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**THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND DEVELOPMENT  
IN ZIMBABWE**

by

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## **DECLARATION**

I, Barbara Nyasha Sambo, declare that the work presented in this mini-dissertation is original. It has never been presented for the award of a degree at any other University or Institution. Where another person's work has been used, references have been provided accordingly. It is in this regard that I declare this work as originally mine. It is presented in partial fulfilment of the requirements for the award of Master of Laws in Multidisciplinary Human Rights.

## **DEDICATION**

I dedicate this work to my parents without whose daily sacrifice and commitment, attaining my education would not have been possible.

Mr. F. Sambo and Mrs. C. Sambo I thank and love you both.

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*Grace carried me here,*

*And by grace, I will carry on.*

I would like to thank my Jehovah EIRoi- the God who sees me, for taking me this far. It is only His Grace and Love. He has provided for me in times where I did not see this end but He has carried me. He knows my name and named me *Nyasha* meaning Grace, I have been a testament of His Grace and by His grace, I am going far.

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## Contents

ABSTRACT .....	viii
LIST OF ACRONYMS AND ABBREVIATIONS.....	ix
CHAPTER 1: INTRODUCTION.....	1
1.1. Background.....	1
1.2 Problem statement.....	2
1.3. Research questions .....	5
1.4. Definition of terms .....	6
1.5. Research methods .....	7
1.6. Limitation of study .....	8
1.7. Theoretical approach .....	8
1.8. Literature review.....	9
1.8.1. The concept of development.....	9
1. 8.2. Women and their role in development .....	12
1.8.3. Domestic violence .....	13
1.9. Chapter overview .....	14
CHAPTER 2: DOMESTIC VIOLENCE AGAINST MARRIED WOMEN IN ZIMBABWE .....	16
2.1. Introduction .....	16
2.2 Status of women and violence in Zimbabwe .....	16
2.3 Marriages in Zimbabwe and domestic violence .....	18
2.4 Married Christian women and domestic violence.....	22
2.5 Conclusion .....	24
CHAPTER 3: LEGAL FRAMEWORKS TO PROTECT WOMEN FROM DOMESTIC VIOLENCE AND TO ENSURE THE RIGHT TO DEVELOPMENT .....	25
3.1. Introduction .....	25
3.2 National Law .....	25
3.2.1 2013 Constitution.....	25
3.2.2 The Domestic Violence Act.....	27
3.2.3 Criminal Law (Codification and Reform) Act .....	30
3.2.4 Marriage Bill.....	31
3.3 International Law.....	32
3.3.1 Convention on the Elimination of all Forms of Discrimination Against Women .....	32

3.3.2 The Maputo Protocol .....	34
3.4 Legal Frameworks on Development .....	36
3.4 Global and Regional Law on Right to Development.....	36
3.4.1 United Nations Declaration on the Right to Development.....	36
3.5.2 African Charter on Human and Peoples’ Rights .....	38
3.6 National Law on the Right to Development .....	39
3.6.1. 2013 Constitution .....	39
3.7 Conclusion .....	40
CHAPTER 4: DOMESTIC VIOLENCE AND WOMEN’S PARTICIPATION IN THE DEVELOPMENT OF ZIMBABWE .....	42
4.1 Introduction .....	42
4.2. Domestic violence against women .....	42
4.3 Impact of domestic violence against women on their lives and on development .....	44
4.4 Factors constraining the implementation of the domestic Violence Act .....	47
4.4.1 Women’s dependency on their husbands .....	47
4.4.2 Societal beliefs.....	47
4.4.3 Patriarchal system .....	48
4.4.4 The economy .....	48
4.4.5 Lack of awareness.....	49
4.4.6 Feminist Jurisprudence.....	50
4.5 Conclusion .....	50
CHAPTER 5: INCREASING WOMEN’S PARTICIPATION IN THE DEVELOPMENT OF ZIMBABWE .....	52
5.1 Introduction .....	52
5.2. Summary and conclusions .....	52
5.3 Strategies.....	53
5.3.1. International law and International assistance .....	53
5.3.2 The African Union .....	53
5.3.3 Civil society.....	54
5.3.4 Women empowerment.....	54
5.3.4 Public awareness on the right to development .....	55
5.3.5. Gender budgeting .....	56
5.3.6 Improvement of support and protection of the victims .....	56

BIBLIOGRAPHY .....	57
Basic Texts .....	57
Books and chapters in books .....	57
Journal Articles .....	59
Case Law .....	64
Websites .....	65
Others .....	68

## **ABSTRACT**

Domestic violence is a huge concern for African countries such as Zimbabwe as it is an obstacle to development despite the preventative measures that have been adopted. This violence is perpetuated by cultural norms, patriarchy, religion, among other things. The research argues that the private and public divide has been a contributing factor to domestic violence that occurs in the home. This study analyses the relationship between domestic violence and women's participation in the development of Zimbabwe. It seeks to investigate how this type of violence against married women limits them in fully participating in development. It hypothesises that the slow development in the country is partly because of non-recognition of domestic violence as a hindrance to development.

The national law of the country is analysed against global and regional human rights instruments. It finds positive development in constitutional protection of women's rights in marriage, protection of women against domestic violence, the principles of equality, while recognising that there is room for improvement as women's rights are not fully realised. The research also argues that the mere existence of legislation to combat domestic violence is not enough to curb the phenomenon.

The focus of the study is on married women in Zimbabwe who are facing violence in their home. It is important to note that the role of women in society has ensured the stability and progress of states. For women to participate fully in development they have to be empowered and this means that there should be elimination of violence against them. Women must be considered as equal partners and valuable contributors to sustainable development. This research identifies specific challenges to the actualisation of the rights of women in Zimbabwe and proposes ways through which this can be addressed. Ultimately, this study submits that domestic violence is not treated as a priority regardless of the available legal framework and this is affecting development in the country.



## LIST OF ACRONYMS AND ABBREVIATIONS

Agenda 2063	African Union Agenda 2063
CSO	Civil Society Organisation
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
FGM	Female Genital Mutilation
GBV	Gender-Based Violence
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights

Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MDGs	Millennium Development Goals
The Declaration	United Nations Declaration on the Right to Development
SDGs	Sustainable Development Goals
VAW	Violence Against Women
ZGC	Zimbabwe Gender Commission

## CHAPTER 1: INTRODUCTION

### 1.1. Background

Violence against women is often not recognised as a priority and this has a negative effect on development in a country.<sup>1</sup> Women suffer from violence in their homes daily, and they suffer from sexual harassment and sexual exploitation in the workplace.<sup>2</sup> Violence against women hinders a country's potential as it is a threat to the social and economic development of the country.<sup>3</sup> Problems such as corruption, political instability, implementation, lack of political will to see women and the youth in the forefront of development, complacency in the leadership, are causing the increase of violence against women and in turn impeding development in the country.<sup>4</sup> Progress in a country is not possible when women's rights are abused. Countries that have the least violence against women are more advanced.<sup>5</sup>

Women play a critical role in sustainable development.<sup>6</sup> When they are educated and healthy, their families, communities and countries benefit.<sup>7</sup> Women have the role as caretakers, educators, in the workforce, as global volunteers and if faced with violence in their homes and work, this limits them to be participants in the development process of the country.<sup>8</sup> Women play the pivotal role in the socio-economic growth at both micro and macro levels.<sup>9</sup> The goal of gender equality is a critical objective as seen in the Millennium Development Goals (MDGs), Sustainable Development Goals (SDGs)

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<sup>1</sup> C Niles 'A problem all of us need to address' 8 March 2013 available at [https://www.unicef.org/policyanalysis/index\\_68115.html](https://www.unicef.org/policyanalysis/index_68115.html) [accessed 7 April 2020].

<sup>2</sup> UN Women 'Facts and figures: Ending violence against women' November 2019 available at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> [accessed 7 April 2020].

<sup>3</sup> KPMG Human and Social Services 'Too costly to ignore-the economic impact of gender-based violence in South Africa' (2014) available at <https://assets.kpmg/content/dam/kpmg/za/pdf/2017/01/za-Too-costly-to-ignore.pdf> [accessed 7 April 2019].

<sup>4</sup> D Gichuki 'Leadership in Africa and the role of youth in the leadership Milieu' (2014) *Mandela Institute For Development Studies* 4.

<sup>5</sup> UN Women 'Women and the sustainable development goals' available at <https://www.unwomen.org/en/news/infocus/women-and-the-sdgs> [accessed 7 April 2020].

<sup>6</sup> E Yildiz 'The importance of women in sustainable development' (2016) 5 *Social Sciences Research Journal* 8.

<sup>7</sup> UNICEF 'Educated girls, a unique positive force for development' (2004) available at [https://www.unicef.org/sowc04/sowc04\\_girls\\_positive\\_force.html](https://www.unicef.org/sowc04/sowc04_girls_positive_force.html) [accessed 10 June 2020].

<sup>8</sup> Global Volunteers 'The global role of women- caretakers, conscience, farmers, educators and entrepreneurs' available at <https://globalvolunteers.org/global-role-of-women/> [accessed 10 June 2020].

<sup>9</sup> Sunday Mail 'First cigar plant for Zimbabwe' 14 June 2020 available at <https://www.sundaymail.co.zw/firstcigarplant-for-zimbabwe> [accessed 17 June 2020].

and African Union (AU) Agenda 2063 as there is growing recognition among policy makers, civil societies that women's marginalisation can negatively affect productivity, competitiveness and growth of a country.<sup>10</sup> The empowerment of women can accelerate the development of a country, as there is a 'bidirectional relationship between economic development and women empowerment.'<sup>11</sup> As long as violence against women continues in a country, they cannot claim to be making and seeing progress towards achieving equality and development.<sup>12</sup>

One type of violence that women in most countries face is that within the household, also known as domestic violence. This study analyses how the non-treatment of domestic violence against married women as a priority is affecting women's participation in development. This study places domestic violence as limiting women's participation in the development agenda. It points out how patriarchy, culture, religion and tradition influences the increase of domestic violence. The focus is on how domestic violence on married women in Zimbabwe is minimising their participation in the development of the country. Focus of this study is on the status of married women, types of marriages that exist in the country and analysis of Shona marriages in Zimbabwe will be done to bring out the analysis of the relationship between domestic violence and development in Zimbabwe.

## **1.2 Problem statement**

In Zimbabwe, the 2013 Constitution brought a significant dimension to the problem of domestic violence that affects women both in the private and public sphere. Section 17 promotes gender balance,<sup>13</sup> urges the state to promote full participation of women in all spheres and addresses access to resources, gender-based discrimination in policy, the protection of women and girls from domestic violence as well as protection from child marriages.<sup>14</sup> The Bill of Rights in the 2013 Constitution is concluded in

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<sup>10</sup> S Nhuta & E Mukumba 'Empowerment of Zimbabwean women through entrepreneurship: An economic and social perspective' (2017) 7 *IRA-International Journal of Management & Social Services* 374.

<sup>11</sup> E Duflo 'Women empowerment and economic development' (2012) 50 *Journal of Economic Literature* 1053.

<sup>12</sup> K Anna, 'Violence against women' 9 June 2000 available at <https://www.un.org/womenwatch/daw/followup/session/presskit/fs4.htm> [accessed 19 June 2020].

<sup>13</sup> The Constitution of the Republic of Zimbabwe, 2013 section 17.

<sup>14</sup> The Constitution of the Republic of Zimbabwe, 2013 section 17.

international terms and is there to protect women. Section 80 deals with the rights of women, it provides:<sup>15</sup>

- (1) Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities
- (2) Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how rights are to be exercised.
- (3) All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.

It is noted that this section gives women substantive and not formal equality. The section has the shortcoming of not providing for affirmative action to ensure substantive equality. The Domestic Violence Act, despite being passed in 2007, has failed to reduce the scourge of violence in the home. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>16</sup> the Declaration on the Elimination of Violence Against Women (DEVAW)<sup>17</sup> and the Southern African Development Community Protocol on Gender and Development (SADC Protocol on Gender and Development)<sup>18</sup> are legal frameworks that can be referred as they deal with violence against women in specific provisions and Zimbabwe is a party to all these documents. The international standards of these frameworks expose the shortcomings of the national law. The Constitution does not provide an exhaustive list of rights and this puts women at a disadvantage. However, the Criminal Law Act deals with the prosecution of the offenders, thus ensuring that survivors have access to justice. Hence, despite laws, domestic violence against women is still a lived reality for married women in Zimbabwe.

It is the contention of this research that development in Zimbabwe has been affected by such domestic violence. The Human Development Index (HDI) is a summary measure used for assessing the long-term progress in the three main basic dimensions which are long and healthy life, access to knowledge and a decent standard of living.<sup>19</sup> In 2019, it was recorded that the HDI value was 0.571 which put the country in the medium development category positioning it at 150 out of 189 countries and territories.<sup>20</sup> Statistics of Zimbabwe's Gender Inequality Index are of

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<sup>15</sup> The Constitution of the Republic of Zimbabwe, 2013 section 80.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination Against Women 1979.

<sup>17</sup> Declaration on the Elimination of Violence Against Women 1993.

<sup>18</sup> Adopted in 2008.

<sup>19</sup> Human Development Report 2020 *The next frontier: Human development and the Anthropocene 2* December 2020 245.

<sup>20</sup> As above.

importance as this shows the loss of human development due to inequality between women and men. In the 2019 index, it was recorded that the country's GII value was 0.527, ranking it 129 out of 162.<sup>21</sup> From this, it is reported that women hold 34.6 percent of parliamentary seats and 59.8 percent adult women have reached at least a secondary level of education compared to 70.8 percent of men.<sup>22</sup> 'Female participation in the labour market is 78.1 percent compared to 89.0 for men.'<sup>23</sup> Moreover, domestic violence have negatively affected the Zimbabwean society, and worsened the status of women and girls.<sup>24</sup>

Zimbabwe has ratified the SADC Protocol on Gender and Development,<sup>25</sup> the Maputo Protocol<sup>26</sup> and the CEDAW.<sup>27</sup> The country therefore has obligations to protect women and ensure their right to development but Zimbabwe has not respected its commitment to enforce the provisions of these documents concerning domestic violence against married women.<sup>28</sup> This shows the condoning of domestic violence against women by the regime as little has been done to curtail it or protect women.<sup>29</sup> As much as domestic violence laws have been passed, there have been challenges in ensuring full implementation of the law. Little has been done by the government in educating communities on these laws, and there is lack of adequate capacity by the judicial systems to manage and handle domestic violence cases.<sup>30</sup> Section 25 of the Constitution of Zimbabwe stipulates that the '[s]tate and all agencies of the government at every level must protect and foster the institutions to adopt measures for the prevention of violence.'<sup>31</sup> This research analyses if the state has adopted the measures to protect women from violence.

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<sup>21</sup> As above.

<sup>22</sup> As above.

<sup>23</sup> As above.

<sup>24</sup> M Zengenene & E Susanti 'Violence against women and girls in Harare, Zimbabwe' (2019) 20 *Journal of International Women's Studies* 83.

<sup>25</sup> Ratified by Zimbabwe in 2013.

<sup>26</sup> Ratified by Zimbabwe in 2008.

<sup>27</sup> Ratified by Zimbabwe in 1991.

<sup>28</sup> WITNESS 'Working to prevent violence against women in Zimbabwe' available at [https://www.witness.org/portfolio\\_page/violence-women-zimbabwe/](https://www.witness.org/portfolio_page/violence-women-zimbabwe/) [accessed 20 June 2020].

<sup>29</sup> WITNESS (n 28 above).

<sup>30</sup> TM Dzivane 'Saying no to gender-based violence: A study of Musasa, a non-governmental organisation based in organisation' published Masters Dissertation, University of South Africa (2016).

<sup>31</sup> The Constitution of the Republic of Zimbabwe, 2013.

Despite the enactment and existence of several gender responsive laws and policies in Zimbabwe,<sup>32</sup> 'women and girls continue to be the victims in 99% of gender based violence cases especially within the private sphere.'<sup>33</sup> 'About one in three women, aged 15 to 49 have experienced physical violence in Zimbabwe.'<sup>34</sup> Concern was expressed about the lack of statistical data and at the absence of an express political will to give high priority to eliminating violence against women.<sup>35</sup> Violence against women is recognised as hindering social and economic development as well as the achievement of internationally agreed targets such as the reduction of poverty.<sup>36</sup> The problem this research focuses on is how domestic violence against married women impact on the development of Zimbabwe. In this dissertation, focus is on domestic violence on married women in Shona marriages. This research demonstrates that this form of violence inhibits any effective development work.<sup>37</sup>

### 1.3. Research questions

The main research question of this study is:

Does domestic violence against married women act as a challenge for development in Zimbabwe?

The following are the sub-questions

- 1.3.1. How does the status of married women in Zimbabwe contribute to the risk of domestic violence?
- 1.3.2. Do global, regional and domestic legal frameworks confront the problem of domestic violence and ensure the right to development?

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<sup>32</sup> The Domestic Violence Act 14 of 2006; the Zimbabwe Gender Commission Act; the National Gender Policy, 2013-2017; the Gender Implementation Strategy 2007-2010; and the Labour Act 2005.

<sup>33</sup> Ministry of Women Affairs, Gender and Community and Development 'Zimbabwe national gender-based violence strategy 2012-2015' available at [http://www.veritaszim.net/sites/veritas\\_d/files/Zimbabwe%20National%20Gender%20Based%20Violence%20Strategy%202012%20-%202015.pdf](http://www.veritaszim.net/sites/veritas_d/files/Zimbabwe%20National%20Gender%20Based%20Violence%20Strategy%202012%20-%202015.pdf) [accessed 20 June 2020].

<sup>34</sup> CEDAW Committee concluding observations on the second, third, fourth and fifth periodic report of Zimbabwe adopted during its 51<sup>st</sup> session in 2012 CEDAW/C/ZWE/CO/2-5.

<sup>35</sup> CEDAW Committee concluding observations on the second, third, fourth and fifth periodic report of Zimbabwe (n 34 above) paragraph 24.

<sup>36</sup> The World Bank Group 'Violence against women and girls resource guide' 2014 available at <https://www.worldbank.org/en/programs/violence-against-women-and-girls/resources> [accessed 7 April 2020].

<sup>37</sup> T Tom & MCC Musingafi 'Domestic violence in urban areas in Zimbabwe: A case study of Glen Norah (Harare)' (2013) 3 *Research on Humanities and Social Sciences* 45.

1.3.3. How does domestic violence affect women from participating in the development of Zimbabwe?

1.3.4. What strategies can the state adopt to ensure an increased participation of women in development in Zimbabwe?

## **1.4. Definition of terms**

### **1.4.1 Violence against women**

Violence against women means:<sup>38</sup>

...all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.

### **1.4.2 Gender budgeting**

Gender budgeting 'is a method of budgeting that examines government budgets to determine how it impacts on women and men, girls and boys of different social and economic groups'.<sup>39</sup>

### **1.4.3 Gender inequality**

Gender Inequality means:<sup>40</sup>

...legal, social and cultural situation in which sex and/or gender determine different rights and dignity for women and men, which are reflected in their unequal access to or enjoyment of rights, as well as the assumption of stereotyped social and cultural roles.

### **1.4.4 Equality**

Equality 'includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes de jure and de facto equality and also equality in terms of outcomes.'<sup>41</sup>

### **1.4.5 Harmful practices**

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<sup>38</sup> Article 1 of the Maputo Protocol.

<sup>39</sup> N Maruzani, N Matope & E Chaurava 'Gender equality from a gender budgeting perspective' (1998) 2 *International Journal of Asian Social Science* 1627-1629.

<sup>40</sup> European Institute for Gender Equality 'Gender inequality' available at <https://eige.europa.eu/thesaurus/terms/1182> [accessed 2 June 2020].

<sup>41</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.



Harmful practices encompass 'all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.'<sup>42</sup>

#### **1.4.6 Development**

Development implies progress from a lower to a higher state and is a process by which people have access to opportunities.<sup>43</sup>

#### **1.4.7 Domestic violence**

For the purposes of the Domestic Violence Act of Zimbabwe, domestic violence means 'any unlawful act, omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent.'<sup>44</sup>

#### **1.4.8 Women's empowerment**

Women's empowerment is the process of increasing the capacity of women. It is the ability of women to control their own destiny and make their own decisions.<sup>45</sup>

### **1.5. Research methods**

This dissertation applies a doctrinal approach in terms of its methods and mainly utilises an analytical approach. This study consists of literature written on this topic which are in the form of journal articles, case law and books and is used when assessing the state of development and the importance of the role of women in development. The research applies a descriptive approach to discuss the aims, manifestations and effects of domestic violence. This research assesses global, regional and domestic law that have been put in place to address domestic violence and the right to development for women. These are but not limited to the 2013 Constitution, the Domestic Violence Act, the Criminal Law Act, the CEDAW and

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<sup>42</sup> Article 1 of the Maputo Protocol.

<sup>43</sup> M Kongolo 'Factors limiting women's involvement in development: Lesson from Ithuseng, South Africa' (2009) 3 *An International Multi-Disciplinary Journal* 13-14.

<sup>44</sup> The Domestic Violence Act of Zimbabwe 2006.

<sup>45</sup> A Dandona 'Empowerment of women: A conceptual framework' (2015) 2 *The International Journal of Indian Psychology* 35.

Maputo Protocol, among others. The research is based on information that is sourced using desktop research library and internet research.

### **1.6. Limitation of study**

This research limits its study to Zimbabwe as the main case study. The study is further limited on the types of violence against women it addresses. This study focuses on domestic violence perpetrated by married men against married women in Shona marriages. While there is an analysis of global, regional and national law in relation to Zimbabwe's obligations to protect women from violence and ensure right to development, it is beyond the scope of this paper to investigate all of the obligations.

### **1.7. Theoretical approach**

The root cause of violence against women, '[l]ies in the unequal power relations between men and women, which ensure male dominance over women.'<sup>46</sup> Feminists have termed this as male dominance over women as patriarchy.<sup>47</sup> Patriarchy comes as a result of women being controlled and men dominating to the exclusion of women.<sup>48</sup> Violence against women is the ultimate weapon that men use to control resources, decision-making at all levels such as home, state and developmental organisations.<sup>49</sup> Adoption of a feminist approach in this research shows that violence against women and development are linked. The link is seen in that, '[i]nternational development organisations have demonstrated that violence against women is a drain on resources and a barrier to women's participation in development processes.'<sup>50</sup> Theories of human development are also used in this research, as development is a process, which means development around people and not people around development.<sup>51</sup> This is linked to violence against women, as its effects are that women have no control over their own lives and results in them not being participants in

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<sup>46</sup> F Pickup, S Williams & C Sweetman *Ending violence against women: A challenge for development and humanitarian work* 19.

<sup>47</sup> Pickup and others (n 46 above) 19.

<sup>48</sup> As above.

<sup>49</sup> Pickup and others (n 46 above) 20.

<sup>50</sup> Pickup and others (n 46 above) 46.

<sup>51</sup> P Sen 'Development practice and violence against women' (1998) 6 *Gender and Development* 7- 12.

development. This research adopts a feminism perspective to the theory of development.

It is of great importance that this research focuses on the theory of intersectionalities. Intersectionality deals with the notion that, 'we as women are not all navigating the same version of 'womanness' and so we must take into account that differently situated women encounter inequality in different ways.'<sup>52</sup> This approach includes a consideration of where gender intersects with other inequalities or oppressions to produce unique experiences of violence.<sup>53</sup> It recognises that all oppressions exist together and simultaneously and the categories of oppression mutually construct each other to create unique experiences of violence of women and girls.<sup>54</sup> Different women are affected differently and their participation in the development of the country is also affected differently. In this specific dissertation, the study is narrowed to married women and how they are affected by domestic violence.

## **1.8. Literature review**

### **1.8.1. The concept of development**

Development is one of the most ambiguous terms. Development is seen to mean growth in the economy and the way in which people in the state have adequate food and employment.<sup>55</sup> Development is both 'a physical reality and a state of mind in which society has secured the means for obtaining a better life.'<sup>56</sup> Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>57</sup> The needs that should be met are of both men and women.

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<sup>52</sup> UN Women 'The value of Intersectionality in understanding violence against women and girls (VAWG)' July 2019 available at <https://eca.unwomen.org/en/digital-library/publications/2019/10/the-value-of-intersectionality-in-understanding-violence-against-women-and-girls> [accessed 9 June 2020].

<sup>53</sup> Sen (n 51 above) 3.

<sup>54</sup> As above.

<sup>55</sup> LG Bellu 'Development and development paradigms: A (reasoned) review of prevailing visions' (2011) *EasyPol* 11.

<sup>56</sup> MP Todaro & SC Smith *Economic Development* (2006) 22.

<sup>57</sup> M Lohani & L Aburaida 'Women empowerment: A key to sustainable development' (2017) 6 *The Social ION* 26.

Development is a process that brings about positive and desirable sustainable changes in society.<sup>58</sup> The development paradigm is multi-dimensional by nature. There are different aspects of development such as economic development, sustainable development, human development and institutional development.<sup>59</sup> The development paradigm is people-centred. Concept development entails efforts that are consciously made by African countries to enhance the living standards of the people.<sup>60</sup> To achieve this, the emphasis is placed on economic growth, increased educational facilities and higher agricultural productivity amongst others.<sup>61</sup>

The MDGs are developmental goals set by the United Nations member states, and states are obliged to combat poverty, disease, illiteracy, and discrimination against women.<sup>62</sup> The MDGs are inter-dependent. The SDGs replaced the MDGs. The SDGs have a commitment to leave no one behind which means ending poverty and reducing inequalities.<sup>63</sup> There are 17 SDGs to increase development by ending poverty, and ensuring that all people enjoy peace and prosperity.<sup>64</sup> The right to development and the SDGs work together as the end goal for both of them is for human rights to be respected, protected and fulfilled.<sup>65</sup> The goals and development ensure that the state is the primary duty-bearers. They both address issues such as are poverty, inequality and conflict. If the SDGs are effectively implemented, this results in sustainable development, which is seen in the reduction of poverty and inequality and progress, and no one will be left behind.

Agenda 2063 is based on the African Union Vision which is to have ‘an integrated, prosperous and peaceful Africa, driven by its own Africa, driven by its own citizens and representing a dynamic force in international arena.’<sup>66</sup> Aspiration 6 is important for this

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<sup>58</sup> I Tedesco and others ‘Development paradigms and related policies’ (2015) *Issue Papers, Food and Agriculture Organization of the United Nations* 5 7.

<sup>59</sup> Tedesco (n 58 above) 8.

<sup>60</sup> I Ayua ‘Law and development in Africa’ (1986) 3 *International Journal on World Peace* 74.

<sup>61</sup> Ayua (n 60 above) 74.

<sup>62</sup> World Health Organization ‘Millennium Development Goals (MDGs)’ available at [https://www.who.int/topics/millennium\\_development\\_goals/about/en/](https://www.who.int/topics/millennium_development_goals/about/en/) [accessed 9 June 2020].

<sup>63</sup> F Machingura & S Nicolai ‘Contextualising the SDGs to leave no one behind: A case study from Zimbabwe’ (2018) 3.

<sup>64</sup> United Nations Development Programme ‘Sustainable Development Goals’ available at <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html> [accessed 9 June 2020].

<sup>65</sup> Advisory Council on International Affairs ‘Sustainable Development Goals and human rights’ May 2019 available at <https://www.asser.nl/media/5625/advisory-report-110.pdf> [accessed 9 June 2020].

<sup>66</sup> African Union ‘Agenda 2063: The Africa We Want’ available at <https://au.int/en/agenda2063/overview> [accessed 9 June 2020] vii.

study as there is an aspiration for Africa, which is people-driven and relies on the potential of its women and youth.<sup>67</sup> The aspiration is to strengthen the role of African women and ensure gender equality and parity in all sphere of life.<sup>68</sup> The goal is that by 2063, all forms of violence against women will be eliminated and they will enjoy their rights.<sup>69</sup> This is linked to SDG 5 which has the goal to achieve gender equality and empower all women and girls.<sup>70</sup>

Development is a human right. This right was proclaimed by the Organisation of African Union in the African Charter on Human and Peoples' Rights<sup>71</sup> (ACHPR), which had a focus of development from its inception. Article 22 of the ACHPR states that:<sup>72</sup>

all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

The right to development is an independent right and is linked to the full enjoyment of human rights with economic, social, cultural, political and economic dimensions.<sup>73</sup> The right to development affects not only that particular country but also the entire global community.

Lee<sup>74</sup> describes the concept of law and development. The concept of development has changed and developed over time. It primarily meant economic growth and to reduce economic gaps between developed and developing countries to now being more holistic and includes right to property, political participation, gender equality, rules of law as the key elements of development.<sup>75</sup> There is an examination of the interrelatedness between law and development and the origins, this is important for the discussion of the right to development and how to implement development in the country.

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<sup>67</sup> Agenda 2063 (n 66 above) vi.

<sup>68</sup> As above.

<sup>69</sup> Agenda 2063 (n 66 above) 17.

<sup>70</sup> African Union 'Linking Agenda 2063 and the SDGs' available at <https://au.int/en/agenda2063/sdgs> [accessed 9 June 2020].

<sup>71</sup> African Charter on Human and Peoples' Rights, 1986.

<sup>72</sup> Article 22 of the African Charter on Human and Peoples' Rights.

<sup>73</sup> United Nations 'The right to development at a glance' available at [https://www.un.org/en/events/righttodevelopment/pdf/rtd\\_at\\_a\\_glance.pdf](https://www.un.org/en/events/righttodevelopment/pdf/rtd_at_a_glance.pdf) [accessed 9 June 2020].

<sup>74</sup> Y Lee 'General Theory of law and development' (2017) 50(3) *Cornell International Law Journal* 415 429.

<sup>75</sup> As above.

Marks<sup>76</sup> examines how the discourse on the right to development has evolved since it was proclaimed in the Declaration on the Right to Development 1986. Emphasis is on the right to development as a special right as it is a composite right of all human rights.<sup>77</sup> The concept of development places people and their human rights at the centre of the development strategies being made and the outcome.<sup>78</sup> This means that there should be an active role of women in development processes. This article considers sustainable development as a right, which states have the obligation to fulfil.

### 1. 8.2. Women and their role in development

Women have a global role in development.<sup>79</sup> Empowerment of women is an effective tool for development.<sup>80</sup> Women are important in development and have been involved in sustainable development but this has not been recognised by other people, especially by men.<sup>81</sup> Women are more than half of the world population and so their contribution to development is vital.<sup>82</sup> Men and women must have an equal role to development. History shows that women in many societies have great potential to play roles supporting their families.<sup>83</sup> Women are important in both the economic and productive sphere. They are a significant and important factor in the process of economic growth that no country should ever overlook.<sup>84</sup>

Bradshaw and others<sup>85</sup> highlight the role of women in economic development. The article addresses the obstacles that are in the way of fully realising potential of women in the process of economic development and the strategies to unblock them.<sup>86</sup> The constraints mentioned in this article are early and forced marriages, inability to access

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<sup>76</sup> S Marks *Implementing the right to development: The role of International Law* (2008) 8.

<sup>77</sup> As above.

<sup>78</sup> Marks (n 76 above) 24.

<sup>79</sup> Duflo (n 11 above) 1053.

<sup>80</sup> United Nations 'No tool for democracy more effective than empowerment of women' 10 November 2006 available at <https://www.un.org/press/en/2006/wom1586.doc.htm> [accessed 15 April 2020].

<sup>81</sup> Kongolo (n 43 above) 14.

<sup>82</sup> G Ayferam 'Assessment of the roles and constraints of women in economic development of Ethiopia: The case of Ambo Town since 1991' (2015) 3(1) *Journal of Political Sciences & Public Access* 1.

<sup>83</sup> E Mwakasangula, D Msabila & V Mushi 'Women participation in development and local governance in Tanzania' (2010) 3.

<sup>84</sup> E Boserup, SF Tan & C Toulmin *Women's role in economic development* (1970).

<sup>85</sup> S Bradshaw, J Castellino & B Diop 'Women's role in economic development: Overcoming the constraints' in H Besada, LM Poloneko & M Agarwal (eds) *Did the Millenium Goals work?: Meeting future challenges with past lessons* (2017) 191.

<sup>86</sup> As above .

justice, limited mobility, violence against women and girls, lack of rights to inherit or own land as well as unequal pay limit women's engagement in development. This article also discusses violence within the home as well as participation in development.

Duflo argues that women empowerment and economic development are interrelated concepts.<sup>87</sup> The concepts are closely related as in one-direction, development drives down inequality between the genders, and in the other direction, empowerment of women will lead to positive development.<sup>88</sup> This creates a synergy between the two. This article brings out that development can play a major role in driving down inequality between men and women.

Nhuta<sup>89</sup> discusses the relationship between women empowerment in economic and social development in Zimbabwe. The findings are that women in Zimbabwe contribute significantly towards Gross Domestic Product and employment of the country.<sup>90</sup> Women were seen to play a critical role in 2008 by ensuring the survival of families through cross-border trade.<sup>91</sup> Women in entrepreneurship play a critical role in the economy of the country with regard to income and employment creation as in any other African country.<sup>92</sup> Economic development is described as unthinkable without women.<sup>93</sup> Women provide an important source of labour in agriculture as they cultivate food for their household.<sup>94</sup>

### **1.8.3. Domestic violence**

Domestic violence occurs mainly in the home and private sphere. It is violence between people that are in a relationship, partnership and in the case of this research, married couple.

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<sup>87</sup> Duflo (n 11 above) 1076.

<sup>88</sup> Duflo (n 11 above) 1051.

<sup>89</sup> Nhuta and Mukumba (n 10 above) 375.

<sup>90</sup> As above.

<sup>91</sup> As above.

<sup>92</sup> Nhuta and Mukumba (n 10 above) 381.

<sup>93</sup> E Bayeh 'The role of empowering women and achieving gender equality to the sustainable development of Ethiopia' (2016) 2(1) *Pacific Science Review* 37 39.

<sup>94</sup> Ayferam (n 82 above) 5.

Chitakure<sup>95</sup> discusses domestic violence and its different manifestations. They point out that the occurrence of domestic violence might not be so evident and publicised in some societies, but this does not mean that domestic violence is non-existent.<sup>96</sup> The issue is that domestic violence remains unchallenged because most societies have considered it to be part of human life and not seen as a social problem.<sup>97</sup> Many societies treat domestic violence as a measure of discipline and that men have the right to discipline their wife by beating her.<sup>98</sup> Causes of domestic violence are discussed in detail such as low self-esteem, desire for power and control, cultural practices, female dependence, alcohol and drugs and extra-marital affairs.<sup>99</sup> There are different types of domestic violence such as wife-battering, marital rape, financial abuse, isolation and so on.<sup>100</sup>

## **1.9. Chapter overview**

### **Chapter one**

This is the introductory chapter. This chapter contains the research topic, introduction of the topic, background of the topic, the problem statement and the research questions. The research methodology and the literature review are included in this chapter.

### **Chapter two**

This chapter is an analysis of the status of married women in Zimbabwe and how they experience violence. It discusses how women are particularly vulnerable to domestic violence in Zimbabwe and this is because of their low status and lack of power in society and family. The types of domestic violence are examined in this chapter to show the different effects these have to the victim.

### **Chapter three**

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<sup>95</sup> J Chitakure *Shona women in Zimbabwe-A purchased people?: Marriage, bridewealth, domestic violence and the Christian traditions on women* (2016) 9.

<sup>96</sup> As above.

<sup>97</sup> Chitakure (n 95 above) 10.

<sup>98</sup> Chitakure (n 95 above) 17.

<sup>99</sup> As above.

<sup>100</sup> Chitakure (n 95 above) 23.



This chapter analyses Zimbabwe's obligations to ensure the right to development of its peoples, including women and how these legal frameworks confront the problem of domestic violence. The national laws are discussed to see how they confront the problem of domestic violence and how they ensure women are protected. The chapter concludes by linking violence against women and development.

#### **Chapter four**

This chapter discusses the connection between domestic violence and development in Zimbabwe. The concept of violence against women is analysed and its link to development. This link is to show how women cannot fully participate in development due to the domestic violence and in turn, this is affecting and impeding development in the country.

#### **Chapter five**

This is the conclusion and recommendation chapter. It discusses strategies that the state can take to ensure an increased participation of women in the development of Zimbabwe.

## CHAPTER 2: DOMESTIC VIOLENCE AGAINST MARRIED WOMEN IN ZIMBABWE

### 2.1. Introduction

The purpose of this chapter is to analyse domestic violence against married women in Zimbabwe. It analyses the status of women and how this contributes to the risk of domestic violence against women in Zimbabwe. It discusses the different types of domestic violence that exist in the home. It also elaborates on the different types of marriages in Zimbabwe which are customary, legal and illegal while analysing marriage legislation that is in place in the country. This is done with the view of assessing whether the laws are contributing in curbing domestic violence or not.

### 2.2 Status of women and violence in Zimbabwe

Women constitute 52.32 per cent of the Zimbabwean population<sup>101</sup> and yet they still face violence to this present day and battle with inequality. Women in the country have a long history of violence at the hands of men.<sup>102</sup> They are vulnerable to violence because of their low status and lack of power within the family.<sup>103</sup> The patriarchal society in the country considers women as inferior and married women do not have power as the husband is the head of the family and this usually makes them vulnerable to violence.<sup>104</sup> Their powers are limited by traditional, cultural and religious practices.<sup>105</sup> The status of women stems from the difference in roles between them and boys.<sup>106</sup> The male child is regarded as superior to the girl child because the boy ensures that the family lineage is carried forward.<sup>107</sup> The girl child is discriminated upon because she will get married and will not be able to carry on with the family's

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<sup>101</sup> Trading Economics 'Zimbabwe-Population, Female (% Of Total)- 1960-2019' available at <https://tradingeconomics.com/zimbabwe/population-female-percent-of-total-wb-data.html> [accessed 10 July 2020].

<sup>102</sup> MJ Osirim 'Crisis in the state and in the family: Violence against women in Zimbabwe' (2003) 7 *African Studies Quarterly* 157.

<sup>103</sup> E Njovana & C Watts 'Gender violence in Zimbabwe: A need for collaborative action' (1996) 4 *Reproductive Health Matters* 47.

<sup>104</sup> M Manyonganise 'Oppressive and liberative: A Zimbabwean woman's reflections on ubuntu' (2015) 36 *Verbum et Ecclesia* 1 6.

<sup>105</sup> Njovana (n 103 above) 47.

<sup>106</sup> RT Nenge 'Redefining The status of women in Zimbabwe in the face of HIV and AIDS: A re-interpretation of 1 Timothy 2:8-15' (2011) 3 *BOLESWA: Journal of Theology, Religion and Philosophy* 1 3.

<sup>107</sup> As above.

name and this has resulted in a boy or son being so important and preferred. 'In adulthood, this separation of roles was reinforced by taboos which were often explicitly linked to women's role as a weaker pattern.'<sup>108</sup> This has resulted in the trend where women are viewed weaker and have subordinate status in the family, marriage, work and political space.

When a girl reaches puberty, all the teachings they give her are directed towards her being able to know that she is now able to get pregnant and that she will one day be able to please her husband.<sup>109</sup> Her sexuality is defined for her, as she is taught how to use it for her benefit and how to keep a man.<sup>110</sup> These teachings foster a dependence syndrome, that a woman will need to depend on her husband as this is what defines her.<sup>111</sup> A woman may get educated and achieve a lot, but is taught that she is incomplete without marriage and so even when her husband dies, she quickly remarries as her status is around a man and marriage.<sup>112</sup>

Since pre-colonial Zimbabwe, women were excluded from access to land in their own right.<sup>113</sup> Their status was and is still influenced by African customary practices which strongly promote male domination. This is seen with *lobola* and another demeaning customary practices. The practice of lobola is an obstacle to the attainment of gender equality. This is seen in how it has been treated as a commercial venture where fathers demand enormous sums of money for their daughter's hand in marriage. This has the potential of sowing seeds of oppression and conflict in the marriage, as the woman is now regarded as her husband's property. A woman's virginity is considered to be so important and they are not allowed to be sexually experimental like men are.<sup>114</sup> The importance is seen in the inclusion of *mombe yechimhanda* in the lobola payment, and it represents a token of appreciation by the husband for ensuring that the wife preserved her virginity.<sup>115</sup> In some of the family settings, girls are still tested for their

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<sup>108</sup> Nenge (n 106 above) 4.

<sup>109</sup> M Kambarami 'Femininity, sexuality and culture: Patriarchy and female subordination in Zimbabwe' (2006) *African Regional Sexuality Resource Centre* 1 2.

<sup>110</sup> As above.

<sup>111</sup> As above.

<sup>112</sup> As above.

<sup>113</sup> AP Cheater 'The role and position of women in pre-colonial and colonial Zimbabwe', Paper presented at the workshop on the role of women in national rehabilitation and development, sponsored and organised by UNESCO and the Zimbabwean Ministry of Community Development and Women's Affairs, November 1985 3.

<sup>114</sup> Kambarami (n 109 above) 3.

<sup>115</sup> As above.

virginity. Virginity is one of the reasons used for domestic violence in marriage especially when a man marries a woman who was not a virgin and punishes her for it.

There is no major change with regards to the status of women in the family set up now. They are still facing exclusion in every sector of society. The majority of them are still illiterate and economically dependent and still lack platforms that they can express themselves.<sup>116</sup> Their economic and social status is lower than men as they do not have access to resources at the same level with men.

### **2.3 Marriages in Zimbabwe and domestic violence**

Zimbabwe has different types of marriages that ensure that anybody who wants to get married has the opportunity to do so. The three types of marriages are civil marriage, customary marriage and unregistered customary law union. The civil union marriage was governed by the Marriage Act Chapter 5:11<sup>117</sup> and the registered customary union was governed by the Customary Marriages Act Chapter 5:07.<sup>118</sup> The unregistered customary law union is characterised by the payment of lobola by the man's family to the woman's family. The Matrimonial Causes Act<sup>119</sup> governs registered marriages, divorces and inheritance, but does not cover the dissolution of unregistered customary law unions.

Marriage is very significant in Zimbabwe. 'Like many other African societies, the Shona society perceives marriage as the focus of existence.'<sup>120</sup> Shona marriages can be considered to be patriarchal as in the set-up of how the husband is the head of the family and the wife is required to be submissive.<sup>121</sup> There is a high tolerance of violence against women, particularly in marriage. This is because it is accepted in Zimbabwe's society that a man has the right to abuse his wife.<sup>122</sup> Domestic violence

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<sup>116</sup> 16<sup>th</sup> Annual Human Rights Report Submitted to Congress by United States of America in 1991 available at <http://heinonline.org/HOL/License> [accessed 27 August 2020].

<sup>117</sup> Marriages Act Chapter 5: 11, 1965.

<sup>118</sup> Customary Marriage Act Chapter 5:07, 1951.

<sup>119</sup> Matrimonial Causes Act Chapter 5:13, 1986.

<sup>120</sup> E Chireshe 'The utility of the Zimbabwean Domestic Violence Act: Christian and Muslim experiences' Published PHD Thesis, University of South Africa 2012.

<sup>121</sup> M Mawere & AM Mawere 'The changing philosophy of African marriage: The relevance of the Shona customary marriage practice of Kukumbira' (2010) 2(9) *Journal of African Studies and Development* 224-231.

<sup>122</sup> Njovana (n 103 above) 47.

is violence perpetrated by intimate partners and other family members.<sup>123</sup> It takes place privately in the home. It takes the form of violence between partners that are in an intimate relationship with one another, or are married and those dating.<sup>124</sup> This includes slapping, beating, stabbing, strangling, threats and murder. It encompasses sexual abuse, marital rape, economic abuse such as refusal to contribute financially, employment and education.<sup>125</sup> Most victims of domestic violence are women. Studies show that at a global level, 1 in 3 women worldwide have experienced physical and or sexual violence by a partner or sexual violence by any perpetrator in their lifetime.<sup>126</sup> For many women, their home is when they face violence at the hands of somebody that is close and they trust.<sup>127</sup> Domestic violence has many effects which are:<sup>128</sup>

Domestic violence effects can include fatal and non-fatal injury, long-term disability, contraction of sexually transmitted diseases including HIV, mental ill health, suicide, alcohol and medication abuse, loss of autonomy, confidence and self-esteem, social isolation and economic impacts such as job loss.

This shows that domestic violence affects all the other rights such as right to life, dignity and health. It is a pattern of coercive behaviour that a partner uses to control his partner.<sup>129</sup> Before marriage, some women are told that domestic violence is an inevitable part of marriage and if they seek help they are told to stay strong because *ndizvo zvinoita dzimba* (that is how matrimony is).<sup>130</sup> In most decision-making, women are not consulted and, as a result, their voices are silent.<sup>131</sup> There is silence in the homes where married women are abused physically, sexually, financially, emotionally and verbally. These women are told that '*chakafukidza dzimba matenga*' which implies that the secrets of the home remain untold and this stops them from disclosing how

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<sup>123</sup> UNICEF 'Domestic violence against women and girls' June 2000 available at <https://www.unicef-irc.org/publications/pdf/digest6e.pdf> [accessed 27 August 2020].

<sup>124</sup> M Khan 'Domestic violence against women and girls' 6 (2000) *Innocenti Digest* 2.

<sup>125</sup> SCY Appiah & A Mohammed 'Domestic violence and its effect on women' (2013) *SSRN Electronic Journal* 4.

<sup>126</sup> World Health Organization 'Violence against women' 29 November 2017 available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [accessed 20 August 2020].

<sup>127</sup> UNICEF 'Violence against children' available at <https://www.unicef.org/protection/violence-against-children> [accessed 20 August 2020].

<sup>128</sup> R Naylor 'Gender rights and sustainable development education: The case of domestic violence with particular reference to Africa' 25 (2017) *Policy & Practice: Development Education Review* 65.

<sup>129</sup> EG Konyana 'Domestic violence legislation in Zimbabwe: Probing into the security of women in rural communities' (2018) in MC Green, TJ Gunn & M Hill (eds) *Religion, law and security in Africa* (2018) 335.

<sup>130</sup> Njovana (n 103 above) 47.

<sup>131</sup> Manyonganise (n 104 above) 2.

they are being treated by their husbands.<sup>132</sup> The desire for power and control is a reason for violence in marriage. Shona men are sometimes advised to give their newlyweds a thorough thrashing for no apparent reason except to prove that they are in charge.<sup>133</sup> If the wife feels entitled to express her control in the home, the husband can wrestle the power from her through battering and insulting her.<sup>134</sup>

There are different types of domestic violence and this has affected the status of women in Zimbabwe negatively. Wife battering is the first and most distinct type of domestic violence. This type involves physical acts and the victim sustains injuries and can lead to death. Some people believe that wife beating does not become battering unless it is often repeated.<sup>135</sup> This is the most leading cause of death of women in Zimbabwe.<sup>136</sup> It is recorded that 35 per cent of women have experienced physical violence from the age of 15 and 14 per cent of them have had sexual violence once in their lifetime.<sup>137</sup> 32 per cent of married women have had experienced spousal emotional violence as well.<sup>138</sup>

Forced sex or marital rape is another type of domestic violence. In the country, marital rape is kept a secret and hardly reported.<sup>139</sup> Marital rape is strange to the Shona because the men think that it is their right to have sex with their wives whenever they want because they paid lobola.<sup>140</sup> The reason behind them not seeing it as a crime is because there is a part in the lobola that deals with that which is *rugaba* or *rutsambo*.<sup>141</sup> *Rugaba* is a sum that is paid for all services that the wife will have to provide except paternal rights and the entitlement is that the husband gets the exclusive sexual rights over his wife.<sup>142</sup> Due to this, some of the husbands believe that this amount of *rugaba*

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<sup>132</sup> Manyonganise (n 105 above) 2.

<sup>133</sup> Chitakure (n 95 above).

<sup>134</sup> As above.

<sup>135</sup> As above.

<sup>136</sup> As above.

<sup>137</sup> JI Mukamana, P Machakanja & NK Adjei 'Trends in prevalence and correlates of intimate partner violence against women in Zimbabwe 2005-2015' (2020) 2 *BMC International Health and Human Rights* 2.

<sup>138</sup> Zimbabwe National Statistics Agency 'Zimbabwe demographic and health survey 2015: Final report' 2016 available at: <https://dhsprogram.com/publications/publication-fr322-dhs-final-reports.cfm> [accessed July 2020].

<sup>139</sup> R Dube "She probably asked for it!" A preliminary study into Zimbabwean societal perceptions of rape' (2013) *Research and Advocacy Unit* 141.

<sup>140</sup> As above.

<sup>141</sup> Chitakure (n 95 above).

<sup>142</sup> As above.

is equivalent to the purchase of the wife's sexual organs and her reproductive capacity, and so the wife cannot deny him of his conjugal rights.<sup>143</sup> Married women in Zimbabwe are raped by their spouses and have contracted Human Immunodeficiency Virus (HIV) due to the spouse being unfaithful.<sup>144</sup> It is noteworthy that husbands who rape their wives can be prosecuted according to section 68 of the Criminal Law Act.<sup>145</sup> Studies have shown that, 'almost a quarter of married women who experience domestic violence also experience sexual violence'.<sup>146</sup> 74 to 85 per cent of women experience forced sexual intercourse by spouses.<sup>147</sup> 40 percent of married women justify the domestic violence for example, if she burns the meal or if she refuses to have sexual intercourse with him.<sup>148</sup> Majority of respondents, that is, 89 per cent, reported that it is rare for women to report spousal rape.<sup>149</sup> They do not report because some of these women are not aware that this is a sexual crime. Moreover, culturally, wives are meant to satisfy their husbands and hence reporting is against their cultural expectations.<sup>150</sup> The husband is presumed to have bought the services that the wife should perform by paying *lobola*.

Husbands further deny financial support to their unemployed wives so that they may solely depend on the husbands. This abuse leads to violence as the husband does not want his wife to look for a job and if she demands for money this ends up in wife battering.<sup>151</sup> This type of domestic violence sheds light on the status of some married women in Zimbabwe as they are marginalised to the point of depending on their husbands or partners for financial support and this limits them from reporting violence or leaving the marriage. Women in the country find it hard to report domestic violence to the police because some feel that they have the obligation to stay in the marriage because of culture and because of their children especially if they have been heavily depended on their husband for provision. The issue is that there are, in some

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<sup>143</sup> Chitakure (n 95 above).

<sup>144</sup> Manyonganise (n 104 above) 3.

<sup>145</sup> The Criminal Law (Codification and Reform) Act Chapter 9:23,2004 section 68.

<sup>146</sup> Mukamana (n 137 above) 2.

<sup>147</sup> F Mukanangana & others 'Gender based violence and its effects on women's reproductive health: The case of Hatcliffe, Harare, Zimbabwe' (2014) 18(1) *African Journal of Reproductive Health* 110..

<sup>148</sup> Zimbabwe National Statistics Agency 'Zimbabwe demographic health survey 2010-2011' 231.

<sup>149</sup> Mukanangana (n 147 above)117.

<sup>150</sup> As above.

<sup>151</sup> C Bowman 'Theories of domestic violence in the African context' (2003) 11(2) *Journal of Gender, Social Policy & Law* 847 855.

instances, cultural sanctions for husbands to beat their wives in certain circumstances.<sup>152</sup>

Studies have shown that women who are rich are less likely to experience domestic violence as compared to poor women.<sup>153</sup> This is because these women are not as dependant on their husbands. The economic freedom gives them the ability to leave an abusive marriage as the financial status of a woman may serve as a protective measure against domestic violence.<sup>154</sup> Though, it is important to note the wealth of the woman may put her at high risk of domestic violence because her having more money or higher education than her husband may make him insecure and he feels threatened and abuses her.<sup>155</sup>

Due to the Shona society perceiving marriage as the focus of women's existence, this has resulted in women staying in abusive marriages as a dependency on their husband has been created. It is noted from above that domestic violence takes different forms and affects women differently. The patriarchal system in the country has given women an inferior status and thus, vulnerable to violence.

## **2.4 Married Christian women and domestic violence**

Majority of the population in Zimbabwe is Christian. Considering the high percentage of Christians in the country, this suggests that they (Christians) are involved in the perpetration of gender-based violence.<sup>156</sup> The Church is vocal about issues such as democracy, human and political rights but tends to be silent about gender-based violence and thus indirectly contributing to the statistic of one in four women are likely to suffer from violence against them.<sup>157</sup> One of the reasons that keeps women in

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<sup>152</sup> L Mashiri & PR Mawire 'Conceptualisation of gender-based violence in Zimbabwe' (2013) 3 *International Journal of Humanities and Social Science* 95.

<sup>153</sup> Mukamana (n 137 above) 8.

<sup>154</sup> As above.

<sup>155</sup> As above.

<sup>156</sup> V Magezi & P Manzanga 'Gender-based violence and efforts to address the phenomenon: Towards a church public pastoral care intervention proposition for community development in Zimbabwe' (2019) 75(4) *HTS Teologiese Studies/Theological Studies* 1-4.

<sup>157</sup> E Chitando & S Chirongoma *Justice not silence- Churches facing sexual and gender-based violence* (2013) 7.



homes that have domestic violence is religious beliefs.<sup>158</sup> Religious reasons deter women from reporting domestic abuse to the police. 'The major religious reason was that only God had the power to end the abuse by changing the abuser.'<sup>159</sup> These women were taught before marriage that prayer is the key to their husbands changing and that they need to forgive them. There is a belief that prayer will end the violence and this is influenced by the perception that satan or the devil was behind the violence.<sup>160</sup> The wife thinks that support from her pastor or church members joining her in prayer may prove to be successful. Victims do not then report the matter to the police and do not consider divorce as this is not in line with Christian values.

From the Biblical point of view, the people are taught that the man is the head of the family. Submission and obedience are required from the wives.<sup>161</sup> Most of these married women stay because they have less control over their lives, as they depend economically on their husbands. This contributes largely to them staying in their homes. The status of women in the church is characterised by forms of marginalisation, domination and subordination to men.<sup>162</sup> Male voices and their desires are dominant in the church while women are silenced, remain subjugated and suppressed.<sup>163</sup>

Marriages in Zimbabwe usually consist of the man having several women who are termed as *small houses*.<sup>164</sup> This has resulted in married women in Zimbabwe contracting Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) more than any other group.<sup>165</sup> It is hard for these women to ask for safer sex as this may result in violence in the home.<sup>166</sup> The religious communities discourage condom use in the household and encourage the wife to be submissive. The impact this has on married women is they get sick because they cannot access

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<sup>158</sup> E Chireshe 'Barriers to the utilisation of provisions of the Zimbabwean Domestic Violence Act among abused Christian women in Zimbabwe' (2015) 16(2) *Journal of International Women's Studies* 263.

<sup>159</sup> As above.

<sup>160</sup> As above.

<sup>161</sup> Chireshe (n 158 above) 45.

<sup>162</sup> Magezi and Manzanga (n 156 above) 4.

<sup>163</sup> As above.

<sup>164</sup> Mashiri (n 152 above) 98.

<sup>165</sup> As above.

<sup>166</sup> Ministry of Women Affairs Gender and Community Development 'Zimbabwe national gender-based violence strategy 2012-2015' (2012) Harare: UNFPA/Government Printers 4.

reproductive health services and them being depressed, traumatised, and disempowered because they are not surrounded by the right support system. In some cases, spiritual abuse occurs.<sup>167</sup> The wife may be Christian but her husband bars her from attending church and speaking to any of the spiritual leaders. This is to make her powerless and not able to seek help.<sup>168</sup>

There needs to be education and awareness that while spiritual intervention is good for those who believe but it can be used along with other available remedies such as criminal law remedies. The key priority for the church is to ensure that the victims are protected and they are directed to the law that provides for their protection. The church must not justify and perpetuate gender-based violence. They must encourage the utilisation of law, support services such as counselling or create spaces that allow victims to seek refuge and move away from the home.

## **2.5 Conclusion**

This chapter discussed the status of married women and married Christian women in Zimbabwe. Women in Zimbabwe do have rights but are still marginalised and face violence in the family setting. The patriarchal system in Zimbabwe plays a big role in their marginalisation and contributes to their risk of domestic violence. Domestic violence exists mainly in the home setting because wives are seen as subordinates to their husbands. Married Christian women face domestic violence as much as the church should be playing the role to curb violence. They are abused in the name of submission. Domestic violence is not reported as much because women know that it is not treated seriously by the police officers. Knowledge on the status of women helps to understand how they continue to experience domestic violence and how this limits them in participating in development of the country.

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<sup>167</sup> Chireshe (n 158 above) 266.

<sup>168</sup> Chireshe (n 158 above) 263.

## **CHAPTER 3: LEGAL FRAMEWORKS TO PROTECT WOMEN FROM DOMESTIC VIOLENCE AND TO ENSURE THE RIGHT TO DEVELOPMENT**

### **3.1. Introduction**

Zimbabwe adopted several laws, which contributes towards the improvement of the status of women. Zimbabwe has also signed some global and regional instruments that seek to ensure women's protection and their participation in development. The right to development originates from the United Nations Declaration on the Right to Development of 1986 (Declaration). The chapter discusses the Declaration and how the right to development originated and the obligations that were placed on states. The Declaration explores how the discourse on the right to development has evolved since it was first proclaimed.<sup>169</sup> The right holders of the right to development are all individuals, all peoples and strong emphasis on women and children.<sup>170</sup> The duty bearers of this right is the State and in this particular chapter, it is Zimbabwe. This chapter analyses Zimbabwe's primary responsibility to respect, protect and fulfil the right to development. Zimbabwe has obligations to ensure this right at three levels that is internally through national policies and programmes, internationally through policies extending beyond their jurisdictions and lastly collectively through global and regional partnerships.<sup>171</sup>

This chapter analyses the relevant instruments such as CEDAW, Maputo Protocol and the SADC Protocol on Gender and Development to elaborate on Zimbabwe's obligation to protect women from domestic violence and to ensure their protection in development. It further examines national laws to review how they are protecting women from violence and the gaps therein.

### **3.2 National Law**

#### **3.2.1 2013 Constitution**

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<sup>169</sup> United Nations Declaration on the Right to Development 1986.

<sup>170</sup> K Arts & A Tamo 'The right to development in International law: New momentum thirty years down the line' (2016) 63 *Netherlands International Law Review* 238.

<sup>171</sup> LH Piron 'The right to development: A review of the current state of the debate to the Department for International Development' (2002) 35.

The 2013 Constitution has extensive provisions that deal with gender equality.<sup>172</sup> This Constitution replaced the gender insensitive Lancaster House Constitution 1979.<sup>173</sup> It is acknowledged for its commitment to gender equality.<sup>174</sup> The respect for human rights is affirmed in the preamble of the Constitution, where it affirms that there will be a commitment to upholding the fundamental human rights and freedoms.<sup>175</sup> This means that the rights should be realised. Gender equality is provided by section 3 and is a founding value that has gender specific provisions that benefit women. The preamble also affirms rule of law and the commitment to protect human rights and this is important for women who endure human rights violations in society. The Constitution contains an expansive Bill of Rights in which gender related matters and rights of women are clearly stipulated and elaborated.<sup>176</sup> Section 17 provides the promotion of full gender balance in the country.<sup>177</sup> There is a duty on the state to ensure that women participate in all spheres and that there is gender equality at every level. Section 80 states that every woman equal dignity with men and all laws, customs, traditions and cultural practices that infringe their rights are void.<sup>178</sup> The Constitution contains the Bill of Rights. Section 63 respects culture practices only to the extent that they do not violate any of the rights contained in the Bill of Rights.<sup>179</sup>

The Constitution establishes a Gender Commission, that is in place to investigate the violations of rights and appropriate action must be taken as provided by section 246. Section 246 states that the 'Constitution must establish Independent Institutions to address the imbalances that have been caused by past discrimination and ensure that they protect women and advance their rights.'<sup>180</sup> The Gender Commission has an obligation to do everything that is possible to promote gender equality.<sup>181</sup> The

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<sup>172</sup> M Makonese 'Women's rights and gender equality in the new Zimbabwean Constitution: The role of civil society in implementation and compliance' in CM Fombad *The implementation of modern African Constitutions: challenges and prospects* (2006) 156.

<sup>173</sup> C Dziva 'The 2013 Constitutional reform and the protection of women's rights in Zimbabwe (2018) 34(2) *Eastern Africa Social Science Research Review* 21.

<sup>174</sup> A Moyo *Selected aspects of the 2013 Zimbabwean Constitution and the Declaration of Rights* (Raoul Wallenburg Institute of Human Rights and the Humanitarian Law: 2019) 80.

<sup>175</sup> The Constitution of the Republic of Zimbabwe, 2013.

<sup>176</sup> As above.

<sup>177</sup> The Constitution of the Republic of Zimbabwe, 2013 section 17.

<sup>178</sup> The Constitution of the Republic of Zimbabwe, 2013 section 80

<sup>179</sup> The Constitution of the Republic of Zimbabwe, 2012 section 63.

<sup>180</sup> The Constitution of the Republic of Zimbabwe, 2013 section 246.

<sup>181</sup> The Constitution of the Republic of Zimbabwe, 2013 section 246(i).

Commission is in place as an institution that women have as a recourse to the court when their rights are violated.

The Zimbabwe Human Rights Commission (ZHRC) is the national human rights institution that ensures the promotion and protection of human rights.<sup>182</sup> With respect to development, the Constitution provides for gender balance in section 17 and the implementation of this is seen with the establishment of the Zimbabwe Gender Commission (ZGC), which was put in place to promote gender equality and the enjoyment of equal rights by women.

There is a responsibility on a state to eliminate and respond to gender-based violence. The law must create space for women to realise their aspirations and this must be done by removing any obstacles to equality. The State has to take all the necessary measures be it legislative, administrative and judicial measures. Thorough investigation needs to be conducted whether the violence occurs in the home, workplace or community. The country needs to ensure that it takes action to empower women and strengthen their personal, legal, social and economic independence.<sup>183</sup>

### **3.2.2 The Domestic Violence Act**

Section 25 of the Constitution states that domestic violence has to be prevented and the state must put measures that protect and foster the institution of family.<sup>184</sup> Zimbabwe has adopted a Domestic Violence Act, which was promulgated to protect victims and added value to the status of women as it protected them from domestic violence. This Act has been hailed as a landmark piece of legislation and that it would be the panacea for women's domestic violence woes.<sup>185</sup> This proves to be a complex statement as cases of abuse continue to increase especially in rural areas and this is because there is limited publicity of the Act. The government has tried to incorporate some of CEDAW's and the Maputo Protocol's provisions in the Act but it is noted that the government has not endorsed these. This is because of poor implementation and

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<sup>182</sup> T Kondo 'Socio-economic rights in Zimbabwe: Trends and emerging jurisprudence' (2017) 17 *African Human Rights Law Journal* 177.

<sup>183</sup> United Nations High Commissioner for Human Rights 'Gender-Based Violence' available at <https://www.unhcr.org/4794b3512.pdf> [accessed 30 August 2020].

<sup>184</sup> The Constitution of the Republic Zimbabwe, 2013 section 25.

<sup>185</sup> L Sithole & C Dziva 'Eliminating harmful practices against women in Zimbabwe: Implementing article 5 of the African Women's Protocol (2019) 19 *African Human Rights Law Journal* 580.

poor administrative practices by both the state and non-state institutions.<sup>186</sup> The implementation of the Act in rural areas is difficult because the ways in which public awareness on violence can be raised is limited.

The Domestic Violence Act has been in operation since 2007.<sup>187</sup> This Act was considered as the most progressive law when it comes to protection of women from domestic violence. The Act came as a result of an escalation in the cases of domestic violence and its aim is to protect people in abusive relationships and marriages.<sup>188</sup> The Act defines clearly what domestic violence is and what constitutes this form of violence. It defines abuses such as economic, physical, sexual, emotional, verbal, psychological, harassment and any other abusive behaviour that harms the complainant.<sup>189</sup> This Act is a way for Zimbabwe to show its obligation to protect women from violence and raise awareness on this form of violence as a pertinent public health issue. The Act protects women from cultural rites or practices that degrade women such as virginity tests and forced marriages.<sup>190</sup> Though, according to section 2 of the Act this is limited to specific relationships<sup>191</sup>:

- (1) In this Act "complainant", in relation to a respondent, means
  - (a) a current, former or estranged spouse of the respondent; or
  - (b) a child of the respondent, whether born in or out of wedlock, and includes an adopted child and a step-child; or
  - (c) any person who is or has been living with the respondent, whether related to the respondent or not; or
  - (d) any person who (i) co-habits with the respondent; or (ii) is or has been in an intimate relationship with the respondent; who applies for a protection order or in respect of whom a protection order may be issued.

The Act protects certain women and so the Criminal Law (Codification and Reform) Act covers what may be limited in this Act. *State v Gudyanga*<sup>192</sup> is a case that dealt with domestic and intimate partner violence. The husband in this case assaulted his

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<sup>186</sup> Mukamana (n 137 above) 2.

<sup>187</sup> The Domestic Violence Act of 2007.

<sup>188</sup> E Chireshe 'Christian women's experiences of domestic violence' (2015) 30(3) *Journal of Women and Social Work* 380.

<sup>189</sup> The Domestic Violence Act 116 of 1998.

<sup>190</sup> T Makahamadze, A Isacco & E Chireshe 'Examining the perceptions of Zimbabwean women about the Domestic Violence Act' (2012) 27(4) *Journal of Interpersonal Violence* 709.

<sup>191</sup> The Domestic Violence Act, 2007 section 2.

<sup>192</sup> *State v Gudyanga* (CRB N 350/14) [2015] ZWHCC 165.

18-year-old wife, over a denial of conjugal rights. Her husband was a repeat violator of the Domestic Violence Act but was only sentenced to two months imprisonment. The court agreed with this sentencing as custodial sentencing is not required because the purpose of the Act is to bring families together.<sup>193</sup> The court in this case explained that judges should apply a multi-factor sentencing analysis by considering the purpose of the Act and whether he was a repeat offender.<sup>194</sup> Noted from this case is that, the courts must ensure that when dealing with domestic violence cases and sentencing, priority must be to protect the victims and the children. As much as bringing families together may be important, the safety of the victim should be priority.

The Act provides for active role of law enforcement in dealing with different cases of domestic violence and this includes them arresting anyone suspected of domestic violence.<sup>195</sup> Law enforcement should provide a friendly environment to the victims of domestic violence.<sup>196</sup> A police officer who receives a domestic violence complaint must advise the victim about how to obtain safe shelter and about their right to seek relief under the Act.<sup>197</sup> Obligation is on the court to issue protection orders and that the designated courts for domestic violence must act as 'one stop' courts.<sup>198</sup> There is an Anti-Domestic Violence Council that plays the role of overseeing the enforcement of the Act and this confirms the state in working to protect women from violence.<sup>199</sup>

Enactment of the Domestic Violence Act was a way to eliminate violence against women, as prior to its enactment there had not been any law in the country that dealt specifically with domestic violence.<sup>200</sup> In the Zimbabwe's Concluding Observations by the Committee on the Elimination of Discrimination Against Women Committee (CEDAW Committee), it was noted that though there exists the Domestic Violence Act there is concern on the high prevalence of violence against women.<sup>201</sup> A critical observation was made that:<sup>202</sup>

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<sup>193</sup> *State v Gudyanga* (n 192 above) para 3.

<sup>194</sup> *State v Gudyanga* (n 192 above) 2.

<sup>195</sup> Makahamadze (n 190 above) 709.

<sup>196</sup> As above.

<sup>197</sup> As above.

<sup>198</sup> The Domestic Violence Act 2007.

<sup>199</sup> The Domestic Violence Act, 2007 section 16.

<sup>200</sup> Osirim (n 102 above) 162.

<sup>201</sup> CEDAW Committee's concluding observations of Zimbabwe in 'Report of the fifty-first session' C/ZWE/CO/2-5.

<sup>202</sup> As above.

There is particularly high prevalence in domestic and sexual violence, which remain underreported, as there is lack of statistical data and absence of political will to give high priority to eliminating violence against women.

The CEDAW Committee further expressed concerns on how the State party, Zimbabwe, has not allocated the required monetary and human resources to eliminating violence against women.<sup>203</sup>

### 3.2.3 Criminal Law (Codification and Reform) Act

Zimbabwe adopted criminal law measures to protect women from discrimination and violence<sup>204</sup> This is seen by the adoption of the Criminal Law (Codification and Reform) Act Chapter 9:23.<sup>205</sup> This Act created new crimes and modified the existing ones. For instance, the crime of rape has extended to cover the situation where a man has non-consensual anal intercourse with the female. Section 65 deals with the sexual crime of rape. Rape is defined in this section as:<sup>206</sup>

If a male person knowingly has sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse the female person has not consented to it; and he knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it he shall be guilty of rape and liable to imprisonment for life or any shorter period.

The Act provides for this measure, but this has been ignored in many instances and the citizens remain without the protection of their human rights. 22 percent of the rape cases of girls over 12 years were reported to the police, as most of these cases were resolved in the family unit.<sup>207</sup> Virginitly testing is dangerous, as certifying the girls as virgins exposes them to being raped by men who want to get rich or being cured from diseases such as HIV.<sup>208</sup> It is important to note that the Act is silent on virginitly testing but covers rape that is done to a female person who has not consented to it. The courts are entitled to impose a life sentence for rape as seen in section 65 but there are cases where lenient sentences than that are administered.<sup>209</sup> This was seen in the case *S v Dhlwayo*,<sup>210</sup> where the Court reduced the sentence to four and half years of

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<sup>203</sup> As above.

<sup>204</sup> G Feltoe 'The role of the criminal law in the protection of women against gender-based violence: Case note on *S v Jeri* HH-516-17 (2018) 3 *Zimbabwe Electronic Law Journal* 2.

<sup>205</sup> The Criminal Law (Codification and Reform) Act Chapter 9:23 2004.

<sup>206</sup> The Criminal Law (Codification and Reform) Act Chapter 9:23,2004 section 65.

<sup>207</sup> D Coltart 'Freedom from all forms of violence: Using Zimbabwe's new constitution to encourage rape law reform' (2014) 50 *SA Crime Quarterly* 31

<sup>208</sup> Coltart (n 207 above) 36.

<sup>209</sup> As above.

<sup>210</sup> *S v Dhlwayo & Anor* 1985 (2) ZLR 101 (S).



imprisonment for the rape of girl aged between 10 and 11 years of age. The Court in this case showed a gross misunderstanding of the forceful nature of rape.

Marital rape is covered in section 68 of the Act as follows:<sup>211</sup>

It shall not be a defence to a charge of rape, aggravated indecent assault or indecent assault (a) that the female person was the spouse of the accused person at the time of any sexual intercourse or other act that forms the subject of the charge: Provided that no prosecution shall be instituted against any husband for raping or indecently assaulting his wife in contravention of section sixty-six or sixty-seven unless the Attorney-General has authorised such a prosecution.

There is a limitation in this section as this needs the authority of the Attorney General. This can limit access for women to prosecute the husband who is raping her because some women will not know how to access the Attorney General and the process may deter them to report. Even though this protection is available, women do not report because it can lead to more violence against them.<sup>212</sup>

### **3.2.4 Marriage Bill**

The Marriage Bill 2019 replaces the Marriage Act and the Customary Marriages Act. The Bill takes into account the recognition of the rights of women in the country and gender equality among other Constitutional precepts. The Bill is a representation of Zimbabwe domesticating international standards such as gender equality. Clause 3 of the Bill provides that the minimum age of marriage is 18 years and this has been extended to unregistered customary law marriage and civil partnerships. Clause 6 provides that spouse have equal rights during the marriage and even after the dissolution.

There are gaps in the Bill to recognise unregistered customary marriages and polygynous unions before the law. This leaves several women to violence and abuse. It was recorded that in 2013, 84 percent of marriages in Zimbabwe were unregistered.<sup>213</sup> Civil partnerships are a common type of marriage in Zimbabwe as the payment of lobola is considered as marriage and the couple does not take a step to solemnize the marriage. This type of marriage puts women in a disadvantaged position such as domestic violence or in the case of separation or divorce. Without this recognition, the woman is not given a fair share of the assets or in the inheritance. The

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<sup>211</sup> The Criminal Law (Codification and Reform) Act, 2004 section 68.

<sup>212</sup> Osirim (n 102 above) 162.

<sup>213</sup> The Herald Zimbabwe '84pc of Zim marriages unregistered' available at <https://www.herald.co.zw/84pc-of-zim-marriages-unregistered/> [accessed 9 March 2021].

Bill has inconsistencies that perpetuate inequality and violence against women in marriage and after marriage.

### **3.3 International Law**

#### **3.3.1 Convention on the Elimination of all Forms of Discrimination Against Women**

The CEDAW was adopted in 1979 and was entered into force in 1981. The CEDAW's main objective is the elimination of any form of discrimination against women. It sets out a common international standard that the states must follow. By ratifying CEDAW, state parties commit to undertake various measures to end discrimination and violence against women in all forms.<sup>214</sup> It places a positive duty on states to respect, protect and fulfil rights to equality and non-discrimination.<sup>215</sup> Discrimination and violence against women has been a major problem in Zimbabwe, with women suffering from harmful cultural practices, domestic violence, sexual abuse and sexual harassment. Zimbabwe ratified the Convention in 1991. The obligation Zimbabwe has is to put in place comprehensive measures that eradicate the discrimination of women at a national level.<sup>216</sup>

CEDAW provides the basis for realising gender equality and state parties must take all the appropriate measures so that women can enjoy all their human rights and freedoms. CEDAW prohibits private and public discrimination against women. Article 1 states that discrimination against women:<sup>217</sup>

shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The measures put in place are to outlaw discrimination against women in all spheres. CEDAW put in place a CEDAW Committee that monitors the progress that States have

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<sup>214</sup> UN Women 'Convention on the Elimination of all forms of Discrimination Against Women' available at <https://www.un.org/womenwatch/daw/cedaw/> [accessed 30 August 2020].

<sup>215</sup> Moyo (n 174 above).

<sup>216</sup> AS Tsanga 'A critical analysis of women's constitutional and legal rights in Zimbabwe in relation to the Convention on the Elimination of all Forms of Discrimination against Women' (2002) 54(4) *Maine Law Review* 218.

<sup>217</sup> Article 1 CEDAW.

and are making in the implementing the Convention and this is done and seen through the state reporting done.

CEDAW imposes explicit obligations on state members with regards to discrimination done by the state, public officials and private persons.<sup>218</sup> According to Article 2 of CEDAW, Zimbabwe, as a state party that ratified the Convention, has an obligation to eliminate discrimination against women and this must be done through constitutional, legal and other appropriate means.<sup>219</sup> This means that the state needs to ensure that there is practical realization of the principle of equality between the genders in their national law.<sup>220</sup> The obligation to eliminate discrimination against women extends to public authorities, private persons, organizations and enterprises.<sup>221</sup> Public authorities and institutions are prohibited from engaging in any discriminatory conduct that is to the detriment of women.

General Recommendation 19<sup>222</sup> of the CEDAW Committee describes 'gender-based violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.<sup>223</sup> General Recommendation 19 refers to the violence against women and provides that each state should indicate in the periodic reports information on violence and measures on how to deal with it.<sup>224</sup> The recommendation elaborates on the rights that are impaired by violence against women and these include right to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, liberty, equal protection under the law, equality in the family, physical and mental health and just and favourable conditions of work.<sup>225</sup> The CEDAW Committee gives specific recommendations that there should be criminal penalties in place in cases of domestic violence and rehabilitation programmes should be in place for the perpetrators.<sup>226</sup> State parties are required to report on the extent of

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<sup>218</sup> A Byrnes 'The connection on the Elimination of all Forms of Discrimination against Women' in W Benedek et al (eds) *The Human Rights of Women: International Instruments and African experiences* (2002) 120.

<sup>219</sup> Article 2 CEDAW.

<sup>220</sup> As above.

<sup>221</sup> Article 2 (c) (e) CEDAW.

<sup>222</sup> General Recommendation 19 of the CEDAW Committee on 'Violence against women' adopted during its 11<sup>th</sup> session in 1992.

<sup>223</sup> As above.

<sup>224</sup> As above.

<sup>225</sup> As above.

<sup>226</sup> As above.

domestic violence and sexual abuse taking place as well as the preventative measures put in place.<sup>227</sup>

There were a significant number of shortcomings of General Recommendation 19 such as failure to put into consideration women of color, living with disabilities and those women experiencing violence of their sexual orientation.<sup>228</sup> This led to General Recommendation 35 as an update to General Recommendation 19. The recommendation expands on the understanding of violence and includes violation of sexual and reproductive health rights.<sup>229</sup> The Recommendation 35 is focused on gender-based violence against women and has a wide and detailed list of violence-related concerns.<sup>230</sup> It is recommended that the country repeals all laws that deter or discourage women from reporting gender-based violence. They should also repeal laws that allow dual arrests in case of domestic violence.<sup>231</sup>

### 3.3.2 The Maputo Protocol

The African Union adopted the Maputo Protocol in 2003 and it came into effect in 2005. The main aim of the Protocol is the protection of women's human rights.<sup>232</sup> The Maputo Protocol is one of the most progressive legal instruments providing a comprehensive set of human rights for African women.<sup>233</sup>

The Maputo Protocol ensures that state parties promote, protect, and enforce the rights of women.<sup>234</sup> Violence against women is defined in article 1 of the Protocol.<sup>235</sup> Article 2 of the Protocol provides that the state parties have an obligation to 'combat

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<sup>227</sup> As above.

<sup>228</sup> R Vijayarasa 'CEDAW's General Recommendation No. 35: A quarter of a century of evolutionary approaches to violence against women' (2020) 19(2) *Journal of Human Rights* 152 162.

<sup>229</sup> 'Launch of CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No.19' available at <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx> [accessed 30 August 2020].

<sup>230</sup> Vijayarasa (n 228 above) 161.

<sup>231</sup> General Recommendation of the CEDAW Committee 35 (n 223 above).

<sup>232</sup> S Omondi, E Waweru & D Srinivasan 'Breathing life into the Maputo Protocol: Jurisprudence on the rights of women and girls in Africa' (2018) 7.

<sup>233</sup> 'Maputo Protocol on women's rights: A living document for women's rights in Africa' available at [https://au.int/sites/default/files/documents/31520-doc-maputo\\_protocol\\_on\\_womens\\_rights\\_a\\_living\\_document\\_for\\_womens\\_human\\_rights\\_in\\_africa\\_submitted\\_by\\_the\\_women\\_gender\\_and\\_development\\_directorate\\_wgdd\\_of\\_the\\_african\\_union\\_commission.pdf](https://au.int/sites/default/files/documents/31520-doc-maputo_protocol_on_womens_rights_a_living_document_for_womens_human_rights_in_africa_submitted_by_the_women_gender_and_development_directorate_wgdd_of_the_african_union_commission.pdf) [accessed 1 September 2020].

<sup>234</sup> Sithole (n 185 above) 569.

<sup>235</sup> Article 1 of the Maputo Protocol.

all forms of discrimination against women through legislative, institutional and other measures.<sup>236</sup> The Maputo Protocol outlines the measures that are required and should be put in place to address violence against women such as budgetary allocation, education and awareness.<sup>237</sup>

There is an obligation on the state to adopt and implement appropriate measures to prohibit any treatment that strips them off their dignity and protect them from any form of violence, particularly sexual and verbal violence.<sup>238</sup> Article 4 of the Protocol the enactment of laws that prohibit all forms of violence against women, whether they take place in private or public.<sup>239</sup> It is emphasised by the Maputo Protocol that states have the obligation to carry out educational campaigns in order to sensitise men and women to break down stereotyping in Article 2. States need to seek to eliminate harmful practices through educational programmes.

The elimination of discrimination of women is found in the Protocol. This elimination must be done by the state and they should include the principle of gender equality and implementation in their national law and integrate a gender perspective in their policy decisions and development plans.<sup>240</sup> The Maputo Protocol obliges the state to modify the social and cultural patterns of conduct of women and men through public education, information with a view of eliminating harmful cultural practices given that violence against women is deeply rooted and perpetuated by patriarchy.<sup>241</sup>

Zimbabwe ratified the Maputo Protocol in 2008 and the state has domesticated some of the articles of the Protocol in its law. This is seen in how the founding values and principles of the 2013 Constitution domesticate article 3 of the Maputo Protocol, which guarantee inherent dignity, and equal worth of all people including women.

The case of *State v Chirembwe*<sup>242</sup> deals with violence against women in Zimbabwe and the issue of sentencing. The Court stated that rape is a form of violence women and girls, which negatively impacts them to enjoy rights guaranteed under the

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<sup>236</sup> Article 2 of the Maputo Protocol.

<sup>237</sup> The Centre for Human Rights 'The impact of the Protocol on the rights of women in Africa on violence against women in six selected Southern countries: An advocacy tool' (2009) 81.

<sup>238</sup> Omondi (n 232 above) 85.

<sup>239</sup> Article 4 of the Maputo Protocol.

<sup>240</sup> Article 19 of the Maputo Protocol.

<sup>241</sup> Centre for Human Rights (n 237 above) 5.

<sup>242</sup> *State v Chirembwe* (2015) ZWHHC 162.

Constitution and the international instruments.<sup>243</sup> The Court relied on specific provisions of the Maputo Protocol such as article 3, which deals with the right to dignity, and article 4, which addresses the punishment of perpetrators.<sup>244</sup> By applying these provisions, the Court concluded that it was the responsibility of the State to protect women from such violence, prosecute, and punish appropriately.<sup>245</sup> As a state party, it is required that they submit periodic state reports to allow for inspection. However, Zimbabwe is considered a dualist state and in terms of section 327 of the Constitution, the Maputo Protocol does not form part of the domestic law.<sup>246</sup>

### **3.4 Legal Frameworks on Development**

#### **3.4 Global and Regional Law on Right to Development**

##### **3.4.1 United Nations Declaration on the Right to Development**

The right to development was founded by the Declaration on the right to development.

Article 1 of the Declaration stipulates that right to development is an:<sup>247</sup>

...alienable human right by virtue of which every human person and all people's are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

It is also defined as,<sup>248</sup>

The right to development aims to ensure a process that took seriously the importance of substantive equality and equal opportunities for all, based on the non-derogatory principle of non-discrimination with regards to access to justice, education, health services, and housing, food and income generation.

Key principles in development are human rights and equal opportunity and this is supported by the Declaration that supports the active role of women in development.<sup>249</sup>

Women need to be equal partners with men in development. The right to development is a composite right from which other rights are realised and this results in the link

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<sup>243</sup> Omondi (n 232 above) 85.

<sup>244</sup> As above.

<sup>245</sup> As above.

<sup>246</sup> VO Ayeni *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 283.

<sup>247</sup> Article 1 of United Nations Declaration on the Right to Development 1986.

<sup>248</sup> R Ozoemena & M Hansungule 'Development as a right in Africa: Changing attitude for the realization of women's substantive citizenship' (2014) 18 *Law, Democracy and Development* 230.

<sup>249</sup> Article 2(3) United Nations Declaration on the Right to Development.

between gender equality and development.<sup>250</sup> Gender equality is important and a key factor for sustainable economic growth, social development and environmental sustainability.

The right to development has elements and principles. The right to development is people-centred as the person is the central subject, participant and beneficiary of development.<sup>251</sup> The right encourages a human rights-based approach, in that it is carried out in such a way that all human rights and fundamental freedoms can be fully realized.<sup>252</sup> The Declaration insists on participation of individuals and populations in development and on equity in that there needs to be fair distribution of the benefits.<sup>253</sup> The right to development has no discrimination and requires full realisation of the right of peoples to self-determination.<sup>254</sup>

Article 8(1) of the Declaration states that women should play an active role in the development process.<sup>255</sup> There is a special concern in the Declaration for a participatory of women in the process of development.<sup>256</sup> It is elaborated in Article 8 that states' measures in realising the right to development should ensure equality of opportunity for all people in their access to basic resources, education, food, housing, health services, employment and in their fair distribution of income.<sup>257</sup> States must ensure participation of all its people and must ensure that participation is active, free and meaningful in the process and outcome of development policies.<sup>258</sup> Zimbabwe, as a state is the duty bearer and has the responsibility for providing an enabling environment for equitable development.<sup>259</sup> The state must create an enabling environment for encouraging popular participation in development. Zimbabwe must always ensure that there is elimination of obstacles to development resulting from

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<sup>250</sup> Ozoemena (n 248 above) 230.

<sup>251</sup> Article 2 of the United Nations Declaration on the Right to Development.

<sup>252</sup> Article 1 of the United Nations Declaration on the Right to Development.

<sup>253</sup> Article 2 of the United Nations Declaration on the Right to Development.

<sup>254</sup> Article 1 of the United Nations Declaration on the Right to Development.

<sup>255</sup> Article 8(1) of UDHR.

<sup>256</sup> K Iqbal 'The Declaration on the right to development and implementation' (2007) 1(10) *Political Perspective Graduate Journal* 5.

<sup>257</sup> A Sengupta 'Right to Development as a human right' (2001) 36 *Economic and Political Weekly* 2529.

<sup>258</sup> Iqbal (n 256 above) 7.

<sup>259</sup> United Nations 'Frequently asked questions on the right to development' 2016 available at [https://www.ohchr.org/Documents/Publications/FSheet37\\_RtD\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf) [accessed 1 September 2020] 4.

failure to observe civil, political, economic and social rights.<sup>260</sup> The state needs to cooperate with other states in ensuring development and that the elimination of obstacles to people enjoying this right.<sup>261</sup> There is a duty on the state to formulate development policies that will help to realise the right to development.<sup>262</sup> The state must ensure that the process of development must be transparent and that there is accountability.<sup>263</sup>

### 3.5.2 African Charter on Human and Peoples' Rights

Article 22 of the African Charter on Human and Peoples' Rights (ACHPR) is one of the few hard laws that guaranteed the right to development that also exists in international instruments.<sup>264</sup> This article guarantees that all peoples have the right to development and states have the duty to ensure that it is exercised. Article 19 states that women have the right to sustainable development. Article 24 states that '[a]ll peoples shall have the right to a general satisfactory environment favourable to their development.'<sup>265</sup>

Zimbabwe is a state party to the ACHPR and it has an obligation under Article 1 to adopt legislative or other measures to give effect to the right to development.<sup>266</sup> Zimbabwe as a state party is required to enact laws that support the creation of an environment in which people can develop their full potential so that they may be able to lead productive lives.<sup>267</sup> To ensure the right to development, the state must promote gender public participation in the budgeting process.<sup>268</sup> Article 19 stipulates that, 'the state needs to take measures such as introducing the gender perspective in the national development planning procedures.'<sup>269</sup> As a duty bearer, the state must 'abstain from undertaking actions that will violate human rights.'<sup>270</sup> Zimbabwe is

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<sup>260</sup> Article 6 clause 3 of UDHR.

<sup>261</sup> Sengupta (n 257 above) 2529.

<sup>262</sup> As above.

<sup>263</sup> As above.

<sup>264</sup> Article 22 of the African Charter.

<sup>265</sup> Article 24 of the African Charter.

<sup>266</sup> Article 1 of the African Charter.

<sup>267</sup> OC Okafor 'A regional perspective: Article 22 of the African Charter on Human and People's Rights' 381.

<sup>268</sup> Okafor (n 267 above) 382.

<sup>269</sup> Article 19(a) of the African Charter.

<sup>270</sup> F Kirchmeier 'The right to development- where do we stand' (2006) 23 *Occasional Paper* 12.



obliged to promote, protect and fulfil the right to development and this must be done by ensuring participation of women at all levels in the conceptualisation, decision-making and implementation and of development policies.<sup>271</sup> The state needs to promote women's access to, control over land, and ensure their right to property.<sup>272</sup>

The right to development is justiciable as confirmed by the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya*<sup>273</sup> (Endorois case). In this case, the government was found to have failed to adequately to involve the Endorois community in the development process.<sup>274</sup>

Zimbabwe has ratified the Charter and the Maputo Protocol but needs to accept jurisdiction of the African Court on Human and Peoples' Rights as this creates avenues for victims to have forums where they can seek recourse when there has been violation of rights.<sup>275</sup>

### **3.6 National Law on the Right to Development**

#### **3.6.1. 2013 Constitution**

The 2013 Constitution has provisions that ensure the right to development of its peoples. Section 13 focuses on national development and the state is obliged to take measures that involve its people in the formulation and implementation of development plans.<sup>276</sup>

Section 71(2) deals with the right to access land.<sup>277</sup> Section 17(1)(c) obliges the 'state to take practical measures to ensure that women have access to resources, including land, on the basis of equality with men'.<sup>278</sup> Equitable access to land is a basic human right. Women having limited land rights has serious social and economic ramifications

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<sup>271</sup> Article 19(b) of the African Charter.

<sup>272</sup> Article 19(c) of the African Charter.

<sup>273</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya* 276/2003.

<sup>274</sup> Okafor (n 267 above) 376.

<sup>275</sup> Kondo (n 182 above) 173.

<sup>276</sup> The Constitution of the Republic of Zimbabwe, 2013 section 13.

<sup>277</sup> The Constitution of the Republic of Zimbabwe, 2013 section 71 (2)

<sup>278</sup> The Constitution of the Republic of Zimbabwe, 2013 section 17 (1) (c)

and affects development.<sup>279</sup> The state needs to ensure that women have more authority in important decisions made over land such as when to buy and when to sell.<sup>280</sup> There needs to be specific land rights that should allow women to invest in land as this results in higher production and food security in the country.<sup>281</sup> The state has the obligation to make sure that the rights are made in such a way that they are secure and they cannot lose them.<sup>282</sup> The state must ensure that laws are modified to ensure the right to development for women for instance the Customary laws concerning land tenure do not reflect section 17(1)(c) of the Constitution.<sup>283</sup> Section 14(2) gives the state the obligation to ensure that appropriate and adequate measures are taken to create to employment for all people, especially women.<sup>284</sup> Rural women have a right to development and the government must ensure that they come up with initiatives to support them as entrepreneurs.<sup>285</sup>

There are barriers that infringe on the rights of women in Zimbabwe. The first one is corruption. Corruption is a development issue that Zimbabwe faces and it is one of the cancerous challenges that continue to directly undermine efforts to protect women from all forms of violence as well as access to economic and social justice. Corruption is what blocks women from participating in development despite the availability of legal instruments that have been in place. Corruption is a form of structural violence as it hinders human potential and prevents women from meeting their needs. Patriarchy is also a barrier and this is entrenched in the government and its leaders, as they do not believe that a woman can take strides in Parliament.

### **3.7 Conclusion**

This chapter examined the obligations Zimbabwe has to protect women from domestic violence. This was done with the analysis of the 2013 Constitution, the Domestic

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<sup>279</sup> A Chigwenya & P Ndhlovu 'Women, land use, property rights and sustainable development in Zimbabwe' in E James (eds) *Introduction to gender studies in Eastern & Southern Africa: A reader* (2016) 217.

<sup>280</sup> Chigwenya and Ndhlovu (n 279 above) 217.

<sup>281</sup> Chigwenya and Ndhlovu (n 279 above) 221.

<sup>282</sup> As above.

<sup>283</sup> S Bhatasara 'Women's access to land and security of tenure post 2013 Constitution in Zimbabwe' (2019) 3 *African Journal on Land Policy and Geospatial Sciences* 190.

<sup>284</sup> The Constitution of the Republic of Zimbabwe, 2013 section 14.

<sup>285</sup> Article 14 of CEDAW.

Violence Act, Criminal Law Act and the Marriages Bill. These laws are in place to ensure the rights of women are recognised but there are gaps and inconsistencies. There was an analysis of CEDAW as part of global law. The general recommendations on violence against women were analysed closely to bring out the obligations Zimbabwe has and if they are ensuring that women are protected. The Maputo Protocol was discussed and the obligations placed on Zimbabwe as a state party.

The chapter also highlights gaps in the national laws in protecting women from violence. These are the 2013 Constitution, the Domestic Violence Act and the Criminal Law (Codification and Reform) Act. Analysis of these laws is to bring out the obligations to protect women against domestic violence and the measures available to women. Shortcomings of these laws are discussed in order to show that domestic violence is still prevalent in the country. Zimbabwe needs to domesticate the international Instruments that it is party to into the national law in order to ensure that the obligations are fulfilled. It is noted that the Constitution has made positive strides in ensuring some of the rights of women are fulfilled but there needs amendment and modification. Zimbabwe needs to commit more to state reporting as it has only submitted four reports to the Maputo Protocol.

The chapter ended by analysing legal frameworks that deal with the right to development. The Declaration stipulates that the right to development is an alienable human right, and it stipulates the active role of women in development. ACHPR guarantees this right and stipulates that states have the duty to ensure that is exercised. The 2013 ensures the right to development but it is noted that there are barriers that exist that infringe on the rights of women in Zimbabwe, such as corruption, inequality and patriarchy.

## CHAPTER 4: DOMESTIC VIOLENCE AND WOMEN'S PARTICIPATION IN THE DEVELOPMENT OF ZIMBABWE

### 4.1 Introduction

There is a connection between domestic violence and development. This is seen in how the elimination of violence is needed for the advancement of development.<sup>286</sup> Women have the right to development. Violence obstructs women from enjoying their rights.<sup>287</sup> Unequal power relations between men and women are manifested when women are abused in custody, raped by the law enforcement and terrorised in their home.<sup>288</sup>

The chapter's focus is on the hostile environment that exists for women and girls in Zimbabwe and how this acts as an obstacle for them to be full participants in the development of the country.<sup>289</sup> Women contribute to the social development of the country. The extent to which women have been undermined is seen in the existence of violence against them, as discussed in this chapter. This chapter notes that even though Zimbabwe has enacted laws against violence, the state falls short in protecting women and girls' rights. There are social and economic costs that come with violence and these undermine a country's development achievements.<sup>290</sup>

### 4.2. Domestic violence against women

Domestic violence has a negative impact on the country in that Zimbabwe cannot reach their full potential as long as women's potential to participate fully in their society is denied. Domestic violence limits women to be full participants in development. There is data that has revealed that the social, economic and health costs of violence against women undermines progress towards human and economic development.<sup>291</sup> For some women, they are made to feel like they are in prison in that marriage as they are

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<sup>286</sup> N Kabeer 'Violence against women as 'relational' vulnerability; engendering the sustainable human development agenda' (2014) *Occasional Paper 2*.

<sup>287</sup> S Dauer 'Violence against women: An obstacle to equality' (2006) 6 *Race, Religion, Gender & Class* 281.

<sup>288</sup> Dauer (n 287 above) 281.

<sup>289</sup> Zengenene (n 24 above) 83.

<sup>290</sup> Kabeer (n 286 above) 23.

<sup>291</sup> Innocenti Digest 'Domestic violence against women and girls' (2000).

isolated, forced to stop work and become dependent on the man. Their role as caregivers is undermined due to this violence. This form of violence leads to women losing their jobs because they cannot go to work due to injuries they have faced.<sup>292</sup> Some women do not apply for some positions in this case, school headship position, because their husbands do not support them and do not want to release them because they want their wives home during non-working hours.<sup>293</sup> Jealousy is one of the causes of domestic violence and this is seen when the husband is jealous of his wife's contact with other men.<sup>294</sup> This contact is impossible to avoid if she goes to work and so he denies her that chance to go to work or hits her when she comes back. This disrupts the economic flow as women are stopped from going to work by their partners and affects places like schools from hiring highly qualified people because they have not been allowed to by their husbands.

Abusive husbands use the method of curtailing his wife's mobility so that she will not have access to opportunities. He monitors her movements and she is not allowed to leave home, because if she does, this increases violence in the home. These abusive men deprive their wives of economic opportunities and uses this as a mechanism of control. This has a negative impact on women gaining independence to leave the abusive husband and also in her empowerment.

While the government of Zimbabwe should take credit for the enactment of the Domestic Violence Act, there still needs evaluation of the impact of this Act. It must be noted that, this Act is hampered by cultural beliefs and societal structures where domestic violence is considered part of tradition and custom.<sup>295</sup> Police officers are not playing their role stipulated in the Act. They are not willing to assist women who report their cases and they need to be given something that is a bribe, in order to take the case seriously.<sup>296</sup> Another reason they do not willingly help in domestic violence cases is because the some women withdraw their cases.

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<sup>292</sup> M Coulter *The impact of domestic violence on the employment of women on welfare* (2004) 8.

<sup>293</sup> O Chabaya, S Rembe & N Wadesango 'The persistence of gender equality in Zimbabwe: factors that impede the advancement of women into leadership positions in primary schools' (2009) 29 *South African Journal of Education* 236.

<sup>294</sup> Bowman (n 152 above) 854.

<sup>295</sup> M Chuma & B Chazovachi 'Domestic Violence Act: Opportunities and challenges for women in rural areas: The case of Ward 3, Mwenezi, District, Zimbabwe' (2012) 3 *International Journal of Politics and Good Governance* 5.

<sup>296</sup> Chuma (n 295 above) 11.

Labour law is not accommodative to women who have taken leave because of domestic violence. Progressiveness in the law has been seen by New Zealand that has introduced paid leave for women affected by domestic violence and are unable to attend work.<sup>297</sup> African states such as Zimbabwe and South Africa need to progress more in their law when it comes to domestic violence. Research conducted in some countries, have shown that the increased levels of female education and general household wealth were related to decreased levels of Intimate Partner Violence.<sup>298</sup> This shows the relationship between domestic violence and development.

Domestic violence has negative effects on children as they witness this. This may affect them in their education, resulting in them failing or leaving school. This poses a threat to the development of the country as the girl child is affected, the parents or guardians, and the nation is affected.

#### **4.3 Impact of domestic violence against women on their lives and on development**

One of the characteristics of violence against women is that it does not know social or economic boundaries and affects women and girls of all socio-economic backgrounds.<sup>299</sup> 'Human development is a development paradigm that goes beyond the rise or fall of national income.'<sup>300</sup> There needs to be an environment where people can develop their full potential and participate in development. Development ensures that there is expansion of choices that allows people to live lives they value. However, this cannot happen if there is an un-enabling environment that is created by gender based violence.<sup>301</sup> Domestic violence hinders women to achieve their full potential. The enlargement of these choices builds human capabilities such as leading long and healthy lives, to be knowledgeable, to have access to the resources that will help them participate in development.<sup>302</sup> Women who experience violence do not have many

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<sup>297</sup> 'New Zealand grants domestic violence victims paid leave' 25 July 2018 available at <https://www.bbc.com/news/world-asia-pacific-44951237> [accessed 20 August 2020].

<sup>298</sup> Bowman (n 152 above).

<sup>299</sup> The World Bank 'Gender-based violence against women and girls' September 25 2019 available at <https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls> [accessed 9 March 2021].

<sup>300</sup> Mashiri (n 152 above)101.

<sup>301</sup> Mashiri (n 152 above) 102.

<sup>302</sup> As above.

choices available to them and are unable to access many opportunities. For economic growth to be effective, women must enjoy good health which violence places in jeopardy.<sup>303</sup> Developmental initiatives encourage participation of all people including women cannot contribute their work and ideas fully when they are burdened with physical and psychological scars of violence.<sup>304</sup>

The impact of marital rape is physical, psychological and also has economic impact. Marital rape impacts women's ability to participate in all the economic and social activities.<sup>305</sup> It renders them to further violence as dependency on their husband increases because they cannot partake in educational and economic activities. This violence affects the married women from generating income and so increases dependency on the husband. Married women may lose their jobs due to absenteeism caused by the rape and not wanting people to know.

The estimated population of Zimbabwe is 14.2 million and about 10 million live in the rural areas.<sup>306</sup> 63 per cent of all households live in poverty and the root of this is lack of economic opportunities.<sup>307</sup> With the economic decline, many Zimbabweans have relied on informal trading which has result in power dynamics in the household and this fuels the violence. Governments have recognised the contributions that women make to economic development and the costs borne by societies as a result of violence against women.<sup>308</sup> The available opportunities have more men than women. The pattern of male domination in Zimbabwe has affected the women's economic participation.

The Human Development Index is 0.509 and this place the country in the low development category. It was recognised in the 2015 Southern African Development Community (SADC) Gender Protocol that the low, political, economic and social status of the majority of women is a challenge to the development of the country.<sup>309</sup> Violence

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<sup>303</sup> Sen (n 51 above) 11.

<sup>304</sup> As above.

<sup>305</sup> Mukanangana (n 147 above) 118.

<sup>306</sup> US AID Zimbabwe 'Country development cooperation strategy' 2016-2021 available at [https://www.usaid.gov/sites/default/files/documents/1860/Zimbabwe\\_CDSCS\\_2016-2021.pdf](https://www.usaid.gov/sites/default/files/documents/1860/Zimbabwe_CDSCS_2016-2021.pdf) [accessed 26 September 2020].

<sup>307</sup> As above.

<sup>308</sup> Mashiri (n 152 above) 102.

<sup>309</sup> US AID Zimbabwe (n 306 above).

is a contradiction to human development. The major causes of women's poverty are embodied in the inequality between men and women and this widespread poverty has affected women's health and education.<sup>310</sup> Women in Zimbabwe are guaranteed the right to development in the Constitution but they experience higher levels of food insecurity, lower participation as political candidates and they have trouble to access credit and finance.<sup>311</sup>

Zimbabwean women are hardworking but experience difficulties in participation in development and being acknowledged. Rural women work and add to the agricultural economy of the country but are not rewarded for it and they are not educated enough to know about their contribution.<sup>312</sup> They have limited access to and ownership of productive assets such as land and agriculture inputs.<sup>313</sup> Barriers to female participation in the economy include inadequate legal framework, low representation in leadership, sexual harassment at work, harmful cultural practices, gender stereotyped and male dominance in a variety of trades and roles.

In Zimbabwe, women played a critical role and ensured the survival of families through cross-border trade in the year of 2008.<sup>314</sup> Female entrepreneurs are important to an economy but in Zimbabwe, the full potential of the female entrepreneurship sector has not been fully unleashed.<sup>315</sup> Violence against women has a direct impact on the development opportunities of women and their family.<sup>316</sup> It affects the health and well-being of the victims and the children involved.<sup>317</sup> There are psychological, emotional, mental, physical and social effects. Other effects are depression, anxiety, substance abuse, economic hardships and low self-esteem.<sup>318</sup> This limits them to participate fully in development. Women's economic and social status in the country is lower compared to those of men because they do not have access to resources at the same platform as men do.

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<sup>310</sup> Mashiri (n 152 above) 102.

<sup>311</sup> GV Nani 'Challenges faced by urban Zimbabwean women experiences' published PHD Thesis, University of Free State, 2011.

<sup>312</sup> M Rukuni and others *Zimbabwe's Agricultural Revolution Revisited* (2006).

<sup>313</sup> Coulter (n 292 above).

<sup>314</sup> Nhuta and Mukumba (n 10 above) 375.

<sup>315</sup> As above.

<sup>316</sup> World Health Organisation 'Violence Against Women' 9 March 2021 available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [accessed 8 May 2021].

<sup>317</sup> As above.

<sup>318</sup> As above.



## 4.4 Factors constraining the implementation of the domestic Violence Act

### 4.4.1 Women's dependency on their husbands

The dependency of women on their husbands is a hinderance to the end of domestic violence and implementation of the Act. Lack of education, poverty and many more factors may make women more susceptible to violence and gives them no choice but to stay in the abusive marriage.<sup>319</sup> Women in rural Zimbabwe are economically dependent on their husbands and they find it difficult to report him fearing that they will lose everything.<sup>320</sup> They also stay in such relationships because of their children and their provision. A male participant in a previous research has stated that:<sup>321</sup>

The main duty of women is to attend to children and household chores. Formal employment can make them prostitutes. They should wait for their husbands for support.

Hence, dependent women depend on their husbands as he control money and exercises strict control over finances. On the contrary, there have been some reports of violence against women who are employed.<sup>322</sup>

### 4.4.2 Societal beliefs

Some societal beliefs are a hinderance to women being free from violence and being able to participate in development. African norms and values seem to clash with the enactment of the Act. Some societies condone domestic violence and hardly condemn it. They believe that it is a private matter and so they do not intervene. The lack of awareness may also be as a result of women not wanting to be seen as though they are hanging their domestic, private linen issues to the attention of the public, and so this hinders them from fully implementing the Act.<sup>323</sup> In the Shona culture, this is referred to as '*kufukura hapwa*' and this means she has to suffer the abuse in silence and not tell anyone outside the family unit.<sup>324</sup> Some believe that the violence is the

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<sup>319</sup> Chuma (n 295 above) 15.

<sup>320</sup> Chuma (n 295 above) 9.

<sup>321</sup> Mukanangana (n 147 above) 50.

<sup>322</sup> As above.

<sup>323</sup> A Memo 'The efficacy of the Domestic Violence Act in reducing gender based violence in rural communities. A case study of Ward 23, Mberengwa District, Zimbabwe' Midlands State University, 2014.

<sup>324</sup> A Makomo & BC Chisaka 'Factors underlying the increase in domestic violence cases in Zimbabwe despite the existence of the Anti-Domestic Violence' (2020) 2 *Journal of Humanities and Social Science Studies* 37-44.

fault of the wife and not the husband.<sup>325</sup> Violence continues because she justifies it and turns a blind eye to it all, in the name of respecting traditional beliefs. There is a belief in African culture that beating a wife is a sign of love.<sup>326</sup> Fear of stigma, shame and humiliation from people due to beliefs make women endure violence and prevents them from living a free life and participate in development.

#### **4.4.3 Patriarchal system**

Many of the Zimbabwean laws follow cultural customs which are part of the patriarchal system in which women occupy subordinate positions.<sup>327</sup> *Lobola* is a token of appreciation but because of the patriarchal system, it has given the man all rights and strips women of their freedom. When lobola is set at a high price, this can lead to abuse if the wife fails her marital responsibilities because he 'paid' for her. Lobola-related violence is common in the country and gives the man the 'permission' to control his wife. The need to control his wife results in violence and uses this to maintain his dominance and ensure his wife's submissiveness. The use of isolation is used to ensure that she has limited support as the husband knows that her having social support is empowering.

#### **4.4.4 The economy**

The economy in Zimbabwe has been unstable and has led to people being in poverty and unemployment. Poor and low-income men have been unable to fulfil their traditional gender roles and due to this men are increasingly taking out their frustrations on their wives.<sup>328</sup> The economic crisis plays a role in husbands being frustrated and them abusing their women because they are unable to provide.<sup>329</sup> Poverty has led women to stay in the abusive home because they cannot afford to leave and provide for themselves and their children.<sup>330</sup> They are afraid to lose contributions provided by their husbands. There is a strong relationship between unemployment and increasing rates of domestic violence.<sup>331</sup>

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<sup>325</sup> Chuma (n 295 above) 10.

<sup>326</sup> As above.

<sup>327</sup> Kambarami (n 109 above).

<sup>328</sup> Osirim (n 102 above) 156.

<sup>329</sup> As above.

<sup>330</sup> Chuma (n 295 above) 15.

<sup>331</sup> Mukamana (n 137 above) 7.

The economic crisis has played a role in lack of budgetary resources. It has been highlighted that it costs women about \$3 to get to the nearest police station and they saw this as time consuming and costly.<sup>332</sup> Severe lack of resources is hampering the effectiveness of the Act. Police officers lack adequate training and do not have access to motor vehicles, material and fuel to adequately cover all areas.<sup>333</sup>

#### **4.4.5 Lack of awareness**

The continuance of domestic violence and the hinderance to the full implementation of the Act is due to lack of awareness and lack of knowledge of the law.<sup>334</sup> Urban and rural communities have a long way to go in understanding the protection they have under the Act.<sup>335</sup> The communities may be aware of the existence of the Act but do not have a strong understanding of the provisions of the Act.<sup>336</sup> In a previous interview, one of the participants said they know that it is a law which prevents domestic violence, but do not know its contents.<sup>337</sup> Duty bearers need to ensure that women are aware of the rights afforded to them and the laws that have been put in place to protect them. Section 16(9)(b) of the Act states that the Anti-Domestic Violence Council needs to take all steps to disseminate information and increase the awareness of the public on the issues of domestic violence.<sup>338</sup>

However, there has been a sense of idleness of the Council which is considered as the overseer of the implementation of the Act.<sup>339</sup> There has been little education and awareness campaigns that targets grassroots areas. People such as ward co-ordinators tasked with awareness have no practical experience in issues that directly concern women.<sup>340</sup> Police have reported that do not have the finances to carry out awareness campaigns.<sup>341</sup> Domestic violence is not considered as priority as some

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<sup>332</sup> Chuma (n 295 above) 8.

<sup>333</sup> Chuma (n 295 above) 11.

<sup>334</sup> Chuma (n 295 above) 7.

<sup>335</sup> As above.

<sup>336</sup> Makomo and Chisaka (n 325 above) 49.

<sup>337</sup> Makahamadze (n 190 above) 716.

<sup>338</sup> The Domestic Violence Act, 2007 section 16 (9) (b).

<sup>339</sup> Chuma (n 295 above) 8.

<sup>340</sup> As above.

<sup>341</sup> As above.

ward co-ordinators take carrying out of government programmes as more important than the communities needs and concerns of violence.<sup>342</sup>

#### **4.4.6 Feminist Jurisprudence**

Feminist jurisprudence on domestic violence notes that societal, traditional beliefs and attitudes maintain and support abusive practices towards women.<sup>343</sup> Feminist jurisprudence has acknowledged that equality will not be achieved fully if there are systematic opportunities that still exist.<sup>344</sup> The issue is that there needs to be more education in communities on feminism. This is because it exposes violations of women from a female perspective and this is motivating to other women and relatable rather than ordinary human literature. Women need to be allowed to speak up and this enables other women to speak out.<sup>345</sup> The problem is, there is not much freedom of speech in the country and platforms to do advocacy for abuse. The issue with feminism as a theory and it being accepted is that it is not a unified one.<sup>346</sup> There is not one agreement on the ways in which the subordination of women can be explained and how emancipation can happen. Black feminists assert that domestic violence has to be attacked in the context of culture, but problem is that culture is the major obstacle to claiming women's freedom from oppression.<sup>347</sup> The theory needs to address the special conditions African women find themselves.

#### **4.5 Conclusion**

The chapter focuses on the connection of violence against women in Zimbabwe and its effects on the right to participate in development that women have. There is still a high rise of domestic violence against married women in Zimbabwe. Patriarchy is central in this as men see and want to make women their subordinate. Patriarchy is rooted in the cultural practices and even with the state. This makes it difficult for women to participate in development.

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<sup>342</sup> As above.

<sup>343</sup> Makomo (n 324 above) 43.

<sup>344</sup> As above..

<sup>345</sup> E Blaire "Women are speaking up about harassment and abuse, but why now?" 2017 available at <https://www.npr.org/2017/10/27/560231232/women-are-speaking-up-about-harassment-and-abuse-but-why-now> [accessed 8 May 2021].

<sup>346</sup> Makomo (n 324 above) 43.

<sup>347</sup> Makomo (n 324 above) 44.

The chapter analyses domestic violence against married women and shows the link in that the violence marginalises women to the extent that they cannot participate fully and equally with regards to their right of sustainable development. Women need to be empowered and have access to justice. This violence disrupts sustainable development. Women are unable to contribute fully because of the violence they face that is not treated as a priority. There are factors that are central in the continuance of violence and these are societal beliefs, patriarchal societies, economic abuse and women dependency on their husbands.

## **CHAPTER 5: INCREASING WOMEN'S PARTICIPATION IN THE DEVELOPMENT OF ZIMBABWE**

### **5.1 Introduction**

The research sought to assess the impact of domestic violence against women on the development of Zimbabwe. The study's inquiry into the question whether domestic violence is being treated as a priority addresses the shortcomings on Zimbabwe's obligations to protect women from violence. It also addresses the shortcomings that exist in ensuring the right to development for women. It revealed the shortcomings of existing laws in protecting the rights of women. This chapter presents conclusions drawn from the study and offers strategies that Zimbabwe can adopt to ensure an increased participation of women in development.

### **5.2. Summary and conclusions**

The study began with an analysis of the status of women in Zimbabwe and how this contributes to the risk of domestic violence. The study focuses on married women who face violence in the home and how this affects them publicly. The SDGs and the Agenda 2063 have a common cause, which is to ensure gender equality. There was a study of global, regional and national laws to assess the obligation Zimbabwe has as a state party to these instruments and whether it is committing to protect women from violence. Violence against women has to be treated as a priority and measures have to be put in place to protect women. CEDAW is an important document that has focus on violence against women as indicated in General Recommendation 19, updated by General Recommendation 35. The obligation placed on state parties is to submit reports and indicate measures put in place.

Chapter Three analysed Zimbabwe's obligations to ensure the right to development of its people including women and how these laws ensure the curbing of domestic violence. Global, local and regional law instruments such as the Declaration and the Maputo Protocol provide as guide on the protection of women and their right to development. This chapter identified the importance of ensuring that the people of a state are participants in development and enjoy this right. It indicated that the right to

development is justiciable and this is seen in the cases of the African Commission where the right to development was discussed.

Chapter Four began with an analysis of the connection between domestic violence and development in Zimbabwe. It is evident that regardless of legislation being in place, there is still high prevalence of domestic violence in the country. The issues affecting this are that the Nation is rooted in a patriarchal system.

### **5.3 Strategies**

Analysis of Zimbabwe's national law revealed positive aspects on women's rights as it sets the platform for legal reform of women's rights in Zimbabwe. There are weaknesses that come with the 2013 Constitution and this could be strengthened by enforcement mechanisms that allow the commitment to gender equality.

#### **5.3.1. International law and International assistance**

The 2013 Constitution must provide for domestication of international law instruments in national law to ensure the protection of the rights of women and ensure their right to development. This is because international law is more comprehensive than Zimbabwe's national law about the protection of women from violence and to ensure development. The state must adopt international law and where domestication is not in place, national law should commit to domesticate and commit to the international human rights standards.

#### **5.3.2 The African Union**

The African Union should express its concerns and publicly condemn the occurrences of violence against women in Zimbabwe. This is the external intervention that is needed to work on behalf of the voiceless civilians as the government has failed to protect them and be held accountable. The African Union needs to stop being silent and call out Zimbabwe's government for the rampant abuses throughout the country. The African Union needs to send its concerns to the state and make it clear that the flagrant violations of the African Charter on Human and People's Rights and the Maputo Protocol by Zimbabwe are unacceptable.

### **5.3.3 Civil society**

Civil society organisations (CSO) are able to foster people-centred development and this is done through promoting rights, inclusivity and promotion. CSOs contribute positively in that some of them have engaged in policy dialogue, conduct independent research and share valuable information on sustainable and economic development.<sup>348</sup> Some of the CSOs provide developmental assistance where the state has failed to provide. Due to the state not submitting accurate periodic reports on time, CSOs in Zimbabwe should play the role of raising concerns about the issue of domestic violence at regional and global forums. The state needs to collaborate with civil society. This is necessary as CSOs use litigation to protect, promote and fulfil the human rights of the people. The CSOs and women's groups should adopt a multi-disciplinary approach in protecting women from violence and ensuring their right to development. They need to engage with disciplines such as law, social sciences, education, economics to bring out stronger strategies ensuring an increased participation of women in development. This will help in the formulation of policy-making and policy reform. The civil societies and women groups should challenge the patriarchal systems, as this will increase women's participation in development.

### **5.3.4 The role of the Church**

The Church must also play its role in helping the curb of violence against women. The theology of the church must be reviewed to ensure it does not treat women in a manner that is not oppressive. The theology of the church should publicly interrogate the social status so that it assists in promoting positive community gender relations.<sup>349</sup> This must be done by understanding that women are not inferior beings and deserve their full dignity and respect. The church needs to do more introspection and transformation and this should be done by creating a safe space and environment where they can share their experiences.

### **5.3.4 Women empowerment**

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<sup>348</sup> 'Civil society and people-centred development in Zimbabwe' available at <http://catalogue.safaidz.net/sites/default/files/publications/Civil%20Society%20and%20zim%20govt.pdf> [accessed 15 October 2020].

<sup>349</sup> Magezi and Manzanga (n 157 above) 7.



It's very difficult for women to talk, to argue, to press for their concerns. How can we encourage women to talk and to express themselves? Maybe the woman in the hut has a lot to say, but we have to encourage her to talk—not about politics, but about her problems, her life, issues that concern her. The answer is education. Education has led many women in my society to join political parties or participate in political activities. Education is the most important channel for encouraging women to speak out.<sup>350</sup>

Women's empowerment is a strategy to ensuring women participate in development. Women gain more power and control over their lives when they are empowered.<sup>351</sup> Women's empowerment is an important process in reaching gender equality. Countries that have low development index need to realise that the empowerment and active participation of women in decision-making facilitates the allocation of public resources to investments in human development priorities, including education, health, nutrition, employment and social protection.<sup>352</sup> It is noted that as female education levels rise, infant and child mortality rates fall and family health improves.<sup>353</sup> Education should be used to increase women's participation in sustainable development as it is the most important means of empowering women with the knowledge, skills and self-confidence to participate fully in the development process.<sup>354</sup> Every country should invest in the education of women as this is an effective way to reduce poverty. This will allow them to participate in the labour force and contribute to the household and national income. When more women work, economies grow. Empowerment of women should entail the expansion of choices for women and an increase in women's ability to exercise that choice.<sup>355</sup>

### **5.3.4 Public awareness on the right to development**

Development is a right that should be applicable to all people. There needs to be public awareness to women especially women in the rural areas. Without this awareness, the duties provided by the constitution will be known only by the ruling elite rather than the intended beneficiaries who are the women in this case. Women need to know their rights that the Constitution affords them and this should be done by requiring the

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<sup>350</sup> N Shvedova 'Obstacles to women's participation in Parliament' in J Ballington & A Karam (eds) *Women in Parliament: Beyond Numbers* (1998) 43..

<sup>351</sup> Lohani (n 57 above) 27.

<sup>352</sup> E Eriksson 'Women's empowerment and its links to sustainable development' (2016).

<sup>353</sup> Eriksson (n 352 above) 11.

<sup>354</sup> SD Bhogadadam, H Malini & DS Rao 'Women empowerment and economic development' (2014) 4 *International Journal of Multidisciplinary Management Studies* 104.

<sup>355</sup> R Mehra 'Women, empowerment and economic development' (1997) 554 *The Annals of the American Academy of Political and Social Science* 136-138.

Constitution to be taught in schools and other government institutions. The education needs to spread into communities and rural homes so that they know the Institutions and legislation that is available for their protection. State and non-state organisations need to ensure they make the awareness.

### **5.3.5. Gender budgeting**

The state needs to put gender budgeting into practice. Most African countries including Zimbabwe offer a low human development for women, it can be deduced that gender inequality is still a harsh reality of the continent.<sup>356</sup> The Maputo Protocol recognises the need for budgetary allocation to realise the rights of women.<sup>357</sup> This is essential in the realisation of the rights of women and to include them in the developmental process. The state needs to prioritise gender budgeting and this starts with political will. Many gender budget initiatives lose momentum if they do not have the backing of the government.<sup>358</sup> The state needs to develop the capacity of women to be effectively involved in the budgeting process. The budgeting process also needs to be transparent and there needs to be accountability. Gender budgeting will ensure increased participation of women in development.

### **5.3.6 Improvement of support and protection of the victims**

There needs to be support and protection available for victims and they need to be aware of that. The government needs to embark on public awareness campaigns to inform victims of the protection that is afforded to them when they report a complaint. This awareness must be done from the grassroots level. Law enforcement needs to make these cases priority as well and ensure that justice is served. There are certain cultural practices that need to be revisited in order to protect these victims. *Lobola*, virginity testing, payment of *mombe yechimhanda* and *rugaba* need to be revisited as they are causes of violence in the home. There needs to be safe houses for the protection of victims to shelter victims. Financial support for victims who were dependent on their husband is needed for them.

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<sup>356</sup> A Budoo 'The role of gender budgeting in implementing the obligation to provide resources to realise women's human rights in Africa' Published doctoral thesis University of Pretoria 2016.

<sup>357</sup> Article 26(2) of the Maputo Protocol.

<sup>358</sup> R Kapungu 'The Zimbabwe Gender-Budgeting and Women's Empowerment Programme' (2011) 22 *Agenda* 68-74.

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