



**Analysing the rights of women in the new Constitution of Zimbabwe with
reference to International Law**

**Submitted in partial fulfilment of the requirements of the LLM Degree
(Master of Laws in International Law)**

By

Rutendo Chinomona

Student number 12173062

**Prepared under the supervision of
Professor Michelo Hansungule**

University of Pretoria, Centre for Human Rights

Pretoria

December 2013

DECLARATION

I, **Rutendo Chinomona**, declare that the work presented in this dissertation is original. It has never been presented for the award of a degree at any other University or Institution. Where other peoples' 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 International Law.

Signed.....

Date.....

Supervisor: Professor Michelo Hansungule

Signed.....

Date.....

Dedication

Mandipamufaro, Mudiwa and Tamiranashe

ACKNOWLEDGEMENT

The Almighty God, without whose love, grace, guidance and protection this would not have been possible.

I am indebted to the Beit Trust for funding my studies. To the family at Surrey House, Wicks, Emma, Major General Ramsay, I will be forever grateful. ‘A rural girl can go far when determined to help other rural girls.’

Professor, Michelo Hansungule, Twalumba loko. I cannot thank you enough for your guidance. Many thanks go to Gus Waschefort for his guidance in the International Law course. Thank you to Professor Dejo Olowu for inspiring me.

My mother, who has always had faith (Rutendo) in me and my father who told me to ‘dream big’; I appreciate the sacrifices you made for me. My brother Anesu and sister Rujeko, thank you. My grandmother, Theodora, you have a special place in my heart. Thank you for all the life lessons and your unconditional love. Special thanks go to my friend Pazvichaenda, Valerie; I do not have words sufficient to express my gratitude. Thank you will have to do. My dearest husband Witness Mapanga, this is only the beginning in the work we have to do. Thank you for your love and support.

Thank you to all friends, family and colleagues whose prayers, love and support blessed this journey.

All glory be to God

TABLE OF CONTENTS

Declaration.....	(i)
Dedication.....	(ii)
Acknowledgments.....	(iii)
Table of Contents.....	(iv)
Abstract.....	(vii)
Chapter One: Orientation to the study	
1.1 Introduction.....	1
1.2 Problem Statement.....	2
1.3 Research Question.....	3
1.4 Motivation.....	8
1.5 Methodology.....	4
1.6 Literature Review.....	4
1.7 Assumptions and limitations.....	8
1.8 Chapter overview.....	8
Chapter Two: Status of Women’s Rights under the 1979 Constitution	
2.1 Introduction.....	10
2.2 Education.....	10-15
2.3 Marriage.....	16-18
2.4 Health.....	18-21
2.5 Conclusion.....	22-23
Chapter Three: Constitutional Guarantees of Women’s Rights under the 2013 Constitution	
3.1 Introduction.....	24-25
3.2 Preamble and Founding Provisions.....	25-26
3.3 Institutions supporting gender equality	26-27
3.4 Gender equality provisions.....	27-28

3.5 Education rights.....	29-30
3.6 Health Rights.....	30-33
3.7 Marriage Rights.....	33-35
3.8 Rights of Women.....	35-36
3.9 Best Practices.....	36
3.10 Conclusion.....	36-37

Chapter Four: Legal Reform in the context of international law applicable to Zimbabwe

4.1 Introduction.....	38-39
4.2 A. International Law.....	39-40
4.2.1 Customary International Law.....	40-41
4.2.2 International treaties.....	41-45
4.3 B. The role of parliament	45-46
4.3.1 Equality legislation.....	46
4.3.2 Legal Reform in Education.....	46-48
4.3.3 Legal Reform in Health.....	49-51
4.3.4 Marriage Laws.....	51
4.4 C. The role of the judiciary in interpreting women’s rights.....	51-55
4.5. D. Implementation.....	55
4.5.1 Political and Economic challenges to effective implementation of women’s rights.	55
4.5.1 (a) Lack of political will and drive.....	55-56
4.5.1 (b) Economic challenges.....	56
4.5.1 (c) Lack of resources.....	56-57
4.5.1 (d) Victims’ lack of awareness.....	57
4.5.1 (e) Cultural environment.....	57
4.5.2 Overcoming challenges to implementation.....	58-59
4.6 Conclusion.....	59-61

Chapter Five: Conclusions and Recommendations

5.1 Introduction.....	62
5.2 Summary and Conclusions.....	62-64
5.3 Recommendations.....	64
5.3.1 Reinforcing Women’s Rights in Education.....	64-65
5.3.2 Reinforcing Women’s Rights in Health.....	65
5.3.3 Reinforcing Women’s Rights in Marriage.....	65
5.3.4 International Law.....	65-66
5.4 The role of civil society in implementing the rights of women.....	66-70
Bibliography.....	71-78

ABSTRACT

This study is an analysis on the rights of women in the new Zimbabwean Constitution with reference to International Law. It seeks to answer the question does the new Constitution address the limitations of the old with regard to the rights of women in international law. The new Constitution is analysed, against international and regional human rights instruments, finding positive development in Constitutional entrenchment of women's rights in education, health and marriage, the principles of equality and non-discrimination; concluding that the new Constitution sets the platform for protecting and fulfilling women's rights, while also recognising there is room for improvement in the Constitutional text to fully protect women's rights. The study goes further to analyse the relationship between the domestic law international law from a constitutional perspective. Women benefit from the monist position of customary international law which ensures individuals may institute claims based on international customary law. Treaties, however, require domestication into municipal law, a position which disadvantages women where the rights are not constitutionally entrenched and the relevant treaties have not been domesticated. This position need not necessarily prejudice women; the legislature is seen to have an important role in assessing existing legislation and fulfilling its mandate of enacting new legislation (complete with remedies for violations) compliant with the Constitution and international human rights standards to protect the rights of women. Areas of focus in strengthening women's rights are highlighted as part of the legislature's role. Legislation should have implementation mechanisms for the realisation of women's rights. The position of international law can be strengthened by the judiciary when it takes an active role in ensuring compliance with international human rights standards on women's rights, responding positively to the social dynamics in adjudicating on the rights of women.

Chapter one: Orientation to the study

1.1 Introduction

This chapter outlines the background of the study and introduces the work, providing a statement of the problem and research questions thereof. It explains the motivation for the study and gives the methodology as well as a literature review, closing with a chapter overview.

Zimbabwe has for the past 28 years used the Lancaster House Constitution, which document has an inadequate framework for the protection of human rights, particularly women's rights. Some of the impediments to women's rights in Zimbabwe can be observed in the following; education, health and marriage rights- and a general ineffectiveness of constitution in protecting women's rights. This paper will examine this inequality in the areas of education, health and marriage as pertains to women's rights to provide a background into the 2013 Constitution. The paper shows that lack of constitutional rights to education and health perpetuated gender inequality. In education, cultural practices were an inhibition for girls to attend school, and where they did attend school, the completion rates for girls was much lower than for boys. Gendered roles which dictate that women bear the brunt of household chores also perpetuated gender inequality, with the result that the cycle of poverty continued. In health, the Constitution did not provide for the right, and women were left vulnerable particularly on reproductive matters including maternal mortality. Hospital fees were a prohibiting factor to accessing health care, causing deaths that could have been avoided. This constitution was the background against which legal reform was necessary in Zimbabwean law, and an opportunity to meet international law standards in women's rights.

Zimbabwe has recently undergone a constitution reform process, and as party to various international human rights treaties, this was a chance to include international human rights law, particularly women's rights. The paper goes on to show that the new Constitution, departing from the Lancaster House position, contains provisions relating to the rights of women in Zimbabwe. These rights can be compared to other Constitutions in the African region- particularly the Zambian Constitution which is also undergoing a reform process. Such a comparison will show strengths and weaknesses of the Constitution. The new Constitution enshrines the rights to education and health. It is premised on the principle of equality and non-discrimination. Marriage rights are also included in the constitution, setting the platform for law reform which reflects women's rights. The Bill of Rights is couched in international terms and is two steps forward from the previous position of women's rights. To the extent that it

protects women's rights, it takes its cue from international standards of protection. It is also these international standards that expose shortcomings of the new Constitution. Independent institutions are established under the new Constitution; Gender Commission and a complementary Human Rights Commission which deal with the rights of women.

The position of international law in the new Constitution is analysed, and the implications thereof for law reform. Zimbabwe's new Constitution envisages a monist model in customary international law and a dualist model for international treaty law; with the result that treaties ratified do not form part of Zimbabwean law until incorporated by a statute. This leaves international law treaties like CEDAW in the lurch until such time as they are incorporated into the domestic law. Rights claims can only be based on the Constitution and legislation until domestication. This puts women at a disadvantage as the Constitution can never provide an exhaustive list of rights, having regard as well to the evolutionary nature of international law. The legislature can still incorporate international law standards into the laws they enact, using the platform provided by the Constitution because the Constitution does provide for the rights to education, health and marriage, albeit with limitations. A new Constitution is also an opportunity to ensure that the judiciary gives consideration to these instruments in deciding on cases, and the new Constitution does provide for constitutional interpretation with regard to international law standards.

Having analysed the position of women in the new Constitution are there opportunities for further reform. An outline of these reforms is to be included after an analysis of the Constitution and its compliance with international human rights norms.

1.2 Problem statement

Zimbabwe's Lancaster House Constitution is silent on the rights of women. In fact, all British tailored constitutions were silent on the rights of women.¹ In the process of reforming the Constitution in Zimbabwe, the Constitution will have to answer the quest for the protection of fundamental human rights. The new constitution should address which rights will be guaranteed in the future and which rights will the women in Zimbabwe have for equality and respect as equal citizens of the nation and as required under international law. Non-provision of women's rights in the 1979 Constitution prejudiced women's rights in the enjoyment of their rights in the areas of education, health and marriage. Girls are more likely to drop out of school

¹ Nigeria 1960, Kenya, Botswana

than boys and face expulsion in the event of pregnancy. The laws and policies do not ensure equal educational opportunities for girls and women. The patriarchal nature of Zimbabwean society allows for discrimination against women in matters of inheritance. Women have no say in some marriages as this is an agreement between male members of the families. The health laws do not protect women's maternal health resulting in a high maternal mortality rate and more complications in pregnancy. Women have little self-determination in reproductive issues as termination of pregnancy is limited to a few circumstances set by law. This position necessitated law reform in the stated areas, using international law as a minimum standard.

1.3 Research question

With the introduction of a new Constitution tailored by Zimbabweans after three decades of Independence, the question is does the new Constitution address the shortcomings of the old with regards to the rights of women in international law?

This study addresses this question in the context of international law by giving an analysis of constitutional provisions against the backdrop of international law which is the minimum standard for rights protections.

This question carries sub-questions.

1. What is the present status of women's rights under the 1979 Zimbabwean Constitution?
2. To what extent does the new Constitution provide for the protection of the rights of women in Zimbabwe in light of international law standards and regional law mechanisms?
3. Having established an answer to this, what are the possibilities of using international human rights norms in domestic litigation and legal enforcement?
4. What are the provisions that could reinforce the rights of women in the Constitution?

1.4 Motivation

The plight of Zimbabwean women, with its roots in a patriarchal society which opened the roads for rights abuses in a variety of sectors for women has motivated this study. Working as a Public Prosecutor in Zimbabwe, domestic violence cases were on the increase rather than decline, in spite of the existence of the Domestic Violence Act. The roots of the violence were often not difficult to establish, neither were the reasons why the women suffering abuse at the hands of their partners did not leave such relationships. The common cause of conflict was

often an extra-marital affair, monetary problems and sometimes reproductive issues. These women depended upon the men for financial support, and therefore could not leave. As women in a patriarchal society they often did not know what this domestic violence Act which purportedly²protected them from abuse was and indeed why it was meant to protect their rights. They did not see how this was a right at all. More often than not, these women were uneducated and had no source of income. Occasionally the odd Ordinary Level educated woman would be the victim, but she still had no means of sustainability and was not empowered to fend for herself and the children if need be. On other days the victim would be under the age of 16, prompting another charge on the accused person of Having Sexual Intercourse with a minor.³ The existence of rights abuses in the equality, education, marriage, healthcare sectors has prompted an examination of these in the new Constitution with a view of establishing if enough has been done to redress the plight of women, using international law standards and if not what changes can be included for proper redress in this regard.

1.5 Methodology

A descriptive and analytical background of the 1979 Constitution will be given, highlighting the shortcomings, with particular reference to the impediments to the realisation of women's rights. An analytical method will also be employed in examining the provisions of the new 2013 Constitution in terms of women's rights.

A comparative methodology will be used in comparing the texts of the new Zimbabwean Constitution and the draft Constitution of Zambia with a view to identifying the best contents and practices.

This will be largely desk research and not field work.

1.6 Literature review

Comparative Constitutional analysis reading material

² I say purportedly because they did not see you the Prosecutor, the neighbor who calls the Police on their behalf as they lie unconscious and the Police as saving them from abuse. More often than not, they saw it as meddling in domestic affairs. Where would they get money for a medical report that was required in the docket? Where would they get the US\$1 to buy a loaf of bread and feed their children if their father was in remand prison, or eventually incarcerated. How would they explain the husband's arrest to his family- their in-laws. What would their own families say if they were to leave their husbands? Most importantly, where would they go?

³ ' Having Sexual Intercourse With a Minor' Zimbabwe Criminal Law Code Chapter 9:23 Section 70

The project seeks to provide a comprehensive comparative analysis of women's rights in the 1979 Lancaster House Constitution and the 2012 COPAC draft Constitution. A detailed reading of the Constitution establishes the content with regards to women's rights and provisions that affect them.

'*Constitutionalism, Pluralism and Democracy in Africa*'⁴ describes the phase of constitution making in Africa as being linked to the independence of African states. In many ex- British colonies (Zimbabwe included) independence was granted on the understanding that the black government would accept the Westminster type constitution. The model focussed on providing for that which had not existed during colonialism, democracy evidenced by universal suffrage and multi-party politics, and also on ensuring the rights of the remaining white minority were secured. In these constitutions, the rights of women were not prioritised. Sex was not a ground for discrimination and customary law was exempted from the non-discrimination and equality provisions.

*Human Rights under African Constitutions: Realising the Promise for Ourselves*⁵ has as its objective the enhancement and promotion of the legal protection of human rights under the constitution of the countries in question which include Ethiopia, Ghana, Guinea, Morocco, Mozambique, South Africa, among others. The origins, main development, and current status of the constitutional and legal systems of the respective countries are expounded, as well as an overview of constitutional provisions relating to human rights. There is an examination of the existing national and international regulatory frameworks for the protection of human rights in each country, information on the structural, social, economic and political problems that limit the implementation of human rights laws; and measures that should be taken to move toward greater protection and promotion of human rights in the respective countries. Although the book is a general overview of all human rights and not confined to the rights of women, lessons can be gleaned which reinforce the rights of women.

*Rights and Constitutionalism: The New South African Legal Order*⁶ constitutionalism analysis of key fundamental rights. Introduction to the new legal order created by constitution by examining it in a comparative and international context

⁴S Adelman " Constitutionalism, Pluralism and Democracy in Africa" (1998) 42 *Journal of Legal Pluralism* 73

⁵ A. A Naim *Human Rights under African Constitutions: Realising the Promise for ourselves* (2003)

⁶ D van Wyk et al (eds) *Rights and Constitutionalism: The New South African Legal Order* (1995)

Women`s Rights texts

There is not much material in comparative constitutional law on the rights of women. However some books try to address this shortcoming.

*The Gender of Constitutional Jurisprudence*⁷ provides a feminist analysis of Constitutional Jurisprudence in which gender becomes the central point and a broader comparative constitutional law approach encompassing diverse countries such as Australia, Colombia, Germany, India, South Africa, Turkey and Spain. The editors propound that what is at stake is no longer whether constitutions can be for women as was the question in 1986⁸, but when and how to ensure that they recognise and promote women`s rights.⁹ They go on to observe that comparative constitutional law literature lacks research pertaining to women`s rights, and so the book aims to identify, sustain and promote constitutional norms that will achieve gender equality for women. The countries represented derive their constitutional rights from a wide range of sources including entrenched bill of rights, unwritten principles, ordinary statutes, and international human rights treaties. The text reveals that constitutional rights provide women with the tools to challenge state activity in the courts. They offer more protection than statutory and other non-constitutional rights which may not constrain legislation. The book shows that women`s constitutional rights claims have encompassed a wide array of grounds, but few of these rights are expressly entrenched in the given constitutions and goes on to show that having such a gap forces women to figure out constitutional strategies to overcome challenges. The text shows, however, that constitutional entrenchment is not a panacea. The lesson gleaned is that antithetical consequences that ensue when constitutional rights also serve as constitutional limits should be factored into any consideration of the feasibility of adopting more grounded expressions of women`s constitutional rights. The book also analyses sphere of application of constitutional rights in the different jurisdictions and the different relevance constitutions attach to international human rights instruments is evidenced to have a clear impact on women`s constitutional status.

⁷B Baines and Ruth Rubio-Marin (eds) *The Gender of Constitutional Jurisprudence* (2005)

⁸Donna Greschner "Can Constitutions Be for Women Too?" in Dawn Currie and B MacLean (eds) *The Administration of Justice* (1992) 20 women are not entirely without constitutional agency although they may be unrepresented or underrepresented in the drafting of constitutions and they still advance claims for constitutional rights.

⁹B Baines footnote 1 at 2

*Women, Gender and Human Rights: A Global Perspective*¹⁰ describes women's struggle for human rights and encompasses a wide range of women's issues including political and domestic violence, education, literacy and reproductive rights. The tone of the book is an argument that the elimination of gender-based violence and discrimination must be at the center for the struggle of social justice.

*Women, Law and Human Rights: An African Perspective*¹¹ examines the role of law broadly constructed in African societies by examining the position of women in Africa and seeing what, if any, role law can play in their empowerment efforts. It shows how law and its interpretation is used to disenfranchise women, resulting in their being deprived of land and other property they may have helped accumulate. It also discusses violence within the home, female genital mutilation, women's reproductive rights as well as participation in development and decision-making. The book considers a linkage of constitutional and human rights norms with local values. The impact and use of human rights norms to challenge gender ascriptions within the African continent is explored. Women's rights in Africa are explored by looking at various human rights instruments including the African Charter on Human and Peoples' Rights the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the African Charter on the Rights and Welfare of the Child. It also reflects on the provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. The book briefly discusses constitutional protection of women's rights under the Zimbabwean Constitution and acknowledges that the law does not always yield the desired or equitable result. Commenting on *Magaya v Magaya*¹², use of law retrogressively by a conservative judiciary is shown. The same happened in *Rattigan*¹³ where a constitutional amendment was passed; effecting an equalisation downwards-curtailing the decision of the Zimbabwean Supreme Court to give women the same rights as men to 'import' alien spouses.

International Instruments and Commentaries

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is a good starting point on the international instruments that Zimbabwe has ratified. It provides guidelines on how states may incorporate the rights of women in domestic systems. The

¹⁰M Agosin *Women, Gender and Human Rights: A Global Perspective* (2001)

¹¹F Banda *Women, Law and Human Rights: An African Perspective* (2005)

¹²*Magaya v Magaya* 1999 (1) ZLR 100

¹³*Rattigan v Chief Immigration Officer* 1994 (2) ZLR 54

African Regional system also provides an instrument on the rights of women by way of Protocol to the African Charter on Human and Peoples` Rights on the Rights of Women in Africa.

From the Literature review, not much has been written specifically on the rights of women in Constitutions. Nothing has been written analysing the rights of women in the new Zimbabwean Constitution with specific reference to health, education and marriage rights in an international law context. This work attempts to fill that gap, providing an analysis of a few rights as they relate to women, using the ACHPR and CEDAW as guidelines. It also discusses opportunities for legal reform, using the Constitutional provisions in the 2013 Constitution as bedrock to analyse the position of women`s rights in Zimbabwe following adoption of a new Constitution. This work does not attempt to be an end-all solution to women`s rights under the new Constitution in an international law context, but only seeks to proffer recommendations that may enhance the protection of women`s rights.

1.7 Assumptions and limitations

This study is limited on the number of rights it addresses, only considering a few human rights pertaining to women. It does not make sub-divisions into the specific needs of rural women for instance, or disabled, or widowed women. The analysis touches on girls as well in some aspects, on the assumption that it is these girls who become women, whose rights are under study. While recognising that human rights are indivisible, it is beyond this paper to elaborate on all the other rights that inform the realisation of the few rights analysed here. It is beyond the scope of this paper to analyse the shortcomings of CEDAW and ACHPR Protocol in their protection of the rights of women internationally and regionally.

1.8 Chapter overview

Chapter one is an introductory chapter giving a background of the study, motivation, objectives, scope of study and the research methodology.

Chapter two analyses the present position set by the 1979 Constitution, giving the status of women`s rights in the identified areas of education, health and marriage and highlighting the shortcomings giving rise to the need for legal reform.

Chapter three gives an analysis of women`s rights in the new Constitution, comparing these rights to the Zambian 2012 draft Constitution. It analyses the extent to which women`s rights

in the Constitution comply with international standards as provided by CEDAW and ACHPR Protocol on Women`s Rights as well as other relevant international law instruments. Chapter three also investigates the institutions established by the Constitution for women`s rights.

Chapter four analyses the implications of the rights enumerated on law reform and the prospects of litigation under these having regard to the international law status in the new Constitution. It analyses the position of international law in the Constitution, and the ensuing roles of the legislature and the judiciary in giving effect to women`s rights.

Chapter five gives conclusions of the entire study by drawing main themes from all the chapters and recommendations on how the Constitution can be improved for the benefit of women in Zimbabwe, meeting international law standards in the process. It also gives recommendations on how the existing structures can be used to enhance women`s rights.

Chapter 2: Status of women's rights under the 1979 Constitution

2.1 Introduction

This chapter contends that the position of women's rights in Zimbabwe under the Lancaster House Constitution is characterised by a lack of women's rights provisions in the Constitution. The Lancaster House Constitution, although it prohibits discrimination¹⁴, contains no equality clause. The Constitution provides the basic rights due to individuals and serves as a framework for all other laws and policies, and when it is silent on certain matters then there is a gap in laws and rights realisation. The patriarchal values and cultural practices for subjugation of women are therefore perpetuated under this state of affairs. The effects of such a position can be seen in the areas of education, health and marriage.

The chapter discusses education, showing that is not provided for in the Constitution, giving rise to problems such as a higher drop-out rate for girls and fewer women tertiary education. Women are marginalised because of financial constraints and their role in the home as the main domestic workers. Education personnel suffers gender imbalance, and poor grades are still evident in math, science and technical subjects in girls. Girls are not protected by the Constitution to help them realise their full intellectual capability and this situation calls for legal reform. Marriage rights under this Constitution are affected by the operation of Section 23 (1) (b) of the Constitution which allows discrimination in the application of customary law. In a patriarchal society, women are viewed as perpetual minors, and this is evinced in property rights of women within the subsistence of a customary marriage as well as upon divorce, whereby they are not entitled to property, in clear violation of international human rights standards. The chapter also submits that women suffer more where there are no constitutional guarantees for health. Health care is not provided free of charge, compounding the problems women face in maternal healthcare. Reproductive health is not prioritised giving rise to deaths that could have been prevented. Further, there is no reproductive autonomy in termination of pregnancy, a position that needs to change, regulated by relevant laws. The chapter concludes that this constitution and its shortcomings in women's rights was the background against which reforms were required to give greater protection to women's rights in line with international standards.

2.2 Education

¹⁴ Section 23 Constitution of Zimbabwe 1979

Cultural and social factors affect the education of girls in Zimbabwean society. Traditionally, male children were given priority in education. Parents invested in the education of males and the females would take on agricultural and domestic chores. This perpetuated a system where women and girls in a home often take on domestic responsibilities from a young age. This widens the perception that girls and women do not have to be educated as the males will take care of the female members of the household. This notion of males taking care of females is fast being phased out by the change in society with more and more households being headed by females. However, the realisation of the importance of educating females is not going at the same pace. While cultural practices may be a cause for the inequality in girls' education, it can also be changed by education itself. The question becomes how can this be achieved?

Education is not singled out in the declaration of rights of the Lancaster House Constitution and as such there is no clause that prohibits discrimination against women in that regard. The educational provisions can be inferred from other sections¹⁵ in the Constitution. This leaves laws and policies to govern the state of education in Zimbabwe. The primary Act being the Education Act¹⁶ which is to provide for inter alia, the declaration of fundamental rights to, and objectives of education in Zimbabwe. Various instruments governing higher education are also part of the education system.¹⁷ According to the Education Act, every child in Zimbabwe shall have the right to school education.¹⁸ The wording of the clause was a means of addressing colonial imbalances in education to include Africans in the education stream. This clause however ignores the gender differences and the position of the girl child in that she is already disadvantaged in society.¹⁹ At Independence, black women suffered the effects of both sexism and racism.²⁰ Lack of a specific clause to cater for the needs of women and girls in education further alienated them in this area. The Act also makes compulsory, primary education for children of school-going age²¹, making it the duty of the parents of any such child to ensure the child attends primary school. This provision is rather difficult to comply with where education is not free. Instead, the 'lowest possible fees consistent with the maintenance of high standards

¹⁵Other sections from which the right to education can be inferred; Article 23 Equality, Article 4,5,6 and 7 on Citizenship, Article 19 Religion

¹⁶Chapter 25: 04

¹⁷University of Zimbabwe Act, Midlands State University Act,

¹⁸Section 4 (1) Education Act 25: 04 1987

¹⁹P Chirimuuta "Gender and the Zimbabwe Education Policy: Empowerment or perpetuation of gender imbalances?" Quiet Mountain accessed 26 June 2013

²⁰R Gordon "Education policy and gender in Zimbabwe" Gender and Education 1994, vol. 6 Issue 2, p131

²¹Section 5

of education²² is provided for. Where primary education is not free, poor parents and guardians cannot comply with the mandate to ensure their children or wards attend primary school.

The Zimbabwean gender policy in education under the previous dispensation is covered by p35 and p77²³. P77 is aimed at providing greater equality in subject selection and educational paths by ensuring equal access to all subjects including technical and vocational subjects. In 2000 it was noted that although access of girls' education in Zimbabwe had improved, sex-stereotyped subject choices were still pronounced.²⁴ Poor grades were still evident in math, science and technical subjects. This cycle of inequality needed to be addressed. P77 is therefore a positive development in a country where girls are known to take on more 'feminine' courses. More can still be done in the way of funding to ensure that girls get opportunities to study male-dominated courses. P35 provides an opportunity for girls who become pregnant whilst in school to continue with their education. Girls are often precluded from education when they fall pregnant and this policy is a welcome development which increases access of education for girls. To note however, is that P35 is couched in a policy document addressing disciplinary matters; therefore it is not specifically aimed at addressing gender disparity in education.²⁵ The Minister of Education²⁶ clarified that a student may be punished, expelled, or suspended for misconduct but an exception can be made in the case of pregnant girls depending on the circumstances of each individual case. The ministry has proposed to let school girls take some time off from studies to give birth. However there will be no maternity or paternity leave. Boys expelled for fathering a child may be transferred or readmitted after 12 months. Although this policy is couched in disciplinary matters, it is notable, however, that this policy increases access to education for girls and boys as the girl can now return to school even after giving birth (on a case by case basis) compared with in the past where the girl would be punished but the boy would continue with schooling.

The expulsion of pregnant female students in tertiary institutions came under the spotlight in *Mandizvidza v Chaduka*.²⁷ The practice and policy of a teacher training college in which a

²² Section 6

²³ Policy number 35 and policy number 77 Circulars from the Ministry of Education, Sport, Art and Culture

²⁴ N Swainson "Knowledge and Power: the design and implementation of gender policies in education in Malawi, Tanzania and Zimbabwe" *International Journal of Educational Development* 20 (2000) 49-64 62

²⁵ P Chirimuuta "Gender and the Zimbabwe Education Policy: Empowerment or perpetuation of gender imbalances?" *Quiet Mountain* accessed 26 June 2013 The appearance of this curriculum change in disciplinary issues is enough evidence that the policy-makers are gender-blind

²⁶ Minister of Education David Coltart *Voice of America Zimbabwe Education Ministry Clarifies Policy on Pregnant Students* 26 June 2013

²⁷ *Mandizvidza v Chaduka & Ors* 1999 (2) ZLR 375

pregnant female was expelled, suspended or required to withdraw from her studies was challenged. The practice was ruled to be discriminatory and in violation of section 23 of the Constitution of Zimbabwe prohibiting discrimination on the basis of gender. A positive development for access to education for females was made in this case.

The National Gender Policy 2004 recognised that gender equality was a key to the Millennium Development Goals²⁸ and proposed to strengthen personnel at all levels to address gender issues. As such, an affirmative action strategy has been adopted, which calls the promotion of more women into important and influential leadership positions. Some of the interventions adopted have not produced the desirable results as although teaching is viewed by some as a ‘feminine’ occupation, men benefited more from the expansion in teacher training.²⁹ Research³⁰ has shown that in Zimbabwe, there exists gender imbalances in the educational institutions themselves, therefore this goal is a long way yet from being realised. Gender discrimination is evident in the recruitment, appointment, deployment and promotion in schools.³¹ Recognition of gender equality as key to the MDGs is therefore not enough where educational personnel still suffers from gender imbalance. One of the areas in which gender inequality can be addressed in the education system is to include more female teachers who are sensitive to the needs of girl and women students.³² This shows that access to education for girls has to start from the top.

A National Strategic Plan³³ for education of girls and other vulnerable groups was put in place to work towards the MDG to eliminate gender disparity in primary and secondary education preferably by 2005 and at all levels by 2015. Accordingly, major challenges for the education of girls and other vulnerable children were analysed and interventions proposed to address them. This plan examined declining rates of completion³⁴ and the reasons thereof. Some of the identified reasons were; lack of parental supervision and guidance due to widespread labour

²⁸ Millennium Development Goals 2000 United Nations adopted these, strengthening its commitment to halving world poverty, improving health and education and regenerating the environment in the world’s poorest countries.

²⁹ R Gordon “Education policy and gender in Zimbabwe” Gender and Education 1994, vol. 6 Issue 2, p131

³⁰ N Matope Gender Discrimination in Educational Personnel: A Case study of Gweru Urban District Secondary Schools, Zimbabwe US-China Education Review B7 P689-696 2012

³¹ N Matope Gender Discrimination in Educational Personnel: A Case study of Gweru Urban District Secondary Schools, Zimbabwe US-China Education Review B7 P689-696 2012

³² The Right to Education Project

³³ National Strategic Plan for the education of girls, orphans and other vulnerable children 2005-2010

³⁴ Completion rate being a measure of the proportion of children in a cohort, who complete the education cycle of a particular stage in Zimbabwe primary (grades 1-7), secondary (forms 1-4 for O-Level) and (Forms 1-6 for A-Level completion)

migration, unaffordable costs of primary and secondary education fees, extreme economic marginality and child labour.³⁵ Where they carry the burden of domestic chores, girls are left with little time to concentrate on their studies. A low value is still attached to the education of girls in some religious sects, such as the Apostolic Faith Church members (vapostori).³⁶ Girls are married at a young age to older members of the sect, and this excludes them from education. Quite often these marriages are against their will as the elder leaders most often 'dream' that God has given a particular girl to them to marry. Economic woes pose challenges in the education of girls. Women traditionally took on the role of domestic chores. With the change in society, women increasingly have to keep up with domestic chores and take on productive roles in the workplace. The idea that males should be given preference over females still exists.³⁷ Part of the society still perceives girl children to be less valuable as once they are married they move to become part of another family, while the boy remains part of the family.

Further compounding these reasons is the declining quality of basic education.³⁸ The education system in Zimbabwe, once lauded for being one of the best in Africa³⁹ has deteriorated to the point of producing an 18% Ordinary Level pass rate, which the Minister of Education blames on problems that have hounded Zimbabwe in the past decade.⁴⁰ The problems include political squabbles, economic woes, and lack of teachers in the profession, amongst others. The situation is particularly dire for women and girls who often have to bear the brunt of household chores and often have no financial means to pursue education. There are private foundations offering educational scholarships but these are too few to absorb all needy women.

Government's obligation is to create safe, effective protective laws, policies and learning environments.⁴¹ Some of the interventions suggested for the legislature to address the challenges above are; prohibition of child labour, abolish cultural practices that prevent girl's participation in education, review and amend the customary law which allows girls below the age of 16 to be married, and criminalise sexual abuse within the school. Violence against girls

³⁵National Strategic Plan

³⁶National Strategic Plan for the education of girls and other vulnerable children

³⁷ Impact of Family planning in Zimbabwe and Mali A participant in the study indicated that during harsh economic times, she would rather send a boy child to school over girl children

³⁸National Strategic Plan

³⁹<http://www.davidcoltart.com/2012/01/how-is-zimbabwe-improving-its-national-education-system-and-what-are-the-results/> 7 FEBRUARY 2013 David Coltart Speech given at the Education World Forum, London How is Zimbabwe improving its national education system and what are the results

⁴⁰<http://www.bbc.co.uk/news/world-africa-21375351> 7 February 2013 Zimbabwe's David Coltart: 18% pass rate is progress accessed 15 April 2013 The Minister adds that the 2009 pass rate was 14%

⁴¹National Strategic Plan

in schools remains an area whose statistics are hard to find because it remains largely unreported, misunderstood and largely unaddressed.⁴² This creates a greater need to ensure that learning environments are safe for boys and girls alike.

The laws and policies arising from the education system in Zimbabwe do not do much in the way of ensuring equal education opportunities for women and girls. The situation has been described as “...as before independence, gender has been a non-issue in educational policy.”⁴³ Girls and boys have not benefited equally from the expansion of school facilities. Available data⁴⁴ suggests that despite verbal committal to gender equity, the education policies ensure a gendering and male protecting role. Women and girls are not protected by the Lancaster Constitution regarding the entitlement and capacity to pursue educational opportunities to the full extent of their intellectual capabilities.

The above situation necessitates the need for policy reform and curriculum change to include the specific needs of women and girls in education. Government interventions have so far failed to tackle gender inequalities in education.⁴⁵ Education is a human right. Like all other rights it would benefit from constitutional reform; paving way to legislative reform. This may in turn inform political and social reform. The root of the problem can be addressed from the legislation, beginning with the Constitution as the supreme law of the land. Although Zimbabwe is party to various international instruments tackling the right to education, these instruments are not automatically part of the domestic law and therefore do not necessarily translate into national laws and policy. By operation of section 111B of the Lancaster Constitution, an international treaty signed, ratified or acceded to by Zimbabwe does not become part of domestic law unless domesticated through an Act of Parliament. This poses a great disadvantage for women, in that although the rights exist on paper, they cannot be realised where they are not provided for.

2.3 Marriage

Section 23 (1) of the Lancaster House Constitution prohibits discrimination on the basis of inter alia race, sex, gender, marital status and physical ability. However, a clawback clause is found in Section 23 which states, “Nothing contained in any law shall be held to be in contravention

⁴²Rights to Education Trust

⁴³R Gordon “Education policy and gender in Zimbabwe” Gender and Education 1994, vol. 6 Issue 2, p131

⁴⁴R Gordon “Education policy and gender in Zimbabwe” Gender and Education 1994, vol. 6 Issue 2, p131

⁴⁵ N Swainson Knowledge and Power: the design and implementation of gender policies in education in Malawi, Tanzania and Zimbabwe International Journal of Educational Development 20 (2000) 49-64 at 61

of subsection (1) (a) to the extent that the law in question relates to the following matters (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law (b) the application of African customary law in any case involving Africans or an African or one or more persons who are not Africans but who have consented to the application of African customary law in that case. This clause gives primacy for customary law and is problematic because of the patriarchal nature of Zimbabwean society which allows discrimination against women. The effects of this on marriage can be seen in the dissolution of marriages in a customary union where there is no principle of equality as wives in customary unions are not regarded as equal partners.

Zimbabwe has two recognised marriage regimes: the civil union governed by Marriage Act Chapter 5:11 and the registered customary union covered by Customary Marriages Act Chapter 5:07. The unregistered customary union is between the men's and the woman's family, characterised by the payment of lobola/roora. With registered marriages, divorce and inheritance are governed by the Matrimonial Causes Act.⁴⁶ However, because of gendered roles, it is often easier to show the husband's contribution to the household than the wife's. In the event of divorce, the husband can easily show his direct contribution while the wife has to show that her contributions were equal in value even if they may not always be financial.⁴⁷ The dissolution of property in an unregistered customary union has worse consequences as it is not included in the Matrimonial Causes Act. It is therefore governed solely by customary practices according to which women do not own property. Therefore, the woman is most likely to be left homeless and with no property upon divorce as any property belongs to the husband.

With a change in the social fabric however, women have begun to challenge this state of affairs. In *Matibire v Kumire*⁴⁸ an argument is made for reform of property rights in unregistered customary unions to the effect that the court should try to "...adapt the unsatisfactory and undeveloped concepts of customary law to the changed social and economic circumstances of the African woman who finds herself in a customary union, which disentitles her to a share in the matrimonial property even though she was a wife in every respect except the non-solemnization of the union. The remedy could be found by "...adopting a reforming exercise in which the court embarks on a rule-creating function so as to provide a remedy where none

⁴⁶Matrimonial Causes Act Chapter 5:13 1985

⁴⁷K Izumi *The Land and Property Rights of Women and Orphans in the context of HIV and Aids* (2006) p10

⁴⁸2000 (1) 492

previously existed.”⁴⁹ This case was in the event of the husband’s death. The problem is still real in dissolution of marriage a polygamous union. In *Jengwa v Jengwa*⁵⁰, the court had to decide on apportionment of property due to one wife when she wanted to divorce the husband. The court held that the rights of the other spouses had to be observed and she therefore got a third of the value of immovable property. The court also noted that a wife married under a registered customary union does not have the capacity to own property during the subsistence of the marriage.

Even in a monogamous union, upon the death of the husband, the Administration of Estates Amendment Act⁵¹ dictates that the husband’s relatives come forward as witnesses that their relative was indeed customarily married to the surviving spouse for verification purposes in the absence of a marriage certificate. Where there is a dispute between in-laws, it can be up to the relatives not to volunteer as witnesses, creating problems for the widow.

The unregistered customary union is recognised for purpose of custody and inheritance. But the African customary inheritance laws are still discriminatory in that property devolves upon male rather than female members, and so the women are deprived of any of what they may have worked for during the tenure of the relationship. The rationale being the woman as the spouse in an ‘outsider’ and the daughter is to be married and will move to her marital home and therefore be a ‘part’ of that family. This is a strange state of affairs though, as the woman as a spouse is still regarded and outsider. A case in point is the case of *Magaya v Magaya*⁵², in which the male primogeniture was upheld. In a case where the eldest daughter of the deceased sought to inherit her father’s estate, the Magistrate’s Court held that her younger half-brother was the heir to the estate on the basis of customary law. The Supreme Court of Appeal upheld the lower court’s decision, reasoning that the Legal Age of Majority Act⁵³ did not affect the male primogeniture principle that male heirs would inherit the estates of deceased African males. The Legal Age of Majority Act gave women majority status and thus gave them the legal capacity to administer estates. However, on the strength of Section 23 (3), customary law was excluded from the discrimination clause; therefore women could not be granted rights which they did not have under customary law. It is clear from this case that customary law is exempted from constitutional scrutiny by the constitution itself. The decision in this case

⁴⁹ As above

⁵⁰1999 (2) ZLR 121

⁵¹6 of 1997

⁵²*Magaya v Magaya* 1999 ZLR

⁵³15 of 1982 now section 15 of the General Laws Amendment Act Chapter 8:07

impacted on the rights of Zimbabwean women to inherit and brought into question the “...effectiveness of Constitutional provisions to ensure women’s rights and the applicability and enforceability of international treaties in Zimbabwe.”⁵⁴ This case clearly evinced the need for Constitutional reform, particularly for women’s rights. International rights norms had been ignored and the constitution clearly protected such customary practices.

The state of marriage laws evinces that women can benefit from absolute prohibition of discrimination in the Constitution, with no exceptions in the areas of customary law and personal law. The Constitution must have equality provisions ensuring women enjoy the rights in the Constitution.

2.4 Healthcare in the Lancaster House Constitution

This right to health is not catered for in the 1979 Constitution. In spite of a lack of entrenchment of the right to health in the Constitution, Zimbabwe’s healthcare system steadily progressed in the 1980s.⁵⁵ This progress is hardly visible today as the public healthcare system has deteriorated remarkably. Life expectancy at birth for males is 53 and that of females is 55.⁵⁶ According to the Zimbabwe Demographic and Health Survey (ZDHS) 2010-2011, the rate of maternal mortality associated with pregnancy and childbearing is 1.3 maternal deaths per 1000 women- years of exposure, up from 0.8 in the 2005-2006 ZDHS.

Like many countries in sub-Saharan Africa, Zimbabwe is beset by a shortage of health professionals and poor infrastructure as well as underdeveloped health systems.⁵⁷ The question therefore becomes access to healthcare. This healthcare comes at a cost to the patient or service-seeker. The government does not provide even the most basic of public health care⁵⁸ free of charge to its citizens, meaning those who need it most, women included are left vulnerable. The state of the health care system in Zimbabwe impacts on women negatively as they are exposed to a myriad of problems. This position could be remedied by including the right to health in the Constitution, and particularly make provisions for women’s health in line with international standards, and fulfilling international obligations.

⁵⁴Conflict in the Zimbabwean Courts: *Magaya v Magaya* 13 Harvard Human Rights Journal 289 2000 at 295

⁵⁵Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protection

⁵⁶World Health Statistics 2013 available at <http://www.who.int/countries/zwe/en/> accessed 29 May 2013 nb figures are for 2009

⁵⁷ S Kevany *et al* Socio-economic status and health care utilization in rural Zimbabwe: findings from Project Accept (HPTN 043) Journal of Public Health in Africa 2012 volume 3 e13

⁵⁸S Kevany

Women are particularly at risk of failing to access required medical attention because of dependency on their husbands or partners for financial support. For example, a pap smear to test for cervical cancer will cost US\$6.50 in a public hospital and US\$20 in a private establishment, which fees are hard to come by as an ordinary Zimbabwean woman. 30% of the women are affected by cervical cancer according to the Zimbabwe National Cancer Registry.⁵⁹ While UNFPA has supported public health institutions, including Parirenyatwa Hospital in cervical cancer screening, there have been long waiting lists to get screened. Even longer lists of women awaiting treatment after screening and having been diagnosed with cervical cancer.⁶⁰ Zimbabwe Association of Doctors for Human Rights (ZADHR) states that Zimbabwean women have one of the highest recorded age-standardized rates of cervical cancer in the world (67 per 100 000), with less than 5% cervical cancer screening coverage.⁶¹ Not many men are educated on the importance of a Pap smear examination in the screening for cervical cancer, some do not even know that it is curable if diagnosed early. Resultantly, not many men would be willing to part with cash for regular cervical cancer screening, leaving the diagnosis until it is too late to save the women.

In the past ten years, the healthcare sector has been riddled by problems, owing to the general financial state of the country. Healthcare professionals opted to leave for other countries in search of better salaries and working conditions⁶² Medical facilities suffered from a lack of drugs, medical equipment and the infrastructure is poor. According to WHO statistics, during 2000-2010, Zimbabwe had fewer than 2 doctors for every 10 000 people. In spite of the brain drain in the health sector, the ministry of health issued a directive limiting the number of nurses that training institutions enrol as they cannot be absorbed into the job market.⁶³ This decision has been said to further worsen the staff shortages and weaken the health system.⁶⁴ The HIV/AIDS pandemic has also taken its toll on the general health system, but particularly for women, who still have to tend to their children even in times of illness. More than half of all maternal

⁵⁹ <http://reliefweb.int/report/zimbabwe/cervical-cancer-major-threat-hiv-positive-women>

⁶⁰ <http://reliefweb.int/report/zimbabwe/cervical-cancer-major-threat-hiv-positive-women>

⁶¹ ZADHR <http://www.kubatana.net/html/archive/hr/130912zadhr.asp?sector=HR>

⁶² <http://www.our-africa.org/zimbabwe/poverty-healthcare> accessed 03 June 2013

⁶³ Mail and Guardian 'New blow to healthcare in Zimbabwe' <http://mg.co.za/article/2013-02-15-new-blow-to-healthcare-in-zimbabwe> accessed 03 June 2013

⁶⁴ As above Itai Rusike director Community Working Group of Health

deaths are linked to HIV. Rated one of the worst in the world in 2008,⁶⁵ not much has changed since then.

In the 2008-2009 periods, the healthcare system rapidly deteriorated. The infrastructure, human resources and drug supply deteriorated to a level where some hospitals were no longer operational. In 2008, public hospitals such as Parirenyatwa and Harare Central Hospital closed down, leading to a huge number of deaths. This was followed by a cholera outbreak. A lack of safe drinking water and adequate sanitation led to cholera outbreaks in 2008 and the deaths in 2009 were pegged in excess of 3000⁶⁶ The healthcare system has somewhat improved with the introduction of the US\$, but the dollar is hard to come by, leaving healthcare accessible to the haves in society.

The situation in 2010 was dire, with the majority of the population failing to access medical care owing to a lack of financial resources. No law obliges health institutions to provide free health services for all pregnant women.⁶⁷ Often pregnant women could not afford to register at clinics for ante-natal check-ups and maternity fees, forcing them to deliver at home, endangering their lives and that of the new-borns when complications arose.⁶⁸ A non-medical birth often results in non-utilisation of Post Natal Care services in hospitals and clinics⁶⁹ The maternal mortality rate in this year was 880 per 100 000 live births. The UNFPA sets this indicator at 790 per 100 000 live births.⁷⁰ The number of midwives per 1000 live births is unavailable in this study making the picture worse as they could be even fewer than the bare minimum. A good number of people sadly died from easily preventable and or treatable diseases during this period and women were also affected by pregnancy related complications.⁷¹ To exacerbate the problem, termination of pregnancy is largely dependent upon the law which prescribes the circumstances conditions under which it can be done.⁷²

⁶⁵UNAIDS. UNGASS Report on HIV and AIDS. Zimbabwe Country Report. 2008. Available from http://data.unaids.org/pub/Report/2008/zimbabwe_2008_country_progress_report_en.pdf

⁶⁶BBC News. Zimbabwe Cholera Deaths Top 3000. 2009. Available from <http://news.bbc.co.uk/2/hi/africa/7855666.stm>

⁶⁷ R Hanzi Zimbabwe's Status of Compliance with Human Rights Instruments 2011 81

⁶⁸ Reviving health services could close gaps in Zimbabwe

TapuwaMutseyekwa http://www.unicef.org/infobycountry/zimbabwe_56573.html

⁶⁹ I Hove et al Prevalence and Associated Factors for Non-Utilisation of Post Natal Care Services: Population-based study in Kuwadzana Peri-Urban Area, Zvimba District of Mashonaland West Province, Zimbabwe African Journal of Reproductive Health volume 3 no 2 1999 25-32 at 30

⁷⁰United Nations Population Fund The State Of the World's Midwifery report available at http://www.unfpa.org/sowmy/resources/docs/country_info/profile/en_Zimbabwe_SoWMy_Profile.pdf

⁷¹ T Mutseyekwa

⁷² Termination of Pregnancy Act Chapter 15: 10

These circumstances are very limited⁷³, leaving very little self-determination for women in reproductive issues. Women could benefit from entrenchment of the right to health in the Constitution and an obligation for the State to provide free maternal health care to all women. Women should also be given autonomy in termination of pregnancy, with reasonable time frames regulated by relevant laws.

All these rights were greatly impacted by the clean-up campaign of 2005 named Operation Murambatsvina. This was a campaign of forcible evictions and demolition of properties in the Zimbabwean urban areas. The rationale behind this operation according to the government being to clean up the urban areas, restore order, rid the cities of criminal elements, and restore dignity to the people.⁷⁴ Thousands of houses and residential dwellings were destroyed as well as informal business structures.⁷⁵ Resultantly, masses of urban dwellers were evicted from their homes and the informal sector was destroyed. According to United Nations estimates⁷⁶, 700 000 people lost their homes, livelihoods or both as a result of the evictions. About 2.4 million people were either directly or indirectly affected by Operation Murambatsvina. The effects of this campaign were widespread and reverberate long after the campaign. This campaign exposed women to more rights abuses in the areas of education, health, housing, access to food amongst others. This dealt a heavy blow on the women and girls who were already facing difficulties accessing those resources.⁷⁷ This left a clear need for laws protecting citizens and indeed women from violations of human rights through forced evictions.

2.5 Conclusion

The chapter discussed the status of education rights of women under the 1979 Constitution, revealing that lack of constitutional guarantee of the right to education perpetuates gender

⁷³ Sections 4 and 5 of Termination of Pregnancy Act A pregnancy may be terminated where the pregnancy endangers the life of the woman or seriously threatens permanent impairment of her physical health; where there is a serious risk that the child born will suffer from a serious physical or mental defect of such a nature that he will be seriously handicapped, or where there is a reasonable possibility that the foetus is conceived as a result of unlawful intercourse (rape or incest)

⁷⁴ "Operation Murambatsvina": An overview and summary." http://www.sokwanele.com/articles/sokwanele/opmuramb_overview_18june2005.html (accessed on 01 March 2012)

⁷⁵ As above

⁷⁶ UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Missions to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005 <<http://www.unhabitat.org/documents/zimbabweReport.pdf>> (accessed 27 February 2012)

⁷⁷ Zimbabwe's forgotten children documentary link can be accessed on <http://zimbabweschildren.org/> chronicles the stories of three children trying to survive in modern day Zimbabwe. Esther is a 9 year old girl who is living with an HIV positive mother and her younger sibling. The mother states how difficult it is to access aid when so much is happening in the country at the time. Esther is deprived of proper healthcare and education as she has to attend to her ailing mother.

inequality in the sector. The chapter discussed how discrimination of women in education manifests in the nation's context. Cultural practices such as early marriage and adherence to gender-defined roles of domestic chores and other care concerns around the home, feeds the discrimination cycle. Other factors compounding this problem are school fees required in a society which does not prioritise girls' education and violence against girls in schools. The school curriculum should respect girls and boys needs alike and stereotypes should be eradicated, allowing girls to venture more into math, science and technical subjects. Education is recognised as the gateway for women to realise and claim other rights as recognised in international law.

The chapter discussed marriage in the context of the constitution, revealing the discriminatory nature of customary law practice particularly in the area of property rights of customarily married women. It showed that section 23 (1) (b) allows discrimination in matters of African Customary law and illustrates the effect on women using decided cases. The court noted that a wife married under a registered customary union does not have the capacity to own property during the subsistence of the marriage. Upon divorce in a customary union, the woman is most likely to be left homeless and with no property as any property belongs to the husband. Against the backdrop of inheritance, the state's constitutional provisions to ensure women's rights and the applicability and enforceability of international treaties in Zimbabwe are found wanting.

The chapter evinced how a lack of health provisions in the constitution impacts negatively on women's health. It showed that when the country faces harsh economic climate, women suffer even more. Women are left vulnerable where even the basic healthcare is to be paid for. Financial constraints also expose women to deaths which could be otherwise prevented from reproductive health matters such as cervical cancer. Maternal mortality rate is high with no provision of free medical care for pregnant women. The chapter observed that this position could be remedied by including the right to health in the Constitution, and particularly make provisions for women's health in line with international standards, and fulfilling international obligations.

The chapter concludes that there is an inadequate framework for women's rights in the areas of marriage, health and education and this Constitution falls below international standards of protection for women's rights. The laws do not create equal opportunities for women in these areas. The right to equality and non-discrimination for men and women must be indicated in laws pertaining to the discussed areas. Constitutional entrenchment of socio-economic rights

generally, and women's rights specifically, would ensure rights protections and avail legal remedies where these rights are violated, as a way of meeting international obligations.

Chapter 3: Constitutional guarantees of women's rights under the 2013 Constitution

3.1 Introduction

Having analysed the shortcomings of the 1979 Constitution regarding women's rights in education, health and marriage, an analysis of the new Constitution is important for a review of whether these shortcomings have been addressed. This chapter will probe constitutional protections, giving the extent to which they do and do not give full effect to the rights of women in the areas of education, health and marriage. It will canvass positive guarantees of the right and scope of exceptions. The chapter offers a brief comparative analysis of these rights in the new Zimbabwean Constitution with the Zambia 2012 draft constitution with a view to establishing best practices. The analysis aims at showing how a similar country undergoing constitutional reform has responded to women's rights. It highlights gaps in the new Zimbabwe Constitution which have been covered by the Zambian Constitution. A gender-sensitive constitution adopts democratic principles⁷⁸ and should contain gender-specific provisions, framing the entire document in the language of human rights.⁷⁹ A democratic constitution should include specific provisions to cater for the rights of women and the Bill of Rights should reflect sensitivity to their rights. In this regard, international standards of protection will be examined to further an understanding of the rights of women in the discussed areas with specific reference to the Convention for the Elimination of Discrimination against Women (CEDAW) and The African Charter on Human and Peoples' Rights Protocol on the rights of Women (ACHPR Protocol). Chapter three also investigates the institutions established by the Constitution for women's rights.

The chapter examines the preamble and founding provisions of the new Constitution, finding that the preamble affirms a commitment to human rights, which could aid in interpreting constitutional provisions. The founding provisions affirm supremacy of the Constitution, setting the stage for outlawing any laws that are inconsistent with it. The National Objectives are gender sensitive and contain some guidelines which are not then included in the Declaration of Rights,⁸⁰ which shows some reluctance on the part of the state to commit to the latter in respect of some of the human rights of women.

⁷⁸ Inter-Parliamentary Union and UNDP. 'The Process of Engendering a New Constitution for Rwanda' 20-22 June 2001, Kigali

⁷⁹ K van der Leest Engendering Constitutions: Gender Equality Provisions in Selected Constitutions

⁸⁰ Also referred to as the Bill of Rights

The Chapter reveals that the Constitution provides for equality and non-discrimination for women in all areas. Direct and indirect discrimination is prohibited, providing women an equal opportunity in all spheres. The rights to education and health are enshrined in the Constitution and marriage rights are enriched by setting the legal marriage age at 18 and requiring consent in all marriages. The Constitution establishes institutional mechanisms for the advancement of women's rights by way of the Gender Commission and Human Rights Commission. It also establishes the Constitutional Court, which is the highest court adjudicating on infringements of rights enshrined in the Bill of Rights. This analysis evinces positive change from the previous dispensation; the constitutional provisions setting the stage for legal reform in the national laws

The chapter then notes shortcomings of the Constitutional provisions in the rights to education and health as well as marriage rights using international law instruments as a minimum standard. The right to education is not free and compulsory, which may still be a barrier for women in education. The right to reproductive health is enshrined but falls short of providing specifically for maternal health and related matters. Pregnancy is not listed as a ground for prohibition of discrimination. Marriage rights apply only to persons of opposite sexes, thus prejudicing same-sex unions. There is no requirement for registration of marriages which is a problem in a country with three marriage regimes. In spite of these shortcomings, there is room for including international law norms in the laws of the country.

3.2 Preamble and Founding Provisions

The preamble outlines the basic principles and values that inform the text of the Constitution.⁸¹The preamble of the new Constitution inter alia, 'reaffirms the people of Zimbabwe's commitment to upholding and defending fundamental human rights and freedoms.' This goes beyond merely recognising those rights but ensuring that the rights are realised, and where they are not, defending victims of rights abuses. Following the doctrine that rights are inalienable, this includes women's rights as outlined under International law. This commitment is buttressed by the 'recognition of the need to entrench democracy, good, transparent and accountable governance and the rule of law.' The preamble could have been enriched by making specific reference to equality between men and women. This would reinforce gender equality as a basic principle of the Zimbabwean state. The preamble can have

⁸¹ Preamble significance in C, Botha. *Statutory Interpretation: an introduction for students* 5th edition (2012) Juta, Cape Town

interpretive effect, informing all other rights in the Constitution, due to the application of section 46(b) which mandates a constitutional interpretation that promotes some of the values stated in the preamble such as democracy and human rights. The case of *The Government of the Republic of South Africa and others v Grootboom and others*⁸² emphasised the commitment to attainment of social justice as stated in the preamble, thus using the preamble as an interpretive tool.

Chapter 1 outlines the founding provisions of the Constitution. Section 2 recognises the Constitution as the supreme law of the country, and any law, practice, custom or conduct inconsistent with it is invalid to the extent of its inconsistency. This is a clear departure from the previous constitution which allows customary law to prevail in areas of personal matter. In light of *Magaya v Magaya*⁸³ this is a positive development for women as customary law can no longer be used to justify discrimination against them. Section 3 states the founding values and principles, which include *inter alia* gender equality.⁸⁴ Recognition of gender equality as a founding value for the Constitution provides the basis for the inclusion of gender neutral language and gender specific provisions which benefit women.

The Constitution provides guidelines for the State and all government institutions by way of national objectives in Chapter 2. National objectives are not judicially enforceable but provide guidelines for state conduct. Gender balance is affirmed in the national objectives directing the State to “take positive measures to “rectify gender discrimination and imbalances resulting from past practices and policies.”⁸⁵ The State is instructed to take appropriate measures to ensure consent in marriage, no pledging of children in marriage, equality of spousal rights and obligations during marriage and at dissolution, and the necessary protection of children and spouses upon dissolution of marriage.⁸⁶ Although these principles are recognised as National objectives, some are excluded in the Bill of Rights which may indicate reluctance on the part of the state to comply with these to the latter.

3.3 Institutions supporting gender equality

The Constitution must establish Independent Institutions to address the imbalances caused by past discrimination, and protect, promote and advance the rights of women. The Constitution

⁸² 2001(1) SA 46 (CC)

⁸³ *Magaya v Magaya*

⁸⁴ Section 3 (1) (g)

⁸⁵ Section 17 (2)

⁸⁶ Section 26

establishes a Gender Commission⁸⁷ which is mandated to monitor issues concerning gender equality as provided for in the Constitution. The Commission is to investigate possible violations of rights relating to gender⁸⁸ as well as receive complaints from the public, taking appropriate action.⁸⁹ The Gender Commission should conduct research into issues relating to gender and social justice, and to recommend changes to law and practices which lead to gender-based discrimination.⁹⁰ The new Constitution necessitates legal reform, and the Gender Commission is instrumental in ensuring international law standards are met. The Constitution goes further to mandate the Gender Commission to “do everything necessary to promote gender equality.”⁹¹ This clause gives the commission powers beyond what is specified where necessary to promote gender equality. This Commission’s mandate is complimented by the Human Rights Commission which inter alia, promotes awareness of and respect for human rights and freedoms, promotes the protection, development and attainment of human rights and freedoms, and monitor, assess and ensure observance of human rights and freedoms.⁹² The human rights commission is also tasked with receiving and considering complaints from the public, taking such action as it considers appropriate.⁹³ Such institutions depend on proper funding to carry out their functions and this should be reflected in the national budget.⁹⁴ An important function⁹⁵ of the Human Rights Commission is to recommend to Parliament effective measure to promote human rights and freedoms. This is particularly important as the Parliament is tasked with domesticating international treaty norms into municipal law. The Constitution establishes the Constitutional Court which adjudicates on the alleged infringement of rights enshrined in the Bill of Rights.⁹⁶ Women therefore have recourse to the court when the rights mentioned above are violated.

3.4 Gender Equality Provisions

⁸⁷ Constitution Section 246

⁸⁸ Constitution Section 246 (b)

⁸⁹ Section 246 c

⁹⁰ Section 246 d

⁹¹ Section 246 i

⁹² Section 243 (1) (a) (b) (c)

⁹³ S243 (1) (d)

⁹⁴ The Human Rights Commission under the previous dispensation was not functional owing to a lack of funding, however the Commission has recently advertised for human resources (Herald news 24 October 2013) and will hopefully be functional soon.

⁹⁵ S243 (i)

⁹⁶ Constitutional Court S 8.5-8.6 The author notes the debate surrounding judicial review, but it is beyond the scope of the study to delve into said.

Zimbabwe is party to the Convention on the Elimination of all forms of discrimination against Women which it ratified without reservation. This convention defines gender discrimination against women, and provides guidelines on tackling gender equality. Article 1 of CEDAW states; Discrimination against women includes any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women's enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women. The Zimbabwean Constitution encompasses equality and non-discrimination rights in section 56 pursuant to these guidelines.

The Zambian Constitution provides for equality before the law and the right to equal protection and benefit of the law.⁹⁷ CEDAW Article 2 enjoins state parties to eliminate discrimination against women and to embody the principle of equality of men and women in their constitutions. ACHPR protocol mandates state parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. They must include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application.⁹⁸ s56 (1), like the Zambia Constitution⁹⁹, states, "Every person is equal before the law and has the right to equal protection and benefit of the law." This clause ensures that women have the right to access legal remedies legal resources and services on the basis of equality with men. It also follows the CEDAW guideline on equality before the law.¹⁰⁰ S56 (2), "Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres." Women are accorded the same opportunities in all spheres, allowing them to rise above the position of gender-based discrimination and the cycle of poverty. S56 (3), "Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, disability or economic or social status, or whether born in or out of wedlock." In a clear departure from the old constitution, gender equality is provided for in the 2013 constitution. The language shows specific recognition of equality, given CEDAW and

⁹⁷ Section 45 Zambia Constitution

⁹⁸ ACHPR Protocol Article 1 (a)

⁹⁹ S51(1) Zambia Constitution

¹⁰⁰ Article 15 CEDAW (1) State parties shall accord to women equality with men before the law. (2) State parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.

ACHPR Protocol. The 2013 Constitution expands the scope of equality rights for women and avoids a narrow interpretation of these rights by specifically including gender, sex and marital status as prohibited grounds of discrimination. Discrimination is prohibited directly or indirectly¹⁰¹, and this applies to public and private spheres.¹⁰² As discussed above¹⁰³, this has important implications for Zimbabwean women who were prejudiced by section 23 of the 1979 Constitution.

3.5 Education Rights

It is recognised that education is the primary tool for promoting human rights, equality, and non-discrimination.¹⁰⁴ It is a human right in itself, and a means to realise other human rights.¹⁰⁵ The Zimbabwean Constitution therefore should take cognisance of this as regarding women's rights, in light of the disadvantaged status under the previous Constitution. Section 75 provides for the right to education; s75 (1), "Every citizen and permanent resident of Zimbabwe has a right to- (a) a basic State-funded education, including adult education; and (b) further education, which the State through reasonable legislative and other measures, must make progressively available and accessible." The clause recognises the right of individuals to receive education, and the duty of the state to provide. This is foundational for claims where the state violates this right. The right to education may have been strengthened by clearly stating that the basic education must be free, compulsory and available to all, thus overcoming the cost barrier. The clause does not specify to what extent the state should fund basic-education, leaving it open to interpretation that the state is partially responsible for funding. Making basic education state-funded will go a long way in ensuring that girls do not drop out of school because of lack of funding. Compulsory primary education works for girls curtailing child labour and early marriage.

The wording 'every' includes women and this is a positive development in light of past injustices of gender discrimination. Education should be provided in a non-discriminatory manner, ensuring that women also benefit from the right. Given the problems facing the education sector in terms of human resources, the Constitution would have benefited from a clause providing for the improved conditions of teaching staff (as well as equal opportunity in

¹⁰¹ Section 56 (4)

¹⁰² Section 44 and 45

¹⁰³ S23 of the Lancaster House Constitution allows discrimination against women in personal matters.

¹⁰⁴ Haki Zetu Right to education p10 General Comment ICESCR

¹⁰⁵ General Comment 13 on Article 13 ICESCR

teacher training colleges). Education goes a long way in assisting women to make informed choices about their health care, particularly reproductive and maternal health care. It has been noted that women who are economically disadvantaged lack the requisite skills to negotiate safe sex, which prevents unwanted pregnancies or sexually transmitted infections.¹⁰⁶ With the right to education being linked to improved economic status for women, it will also indirectly empower women in terms of health decisions, which decisions will ensure that women are able to work and help break the cycle of poverty. Section 75 (4) provides, “The State must take reasonable legislative, and other measures, within its available resources, to achieve the right set out in subsection (1).” The state must therefore start fulfilling its mandate immediately, using the available resources.

The National Objectives instruct the State to “take practical measures to promote free and compulsory basic education for children.”¹⁰⁷ The right to education as stated in the Constitution, however, does not mention compulsory education. Further education can be implied to include secondary, technical and vocational training. There is no mention of higher or tertiary education, so this may be included in further education as well. The right to education would have been strengthened by a clause giving importance to the development of schools with adequate facilities at all levels. CEDAW Article 10 States shall ensure that women have equal rights with men in education, including equal access to schools, vocational training, curricula and educational resources. States shall eliminate stereotypes of the roles of women and men through revising school materials and teaching methods. The national objectives make specific mention to the State mandate to ensure girls are afforded the same educational opportunities as boys to obtain education at all levels.¹⁰⁸ This position is not reaffirmed as a right, showing some reluctance to commit to this position.

3.6 Health Rights

The right to health must be enshrined in the Constitution. The right to women’s health must also be provided. Section 76 of the Constitution provides for the right to health care; s76 (1) “Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.” This article ensures an equal opportunity to access health care-services. This is qualified by the word basic, which is not

¹⁰⁶ Maposhere and Ray ‘ Male and Female Condom Use by sex workers in Zimbabwe’
www.who.int/.../publications

¹⁰⁷ Section 27 (1) (a)

¹⁰⁸ Section 27 (2)

defined in the Constitution. This may be left to the judiciary to decide what basic-health care services are. However, this could be catered for in legislation, but balance has to be struck to avoid narrow interpretation as this could also restrict what is meant by basic health care services. This clause could be bolstered by an obligation on all health facilities to provide free health services for pregnant women. CEDAW affirms the need for access to health-related information, including advice on family planning.¹⁰⁹ Article 12 (1) enjoins state parties to take appropriate measures to eliminate discrimination against women in health care and to ensure equal access to health care and family planning services. To complement this is Article 12 (2) under which states must provide services and nutrition during pregnancy, childbirth, and the post-natal period, including free services where necessary. These CEDAW guidelines are important for Zimbabwean women whose maternal healthcare services have been neglected in the past.

Section 76 (2) states, “Every person living with a chronic illness has the right to have access to basic health-care services for the illness.” Section 76(3) provides, “No person may be refused emergency medical treatment in any health-care institution.” This is important where pregnant women face complications in pregnancy or during child-birth creating an emergency, and may work to reduce maternal mortality. Section 76(4) mandates the state to take reasonable legislative and other measures, within its available resources, to achieve the rights set out in this section. Again, the state should start fulfilling its mandate using the available resources. The Zambian Constitution provides for the right of access to health-care, adding the dependant rights such as housing, adequate food, clean and safe water, social security and protection, education, as part of the right to health. This is recognition that the right to access to health-care is largely dependent on the realisation of the stated rights. The Zimbabwean Constitution could be enriched by such an addition.

The state is mandated to respect the right to health, which entails not interfering with this right by limiting access, and in the context of health rights of women, not discriminating against women. This entails sexual reproductive health must be catered for as well. Reproductive health of women is catered for in CEDAW Article 16 (1) (e) which urges state parties to ensure the same rights on the basis of equality between men and women to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights. Given the history of the health

¹⁰⁹ Article 10 (h)

care system in previous years, women would have benefited from a clause specific to their maternal, childhood and reproductive health care. Where bride price is regarded as perpetual consent to sexual intercourse,¹¹⁰ reproductive rights of women are important to curb abuse of this position.

ACHPR Protocol Article 14 contains the right to reproductive health includes women's rights to be informed of their health status and of their partner's health status, particularly if affected with STIs, including HIV/AIDS, in accordance with internationally recognised standards and best practices. Women should be given the choice to know of their partner's status. It is submitted that this should canvass men as well as women as sexually transmitted infections are transmitted both ways, not necessarily from men to women. The 2013 Constitution, however protects the right not to have one's health status disclosed¹¹¹, therefore, application of article 14 is not without controversy. ACHPR protocol affirms women's rights to abortion in specified circumstances.¹¹² The Constitution proclaims the right to personal security includes the right, "subject to any other provision of this Constitution, to make decisions concerning reproduction."¹¹³ This clause may be used in support of abortion, in specified circumstances, but there is no clause specifically decriminalising abortion.

Discrimination against pregnant women curtails the rights of women to decide on family planning and child spacing. Although pregnancy does not explicitly state pregnancy as a prohibited ground of discrimination, the labour provisions, have to be cognisant of the ripple-effects of discriminating against pregnant women in reproduction, and should therefore protect the rights of pregnant and married women in the workplace. Strength of the Constitution in this regard is the entitlement of fully paid maternity leave for at least three months to women employees.¹¹⁴

CEDAW General Recommendation 19 recognises gender-based violence as a form of discrimination violating the right to equality.¹¹⁵ The Committee suggests recognising such a right as a form of discrimination against women.¹¹⁶ Women suffer from domestic violence

¹¹⁰ B Goercke 'The Impact of Traditional Shona beliefs on HIV/AIDS intervention' www.etdl.libdary.dug/edu/theses quoted in S Chirawu

¹¹¹ Section 57 (e)

¹¹² ACHPR Protocol 14(c)

¹¹³ Section 52 (b)

¹¹⁴ Section 65(7)

¹¹⁵ CEDAW General Comment 19

¹¹⁶ CEDAW concluding observations 2012 para 24 (a)

more than men, and incidence of sexual assault. Despite enactment of the Domestic Violence Act,¹¹⁷ gender-based violence is still a reality in Zimbabwe. Greater protection for women in general is provided by addressing domestic violence in the Constitution as a right and not just as part of the national objectives for the State to establish measures for the prevention of domestic violence.¹¹⁸ The Constitution provides the right to “freedom from all forms of violence from public or private sources.”¹¹⁹ This clause is strength as domestic violence is recognised as a violation of a human right to physical and psychological integrity. However, the state could have benefited from an explicit prohibition of gender-based violence. Application of the rights in section 4 is on the state and individuals. This is important particularly for gender violence which is usually perpetrated by individuals

3.7 Marriage Rights

Marriage rights are encompassed in s 78 setting the age of marriage at 18, and providing for the right to marry and found a family as a constitutional guarantee. Setting the legal age of marriage at 18 protects girl children at large; they may be able to stay in school longer and the early child-bearing may be averted. Marriage does not automatically impart to the young girls knowledge about sex and sexually transmitted infections and HIV/AIDS.¹²⁰ Combating early marriage indirectly works in reducing complications during pregnancy and birth, thus protecting them from the health risks associated with. Consent is stated as a requirement for marriage by section 78 (2) which states, “No person may be compelled to enter into marriage against their will.” Consent to marriage is important in light of the cultural practices of *nhaka*¹²¹, *ngozi*, *chimutsamaphihwa*¹²² where consent of the woman concerned was not regarded as important. Where the wife is infertile someone to bear children for her husband has to be provided from her family. This is done without the consent of the woman and the

¹¹⁷ Domestic Violence Act 2006

¹¹⁸ Section 25 (b)

¹¹⁹ Section 52(a)

¹²⁰ WHO 10 facts about women’s health www.who.int/gender

¹²¹ Levirate marriage, where the husband dies, the woman is inherited by a brother or nephew of her deceased husband’s. This means that the woman has no control over her sexuality and to whom she is married. Rather she is married to the family and not necessarily to one person. Seemingly, the payment of *lobola* makes her a possession. For a discussion of Levirate marriages- WLSA: Widowhood, inheritance laws and customs in Southern Africa 42-44

¹²² Surrogate wife for the husband whose first wife is deceased. The surrogate may be the deceased’s sister or niece. Again the surrogate has no say in the matter. S Chirawu ‘Till death do us part: Marriage , HIV/AIDS and the law in Zimbabwe’

replacement.¹²³ In the case of levirate marriages, the risk of HIV infection is exacerbated to all concerned, a precarious position for the women concerned as they have no say in the matter that potentially compromises their health. Customary Marriages Act outlaws pledging of girls for purposes of marriage¹²⁴ but this practice is still occurring in some tribes¹²⁵ making this clause even more necessary. Section 78 complies with ACHPR Protocol which prohibits forced marriages and specifies the minimum age of marriage at 18 years.¹²⁶ Section 78 (3) prohibits same-sex marriages, a matter of contention for women who may want to marry persons of the same sex. They are therefore not protected by the marriage regimes as their unions are explicitly prohibited in the Constitution, which is discrimination on the basis of sexual orientation, which however the Constitution does not proscribe.

CEDAW obliges state parties to make registration of marriages compulsory,¹²⁷ but the Constitution is silent on the registration of marriages. This does not do much in the way of eradicating some of the problems faced by women owing to the different marriage regimes; in particular the rights of women in unregistered customary unions, which unions are not marriages for purposes of the Matrimonial Causes Act.¹²⁸ Only in matters that affect welfare of the children upon termination of the unregistered customary union are they considered, that is for custody, maintenance, succession.¹²⁹ The Constitution does not mention rights upon dissolution of marriage whereas CEDAW¹³⁰ obliges all state parties to ensure the rights of men and women during subsistence of the marriage and at dissolution, as does ACHPR Protocol¹³¹. The Zambia Draft Constitution follows this guideline, giving equal rights to men and women in the marriage, during the marriage, and upon dissolution.¹³² Failure to mention equal rights upon dissolution of marriage is prejudicial to women, who according to the Matrimonial Causes Act have to be citizens of Zimbabwe who have resided in Zimbabwe for at least two years for eligibility to institute divorce action, a requirement which is not applicable to men. ACHPR Protocol protects the rights of married women to retain their nationality and maiden

¹²³ WLSA: Lobola; Its Implications for women's reproductive rights in Botswana, Lesotho, Mozambique, Swaziland, Zambia and Zimbabwe 55

¹²⁴ Customary Marriage Act

¹²⁵ S Chirawu 'Till death do us part: Marriage, HIV/AIDS and the law in Zimbabwe' 6

¹²⁶ Article 6 (a) and (b)

¹²⁷ Article 16 (2)

¹²⁸ *Mandava v Chasweka* Harare High Court Case 48/2008 unreported

¹²⁹ Customary Marriages Act Section 3(5)

¹³⁰ Article 16 (1) (c)

¹³¹ Article 6 and 7

¹³² S51 (4) Zambia Constitution

surname¹³³ and this could have been incorporated in the Constitution, allowing the spouses to decide which surname to use after marriage and not necessarily have to adopt the husband's.

CEDAW enjoins state parties to grant the same rights and responsibilities as parents to women and men, irrespective of their marital status, in matters relating to their children.¹³⁴ Section 60 (3) Zimbabwean Constitution states, “Parents and guardians of minor children have the right to determine, in accordance with their beliefs, the moral and religious upbringing of their children, provided they do not prejudice the rights to which their children are entitled under this Constitution, including their rights to education, health, safety and welfare.” By this section, women are granted the same rights and responsibilities for their children in the moral and religious upbringing of children. This reciprocal duty could have been extended to education and health of children.

Section 71 protects the general property rights of every person in Zimbabwe to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, individually or in association with others. Every person means women and men are included; women therefore have a constitutional right to own property. The Zambia Constitution states, “Women and men have an equal right to inherit, have access to, own, use, administer and control land and other property.”¹³⁵ CEDAW encourages the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of the property. The Constitution could have been strengthened by specific mention of the property rights of women, particularly during the subsistence of marriage and upon dissolution, as well as the right to inherit.

3.8 Rights of Women

An elaboration of some of the rights is provided in the Constitution. The rights of women are elaborated in Section 80 (1); “Every woman has full and equal dignity with men and this includes equal opportunities in political, economic and social activities.” Women are offered the same recognition with men, ensuring that all the rights in the Constitution are applicable to them on an equal basis with men. Section 80 (2) provides, “Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how these rights are to be exercised.” This is an important area because it grants women the

¹³³ Article 6 (g)

¹³⁴ CEDAW 16 (1) (d)

¹³⁵ S51(3)

same rights as men where children are concerned. Under the previous dispensation, the father, following a patriarchal system, was the guardian of the children. Section 80(3) states, “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.” This will encompass such practices as virginity testing which still exists in some parts of the country.¹³⁶ Another practice which exists and which violates inter alia the health rights of women is enlarging/lengthening the labia minora through pulling and stretching with or without herbs or the use of herbs smoked as cigarettes.¹³⁷ ACHPR Protocol states that harmful practices include 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.¹³⁸ It is submitted that women may do so willingly for various reasons, but where this is imposed on young girls incapable of making the choice themselves, it is a violation of their physical integrity and the right to make decisions about their own bodies.

3.9. Best Practices

The Zimbabwean and Zambian Constitutions are compared to establish the best practices and to further an understanding of women’s rights in the new Constitution of Zimbabwe. The comparison revealed that both Constitutions include women’s rights in general, and an analysis of this provisions revealed lessons to be learnt where the new Constitution fails to adequately provide for the rights of women. The Zimbabwean Constitution does not include pregnancy as a prohibited ground for discrimination, and would benefit from the Zambian Constitution inclusion of that clause. The Zambian Constitution clearly states that women and men have equal rights in the marriage, during the marriage and at the dissolution of the marriage, which is not provided for in the Zimbabwean Constitution. The Zambian Constitution offers the best inclusion on adding the dependant rights of health such as housing, adequate food, clean and safe water, social security and protection and education as a part of the right to health. The Zambia Constitution also has a section on the further rights of women, providing the right to reproductive health, including family planning and access to related information and education.¹³⁹ It also provides for women the right to acquire, change, or retain their nationality, including the right to change the nationality of their children if this is in the best interests of

¹³⁶ S Chirawu ‘Till death do us part: Marriage , HIV/AIDS and the law in Zimbabwe’ 20-21

¹³⁷ S Chirawu ‘Till death do us part: Marriage , HIV/AIDS and the law in Zimbabwe’ 22

¹³⁸ ACHPR Article 1 (f)

¹³⁹ S52 (a) Zambia

the children.¹⁴⁰ These are rights absent in the Zimbabwean Constitution, which would strengthen the rights of women.

3.10 Conclusion

This chapter examined constitutional provisions on the rights of women in health, education and marriage. It provided a brief comparative analysis of the Zimbabwean and Zambian Constitutions using ACHPR protocol and CEDAW as an analytical framework with a view to establishing best practice and strengthening constitutional rights of women in the said areas. The Zimbabwean Constitution provides a platform for fulfilling and protecting women's rights. The Constitution provides for equality and non-discrimination for women in all areas. It also prohibits direct and indirect discrimination, providing women an equal opportunity in all spheres. The rights to education and health are enshrined in the Constitution and marriage rights are enriched by setting the legal marriage age at 18 and requiring consent in all marriages. The Constitution establishes institutional mechanisms for the advancement of women's rights in the Gender Commission and Human Rights Commission. It also establishes the Constitutional Court, which is the highest court adjudicating on infringements of rights enshrined in the Bill of Rights. Posited against the previous constitution, the new Constitution is a positive achievement for the rights of women as it sets a platform for legal reform where there has been discrimination, enshrining this principle in the Bill of Rights; offering better protection for women in the discussed areas.

The chapter also highlights gaps in the Zimbabwean constitution as pertaining to gender equality provisions in the areas of health, education and marriage, providing a foundation for changes to the constitutional text. The right to education is not free and compulsory, which may still be a barrier for women in education. The right to reproductive health is enshrined but falls short of providing specifically for maternal health and related matters. Pregnancy is not listed as a ground for prohibition of discrimination. Marriage rights apply only to persons of opposite sexes, thus prejudicing same-sex unions. There is no requirement for registration of marriages which is a problem in a country with three marriage regimes. This analysis reveals that the Constitution has made positive inroads in entrenching some of the rights of women but there is room for more change. This may take the form of domestication of international law

¹⁴⁰ S52 (b)

treaties on the rights of women to cater for instances where the Constitution is not exhaustive, or legislature sensitive to the rights of women under international law

Chapter Four: Law Reform in the context of international law applicable to Zimbabwe

4.1 Introduction

Having adopted a national constitution which recognises the rights of women in education, health, marriage and family relations, the national laws must reflect this position in line with the international human rights obligations the state is party to. This chapter is divided into three sections. The first section focuses on the relationship between international law and customary law as provided for in the new Constitution. It analyses the implication of adopting dualism in domestication of international treaties and monism for customary international law. Given this position, the chapter will examine the significance thereof for continuing legal reform in Zimbabwe.

The second section discusses this role in the legislation that the Parliament should enact in line with international human rights standards, and giving effect to constitutional provisions, chief amongst which is equality legislation to ensure observance of equality in all spheres. The right to education for everyone, including women, is enshrined in the constitution; education laws should recognise the right and have as a bedrock principle of equality and non-discrimination. The Constitution entrenches the right to health, which should be reflected in the laws. In the areas affecting women the Constitution does not elaborate on such as reproductive rights, legislation should regulate easy access to obstetrics care, pre-natal examinations, and skilled midwives, medical facilities offering family planning services and dealing with emergencies as part of the right to reproductive health. Legislation must be enacted to cater for the property rights of women, and particularly at the dissolution of marriage whether through death, divorce or other cause. Review of the existing legislation governing property rights of women is necessary to comply with the Constitution. This section focuses on the role of Parliament in enacting legislation that complies with international law standards, giving guidelines.

The third section examines the implications of the position of international law on the judiciary as a crucial organ in the domestic sphere and its role in giving effect to international standards for women's rights. It recognises that the judiciary may face challenges where an international provision is not part of the municipal law (where incorporation has not taken place) and that provision is not included in the Constitution. The judiciary is urged to take an active role in interpreting women's rights according to international law standards whenever possible.

The last section focuses on implementation of the constitutional rights. It briefly discusses some of the political and economic challenges that serve as obstacles to the effective implementation of women's rights. The inadequate representation of women in politics and limited participation in economic development are cited as factors affecting effective implementation of women's rights. Lack of awareness on the part of the victim, the cultural environment in which these rights operate, and a lack of resources are some of the factors discussed under this section. Overcoming these challenges requires the participation of more women in politics and parliament to advance women's rights and gender equality. Adequate funding is important for the institutions advancing women's rights as well as for victims of rights abuses. Education of the populace is important in understanding women's constitutional rights as well as gender equality.

4.2 A. International law

Zimbabwe is party to various international and regional human rights treaties upholding the rights of women. In becoming party to international human rights treaties, Zimbabwe undertakes to be bound by the ensuing obligations and duties to respect, protect and fulfil human rights, in the particular context, the rights of women in the areas of education, health and marriage. The rule¹⁴¹ of *pacta sunt servanda* mandates Zimbabwe to comply with its treaty obligations in good faith. Further, a state may not invoke provisions of its internal law as justification for its failure to perform a treaty.¹⁴² The duty to respect means that the state must not interfere directly or indirectly with or curtail the enjoyment of human rights.¹⁴³ The duty to protect means the state must protect individuals and groups against human rights abuses by third parties. The obligation to fulfil means positive action by the state to facilitate the enjoyment of rights.¹⁴⁴ It requires legislative, administrative, budgetary, judicial and other measures toward the full realisation of rights. International law recognises the reality that states may not be able to realise all of the rights immediately owing to financial and resource constraints. As such, states are enjoined to 'progressively realise' certain rights. Immediate

¹⁴¹ Article 26 Vienna Convention on the law of treaties

¹⁴² Article 27 Vienna Convention on the law of treaties

¹⁴³ The Maastricht Guidelines on Violations of Economic Social and Cultural Rights seek to clarify violations in socio economic rights and suggest 3 facets of states obligations which the international human rights community has adopted para 6

¹⁴⁴ As above

obligations to respect and promote these rights still exist, including the rights to respect and promote the rights as well as ensure non-discrimination.¹⁴⁵

4.2.1 Customary International Law

Customary international law is defined as the practices that states follow from a sense of legal obligation. International legal custom should be general practice and should be regarded as law.¹⁴⁶ The position of customary international law in the new Constitution is expressly clarified. Customary international law is directly applicable in Zimbabwean Courts; however, where there is a clash between the Constitution or municipal law, the laws of Zimbabwe take precedence. S326 (1) “Customary international law is part of the law of Zimbabwe unless it is inconsistent with this Constitution or an Act of Parliament.” This changes the position under the 1979 Constitution which did not directly address the legal position of customary international law,¹⁴⁷ with the effect that women can benefit from customary international law within the domestic arena. Customary international law should be included in the national legal system.¹⁴⁸

As long as international human rights treaties do not enjoy universal ratification, treaties will be an incomplete means of attaining the goal of universal respect for human rights. Customary international law fills this gap, as it binds those states not party to a treaty-provided that the relevant norm has become a rule of customary international law.

Zimbabwe’s new Constitution is similar to the South African provision on customary international law which reads, “Customary International Law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”¹⁴⁹ As Dugard notes, “...the constitutionalization of this rule gives it additional weight.”¹⁵⁰ The judiciary will have to be guided by customary international law in interpreting women’s rights. In *S v Makwanyane*¹⁵¹

¹⁴⁵ ESCR General Comment 3 at para 1

¹⁴⁶ J. Dugard *International Law: A South African Perspective* (2011) 4th edition Juta, Cape Town

¹⁴⁷ Section 89 of the Constitution retained Roman-Dutch law where customary law is directly applicable in domestic law, therefore customary international law was deemed (albeit with uncertainty) a part of Zimbabwean law but with no specifications of its status where the former clashed with the latter. This was discussed in *Barker McComarc (Pty) (Ltd) v Government of Kenya* 1983 4 SA 803 (ZSC) which held that international law is part of the law of Zimbabwe, but did not specifically mention customary international law. However, the court clarified that automatic incorporation of customary international law is subject to parliamentary supervision as parliament can exclude its direct operation by statute.

¹⁴⁸ F Viljoen *International Human Rights Law in Africa* (2012) 2nd edition Oxford University Press, Oxford

¹⁴⁹ Section 232 South Africa Constitution

¹⁵⁰ J Dugard ‘Kaleidoscope: International Law and the South African Constitution’ 1 *EJIL* (1997) 77-92

¹⁵¹ 1995 (3) SA 391 (CC)

the court, in deciding upon the constitutionality of the death penalty, acknowledged that customary international law provides a framework against which the bill of rights can be evaluated and understood.¹⁵² Zimbabwe is bound by customary international law even where the state has not ratified international agreements, or incorporated treaty provisions into the national law, and this is beneficial for women's rights. The Constitution also enjoins the judiciary to, "adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation inconsistent with that law." Women's rights benefit from the position of automatic application of customary law.

4.2.2 International treaties

Two main schools of thought exist in the relationship between international law and municipal law; monism and dualism. This section discusses monism, dualism and the harmonisation theory in the application of international law in municipal law.

Monism dictates that "...international and municipal law, far from being essentially different, must be regarded as manifestations of a single conception of law."¹⁵³ International law and domestic law are parts of a single legal system and international law has automatic application on the domestic plane.

Dualism maintains that "...international and municipal law differ so radically in the matter of subjects of the law, its sources and its substance, that a rule of international law can never per se become part of the law of the land; it must be made so by the express or implied authority of the state. Thus conceived, the dualistic view is merely a manifestation of the traditional positivistic attitude."¹⁵⁴ International law and domestic law are separate and international law can only be applied on the domestic sphere when it has been incorporated into domestic law.

The harmonisation theory is a result of an investigation into how international law standards can be used to reinforce the effectiveness of the domestic system. Where there is conflict between international and municipal law, the judge must apply his jurisdictional rules.¹⁵⁵The

¹⁵² Per Chaskalson *S v Makwanyane*

¹⁵³ E Lauterpacht

¹⁵⁴ E Lauterpacht

¹⁵⁵ I A Shearer *Starke's International Law* (1994) 65-66 "To resolve conflicts of obligation by adhering to a theory that asserts the automatic superiority of the one legal order over the other does not reflect the reality, on the one hand, of legal rules that compel national judges to follow the law commanded by national authority, and on the other hand the leeways of judicial choice opens to judges in some circumstance to apply

operation of this approach can be seen in the idea that customary international law is to apply directly in the municipal system, in so far as it does not conflict with Acts of Parliament, thus achieving harmony. The judge should aim for harmonising rules which have different points of formal origin but overlap in operation.¹⁵⁶ This theory is a result of practical application of international law rules by the courts, moving away from the rigid construct of monism and dualism. It is submitted that, the question on international law as it relates to women's rights in the new Constitution should not focus on the rigid constructs of monism and dualism, but should focus on actual practice the courts will approach as they have a pivotal role in giving effect to international rights in the domestic field.

Zimbabwe maintained¹⁵⁷ the dualistic position with regard to treaties. Section 327 deals with international conventions, treaties and agreements with section 327(1) defining 'international organisation' and 'international treaty.' Section 327 (2) provides, "An international treaty which has been concluded or executed by the President or under the President's authority-

- a) does not bind Zimbabwe unless it has been incorporated into the law through an Act of Parliament
- b) does not form part of the law unless it has been incorporated into the law through an Act of Parliament.

This section confers treaty conclusion and execution powers on the President. However, ratified treaties do not (i) bind Zimbabwe and (ii) is not part of Zimbabwean law unless incorporated through a statute. Thus, even though Zimbabwe is seemingly in agreement on the international plane, it remains 'unbound' until the Parliament incorporates the treaty provisions into national law. Only where the treaty is incorporated into domestic law can individuals base their human rights claims on international law. Where the treaty is incorporated into domestic law through an Act of Parliament, it becomes part of statute law and is under the Constitution. The 'treaty' is on the same level as domestic legislation and rules applicable thereto apply.¹⁵⁸

It follows that the national legislature may at any time pass a law amending or repealing a rule of international origin. True, in this case the State, if it applies the national law in lieu

international law as part of national law. What should rather be the approach is to harmonise wherever possible the two competing legal prescriptions so as to avoid a conflict of obligations.

¹⁵⁶ O Tshosa *National Law and International Human Rights Law: Cases of Botswana, Namibia and Zimbabwe* (2001) 12

¹⁵⁷ S111B (b) Any treaty, agreement or convention shall not part of the law of Zimbabwe unless incorporated into the law by or under an Act of Parliament.

¹⁵⁸ A Cassese *International Law* 2nd edition (2005) 222

of the international rule, incurs international responsibility for a breach of international law. The fact remains, however, that the international rule is set aside by a simple act of parliament.

It is observed, however that this does not mean states systematically disregard international norms, but rather comply with them. States simply do not wish to tie their hands formally, at the constitutional or legislative level.¹⁵⁹ In response to treaties not being automatically domesticated in the national law, CEDAW Committee notes that, “...short of such full domestication, the relevance of the Convention and its direct application has not yet been established in Zimbabwe.”¹⁶⁰ The Committee recommends Zimbabwe to place high priority on full incorporation of CEDAW into the domestic system to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women.¹⁶¹ It is therefore imperative for the rights of women that CEDAW and related international treaties be domesticated into the national law.

Zimbabwe is still able to ratify treaties and avoid implementation in the municipal law. This state of affairs can hardly be an omission where awareness of international law standards is increasing through advocacy and training, as well as increased university courses on the subject. The new Constitution was an opportunity to include direct application of international law. Instead of just relying on the Constitution for legal reform, direct invocation of international standards would ensure the legislation and policies conform and offer the best protection for the rights of women. Zimbabwe still maintains some reluctance to fully give prominence to international law. Full application of international law would read like, “The generally recognised principles and norms of international law and the international treaties of the state shall constitute part of its legal system. If an international treaty of the state establishes other rules than those stipulated by the law, the rules of international treaties shall apply.”¹⁶² The wording enhances the application of ‘all’ international law and does not make a demarcation between treaty and customary law. Self-executing and non-self executing treaties are treated alike, making it possible for individuals to use all forms of international law within the domestic legal system. It also takes into account the evolutionary nature of international law, encompassing current and future treaty obligations. International treaty norms are granted

¹⁵⁹ A Cassese *International Law* 2nd edition 2005 236

¹⁶⁰ CEDAW Committee Concluding Observations on Zimbabwe 2012 para 11

¹⁶¹ CEDAW Committee Para 11

¹⁶² See for example Constitution of Russia 1993 15(4)

higher status than contrary domestic laws. The clause does not confer higher normative status to customary international law nor to international treaties over the Constitution.¹⁶³

A drawback of the position under the new Constitution where the legislature is yet to incorporate human rights treaty norms into domestic law is the reliance on the political environment. Where the government is not fully committed to the protection of women's rights, the municipal human rights mechanisms may not effectively protect such. If the legislation is not reformed to fully comply with international standards, the national mechanisms may not be able to offer redress for rights violations. All related branches should therefore work in tandem for the realisation of women's rights and if one branch, for example the judiciary, is corrupt redress may not be available in the domestic courts.

S 327 (3) an agreement which is not an international treaty but which-

- a) has been concluded or executed by the President or under the President's authority with one or more foreign organisations or entities; and
- b) imposes fiscal obligations on Zimbabwe

does not bind Zimbabwe until it has been approved by Parliament.

S327 (4) An Act of Parliament may provide that subsections (2) and (3)-

- a) do not apply to any particular international treaty or agreement or to any such class of treaties or agreements; or
- b) apply with modifications in relations to any particular international treaty or agreement or to any class of such treaties or agreements.

An Act of Parliament may exclude certain international treaties or groups of treaties from the requirement in subsection 327(2). An Act of Parliament may also provide that subsection 327 (2) applies with modification in respect of certain treaties or groups of treaties. Human rights treaties can, if the Parliament so wishes be included in this provision through a statute, thus directly applying the rights of women to municipal law.

S327 (5) Parliament may by resolution declare that any particular international treaty or class of international treaties does not require approval under subsection (2), but such a resolution does not apply to treaties whose application or operation requires-

¹⁶³ See generally G.M Dalinenko *American Journal of International Law* Vol 88: 451-470

- a) the withdrawal or appropriation of funds from the Consolidated Revenue Fund; or
- b) any modification of the law of Zimbabwe

It is within the power of Parliament to resolve that particular international treaties need not go through the approval procedure in section 327 (2). This provision makes it possible for human rights treaties to be directly applicable to the domestic laws where Parliament passes such resolution, which includes women's rights.

The position of international law in Zimbabwe need not paint a bleak picture for women's rights. The available mechanisms can work to ensure these rights are realised. Ministry of Women Affairs Gender and Community Development can show commitment to its mandate by engaging in advocacy, legislative reform, and a general awareness for women's rights to bring domestic laws in line with international standards. The National Gender Policy 2013-2017 recognises the strides made in constitutional protections and takes the opportunity to aim for eradication of gender discrimination and inequalities in all spheres of life and development. As shall be discussed in part B and C below, the legislature and the judiciary are empowered to realise the rights of women as is required by international law.

s327 (6) When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with any international convention, treaty or agreement which is binding on Zimbabwe, in preference to an alternative interpretation inconsistent with that convention, treaty or agreement. The judiciary is constitutionally obliged to look at international law in interpreting and developing domestic law and has a crucial role in rights realisation as shall be discussed in part C below.

4.3 B. The Role of Parliament

Apart from the role of specifically entrenching Acts of Parliament relating to international treaties, the Zimbabwean legislature has the task of implementing constitutional rights to reflect the new position, in the way of development and implementation of laws giving effect to those rights. It should also provide remedies for violations of such laws. Positive laws are already in effect such as the Domestic Violence Act prohibiting even forced marriages, Criminal Law Code penalising the pledging of anyone below the age of 18 into marriage, Customary Marriages Act Section 11 children's rights. However this is not enough to protect the rights of women. The existing laws need to be reviewed and new laws be enacted in line

with the Constitution. Parliament can exercise its legislative function¹⁶⁴ to ensure that legislation is consistent with international human rights standards.¹⁶⁵ The legislature has an important role in the implementation of international human rights standards. The Bill of Rights uses the language of international treaties in providing for human rights, including those rights pertaining to women. Given that position, some of the international rights of women are protected, and women are in a better position than under the previous dispensation.

4.3.1 Equality Legislation

CEDAW Article 2 provides that States agree to pursue by all appropriate means a policy of eliminating discrimination against women, undertaking to take concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework. ACHPR Protocol Article 2 (1) mandates state parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. The Protocol calls for the enactment and effective implementation of appropriate legislative, or regulatory measures, including those prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general well-being of women.¹⁶⁶ State parties should integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.¹⁶⁷ State parties are enjoined to take corrective and positive action in those areas where discrimination against women in law and in fact, continue to exist.¹⁶⁸ The Constitution provides a framework for the legislature to use in complying with international law standards. These obligations can be met in a law addressing gender equality.

4.3.2 Legal Reform in Education

The right to education is a positive right. “International human rights law lays down a three-fold set of criteria where by girls should have an equal right to education, equal right in education and their equal rights should be protected and promoted through education.”¹⁶⁹ States must ensure a legal framework for this right, ensuring that women are recognised as equal

¹⁶⁴ Parliament has the power to amend the Constitution and make laws s17 Constitution

¹⁶⁵ L Chenwi ‘Using international law to promote constitutional human rights.’ Law Democracy and Development vol 15 2011 323 Parliament can assess new and existing legislation for compliance with international human rights standards

¹⁶⁶ ACHPR protocol 2(1) (b)

¹⁶⁷ ACHPR protocol 2 (1) (c)

¹⁶⁸ ACHPR Protocol 2 (1))d)

¹⁶⁹ Tomaveski 2005

beneficiaries in education. The right to education for everyone, including women, is enshrined in the constitution; education laws should recognise the right and have as a bedrock principle of equality and non-discrimination. To increase access to education for girls, the goal of gender parity is to be included in legislation. Schools should promote gender sensitivity with education policies addressing the customs which mandate girls to bear the brunt of household chores. The state must take measures to educate the community on the importance of education for girls. Policies on monitoring school drop-out, documenting reasons to adopt strategies for minimising such are an essential component in achieving equality in education.

The Education Act must follow the 4A's¹⁷⁰; Availability- education must be free and there must be a sufficient number of educational institutions and trained teachers, as well as educational material. Quality teaching can be achieved by improving the working conditions of teachers, competence by enhancing training and the number of teachers in schools. Working conditions of teachers should be reviewed. Presently schools offer incentives to teachers as motivation to do the jobs they are employed to because of poor remuneration. This prejudices parents who already have to pay for their children's schooling. Sometimes lessons that should have been covered during school hours as part of the curriculum are held after hours as 'extra lessons'¹⁷¹ for which parents have to make private payments. The laws must ensure that there is a gender balance in teaching staff, which must be trained to understand a rights-based approach to education.

Accessibility- institutions and programmes must be accessible to all without discrimination. Sufficient schools, within safe and reasonable distances must be made available, including building bridges and roads connecting the schools with communities. Girl's enrolment has to be taken into account when considering the number of schools to be built. Adequate infrastructure includes toilets separate for boys and girls.

Accessibility in terms of cost must be addressed in legislation, with a view to making primary education free. Education Act should unequivocally state that primary education is compulsory. The state should provide funding for this and develop a plan to make education free. Women not only face discrimination as a barrier to education, but cost is another hindrance. Other hidden costs in education include items like uniforms stationery textbooks and food. Policies

¹⁷⁰ 4As criteria set according to the International Covenant on Economic Social and Cultural Rights which Zimbabwe is party to.

¹⁷¹ Another phenomenon which has taken schools is the 'incentive' which school bodies devised to motivate and retain teaching staff, but which is also an extra burden on the parents.

should be put in place to subsidise costs and provide food for students. Secondary, technical and vocational education is to be made generally available and accessible, and progressively made free of charge. Higher education must be made equally accessible by all, and also progressively made free of charge. Basic or fundamental education must be made available for those who have not yet satisfied their basic learning needs as stated in the International Covenant on Economic Social and Cultural Rights.

Acceptability- content must be relevant and acceptable to all. Textbooks and curricula should move away from stereotypes, rather encouraging girls to take on challenging subjects and careers. The curriculum must change to cater for the needs of girls and must address educational issues from a rights-based perspective. Access to maths and science subjects must increase for girls. Adaptability- education must be flexible and able to respond to the needs of students in different social and cultural settings including those with learning disabilities and gifted children. Reproductive health and sex education should be tailored to meet the gender specific needs for girls. Education laws should set the platform for capacity building in schools, raising awareness on gender relations and the need for gender equality.

The right to be free from abuse and sexual harassment in school must be reflected in the national laws.¹⁷²The new legislation in line with the Constitution must address violence against girls in school, to address the issue of dropouts. It must mandate schools to enact policies that address violence in schools. Out of school jobs for teachers may expose children particularly girls to sexual abuse. In rural schools out of school jobs are a common phenomenon still. The education policies should address such to safeguard the rights of girl children.

On the basis on equality and non-discrimination, provision is to be made in the education act for pregnant girls; not only for re-admission after giving birth, but allowing girls to stay in school as far as possible before giving birth. Policy of dismissing girls because of pregnancy violates the Constitutional right to education and discriminates against girls.

4.3.3 Legal Reform in Health

The Constitution enshrines the right to have access to basic health-care, including reproductive health services. In fulfilling the right to health, the state must adopt measures to ensure the full

¹⁷² ACHPR Article 12 (1) (c)

realisation of this right. States must adopt national health plans; ensure the provision of health care, including immunisation programmes; realise equal access to the underlying determinants of health, including safe food, water, and sanitation; ensure the provision of sexual and reproductive health services and the proper training of doctors and staff.¹⁷³ The laws should ensure adequate medical facilities within reasonable distances are available for women to reduce maternal mortality.

As health is largely dependent upon other rights for its realisation, the state needs to ensure that these rights are catered for. These rights include, but are not limited to sanitation, safe drinking water and shelter. Cities continue to be riddled by water problems.¹⁷⁴ Zimbabwe Association of Doctors for Human Rights (ZADHR) urges the government of Zimbabwe to prioritise the right to healthcare and the ancillary rights to food and water.¹⁷⁵ The state therefore has an obligation to provide access to the corollary rights of sanitation, safe drinking water, and shelter, or the right of access to health-care will be rendered meaningless.

The right to health should encompass health care information, access to healthcare, properly stocked medical facilities with equipment and supplies, and legislation should reflect this position. Health facilities should be accessible with medical staff complement sufficient for the needs of the community.¹⁷⁶ There must be trained medical personnel. The country suffered significant brain drain in the difficult years. It is imperative that the employment sector is revised and remuneration as well as working conditions. The Public Health Act must pay special attention to maternal healthcare to reduce maternal mortality.

The Constitution does not elaborate on the reproductive rights of women. Legislation could address this by specifically enacting a law on reproductive health. Legislation should regulate easy access to obstetrics care, pre-natal examinations, and skilled midwives, medical facilities offering family planning services and dealing with emergencies as part of the right to

¹⁷³ General Comment 14

¹⁷⁴ Alex Bell 'Zim towns run dry as residents call for urgent action'

<http://www.swradioafrica.com/2013/08/30/zim-towns-run-dry-as-residents-call-for-urgent-action>

¹⁷⁵ Zimbabwe Association of Doctors for Human Rights 'A call to the new government of Zimbabwe to prioritize the right to healthcare and clean water' September 12 2013

<http://www.kubatana.net/html/archive/hr/130912zadhr.asp?sector=HR> accessed 17 September 2013

¹⁷⁶ Haki Zetu Right to Health

reproductive health. The laws should address the main¹⁷⁷ as well as indirect¹⁷⁸ causes of maternal mortality. Abortion should also be addressed as part of the right to access reproductive health services. HIV positive women may particularly be faced with a dilemma where culture dictates that failing to breastfeed is not normal in our culture.¹⁷⁹ It is submitted that the right to healthcare for women should include their right not to breastfeed or breastfeed as fits their circumstances.

Health laws should make cervical screening accessible to women from all walks of life. Currently the United Nations Population Fund (UNFPA) partnered with public health institutions to make screening available to women.¹⁸⁰ Routine testing and screening should form an important part of the public health system in a country where 30% of the women in the country are affected by cervical cancer. Treatment should also be prioritised as it would be in vain to test and not treat. Strategies should be adequately resourced for them to be successful. The ZADHR further encourages the government to prioritize cervical cancer through increased access to information and cancer screening centers.¹⁸¹

ACHPR Article 5 deals with the elimination of harmful practices. In particular, article 5(b) provides that state parties prohibit, through legislative measures backed by sanctions, all forms of female genital mutilation, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them. State parties are enjoined to protect women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.¹⁸² Labia elongation,¹⁸³ practised in Zimbabwe, is arguably among such practices that should be considered in legislation.

Women's rights protocol prohibits violence against women in all its forms, including sexual harassment and calls on state parties to take appropriate and effective measures to (a) enact and

¹⁷⁷ Haemorrhage, sepsis, high blood pressure, pre-eclampsia and eclampsia, obstructed labour, unsafe abortion, Malaria, anaemia and HIV/AIDS during pregnancy

¹⁷⁸ Lack of information about the main causes and risk factors, weak health systems that cannot respond to emergencies, discrimination against women, cultural and social barriers, lack of family planning knowledge or access

¹⁷⁹ Phyllis Mbanje 'Mothers Should not feel guilty about breastfeeding' August 5 2013

<http://www.thestandard.co.zw/2013/08/25/mothers-should-not-feel-guilty-about-not-breastfeeding>

¹⁸⁰ Nunurai Jena 'Women embrace cervical cancer screening' September 1 2013

<http://www.thestandard.co.zw/2013/09/01/women-embrace-cervical-cancer-screening>

¹⁸¹ ZADHR <http://www.kubatana.net/html/archive/hr/130912zadhr.asp?sector=HR>

¹⁸² ACHPR Protocol 5 (d)

¹⁸³ B. Makoni. <http://muzvarebettymakoni.org/labia-elongation-is-female-genital-mutilation-type-4-harmful-to-girls> however, this is not the focus of this discussion.

enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.¹⁸⁴ It goes further to mandate state parties to adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.¹⁸⁵ The CEDAW Committee suggests enacting anti-discrimination legislation that provides effective protection against violence and discrimination against all groups of women.¹⁸⁶ Violence against women is a negative right in the sense that there is a prohibition on this act in the Constitution. The laws should recognise that violence against women is violation of human rights according to CEDAW and the Constitution. Violence has serious health consequences for women, including injuries, unwanted pregnancies, sexually transmitted infections, depression and chronic diseases.¹⁸⁷ The Domestic Violence Act needs to be reviewed and judiciary mete out stiffer penalties as per the Act. State is urged to increase the number of shelters and the capacity of existing shelters for abused women, and provision should be made in legislation for their funding thus this has to be incorporated in legislation.¹⁸⁸

4.3.4 Marriage Laws

Property rights in marriage have to be reviewed, particularly in matters of non-monetary contribution to the household. The registered owner of immovable property, which may be the matrimonial home, has real rights in such property, leaving the spouse vulnerable. Legislation must be enacted to cater for the property rights of women, and particularly at the dissolution of marriage whether through death, divorce or other cause. Review of the Matrimonial Causes Act or enactment of a new law altogether which governs the marriage regimes is necessary to comply with the Constitution. Customary Marriage Act should be reviewed where it creates the need for an adult woman to have a guardian. Legal age for marriage has to be changed in the existing laws to be set at 18 as stipulated in the Constitution. Legislation must also be enacted to provide for women inheritance.

4.4 C. The role of the judiciary in interpreting women's rights.

The new constitution makes positive strides in realising the rights provided under international law. Constitutional protection may be the most appropriate tool for fulfilling treaty obligations,

¹⁸⁴ ACHPR Article 2(a)

¹⁸⁵ ACHPR 2 (b)

¹⁸⁶ CEDAW concluding observations para 24 (f)

¹⁸⁷ WHO 10 facts on women's health www.who.int/gender

¹⁸⁸ CEDAW Concluding report 2012

as a constitution will govern all state action.¹⁸⁹ Where the rights require incorporation into domestic law, inclusion of women's rights in the Constitution, as part of a justiciable Bill of Rights provides accountability for obligations Zimbabwe has already undertaken pursuant to ratification of human rights treaties.¹⁹⁰ The Constitution can never exhaust the human rights applicable to women, owing to the evolutionary nature of international law. These internationally recognised rights should still form part of Zimbabwean legal system even where they are not expressly included in the Constitution. Where ratified domestic treaties have not been incorporated into municipal law, the judiciary can apply international law in interpretation. International law can be used to interpret the constitutional and legislative provisions of the state because the Constitution specifically entrenches the principle, obliging the court to take into account international law and all treaties and conventions to which Zimbabwe is a party.¹⁹¹

The new Constitution empowers the judiciary to protect human rights, including the rights of women. S 326 (2) "When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation inconsistent with that law." A similar provision is found relating to international treaties, conventions and agreements in Section 327 (6). Principles guiding the judiciary on the application of international law include the clause, "Members of the judiciary must take reasonable steps to maintain and enhance their professional knowledge, skills and personal qualities, and in particular must keep themselves abreast of developments in domestic and international law."¹⁹² This is constitutional recognition that the judiciary has a crucial role and should therefore keep abreast of developments in international law. States have an obligation to provide effective remedies to victims of human rights violations, "...whether ratified or not, all these international and regional instruments embody human rights norms which are broadly accepted by the entire international community. They should and must be incorporated into domestic jurisprudence by judicial interpretation."¹⁹³ The judiciary has an important role in the realisation of the rights of women through their mandate of interpretation.

¹⁸⁹ ZLHR "Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protections" 14

¹⁹⁰ ZLHR "Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protections" 15

¹⁹¹ Section 46 (1) (c)

¹⁹² Constitution of Zimbabwe 2013 S166 (7)

¹⁹³ A.R Gubbay "The Protection and Enforcement of Fundamental Human Rights: The Zimbabwean Experience" Human Rights Quarterly vol.19 no2 1997 p233

As Gubbay notes, “...The main role of international human rights law, in the form of case law and other interpretation by supervisory bodies, should be to aide national courts to interpret constitutionally recognised rights.”¹⁹⁴ The role of international law in interpretation relates to the interpretation of constitutional provisions, statutory interpretation and the development of the common and customary law.¹⁹⁵ The ideal position would be to have all the women’s rights provided for in the Constitution. International law requires that certain aspects of socio-economic rights be immediately implemented¹⁹⁶ enabling judges to avoid difficult policy considerations. “After rights are put into a constitution, the judiciary begins to develop tests and standards that will clarify the precise meaning of the various protections.”¹⁹⁷ The judiciary may use the text of the constitution, looking to international law for guidance where precision is lacking. The increasing number of rights covered in national bills of rights is a clear indication of the impact of international human rights law.¹⁹⁸ This indirect domestication makes it less likely that international human rights treaties need to be directly applied, but further reinforces the importance of treaties and case law, resolutions etc associated with them for interpretation of the constitutional provisions. However, where rights are not exhausted in the Constitution, judicial interpretation can take a positive stance, therefore this need not be the end to the rights of women that are not included in the Constitution.

Although the Constitutional Court is the main domestic medium for adjudicating on Constitutional disputes, the Constitution does not offer direct application of international law. If an international treaty norm is not included in the Constitution, and has not been incorporated into municipal law through a statute, the Constitutional Court may not rule on questions of international law with regard to such a norm. This may be a challenge to the interpretation role of the courts and will require a legislature willing to incorporate the international treaties specific to women’s rights such as CEDAW to ensure that individuals can base their claims on such instruments in the domestic courts. Women are unlikely to benefit from international law provisions where there are neither included in the Constitution nor domesticated through an Act of Parliament.

¹⁹⁴ M Killander and Adjolahoun above at 3

¹⁹⁵ M Killander and Adjolahoun above at 15

¹⁹⁶ ICESCR General Comment 9 para 4

¹⁹⁷ Zimbabwe Lawyers for Human Rights et al “Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protections”

¹⁹⁸ M. Killander and H. Adjolahoun “International law and domestic human rights litigation in Africa: An Introduction” 14 in M Killander (ed) *International law and domestic rights litigation in Africa*. 2010

The judiciary has previously relied on international law to expand the existing scope of constitutional rights and to interpret national human rights law. In *Rattigan v Chief Immigration Officer*¹⁹⁹ the court relied on foreign law to interpret the meaning of freedom of movement. In *Nyambirai v National Social Security Authority and Others*²⁰⁰ the court took into account Zimbabwe's obligations under the ICESCR to set up a social security scheme, concluding that the obligation was fulfilled by passing the National Social Security Act.²⁰¹ Legal advocates have also shown willingness to invoke international law in their arguments. The case of *Kachingwe and ors v Minister of Home Affairs and Commissioner of Police*, Final Appeal Judgment, Decision No Sc 145 /04 (2004) ZWSC 145 considered the issue(s) of (i) whether the ACHPR and the International Covenant on Civil and Political rights were part of the domestic law of Zimbabwe, and (ii) whether the court could rely on international human rights instruments for guidance in interpreting the prohibition of inhuman and degrading treatment under the 1979 Zimbabwe Constitution. The court held that the contention that the African Charter and ICCPR were, in principle, part of the domestic law of Zimbabwe in all probability was the correct position, but the determination of that point of law was not necessary for the determination of the case.²⁰² This case strengthened the view that human rights treaties ratified before 1993 were arguably part of Zimbabwean law. To the extent that the judiciary can use international law, the opportunity should be utilised fully to give effect and meaning to the rights of women.

Judicial activism plays a big role in applying international human rights norms, but this has to be in a permissive environment. Gubbay notes that binding domestic law to international norms would prohibit a politicised court from interpreting rights in a way that deprives it of all meaning.²⁰³ "A justiciable declaration of rights can protect and enforce fundamental rights only if the highest court in the land is powerful enough, and independent enough, to proscribe all attempted infringements thereof."²⁰⁴ This is in recognition that a justiciable bill of rights does not guarantee the respect and enjoyment of human rights per se. The judiciary should be empowered and independent to give effect to the rights of women. Another problem that could

¹⁹⁹ 1995 (2) SA 182

²⁰⁰ 1996 (1) SA 636 (ZSC)

²⁰¹ Per Gubbay C.J (as he then was) at 644

²⁰² Para 62-64

²⁰³ Zimbabwe Lawyers for Human Rights 'Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protections.

²⁰⁴ A. R Gubbay 'The Protection and enforcement of fundamental human rights: The Zimbabwean experience.' 19 Human Rights Quarterly 1997 227-254

affect rights realisation is as Gubbay²⁰⁵ notes that where a constitution may be amended without difficulty, the provisions of the declaration of rights remain at risk of being diluted and eroded. Constitutional amendment of a provision in the Declaration of rights requires two thirds majority vote in the National Assembly and two thirds majority vote in the Senate as well as a majority vote in a national referendum. This will protect the rights of women entrenched in the Constitution.

4.5. D Implementation

The implementation of Constitutional rights as they will be manifested in legislation and policy will require adequate financial resources; therefore, legislation must contain implementation mechanisms as well as discuss funding for these actions. Legal awareness is an essential component of implementation of the laws. Legislation should provide mechanisms and machinery for such projects. In the past, non-governmental entities have made it their task to educate the public on their rights and their effect. The different Ministries should coordinate their efforts, with the help of the Gender Commission, to educate women on their rights and the procedures as well as remedies where these rights are violated.

4.5.1 Political and economic obstacles to the effective implementation of women's rights.

The constitutional, legislative and judicial interventions discussed in this chapter are aimed at realising the rights of women. Political and economic challenges to implementation of these rights are discussed in this section, as are ways of overcoming them.

4.5.1 (a) Lack of political will and drive toward women's rights.

A women's rights agenda is not served by ratification of instruments like CEDAW without domestication and implementation. Women in politics and legislative positions could push the agenda for domestication of international human rights instruments; however, they have limited participation in the political environment. Women are underrepresented in local and national government structures, resultantly women's voices are not heard. The new constitution provides equal rights in the workplace and a 50-50 representation in all public offices, which includes cabinet. These provisions ring hollow where there is no will to implement them.

²⁰⁵ A.R Gubbay at 251. The new Constitution requires a minimum of 2/3 majority in the National Assembly and 2/3 majority in the Senate as well as a national referendum to amend any provision in Chapter 4 S328 2013 Constitution. He further notes that the Parliament amends provisions of the Declaration of Rights whenever it is of the opinion that the decision of the Supreme Court in respect thereto is wrong.

Presently, 11.5% of the cabinet is female.²⁰⁶ The President explained this gender bias as being caused by a lack of qualifying women, citing their lack of education.²⁰⁷ If this assertion is true, then it supports the need to increase access of education for women. A lack of women in politics reinforces the marginalisation of women's issues.²⁰⁸ They have limited participation in structures and institutions governing their lives, and this includes structures deciding on their specific rights as women.

4.5.1 (b) Economic challenges

Zimbabwean women have significantly limited access to control and ownership of economic resources.²⁰⁹ Economic participation of women in Zimbabwe is limited. The 2012 ZIMSTAT report²¹⁰ indicates that participation of males in labour force was higher than females. There was also a wide gap between the percentage of women in paid employment and that of men. Women constituted a greater proportion of the unemployed population. This lack of occupation is due in part to lack of skills, as more females than men are unskilled. Women still dominate in areas such as agriculture, fishing and forestry. Suffice it to say that most of the work done by women in agriculture is for subsistence purposes. They also dominate in private households, human health and social work. However, they are remarkably fewer in mining, electricity, steam and air condition supply. This information indicates that gender stereotypes and gendered roles still exist in Zimbabwe; consequently women are not empowered to make decisions. Zimbabwe is not exempt from the impact of the global economic crisis, significantly affecting resources available for implementation of women's rights.

4.5.1 (c) Lack of resources

Advocacy of women's rights is rendered meaningless by lack of resources. Fewer women than men hold positions in organisations that have the capability of funding programs directed at implementation of women's rights. Women's ministry is conspicuously under resourced in the

²⁰⁶ 3 women out of 26 cabinet ministers, 3 out of 13 ministers of state, 5 out of 24 deputy ministers. 60 women were elected to the National Assembly in accordance with the new Constitution through proportional representation.

²⁰⁷ "This time we did proportional representation but there were just not enough women. Women are few in universities. Its no longer necessary to do affirmative action. Its free for all." Zimbabwe Independent 'Outrage over cabinet gender bias' 20 September 2013

²⁰⁸ L. VeneKlasen 'Women's Legal Rights Organizing and Political Participation in Africa' in M. Schuler and S. Kadrigamar-Rajasingham *Legal Literacy: A Tool for Women's Empowerment* (1992) 253

²⁰⁹ UNFPA Zimbabwe 'Promoting gender equality and protection of women's rights' <http://countryoffice.unfpa.org/zimbabwe/2010/11/20/2892/gender/> (accessed 24 March 2014)

²¹⁰ Zimbabwe National Statistics Agency 'Women and Men in Zimbabwe' report 2012

2014 National Budget. The Ministry of Women Affairs, Gender and Community Development was allocated US\$10,804.000, which is less than 1% of the National Budget. Lack of financial resources results in understaffing and a limited number of activities. This is an undesirable position for women because the ministry is supposed to be the machinery that drives the national agenda for gender equality and women empowerment. There has been a gap in the institutions supporting women's rights, but the new Constitution establishes a Gender Commission and a Human Rights Commission. These institutions are necessary institutions to support constitutional rights and subsequent laws and require funding to be operational and effective; in light of the budget allocated to the women's ministry, there is not much hope for sufficient funding of the Gender Commission.

4.5.1 (d) Victims' lack of awareness

Women have less access to vital information. Some are not privy to such information because of illiteracy or semi-literacy. Where they are not aware of the existence of rights, the women cannot claim them, and will not know they have been violated. Women, despite knowing their rights, may fail to access their rights due to a lack of empowerment and confidence to assert their rights. Financial constraints may hinder access to legal remedies.

4.5.1 (e) Cultural environment.

Patriarchal attitudes exclude women from social, economic and political processes. Males are assumed to take the lead politically and economically. Cultural constraints resulting from patriarchal traditions still impact on women's ability to participate in different activities. For example attending meetings outside working hours where the woman is still regarded as the primary caregiver in the home restricts her participation. Societal perceptions dictate that women have to work twice as hard to break into male dominated professions and sectors. Societal constraints disempower women economically and politically. Once they are disempowered they cannot effectively implement their rights. Cultural factors which tie women to their spouse's family may hinder pursuance of legal rights in cases of domestic violence.²¹¹

4.5.2 Overcoming challenges to implementation.

²¹¹ UNFPA Zimbabwe 'Promoting gender equality and protection of women's rights'
<http://countryoffice.unfpa.org/zimbabwe/2010/11/20/2892/gender/> (accessed 24 March 2014)

The constitutional entrenchment of equal rights and non-discrimination is the foundation for the various ways of countering the problems above. Entrenching non-discrimination across the board facilitates the participation of women in all spheres. It must be noted that this only facilitates but does not guarantee their participation as can be seen in the gender bias in cabinet. The lack of quotas in government and parliamentary positions means there is no provision for affirmative action to realise gender equality in politics. Even with the introduction of a gender-sensitive Constitution, women are still under represented in politics. Where the justification is a lack of qualified women, then women should show their capabilities within their spheres of influence, and make their mark in making decisions that impact women's rights. The patriarchal nature²¹² of Zimbabwean society is a contributory factor to the small number of women in politics, the change of which requires a change in mindsets and identity. Education of all actors involved-men and women is a step towards that change. A political climate characterised by violence and intimidation is one of the reasons that discourages the participation of women. Overcoming this challenge is dependent on conscious decisions to end violence and intimidation by all concerned- the men and women of Zimbabwe. Women by all means need to participate in political decision-making to advance their cause, and they should grab the opportunity with both hands.

The National Budget undeniably needs to take into account the work to be done in achieving gender equality. Resources should be allocated to the relevant women's ministry and institutions supporting gender equality such as the Gender Commission and Human Rights Commission. The government should be committed to gender equality, and it is women leaders themselves, with the support of women on the ground, who can effect change. These institutions should work effectively to effect change in law and policy to reflect gender equality.

Expanding women's access to education is only a step towards economic development and eliminating economic dependency. Skills training should not follow gender stereotypes but should be aimed at gender equality. Such an approach will enable women to take up traditionally male-dominated positions, pierce the job-market, and even become entrepreneurs in their own right, creating employment opportunities for others. Women should have a presence in fields such as construction, mining, water and sanitation, electricity amongst other

²¹² R Dube 'Ratification, Rhetoric and rare implementation of international and regional standards on women's right to participate in decision-making in Zimbabwe: If adopted, will the new Constitution change anything' cites example that the multiplicity of roles women take leaves them little energy to participate in politics.

areas to achieve gender equality and drive the women's rights agenda. Women should take up research and statistics to ensure a steady stream of reliable collection on data in areas that affect the economy and women's rights.²¹³ Economic development is a challenge in a struggling economy where production has largely decreased and established companies are downsizing or closing operations owing to a decrease in disposable income. Women need to be empowered to contribute meaningfully to the realisation of their rights using their economic resources.

A change in cultural attitude requires conscientisation of men and women alike in gender equality and women's rights. The Constitution should be widely disseminated to the people in simplified forms giving practical examples. Awareness of rights is important but could be marred by lack of financial resources; therefore legal aid should be accessible to victims of rights violation.

4.6 Conclusion

The first section discussed the position of international law in the Zimbabwe legal system. It analysed the relationship between the domestic law and international law from a constitutional perspective, having regard to constitutional provisions dealing with international law. It discussed the relationship between customary international law and domestic law, concluding that customary international law is part of Zimbabwean law to the extent that it not in conflict with domestic law. In this regard, the state has adopted a monist approach to this section of international law, ensuring that individuals may institute claims based directly on international customary law. It discussed the relationship between international treaty law and domestic law, finding that a dualist stance is taken; treaties have to be incorporated into the domestic laws through legislation for Zimbabwe to be bound by the treaty provisions and for the provisions to form part of Zimbabwean law. The Constitution entrenches some international human rights of women in the Bill of Rights granting them constitutional status and protection, which is a favourable position for women. However they would benefit more from direct application of international norms contained in international treaties. It remains to be seen whether the Parliament will regard any of the treaties protecting women's rights to be falling under s327 (4) and s327 (5)

²¹³ J Hendra 'Challenges and achievements in the implementation of the Millenium Development Goals for women and girls-the road ahead' 4 December 2013 <http://www.unwomen.org/lo/news/stories/2013/12/john-hendra-closing-remarks-at-stakeholders-forum> (accessed 24 March 2014)

The second section in the chapter observes that the Constitution provides a foundation for implementation of women's rights in Zimbabwe and sets the stage for legal reform in education, health and marriage. Parliament has the opportunity to assess (and amend where necessary) existing legislation against the constitution, and against international human rights standards. It also has the mandate to enact new legislation which complies with the Constitution and international human rights norms, providing remedies for violation of the legislation. The right to access to basic health-care services is protected as well as access to reproductive health services. Legislation can specifically be enacted protecting reproductive rights and specifically address maternal health care and abortion. The Domestic Violence Act should be reviewed, with the understanding that violence against women is a violation of the Constitution. Health laws should make provision for cervical cancer screening to reduce the number of fatalities. Marriage laws are to be reviewed in so far as they require a guardian for a woman in customary marriages. The Matrimonial Causes Act should be reviewed or a new Act enacted altogether. Education laws should be changed to comply with the Constitution, explicitly addressing gender parity and equality in all matters educational. The implementation of Constitutional rights is dependent on its implementation in legislation. As such, legislation should provide implementation mechanisms, and make provision for funding for projects relating to implementation, which includes awareness of the Constitutional rights.

The third section concludes that the position of international law can be strengthened through the judiciary, which can take an active and important role to ensure compliance with international standards on the rights of women. The Constitution empowers the judiciary to interpret constitutional provisions with regard to customary international law as well as international treaty law. With respect to treaty law, however, the state has to be bound by that treaty, a position which rests with the legislature. It is concluded that full realisation of the rights of women will require participation of Parliament in giving effect to the rights of women as provided by the Constitution and under international law.

The fourth section identifies political and economic factors affecting the effective implementation of women's rights. There is limited participation of women in politics and economic development. This lack of involvement is compounded by cultural factors under which the patriarchal tradition excludes women from participation in economic and political processes. The result is disempowerment of women, who then cannot assert their rights. Lack of awareness of rights is a hindrance to their realisation, as it lack of resources to pursue legal remedies. The women's Ministry and institutions supporting gender equality will not achieve

their full potential without funding. It is recommended that women engage more in politics and economics, taking on roles previously dominated by men and asserting their rights in the process. Constitutional awareness of women's rights and conscientisation is also suggested.

Chapter 5: Recommendations and Conclusions

5.1 Introduction

The study's inquiry into the question whether the 2013 Zimbabwean Constitution addresses the shortcomings of the Lancaster House Constitution in addressing the rights of women in education, health and marriage revealed the positive changes brought by constitutional reform in the 2013 Constitution. It also revealed the shortcomings of the Constitution in protecting the said rights of women. That having been said it discussed international law protection of the rights of women under the new Constitution, and the opportunities for law reform thereof. This chapter presents conclusions drawn from the study and offers recommendations for changes that can be made to the Constitution for effective protection of women's rights.

5.2 Summary and Conclusions

The study began with an analysis of women's rights to education, health and marriage in the 1979 Zimbabwe Constitution. The Constitution has no equality clause and allows discrimination in matters of personal law. It revealed that there are no provisions for education rights in the 1979 Constitution, and the laws arising from this position do not protect women's entitlement and capacity to pursue educational opportunities to the full extent of their intellectual capabilities. Women are left vulnerable and are exposed to a myriad of problems, including cervical cancer and maternal mortality owing to lack of health rights. Marriage laws discriminate against women with the customary law not recognising women's ownership of property and treating them as perpetual minors. International law norms are ignored and the Constitution protects discriminatory cultural practices. An inadequate framework for women's rights existed in education, health and marriage, a situation which could be remedied by constitutional entrenchment of equality and non-discrimination principles, as well as of the rights to education and health.

Chapter Three analysed the 2013 Constitution, examining the rights entrenched in the Constitution and briefly comparing them to the Zambian 2012 draft Constitution. It used international and regional law instruments, CEDAW and ACHPR Protocol as guiding norms on legal protection of women's rights in constitutions. This process, aimed at analysing the extent to which the new constitution addressed the shortcomings of the old, exposed the strengths and weaknesses of the new constitution. This chapter identified the strengths as entrenchment of the rights to health and education, while setting the minimum marriage age at

18. However, weaknesses also surfaced in that the right to education is not free and compulsory, which may still prejudice women. Reproductive health is entrenched in the Constitution but there is no provision on maternal health care. Pregnancy is not listed as a ground of discrimination. There is no requirement for registration of marriages and the Constitution prohibits same sex-unions. The chapter also discussed the Gender Commission and the Human Rights Commissions, institutions established by the Constitution that protect women's rights.

The Constitution protects these socio-economic rights generally, but fails to make further provisions for women in the discussed areas. This could be interpreted as a reflection of lack of commitment to women's rights. However, it could also be interpreted as a cautious approach in avoiding alienating women's rights from all other rights. It is submitted that some of the rights of women are specific to them, such as maternal health care, and as such would require explicit provisions.

Chapter Four began with an analysis of the position of international law under the new Constitution. It found that international treaty law is not automatically part of the law of Zimbabwe and needs to be incorporated by an Act of Parliament to become part of domestic law. This position denies women's rights direct operation of CEDAW in the domestic arena, a disadvantage where the Constitution is not exhaustive on the rights of women. Customary international law is offered direct application where it is not in conflict with the Constitution or an Act of Parliament. The chapter contends that women would benefit from direct incorporation of international law standards but in the absence of such provision, the legislature is still obligated to use international human rights standards as a minimum reference point in legislating on the rights of women. The chapter observes that it is not strict adherence to the traditional theories of international law that gives effects to international law rights in the domestic sphere, but rather the actual practice of courts in the domestic field.

The chapter then focused on the opportunities that exist for law reform, providing areas that need to be focused on to realise the rights of women as they are entrenched in the Constitution. The legislature could enact a law on gender equality, expanding on the equality provision. Education laws should recognise the principle of equality and non-discrimination; ensuring girls are given an equal opportunity in education. The Constitution does not overtly enshrine maternal health care rights. Legislation can address this as part of the right to health to protect maternal health care. Reproductive health rights can include cervical and breast cancer screening to protect women's rights. Marriage rights can benefit from a review of the existing

legislation, outlawing the requirement for a legal guardian for women in customary marriages. They can also benefit from a review of legislation governing property dissolution upon death or divorce

The chapter discussed the role of the judiciary in giving meaning to the constitutional rights of women and submits that the position of international law can be strengthened through the judiciary, which can take an active and important role to ensure compliance with international standards on the rights of women. The Constitution empowers the judiciary to interpret constitutional provisions with regard to customary international law as well as international treaty law. With respect to treaty law, however, the state has to be bound by that treaty, a position which rests with the legislature. Therefore the branches of government have to work together for the realisation of women's rights under the new Constitution.

Further, the chapter briefly discusses political and economic challenges to implementation of women's rights. It gives recommendations on overcoming these challenges to implementation.

5.3 Recommendations.

The Constitutional analysis revealed positive changes on women's rights as it sets the platform for legal reform of women's rights in Zimbabwe. It also revealed weaknesses which can be addressed in the following to comply with international law standards:

The Constitution could be strengthened by including the principle of gender equality in the preamble, showing the nation's commitment to gender equality. Pregnancy is to be included as a ground for prohibition against discrimination

5.3.1 Reinforcing women's rights in education

By stating that basic education must be free, compulsory and available to all, the cost barrier can be overcome, recognising that cost is one factor which perpetuates discrimination against women in education. It also makes compulsory basic education a constitutional guarantee, protecting girls from early-dropout for various cultural and social reasons. The right to education would be further strengthened by a clause giving importance to the development of schools with adequate facilities at all levels, recognising that some of the discriminatory factors in women's education are lack of adequate facilities such as separate ablution blocks for girls. The state can affirm commitment to gender parity by explicitly including a clause affording girls the same educational opportunities as boys to obtain education at all levels

5.3.2 Reinforcing women's rights in health

The Constitution lacks an obligation on all health facilities to provide free health services for pregnant women. Given the history of the health care system in previous years, women would have benefited from a clause specific to their maternal, childhood and reproductive health care. Abortion rights must be included as part of the right to reproductive health. Women would benefit from an explicit prohibition of gender-based violence.

The Constitution would protect the rights of women more by including housing, adequate food, clean and safe water, social security and protection, education, as part of the right to health. This is recognition that the right to access to health-care is largely dependent on the realisation of the stated rights.

5.3.3 Reinforcing women's rights in marriage

The constitution does not proscribe discrimination on the basis of sexual orientation as a ground for prohibition and goes further to prohibit same-sex marriages. The Constitution should therefore protect the rights of same-sex partnerships, and outlaw discrimination on the basis of sexual orientation.

The constitution should make registration of marriages compulsory, and should ensure the equal rights of men and women during subsistence of the marriage and at dissolution

The Constitution should accord same rights and responsibilities as parents to women and men, irrespective of their marital status, in matters relating to their children

There should be specific mention of the property rights of women, particularly during the subsistence of marriage and upon dissolution, as well as the right to inherit.

Women's right to acquire, change, or retain their nationality, including the right to change the nationality of their children if this is in the best interests of the children should be enshrined in the Constitution

5.3.4 International Law

The Constitution must provide for the automatic domestication of international and regional instruments and treaties signed by the state that respect, protect and promote the rights of women. International Human Rights Law is more comprehensive than the Constitution and women will benefit from instruments protecting their rights.

Alternatively, Parliament may include international human rights treaties as falling under section 327 (4) and (5) which does away with the need for incorporation by an Act to be applicable in the domestic sphere.

The legislature still has a duty to uphold international law even where such domestication is not yet in place, and the legislation should reflect a commitment to international human rights standards.

The study concludes that the role of the judiciary cannot be trivialised. The judiciary will give meaning to constitutional rights against the backdrop of international law to give full meaning to the rights of women. Recognising that society is not static, unenumerated constitutional rights will require attention as and when they materialise, and the judiciary is challenged to adopt an integrative human rights approach in rendering justice to the aggrieved.²¹⁴ In the quest for justice for women, the judiciary has an important role, responding to social dynamics in adjudicating on socio-economic rights of women. Against this background, the judiciary has to exercise activism, and should be alert to issues concerning women's rights to ensure compliance with international human rights standards.

5.4 The role of Civil Society in the enhancement of the implementation of the rights of women

Civil society helps promotes legal reform and played an important role in the Constitution-making process. The Group of 20²¹⁵ and the Women's Coalition²¹⁶ participated by carrying out their own public consultations resulting in a Position Paper of women's expectations in the new Constitution. They worked on drafting language for the rights of women in the Constitution, resulting in a Constitution that includes women's rights. The future role of civil society in implementing the Constitutional rights of women cannot be overstated. They can help

²¹⁴ D Olowu *Constitutional Interpretation of Unenumerated Rights: Circumventing the Exclusion of Socio-Economic Rights in African Jurisdictions* (2012) 53 Integrative human rights approach in D Olowu An Integrative rights-based approach to human development in Africa

²¹⁵ Comprised of civil society representatives, academics, and representatives of the Women's Parliamentary Caucus and the Constitution Management Committee of Parliament (COPAC) advancing the constitutional agenda for women in Zimbabwe. Some of the NGOs focusing on rights of women; Musasa -working towards ending gender-based violence, and offers temporary shelter for abused women, Women in Law in Southern Africa Research and Education Trust-focuses on legal aid and support, advocacy, action research, institutional development and legal rights education and training, Legal Resources Foundation- improving access to justice by educating the people, offering legal services, providing legal civic information, promoting law and policy reform and citizen participation in governance, monitoring human rights abuses, training service providers in the justice system and public sector, Zimbabwe Women's Resource Centre and Network-information based organization promoting women's rights and empowerment by advocating for social and economic justice

²¹⁶ A network of women rights activists and women's organizations with national structures. It's a focal point for activism on women's rights.

incorporate constitutional and international human rights law into legislation, policy, transform and establish relevant institutional mechanisms, and facilitate public debate. More importantly they mainstream women's rights, connecting gender equality with the people. They take women's rights from an international standpoint and bring them within the domestic sphere. Below are some of the ways this role can be achieved, enhancing the implementation of women's rights.

Civil society has a role to play in preparing shadow reports to CEDAW Committee and should effectively use this platform to indicate state action and highlight shortcomings on women's rights. ZWLA produced a shadow report on behalf of Zimbabwe Civil Society highlighting areas of concern in the implementation or lack thereof, of CEDAW provisions. This served well as the Committee refers and largely makes use of this report in its 2012 concluding observations²¹⁷ on Zimbabwe. They also have a role in implementing recommendations of the Committee to ensure full realisation of women's rights.

Civil society use litigation to enhance human rights protection. Zimbabwe Women Lawyers Association (ZWLA) aims at enabling women and children assert their rights by accessing relevant legal resources. Some of their activities include lobbying and advocacy, provision of legal aid services and legal education. In a landmark ruling, on the case of *Mapingure v State*²¹⁸ brought by ZWLA, the Zimbabwe Supreme Court held that the Zimbabwean government is liable for failing to provide a rape survivor with emergency contraception and ordered the government to pay damages. This has changed the tone of women's sexual and reproductive rights, and is a clear indication the judiciary is willing to affirm women's rights, as well as a message that the government may not violate women's rights with impunity. Such interventions by the civil society are important for the realisation of women's rights nationally as well as internationally.

The existing organisations focusing on women's rights are to be lauded for advancing women's cause. There is no wholesale approach to advancing the implementation of women's rights;

²¹⁷ Concluding Observations on Zimbabwe CEDAW Committee

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZWE-CO-2-5.pdf>

²¹⁸ Judgment handed down Tuesday 25 March 2014, Zimbabwe Supreme Court. The facts of the matter are that Mildred Mapingure was raped in 2006 and sought emergency contraception within 72 hours of the rape to ensure that she did not become pregnant resulting from the rape. She failed to access emergency contraception owing to police delays and lack of information on the means of access to the contraception. She sought a lawful termination upon discovering she was pregnant but was unable to obtain a court order authorizing the termination of pregnancy under the Termination of Pregnancy Act in time and eventually gave birth. She sued the government in 2007, seeking maintenance for her baby from the State.

strategies specific to the nation need to be adopted. A challenge is that women still lack self-confidence and support to exercise their rights in the face of social and family pressures.²¹⁹ The clause allowing discrimination in areas of personal matter was only recently abolished, and this requires a new mindset altogether for die-hard traditionalists, and for women whose identity is tied to such traditional beliefs. It requires more engagement with the community, not as passive educators, but as part of the community, which requires greater participation of community leaders. Challenging cultural and patriarchal attitudes requires more political involvement, using the platform to effect positive change.

The Constitution has set the platform for realisation of women's rights. Civil Society should make a move towards law and development for the economic improvement of women. There should be a move away from development policies and projects that focus on small-scale income generating activities to full participation in the nation's economy. Women's rights can be asserted in previously male-dominated areas using development strategies that ensure women are part of these fields.

Civil society needs to adopt a multi-disciplinary approach to the realisation of women's rights. Engaging with different disciplines from, for example, law, social sciences, economics, health, education, agriculture, as a collaborative effort to implementing human rights will bring stronger strategies in advancing women's rights. Such a multi-disciplinary approach is crucial for discussions and research on issues such as the change in society from accepting polygamy to the prevalence of 'small houses' in the face of HIV/AIDS and the relationship to rights. A multi-disciplinary approach also helps in the formulation of policy making and policy reform, linking them to gender equality.

Building on the foundation laid by the Constitution, research could now move from a generalised approach to addressing specific needs of different groups of women, for instance, needs of rural women and disability rights of women. Caution should be had to the danger of further marginalising the different groups, rather aiming at integrating these findings as part of the bigger picture of women's rights agenda.

A clear, rights-based agenda should be followed. Media campaigns are still couched in soft terms regarding human rights. For example, an advertisement advising women they can visit a

²¹⁹ L VeneKlasen 'Women's Legal Rights Organizing and Political Participation in Africa' in M. Schuler and S. Kadirgamar-Rajasingham *Legal Literacy: A Tool for Women's Empowerment* (1992) 249

New Start Centre of the nearest hospital for post-rape treatment does not mention that it is a right to receive such treatment. A woman who does not get the necessary treatment may fail to challenge the violation of her right because she is unaware of the existence of the right. Awareness of these rights is the next step, and educating the layperson on how the law works for them. This legal rights training also includes disseminating the Constitution in simplified formats and in a language one understands- Shona, Ndebele, Nambya, Tonga. It also includes eliminating use of legalese in legal education of the community. In all these programs and initiatives, it is imperative to involve men and boys, to conscientise them on the rights of women.

Bibliography

Basic Texts

Convention on the Elimination of All forms of Discrimination against Women, 1979.

Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa,

International Convention on Economic Social and Cultural Rights

Committee on the Elimination of Discrimination Against Women

General Recommendation 19 violence against women

General Recommendation 21 equality in marriage and family relations

General Recommendation 24 women and health

Committee on Economic Social and Cultural Rights

General Recommendation 14 the highest attainable standard of health

General Recommendation 16 equal right of men and women to the enjoyment of all economic, social and cultural rights

Constitution of South Africa 1996

Constitution of Zimbabwe 1979

Constitution of Zimbabwe 2013

Constitution of Zambia 2012 Draft

Zimbabwe Statutes

Administration Amendment Act 6 of 1997

Criminal Law Codification and Reform Act Chapter 9:23

Customary Marriage Act 5.07

Education Act Chapter 25:04 1987

Legal Age of Majority Act 15 of 1982 now section 15 of the General Laws Amendment Act Chapter 8:07

Marriage Act Chapter 5.11

Matrimonial Causes Act Chapter 5: 13 1985

Termination of Pregnancy Act Chapter 15: 10

Books

Agosin, M. *Women, Gender and Human Rights: A Global Perspective* (2001) Rutgers University Press, New Brunswick

An Na'im, A.A. (ed) *Human Rights under African Constitutions: realising the promise for Ourselves* (2003) Pennsylvania University Press, Philadelphia

Baines, B. and Rubio-Marin, R. (eds) *The Gender of Constitutional Jurisprudence* (2005) Cambridge University Press, Cambridge

Banda, F. *Women, Law and Human Rights: An African Perspective* (2005) Hart, Oxford

Cassese, A *International Law*, (2005) 2nd edition, Oxford University Press, New York

Dugard, J. *International Law: A South African Perspective* (2011) 4th edition Juta, Cape Town

Greschner, D. "Can Constitutions Be for Women Too?" in Dawn. H Currie and B.D MacLean (eds) *Rethinking The Administration of Justice* (1992) Fernwood Publishing, Halifax

Hanzi, R. *Zimbabwe's Status of Compliance with Human Rights Instruments* (2011) Zimbabwe Lawyers for Human Rights, Harare

Izumi, K. *The Land and Property Rights of Women and Orphans in the context of HIV and*

Aids (2006)

Killander, M. *International law and domestic rights litigation in Africa* 2010 Pretoria

University Law Press, Pretoria

Mvududu, S.C (ed) *Lobola: Its Implications for women's reproductive*

rights in Botswana, Lesotho, Mozambique, Swaziland, Zambia and Zimbabwe (2002)

Women and Law in Southern Africa Research Trust, Harare

Olowu, D. *Constitutional Interpretation of Unenumerated Rights: Circumventing the*

Exclusion of Socio-Economic Rights in African Jurisdictions (2012)

Shearer, I. A. *Starkes's International Law*, (1994) 11th edition, Butterworths, London

Tshosa. O *National Law and International Human Rights Law: Cases of Botswana,*

Namibia and Zimbabwe (2001) Ashgate/ Dartmouth, Aldershot

vanWyk, D. et al (eds) *Rights and Constitutionalism: The New South African Legal Order*

(1995) Juta, Kenwyn

VeneKlasen. L. 'Women's Legal Rights Organizing and Political Participation in Africa' in

M. Schuler and S. Kadirgamar-Rajasingham *Legal Literacy: A Tool for Women's*

Empowerment (1992) UNIFEM WIDBOOKS: New York

Viljoen *International Human Rights Law in Africa* (2012) 2nd edition Oxford University

Press, Oxford

Cases

Barker McComarc (Pty) (Ltd) v Government of Kenya 1983 4 SA 803 (ZSC)

Jengwa v Jengwa 1999 (2) ZLR 121

Kachingwe and ors v Minister of Home Affairs and Commissioner of Police, Final Appeal Judgment, Decision No Sc 145 /04 (2004) ZWSC 145

Magaya v Magaya 1999 (1) ZLR 100

Mandava v Chasweka Harare High Court Case 48/2008 unreported

Mandizvidza v Chaduka&Ors 1999 (2) ZLR 375

Mapingure v State 2014

*Matibire v Kumire*2000 (1) ZLR 492

*Nyambirai v National Social Security Authority and Others*1996 (1) SA 636 (ZSC)

Rattigan v Chief Immigration Officer 1994 (2) ZLR 54

S v Grootboom 2000 (1) SA 46 (CC)

S v Makwanyane 1995 (3) SA (CC)

Journal Articles

Adelman, S. “Constitutionalism, Pluralism and Democracy in Africa” (1998) 42 *Journal of Legal Pluralism* 73

Barnett, B *et al* ‘Impact of Family planning in Zimbabwe and Mali: Findings from the Women’s Studies Project in Mali and Zimbabwe’ *African Journal of Reproductive Health*vol 3 no1 1999 27-38

Bigge, D.M. and von Briesen, A. ‘Conflict in the Zimbabwean Courts: *Magaya v Magaya*’ 13 *Harvard Human Rights Journal* 289 (2000)

Chenwi, L ‘Using international law to promote constitutional human rights.’ *Law Democracy and Development*vol 15 (2011) 323

Dalinenko, G.M ‘The New Russian Constitution and International Law’*American Journal of International Law* (1994)Vol 88: 451-470

Gordon, R. "Education policy and gender in Zimbabwe" *Gender and Education*(1994), vol. 6 Issue 2, p131

Hove, I. et al Prevalence and Associated Factors for Non-Utilisation of Post Natal Care Services: Population-based study in Kuwadzana Peri-Urban Area, Zvimba District of Mashonaland West Province, *Zimbabwe African Journal of Reproductive Health* volume 3 no 2 (1999) 25-32

Kevany, S. *et al* Socio-economic status and health care utilization in rural Zimbabwe: findings from Project Accept (HPTN 043) *Journal of Public Health in Africa* (2012) volume 3 e13

Matope, N. Gender Discrimination in Educational Personnel: A Case study of Gweru Urban District Secondary Schools, Zimbabwe *US-China Education Review* B7 P689-696 (2012)

Swainson, N. "Knowledge and Power: the design and implementation of gender policies in education in Malawi, Tanzania and Zimbabwe" *International Journal of Educational Development* 20 (2000) 49-64

van der Leest, K. Engendering Constitutions: Gender Equality Provisions in Selected Constitutions

Other Sources

National Strategic Plan for the education of girls, orphans and other vulnerable children 2005-2010

Policy number 35, 1999 Ministry of Education Sport and Culture, Zimbabwe

Policy number 77, Ministry of Education, Sport, Art and Culture, Zimbabwe

Millennium Development Goals 2000 United Nations

Zimbabwe Demographic and Health Survey (ZDHS) 2010-2011

Zimbabwe National Statistics Agency Women and Men in Zimbabwe 2012 Report

Inter-Parliamentary Union and UNDP. 'The Process of Engendering a New Constitution for Rwanda' 20-22 June 2001, Kigali

Web-based sources

BBC News. “Zimbabwe Cholera Deaths Top 3000.” 2009. Available from <http://news.bbc.co.uk/2/hi/africa/7855666.stm> (accessed 03 June 2013)

BBC News “Zimbabwe’s David Coltart: 18% pass rate is progress”<http://www.bbc.co.uk/news/world-africa-21375351> 7 February 2013 (accessed 15 April 2013)

Bell, A. ‘Zimbabwe towns run dry as residents call for urgent action’
<http://www.swradioafrica.com/2013/08/30/zim-towns-run-dry-as-residents-call-for-urgent-action>

Chirimuuta, P. “Gender and the Zimbabwe Education Policy: Empowerment or perpetuation of gender imbalances?” Quiet Mountain

Coltart, D. “How is Zimbabwe improving its national education system and what are the results”<http://www.davidcoltart.com/2012/01/how-is-zimbabwe-improving-its-national-education-system-and-what-are-the-results/> 7 FEBRUARY 2013 Speech given at the Education World Forum, London (accessed 26 June 2013)

Concluding Observations on Zimbabwe CEDAW Committee
<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZWE-CO-2-5.pdf>

Hendra, J. ‘Challenges and achievements in the implementation of the Millenium Development Goals for women and girls-the road ahead’ 4 December 2013
<http://www.unwomen.org/lo/news/stories/2013/12/john-hendra-closing-remarks-at-stakeholders-forum> (accessed 24 March 2014)

Jena, N. ‘Women embrace cervical cancer screening’ September 1 2013
<http://www.thestandard.co.zw/2013/09/01/women-embrace-cervical-cancer-screening>

Mail and Guardian ‘New blow to healthcare in Zimbabwe’ <http://mg.co.za/article/2013-02-15-new-blow-to-healthcare-in-zimbabwe> (accessed 03 June 2013)

Mbanje, P. ‘Mothers Should not feel guilty about breastfeeding’ August 5 2013
<http://www.thestandard.co.zw/2013/08/25/mothers-should-not-feel-guilty-about-not-breastfeeding> (accessed 2 October 2013)

Mutseyekwa, T. 'Reviving health services could close gaps in Zimbabwe' http://www.unicef.org/infobycountry/zimbabwe_56573.html (accessed 2 October 2013)

Operation Murambatsvina': An overview and summary." http://www.sokwanele.com/articles/sokwanele/opmuramb_overview_18june2005.html (accessed on 01 March 2012)

Ray, S. and Maposhere, C. 'Male and Female Condom Use by sex workers in Zimbabwe: acceptability and obstacles' in Beyond acceptability: user's perspectives on contraception www.who.int/.../publications

United Nations Population Fund 'The State Of the World's Midwifery' report available at http://www.unfpa.org/sowmy/resources/docs/country_info/profile/en_Zimbabwe_SoWMy_Profile.pdf

UNAIDS. UNGASS Report on HIV and AIDS. Zimbabwe Country Report. 2008. Available from http://data.unaids.org/pub/Report/2008/zimbabwe_2008_country_progress_report_en.pdf

UNFPA Zimbabwe 'Promoting gender equality and protection of women's rights' <http://countryoffice.unfpa.org/zimbabwe/2010/11/20/2892/gender/> (accessed 24 March 2014)

UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Missions to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005
<<http://www.unhabitat.org/documents/zimbabweReport.pdf>> (accessed 27 February 2012)

Voice of America "Zimbabwe Education Ministry Clarifies Policy on Pregnant Students" <http://www.voazimbabwe.com/content/ministry-of-education-maintains-policy-for-pregnant-school-girls-102989719/1462612.html> 26 June 2013

<http://reliefweb.int/report/zimbabwe/cervical-cancer-major-threat-hiv-positive-women>

<http://www.our-africa.org/zimbabwe/poverty-healthcare> (accessed 03 June 2013)

WHO 10 facts about women's health www.who.int/gender

World Health Statistics 2013 available at <http://www.who.int/countries/zwe/en/> accessed 29 May 2013

Zimbabwe Association of Doctors for Human Rights ‘A call to the new government of Zimbabwe to prioritize the right to healthcare and clean water’ September 12 2013 <http://www.kubatana.net/html/archive/hr/130912zadhr.asp?sector=HR>(accessed 17 September 2013)

Zimbabwe Association of Doctors for Human Rights <http://www.kubatana.net/html/archive/hr/130912zadhr.asp?sector=HR> (accessed 2 October 2013)

Zimbabwe Lawyers for Human Rights et al ‘Economic, Social and Cultural Rights in Zimbabwe: Options for Constitutional Protection’ http://www.law.harvard.edu/programs/hrp/documents/ESCR_Zimbabwe.pdf(accessed 27 February 2012)

Zimbabwe National Statistics Agency ‘Women and Men in Zimbabwe’ report 2012 <http://www.zimstat.co.zw/dmdocuments/Gender/Report2012.pdf>