stander, waiting for directions from the State with limited say in what happens in their case. The victim’s voice is only heard when they are giving evidence. They rarely have a say in bail and sentencing procedures as they are told that “the prosecutor is your lawyer and is representing your interests,” while the interest of the victim is not always the main priority of the prosecutor.

It is therefore important for the country’s criminal justice system to put in place procedures that allow victims to be part of the process and to have their voices heard, whilst acknowledging their vulnerability through an efficient victim-friendly system. In some jurisdictions, the provision of victim support lawyers/advocates in GBV cases helps to ensure that victims are able to access a continuum of care, support and services from the time they experience a crime.

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95 E.g., Australia.
until a criminal case is finalized. This includes accessing the police, medical help and throughout the criminal trial process. Had Mildred Mapingure been a beneficiary of such a system, the unfortunate experiences that she went through could have been avoided.
CONCLUSION

This report has evinced that laws to protect women and girls’ rights, equality and non-discrimination are largely out of step with the Constitution and international women’s/human rights law. Whilst both Parliament and Government have publicly expressed their desire for these tenets to be promoted and protected, the reality is that this has not been transformed into action in terms of amending, repealing, and enacting the critical laws and legal provisions to make this an actuality.

The family law framework, and the criminal law framework governing sexual offences in particular, are still largely steeped in common and customary law that fail to adequately capture the contemporary issues in human rights, women and girls’ rights and gender equality as developed at the international level. The Constitution recognises the role of legislation in correcting discriminatory common law and customary law provisions, with the legislature and the judiciary playing an important role in this regard. Efforts such as this audit of laws therefore help in identifying the gaps and ensuring that this knowledge is channelled to the relevant institutions, including through efforts such as strategic litigation and advocacy for law reform. Civil society organisations, the academia, and institutions such as UN Women play an important role in this regard.
REFERENCES


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Degree of Master of Arts In Gender and Women’s Studies. Minnesota University. Available at: https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=2031&context=etds (accessed 2 December 2020)


Annex A: Legislative Documents Reviewed

Constitution of Zimbabwe, 1980,
Constitution of Zimbabwe, 2013
Statutes, in order of presentation:
Vagrancy Act [Chapter 10:25], 1960
Termination of Pregnancy Act [Chapter 15:10], 1977
Citizenship of Zimbabwe Act [Chapter 4:01], 1984
Marriage Act [Chapter 5:11], 1964
Customary Marriages Act [Chapter 5:07], 1917
Disabled Persons Act [Chapter 17:01], 1992
Births and Deaths Registration Act [Chapter 5:02], 1986
Communal Land Act [Chapter 20:04], 1982
Criminal Law (Codification and Reform) Act [Chapter 9:23], 2004
Electoral Act [Chapter 2:13], 2004
Labour Act [Chapter 28:01], 1985
Mines and Minerals Act [Chapter 21:05], 1961
Administration of Estates Act [Chapter 6:01], 2002
Deceased Estates Succession Act [Chapter 6:02], 1929
Guardianship of Minors Act [Chapter 5:08], 1961
Matrimonial Causes Act [Chapter 5:13], 1985
Married Persons Property Act [Chapter 5:12], 1928
Public Health Act [Chapter 15:17], 2018
Customary Law and Local Courts Act [Chapter 7:05], 1990
Domestic Violence Act [Chapter 5:16], 2007
Deeds Registries Act [Chapter 20:05], 1959
Legal Aid Act [Chapter 7:16], 1996
Education Act [Chapter 25:04], 1987
Political Parties (Finance) Act [Chapter 2:11], 2001
Public Entities Corporate Governance Act [Chapter 10:31], 2018
Zimbabwe Council for Higher Education Act [Chapter 25:27], 2006
Zimbabwe Land Commission Act [Chapter 20:29], 2018
Annex B: UPR Conclusions/Observation Accepted by the Government of Zimbabwe

- “131.20 Update national legislation in line with its international commitments, especially with regard to gender equality, protection of the rights of the child and combating violence and forced marriage (Tunisia);
- 131.21 Fully incorporate the Convention on the Elimination of All Forms of Discrimination against Women into its domestic legal system (South Africa);
- 131.22 Amend all statutory and customary laws to establish the minimum age of marriage at 18 years and take concrete steps to implement this legislation, in line with the Convention on the Rights of the Child (Belgium);
- 131.29 Accelerate efforts to ensure the full operationalization of the Zimbabwe Gender Commission (South Africa);
- 131.30 Take all necessary measures, including to ensure the full operationalization of the Zimbabwe Gender Commission, without delay, to ensure that women are not subjected to violence, including sexual violence (Sweden);
- 131.38 Continue to implement policies for the development of its people under the Sustainable Development Goals, including measures taken for equal opportunities for women’s participation in the economic development of the country (Pakistan);
- 131.52 Continue efforts to strengthen gender equality (Syrian Arab Republic);
- 131.53 Continue to strengthen its policies and measures for the empowerment of women (Bangladesh);
- 131.54 Continue to develop policies to protect women’s rights (Syrian Arab Republic);
- 131.55 Develop and implement the national gender policy in order to ensure that the principle of equal gender representation is respected (Ecuador);
- 131.56 Ensure more effective enforcement of policies and legislation to address discrimination against and marginalization of women, and take measures to promote equal access for boys and girls to basic education (Thailand);
- 131.57 Continue taking legislative action to eliminate the marginalization of women from socioeconomic and political spheres and strengthen mechanisms for protection against gender-based violence (Maldives);
- 131.58 Continue to address the marginalization and exclusion of women in the economic, social and political spheres, with special attention paid to eliminating the harmful practice of child marriage (Republic of Korea);
- 131.59 Set up a strategy to promote the rights of women to combat discrimination against women and girls, focusing in particular on matters such as early or forced marriage, sexual violence, equal access to education and equal access to land ownership, inter alia (Mexico);
- 131.60 Act swiftly to address issues of discrimination against girls in education, especially sexual abuse and harassment of girls in schools, as well as difficulties faced by children in rural areas in accessing education (Japan);

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• 131.61 Continue to adopt measures to increase the rate of issuance of birth certificates, especially in rural areas and in low-income households (Turkey);

• 131.62 Increase prompt access to birth registration and public awareness for the same (Kenya);

• 131.66 Fully implement the constitutional provisions for the protection of the rights of the child in line with international standards, also in order to further reduce the practices of child, early and forced marriage (Italy);

• 131.67 Improve the protection of children, taking measures to prevent forced and early marriage, and eliminate child labour (Israel);

• 131.68 Amend all statutory and customary laws as soon as possible to establish the minimum age of marriage at 18 years, and create and implement a comprehensive national plan of action to combat the practice of child marriage and its root causes (Ireland);

• 131.69 Develop a national plan of action to stem the rise in the practice of child marriage (Madagascar);

• 131.70 Adopt measures to prevent and eradicate violence against women and girls, especially the adoption of legislation, the establishment of more shelters and the training of judges, prosecutors and police officers (Israel);

• 131.71 Adopt measures to prevent and eliminate all abuses of sexual violence against girls and women, ensuring that perpetrators are effectively held to account, including with full coordination of the Zimbabwe Gender Commission (Turkey);

• 131.72 Ensure victims of sexual and gender-based violence have access to social and legal support, and that perpetrators of sexual and gender-based violence are brought to justice (Canada);

• 131.73 Provide adequate assistance and protection to women who were victims of violence (Timor-Leste);

• 131.74 Ensure strict compliance with legal provisions pertaining to the minimum age for marriage, and also prevent and investigate cases of forced marriage, bringing perpetrators to justice and guaranteeing assistance to victims (Argentina);

• 131.77 Continue its efforts in combating human trafficking (Islamic Republic of Iran);

• 131.78 Continue its efforts to implement the national plan on anti-trafficking and the Zimbabwe Agenda for Sustainable Socioeconomic Transformation 2013-2018 (Sudan);

• 131.79 Strengthen the inter-ministerial committee to combat trafficking in persons to provide effective protection to victims of trafficking, particularly women and children (Belarus);

• 131.80 Provide training to judges, prosecutors, law enforcement officials, border guards and social workers in identifying and dealing with victims of trafficking and in anti-trafficking legislation (Israel);

• 131.83 Train judges and prosecutors on laws related to violence against women and train police forces on the protocols to assist women victims of violence (Panama);

• 131.118 Strengthen efforts to increase women’s access to health-care facilities and medical assistance in order to address the prevailing high maternal mortality rate (Ghana);

• 131.119 Continue to take further measures to enhance health-care services, especially for women and children (Myanmar);
• 131.129 Further develop its education system, including through the improvement of access to education for persons with disabilities and other vulnerable groups (China);
• 131.130 Incorporate into the education system a human rights-based strategy which is inclusive of children with disabilities (Panama);
• 132.25/132.35/132.40/132.43/132.57/132.58 Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Guatemala, Sierra Leone, Ghana, Indonesia, Philippines)
• 132.26/132.59/132.60/132.61 Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Guatemala, Spain, Costa Rica, Djibouti);
• 132.33 Ratify the core international human rights instruments, including the Convention against Torture, the Convention on the Rights of Persons with Disabilities, all Optional Protocols to the Convention on the Rights of the Child, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the First Optional Protocol to the International Covenant on Civil and Political Rights, and incorporate them into its national legislation (Slovenia);
• 132.65 Amend all discriminatory provisions and administrative regulations relating to family, marriage and divorce (Belgium);
• 132.78 Reinforce policies to ensure that all children born in Zimbabwe, regardless of their parents’ origins, are issued with birth certificates (Holy See);
• 132.79 Consider amending the existing legislation to ensure that all children born in Zimbabwe, regardless of their parents’ origin, are issued with birth certificates and ensure the paternity rights of children born out of wedlock (Namibia);
• 132.80 Scale up efforts to ensure that all children are issued with a birth certificate (Mexico);
• 132.81 Provide access to free, quality health-care services for all children; abolish corporal punishment in all settings; and strengthen child protection systems in full compliance with international human rights obligations, including through the implementation of national child protection programmes by December 2018 (Slovenia).
Annex C: Excerpt of Recommendations from the CRC

• 24. The Committee welcomes the Constitutional provision establishing the age of majority at 18 years, as well as the prohibition of pledging children in marriage and of forced marriage. It also welcomes the recent Constitutional Court ruling prohibiting marriage of persons below the age of 18 years;
• 25. The Committee recommends that the State party urgently amend all legislation in statutory and customary law to establish the age of marriage at 18 years, in line with the Constitution and the ruling of the Constitutional Court, and widely disseminate the ruling;
• 33 (b). Conduct programmes, awareness-raising activities and training for all professionals in contact with children to promote meaningful and empowered participation by all children in the family, community and schools, including student council bodies, with particular attention to girls and children in vulnerable situations, and ensure regular assessment and evaluation of these programmes and activities;
• 35. The Committee recalls its previous recommendation (para. 27) and recommends that the State party:
  a) Ensure the Births and Deaths Registration Act (2005) is implemented in a manner that promotes the best interests of the child and simplifies the administrative requirements for the registration and issuance of birth certificates;
  b) Equip decentralized government authorities and health facilities at the local level to register births and issue birth certificates;
  c) Strengthen and expand mobile birth registration to reach universal coverage, in particular for registering children born outside of health facilities and children who have never been registered;
  d) Increase public awareness of the importance of birth registration and the process by which births are registered.
• 45. The Committee urges the State party to take the measures necessary to ensure that all children who are vulnerable to or at risk of any form of sexual exploitation and abuse are provided with all necessary assistance and protection. In particular, the Committee recommends that the State party:
  a) Ensure that victims of sexual exploitation and abuse have access to child protection centres throughout the country and that the centres are staffed with professionals trained in child protection and handling child victims of abuse;
  b) Establish accessible, confidential and child-friendly mechanisms, procedures and guidelines to ensure the effective and mandatory reporting of cases of sexual abuse and exploitation of children and, to that end, continue to work with community police and the gender and children’s desks in a joint effort;
  c) Provide adequate resources to the Interministerial Task Force on Gender-based Violence and the Protocol on the Multisectoral Management of Sexual Abuse and

Violence in Zimbabwe, as well as to the justice system, to ensure the documentation and prompt and effective investigation of sexual exploitation and sexual abuse of children and the prosecution of perpetrators;

d) Conduct awareness-raising programmes, in particular for children, parents and caregivers, to combat the stigmatization of victims of sexual exploitation and sexual abuse, including incest, and promote knowledge of reporting channels for such violations;

e) Ensure the development of programmes and policies for the prevention, recovery and social reintegration of child victims, in accordance with the outcome documents adopted at the World Congresses against the Commercial Sexual Exploitation of Children.

• 47. The Committee urges the State party to:
  a) Take all measures to enforce the application of the law prohibiting child and forced marriage and to prevent such marriages from occurring;
  b) Establish an effective monitoring system to assess progress towards the eradication of child marriage;
  c) Provide victims of child and forced marriage with compensation and rehabilitation, including medical, psychological and social services;
  d) Conduct an investigation into the allegations of the involvement of members of religious sects, such as apostolic churches, in harmful cultural practices, ensure that criminal charges are brought against all those found responsible within these churches, and against all those who facilitated early and forced marriages;
  e) With reference to joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014), raise awareness among families and traditional and religious leaders aimed at preventing and combating harmful practices that impede the implementation of the Convention.

• 49. The Committee recommends that the State party:
  a) ...
  b) Ensure that mothers and fathers equally share the legal responsibility for their children, in accordance with article 18 (1) of the Convention;
  c) Take the necessary measures to align laws with the non-discriminatory provisions of the Constitution so as to give equal rights and responsibilities to parents for the guardianship and custody of their child, whether the child is born within or outside marriage, and remove any preference given to a parent prior to specific consideration of the best interests of the child;
  d) Ensure that children of unmarried parents can have contact with their fathers when it is in the best interests of the child.

• 57. In the light of article 23 of the Convention and of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to adopt a human rights-based approach to disability and specifically recommends that it:
  a) Adopt measures to eliminate the stigmatization and exclusion of children with disabilities and strengthen its enforcement mechanisms for ensuring compliance with its legislation that prohibit such discrimination;
b) Adopt a policy of prevention with measures to eliminate the preventable causes of disability;

b) Allocate sufficient resources to implement and strengthen the policies and programmes embarked upon by the State party to ensure that children with disabilities have access to health care, including early detection and intervention programmes;

c) Set up comprehensive measures to develop inclusive education for children with disabilities and ensure that inclusive education is given priority over the placement of children in special schools and classes;

e) Train and assign specialized teachers and professionals in inclusive classes that provide individual support and all due attention to children with learning difficulties;

f) Expedite the establishment of infrastructure in public places that is necessary to accommodate children with various disabilities.

• 61. In the light of its general comment No. 4 (2003) on adolescent health and development in the context of the Convention, the Committee urges the State party to:

a) Take immediate measures to combat sexual violence against adolescent girls, through documentation, prompt and effective investigation of all cases of sexual violence and prosecution of perpetrators and ensure the rehabilitation of victims;

b) Ensure that sexual and reproductive health education is part of the mandatory school curriculum and that it targets adolescent girls and boys, with special attention to improving the knowledge of and the availability of reproductive health-care services with a view to reducing teenage pregnancies and preventing HIV/AIDS and other sexually-transmitted infections;

b) Ensure that sexual and reproductive health education is part of the mandatory school curriculum and that it targets adolescent girls and boys, with special attention to improving the knowledge of and the availability of reproductive health-care services with a view to reducing teenage pregnancies and preventing HIV/AIDS and other sexually-transmitted infections;

c) Take urgent measures to reduce maternal deaths relating to teenage abortions and ensure children’s access to safe abortion and post-abortion care services, in law and in practice;

c) Take urgent measures to reduce maternal deaths relating to teenage abortions and ensure children’s access to safe abortion and post-abortion care services, in law and in practice;

d) Ensure the alignment of legislation with the Constitution to prevent discrimination against adolescents on the basis of marital status, particularly with regard to their access to reproductive health services without the consent of a parent or a guardian.

• 69. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party continue to strengthen programmes and policies to ensure the accessibility of quality education for all children in Zimbabwe. In particular, the Committee urges the State party to:

a) Ensure that primary education is free and compulsory so as to provide unhindered and equal access to education for all children;

b) Address barriers to girls’ education, such as negative cultural attitudes, early marriage and excessive domestic duties, and take steps to retain girls in school, including by ensuring that pregnant teenagers and adolescent mothers are supported and assisted in continuing their education in mainstream schools through, inter alia, clarifying and publicizing the government policy of re-entry of girls into school after pregnancy;

c) ... 

d) Provide a safe educational environment, free from discrimination and violence, as well as institute measures to protect girls from sexual harassment and violence on their way to and from school and in school, through the establishment of reporting and
accountability mechanisms to ensure that perpetrators of sexual abuse and harassment are prosecuted and punished;

75. The Committee recalls the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/ZWE/CO/2-5, para. 26) on combating trafficking and the exploitation of prostitution. As particularly regards the situation of children, it further recommends that the State party:

a) Ensure the effective enforcement of relevant legislation, policies and programmes to combat trafficking in and commercial sexual exploitation of children, including through the allocation of sufficient human and financial resources and by establishing more rigorous border controls;

b) Ensure that adequate measures are taken to hold perpetrators of child sale, trafficking and commercial exploitation accountable for their offences;

c) Expand efforts to provide specialized training on combating trafficking in and commercial sexual exploitation of children to the judiciary, prosecutors, the police, in particular the gender and children’s desks, law-enforcement officials, social workers and other relevant professionals, throughout the State party;

d) Strengthen awareness-raising programmes, including campaigns, on trafficking and commercial sexual exploitation, particularly in rural areas, border areas and areas of poverty;

e) Ensure the protection of and support services for children who have been victims of trafficking and commercial sexual exploitation, including the provision of shelters, a formal determination of the best interests of the child and their rehabilitation and social integration, in accordance with the outcome documents adopted at the World Congresses against Commercial Sexual Exploitation of Children;

f) Address the root causes of trafficking, child labour and sexual exploitation, for example by increasing efforts to improve and expand access to education for both girls and boys, particularly for children in vulnerable situations;

### Annex D: Summary of Recommendations

<table>
<thead>
<tr>
<th>Five (5) New Laws to be enacted</th>
<th>Six (6) laws to be repealed</th>
<th>Seven (7) laws require extensive amendments</th>
<th>Fifteen (15) laws require minor amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Workplace Violence and Harassment Act</td>
<td>1) Vagrancy Act (total repeal, no replacement)</td>
<td>1) Electoral Act</td>
<td>1) Married Persons Property Act</td>
</tr>
<tr>
<td>2) Gender Equality and Women’s Rights Act (alternatively a provision in each piece of legislation on women’s rights and gender equality)</td>
<td>2) Termination of Pregnancy Act (repeal and replacement)</td>
<td>2) Criminal Law (Codification and Reform) Act</td>
<td>2) Public Health Act</td>
</tr>
<tr>
<td>4) Forensic Evidence Act</td>
<td>4) Customary Marriages Act (repeal and replacement, A Marriage Bill is before Parliament and has reached the second reading stage)</td>
<td>4) Births and Deaths Registration Act</td>
<td>4) Domestic Violence Act</td>
</tr>
<tr>
<td>5) Sexual Harassment Act</td>
<td>5) Marriages Act (repeal and replacement, A Marriage Bill is before Parliament and has reached the second reading stage)</td>
<td>5) Communal Land Act; and</td>
<td>5) Zimbabwe Land Commission Act</td>
</tr>
<tr>
<td></td>
<td>6) Disabled Persons Act (repeal and replacement)</td>
<td>6) Mines and Minerals Act (an draft amendment Bill is in place but even this Bill fails to address the gaps identified in this study)</td>
<td>6) Legal Aid Act</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7) Administration of Estates Act</td>
<td>7) Political Parties Finance Act</td>
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<tr>
<th>Fifteen (15) laws require minor amendments</th>
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</thead>
<tbody>
<tr>
<td>1) Married Persons Property Act</td>
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<tr>
<td>2) Public Health Act</td>
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<td>3) Customary Law and Local Courts Act</td>
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<td>4) Domestic Violence Act</td>
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<td>5) Zimbabwe Land Commission Act</td>
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<td>7) Political Parties Finance Act</td>
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<td>8) Education Act</td>
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<tr>
<td>9) Zimbabwe Council for Higher Education Act</td>
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<tr>
<td>10) Guardianship of Minors Act</td>
</tr>
<tr>
<td>11) Deceased Estates Succession Act</td>
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<tr>
<td>12) Deceased Persons Family Maintenance Act</td>
</tr>
<tr>
<td>13) Deeds Registries Act</td>
</tr>
<tr>
<td>14) Public Entities Corporate Governance Act</td>
</tr>
<tr>
<td>15) Wills Act</td>
</tr>
</tbody>
</table>
## Annex E: Ratification of Global and Regional Instruments by Zimbabwe

<table>
<thead>
<tr>
<th>Name of Treaty</th>
<th>Date of Ratification/Accession</th>
</tr>
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<tbody>
<tr>
<td><strong>International Human Rights Standards</strong></td>
<td></td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights</td>
<td>30 May 1986</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political Rights</td>
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<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty</td>
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<td>Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>Convention for the Protection of All Persons from Enforced disappearance</td>
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<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
<td>12 May 1991</td>
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<td>Optional Protocol to the Convention on the Elimination of Discrimination against Women</td>
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<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</td>
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<tr>
<td>Convention on the Rights of the Child</td>
<td>11 September 1990</td>
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<tr>
<td>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed Conflict</td>
<td>22 May 2013</td>
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<tr>
<td>Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography</td>
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<tr>
<td>Convention on the Rights of Persons with Disabilities</td>
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<tr>
<td><strong>ILO Conventions (Fundamental)</strong></td>
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<tr>
<td>C029 - Forced Labour Convention, 1930 (No. 29)</td>
<td>27 August 1998</td>
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<tr>
<td>C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</td>
<td>09 April 2003</td>
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<tr>
<td>C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td>
<td>27 August 1998</td>
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<tr>
<td>Contract or Convention</td>
<td>Signed/Not signed</td>
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<tr>
<td>C100 - Equal Remuneration Convention, 1951 (No. 100)</td>
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<tr>
<td>C105 - Abolition of Forced Labour Convention, 1957 (No. 105)</td>
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<tr>
<td>C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td>
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<tr>
<td>C138 - Minimum Age Convention, 1973 (No. 138)</td>
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<tr>
<td>C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)</td>
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<tr>
<td>C190 - Violence and Harassment Convention, 2019 (No. 190)</td>
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<tr>
<td>C189 - Domestic Workers Convention, 2011 (No. 189)</td>
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<tr>
<td>C183 - Maternity Protection Convention, 2000 (No. 183)</td>
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<tr>
<td><strong>Regional Human Rights Standards</strong></td>
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<tr>
<td>African Charter on Human and Peoples’ Rights</td>
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<tr>
<td>Protocol on The Statute of The African Court of Justice and Human Rights</td>
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<tr>
<td>SADC Protocol on Gender and Development</td>
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<tr>
<td>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa</td>
<td>Not signed</td>
</tr>
<tr>
<td>Protocol to the African Charter in Human and Peoples’ Rights on Rights of Older Persons</td>
<td>Not signed</td>
</tr>
</tbody>
</table>
## Annex F: List of Interviewees

<table>
<thead>
<tr>
<th>Name</th>
<th>Institutional Affiliation</th>
<th>Position</th>
<th>Type of Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Caroline Matizha</td>
<td>Zimbabwe Gender Commission</td>
<td>Director - Programmes</td>
<td>Constitutional Commission</td>
</tr>
<tr>
<td>Mrs. V. Mashangwa</td>
<td>Ministry of Women Affairs, Gender and Community Development</td>
<td>Director - Gender</td>
<td>Government Ministry</td>
</tr>
<tr>
<td>Mr. Kingston Magaya</td>
<td>Ministry of Justice, Legal and Parliamentary Affairs</td>
<td>Deputy Director</td>
<td>Government Ministry</td>
</tr>
<tr>
<td>Ms. Fadzai Chatiza</td>
<td>Women and Law in Southern Africa (Research and Education Trust)</td>
<td>Director</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Debra Mwase</td>
<td>Katswe Sisterhood</td>
<td>Programme Manager</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Judith Chiyangwa</td>
<td>Girls’ Legacy</td>
<td>Director</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Beatrice Savadye</td>
<td>Roots</td>
<td>Director</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Miriam Majome</td>
<td>Veritas</td>
<td>Gender Specialist</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Abigail Matsvayi</td>
<td>Zimbabwe Women Lawyers’ Association</td>
<td>Director</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Mr. Tony Reeler</td>
<td>Research and Advocacy Unit</td>
<td>Senior Researcher</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Ms. Nyaradzo Mashayamombe</td>
<td>Tag a Life International</td>
<td>Director</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>Professor Julie Stewart</td>
<td>Southern and East African Regional Centre for Women’s Law, Faculty of Law, University of Zimbabwe</td>
<td>Director</td>
<td>Academic Institution</td>
</tr>
<tr>
<td>Advocate Choice Damiso</td>
<td>Advocate’s Chambers</td>
<td>Advocate</td>
<td>Individual Respondent</td>
</tr>
<tr>
<td>Ms. Gamu Bakasa</td>
<td></td>
<td>Gender Expert</td>
<td>Individual Respondent</td>
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<tr>
<td>Ms. Rumbidzai Lucy Chivasa</td>
<td></td>
<td>Lawyer</td>
<td>Individual Respondent</td>
</tr>
<tr>
<td>Ms. Tinotenda Hondo</td>
<td>Plan International</td>
<td>Global Gender Specialist</td>
<td>International Organisation</td>
</tr>
<tr>
<td>Ms. Catherine Makoni</td>
<td>United Nations Children’s Fund</td>
<td>Gender Specialist</td>
<td>United Nations Entity</td>
</tr>
<tr>
<td>Ms. Veronica Zano</td>
<td>Southern Africa Resource Watch</td>
<td>Governance and Research Officer/Zimbabwe Country Representative</td>
<td>Regional Civil Society Organisation</td>
</tr>
<tr>
<td>Dr. Loveness Makonese</td>
<td>United Nations Population Fund</td>
<td>Programme Specialist - Gender</td>
<td>United Nations Entity</td>
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