



ZWLA
ZIMBABWE WOMEN LAWYERS ASSOCIATION

zwla@zwla.co.zw
www.zwla.co.zw

ZIMBABWE CIVIL SOCIETY'S SHADOW REPORT TO THE CEDAW COMMITTEE (2012)



The use of any material from this publication is to be acknowledged

Published Zimbabwe Women Lawyers Association
P.O. Box CY 473 Causeway, Harare

Email:

Harare zwla@zwla.co.zw
Bulawayo bulawayo@zwla.co.zw

ZIMBABWE CIVIL SOCIETY'S SHADOW REPORT TO THE CEDAW COMMITTEE

January 2012

Produced by Zimbabwe Women Lawyers Association and the report represents the views and concerns of the following Zimbabwean organisations:

- Action Aid
- African Centre for Law and Justice
- Disabled Women's Support Organisation
- Envision Zimbabwe
- Institute for Young Women's Development
- Jekesa Pfungwa
- Legal Resources Foundation
- Midlands Aids Service Organisation
- Media Institute of Southern Africa
- Musasa Projects
- National Association of NGOs
- NGO Forum For Human Rights
- Plan Zimbabwe
- Padare
- Regional Exports Promotion Agency
- Research And Advocacy Unit
- Sexual Rights Centre
- Southern and East African regional Centre for Women's Law
- Southern and Western Region Gender Network
- SKITHI
- Women and Law in Southern Africa Research Trust
- Women's Action Group
- Women in Politics Support Unit
- Women's Coalition of Zimbabwe
- Young Women Christian Association
- Zimbabwe Lawyers for Human Rights
- Zimbabwe Women Lawyers Association

Contents

ZIMBABWE CIVIL SOCIETY’S SHADOW REPORT TO THE CEDAW COMMITTEE	
January 2012	1
LIST OF ACRONYMS	3
ARTICLE 1	8
ARTICLE 2	10
ARTICLE 3	12
ARTICLE 4	14
ARTICLE 5	16
ARTICLE 6:	17
ARTICLE 7:	19
ARTICLE 9	21
ARTICLE 10	22
ARTICLE 12	24
ARTICLE 13	25
ARTICLE 14	27
ARTICLE 16	29
GENERAL RECOMMENDATION 19	31
CONCLUSION	33
MATERIALS REFERRED TO	33
Legislation	33
Case Law/Decided Court cases	34
Books/Publications	34
Media Releases and other On line materials	34

LIST OF ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
ART	Anti Retroviral Treatment
ARV	Anti Retroviral
AG	Attorney General
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CMR	Child Mortality Rate
COMESA	Common Market for Eastern and Southern African
CSO	Central Statistical Office
DVA	Domestic Violence Act
ESAP	Economic Structural Adjustment Programme
GFP	Gender Focal Person
HC	High Court Unreported Judgment
HIV	Human Immunodeficiency Virus
IEC	Information Education and Communication
ILO	International Labour Organisation
IMR	Infant Mortality Rate
LAMA	Legal Age of Majority Act
MDG	Millennium Development Goal
MFI	Microfinance Institute
MP	Member of Parliament
MWAGCD	Ministry of Women Affairs, Gender and Community Development
NAC	National AIDS Council
NGO	Non-Governmental Organisation
NSSA	National Social Security Authority
POSB	People's Own Savings Bank

PSC	Public Service Commission
RBB	Results Based Budgeting
RBZ	Reserve Bank of Zimbabwe
RDC	Rural District Council
SADC	Southern African Development Community
SACCOS	Savings and Credit Cooperative Societies
SC	Supreme Court Unreported Judgment
SDF	Social Dimensions Fund
SEDCO	Small Enterprise Development Corporation
SME	Small and Medium Enterprise
STERP	Short Term Economic Recovery Programme
STI	Sexually Transmitted Infection
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
WTO	World Trade Organisation
ZEC	Zimbabwe Electoral Commission
ZEDS	Zimbabwe Economic Development Strategy
ZDHS	Zimbabwe Democratic Health Survey
ZHRC	Zimbabwe Human Rights Commission
ZimPREST	Zimbabwe Programme for Economic and Social Transformation
ZLHR	Zimbabwe Lawyers for Human Rights
ZMC	Zimbabwe Media Commission
ZWRCN	Zimbabwe Women Resource Centre and Network

EXECUTIVE SUMMARY OF ZWLA'S SHADOW REPORT

AREAS OF CONCERN:

1. **Art. 1:** Discrimination is defined and prohibited under section 23 of the Constitution. The definition falls far short of the definition provided for under Art. 1 of CEDAW in that It does not prohibit discrimination on a comprehensive set of grounds which have an impact on women, such as economic status, culture, pregnancy and age

Subsection 3 of section 23 represents a claw back clause which allows discriminatory laws to be passed in the area of personal law and also in the application of African customary law. This should be rectified in the new Constitution which should provide unequivocally for non discrimination on the basis or sex and gender and other grounds that are relevant to women.

2. **Art. 2:** Zimbabwe follows a dualist approach to the treatment of international law in municipal law. She has not fully domesticated CEDAW nor has she ratified the Optional Protocol to CEDAW. Further there is inadequate national machinery for the protection of women's rights. The institutional arrangements in place such as the Ministry responsible for women affairs and the gender focal points have been largely ineffective. Women still continue to face discrimination through administrative measures implemented by such offices as the office of the Registrar General and the police.

Accordingly, ZWLA recommends that Zimbabwe ratifies and domesticates the optional protocol, establishes a gender equality commission and embark on a nationwide campaign to educate and sensitise public officials on gender.

3. **Art. 3:** As long as subsection 3 of section 3 of the Constitution remains a part of Zimbabwean law, equality between men and women will remain a pipe dream. That subsection should therefore be repealed and replaced with a new provision in the Constitution which provides for unconditional equality and equity between the sexes.
4. **Art. 4:** Affirmative action is permitted under section 23 of the Constitution but it is not mandatory. The discretionary nature of the provision has rendered it largely ineffective. The government has not implemented affirmative action policies in areas where the most difference could have been made for women, such as in access to land and indigenisation. To rectify this the government should formulate a clear policy of affirmative action in consultation with the women themselves and enact laws which bind the state to clear obligations with regard to affirmative action.
5. **Art. 5:** The state has not taken sufficient measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. The exception to the prohibition against discrimination contained in subsection 3 of section 23 of the Constitution actually buttress the prejudices and ideas targeted by Art.5. polygamy for men is recognised by the law. *Lobola* continues to be regarded as a requirement for a valid marriage under customary law. Harmful cultural practices such as child marriages, virginity testing and witch hunting continue. Some of the worst forms of discrimination are perpetrated by religious organisation whose practices the state has failed to control.

To address this, the government must enact a new Constitution with a bill of rights which takes precedence over all other laws and norms. This should be accompanied by massive educational and awareness building programmes. The state should also be seen to be leading the way by taking such measures as providing for paternal leave for men.

6. **Art. 6:**, the approach taken by the state to address prostitution is to criminalise sex work. The police however target only the suspected prostitutes while their male clients go free. This approach is hypocritical and does nothing to protect women from exploitation. Sex work should be decriminalised and the government should strengthen its laws on human trafficking. In particular the state should ratify and domesticate the Palermo Protocols to the UN Convention Against Transnational Organised Crime.
7. **Art. 7:** Section 23A of the Constitution provides for political rights in gender neutral language. women in Zimbabwe however continue to be underrepresented in decision making positions and in politics because of such factors as lack of resources, political violence and undemocratic internal party systems

To address this, the government should consider implementing a policy of affirmative action to ensure that women are adequately represented

8. **Art. 8:** The provisions in part II of the Constitution and the citizenship Act contain different rules with regard to how men and women may pass their citizenship on to their children. Further, dual citizenship is prohibited by section 9 of the Citizenship of Zimbabwe Act. While the law is gender neutral, it undue hardship for Zimbabwean women married to foreigners, who at marriage, naturally assume husband's domicile, and thus cease to be Zimbabwean citizens. This creates an onerous burden for such women, in the event of divorce, as they have to re-apply to become citizens, a position which is untenable.

The law must be amended to provide for equality of citizenship in all respects.

9. **Art. 10:** While Zimbabwe has made commendable progress with regard to access to schools, the dropout rate for female students is much higher than that for boys. In remote areas, children have to travel long distances to school and this impacts negatively on girls more than boys, violence against girl children has also been reported in some schools
In order to address these issues, the state must put in place positive measures to support female students and to allow girls who fall pregnant to complete their education after having given birth. To prevent unwanted pregnancies in the first place, the state should also ensure that effective sex education is a part of the mainstream school curricular.
10. **Art. 12:** The reproductive role of women makes them more vulnerable to health concerns linked with their reproductive role than men and CEDAW placed an obligation on states to take steps to protect the health of women. The biggest concern is that the right to health is not provided for in the Constitution. The restrictive criteria for legal abortions and the continued criminalisation of abortion pushes women into unsafe abortions and early deaths. Women still face challenges with regard to accessing ART therapy and treatment. To address these challenges, the new Constitution must provide for a right to health; abortion must be decriminalised and measures must be put in place to support women living with HIV and AIDS.
11. **Art. 13:** Discrimination against women in economic and social life continues to exist as evidenced by the fact that women are generally poor as compared to their male counterparts.

Gender roles within the home are such that jointly owned real property is more likely to be registered in the name of the husband. When this is so, the husband is regarded as the real owner of the property and may sell it without the knowledge or consent of his wife even if she had contributed directly or indirectly to the acquisition of the property. There has not been much effort to mainstream gender into national economic policies and neither has there been much effort to implement the principles of gender budgeting. To improve implementation of this article, the state should revise the common law relating to acquisition of real rights within marriage; always, there should be gender mainstreaming in economic policies and gender budgeting should be implemented as a matter of policy.

12. Art. 14: Life is difficult for women in general. It is especially so for rural women. All the challenges faced by women take on a special dimension when experienced by rural women. In particular, rural women tend to be marginalised with regard to access to all resources and services which tend to be centralised in urban areas. In addition the worst effects of customary law are felt by rural women. To ameliorate the plight of rural women, the first step is to repeal subsection 3 of section 23 of the Constitution. The state should also pursue a policy of devolution and decentralisation in order to facilitate a participatory approach to decision making as we as take positive measures to address the specific challenges faced by rural women with regard to accessing education and healthcare services.

13. Art. 16: some of the worst forms of discrimination against women take place in the private sphere, particularly within families. Wives occupy a subordinate role to their husbands and this subordinate status manifests in abuses of various forms such as domestic violence, economic deprivation and exploitation. Discrimination is evident in the way men and women are treated in the laws relating to the rights of guardianship and custody over their children, in the existence of polygamy and *lobola* and in the rules regulating division of property upon divorce.

Apart from recommending that the new Constitution provide for non discrimination in unequivocal and absolute terms, in the meantime, the government should give serious consideration to the marriage laws reforms advocated for by ZWLA.

ARTICLE 1

DEFINITION OF DISCRIMINATION

AREAS OF CONCERN

1. Inadequate Definition of Discrimination Against Women

1.1 As represented in the State Report, the Zimbabwe Constitution prohibits discrimination on the basis of 'race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability. CSOs are of the view that these grounds do not adequately cover the specific areas where discrimination against women is prevalent such as pregnancy, culture and age.

1. Insufficient Scope of Application of the Prohibition against Discrimination

2.1 Section 23 addresses only discrimination perpetrated by public agencies. It does not cover situations where women face discrimination in the domestic sphere or at the hands of private actors. An attempt was made to address this through the Prevention of Discrimination Act. CSOs believe that the principle of horizontal application of the Bill of Rights should be provided in the Constitution where it enjoys better protection.

2. Failure to Differentiate between “Sex” and “Gender”

3.1 ZWLA is concerned that the State report does not clearly distinguish the use of the terms “sex” and “gender”, it uses them interchangeably and conflates the terms. When addressing issues of discrimination, determining whether it is a matter of discrimination based on sex or on the social assumptions that are attached to sex, gender, is important. It is important to deal with Constitutional, legal and policy issues with an appreciation that sex and gender are different, and that while sex may require the recognition of difference between the sexes and appropriate managerial responses, gender is not a basis for differentiation. Gender equality is predicated on ensuring that sex based difference is not treated as a basis for social differentiation.

3.2 In relation to Article 1 it is important to note that piecemeal approaches, rather than clear unequivocal and unqualified Constitutional provisions outlawing all forms of discrimination stymie social and economic transformations that are crucial for equality to become a full paper reality let alone a practical reality.

3.3 Multiple Discrimination

There is no protection provided for in Zimbabwean law on discrimination against lesbian, bisexual and transgender women, or their male counterparts. It is not addressed in the constitution, however lesbian, bisexual and transgender women experience discrimination both because they are women and because of their sexual orientation

¹ Sex refers to the way in which, people are classified as male or female, based on a variety of biological

Recommendations

- In the light of the proposed Constitutional reform process a clear, unequivocal and unfettered equality clause is required in the Constitution, this clause **MUST** trump all other provisions and there can be no claw back clauses. The non-discrimination clause should put all legislation and all forms of law, including customary law under scrutiny to determine and where needed reform to bring about basic equality.*
- A thorough review and revision of all legislation that merely refers to 'he' and perpetuates the assumption that the male implies the female needs to be undertaken so there is no misunderstanding by those reading the legislation that it refers only to males.*
- All legislation should to be scrutinised through a broad sex and gender lens and discriminatory provisions removed, except where physiological difference needs to be specifically, comprehensively but narrowly, addressed.*
- The categories of persons who might be potential victims of discrimination should be as specific and as broad as possible. Men and women, males and females are to be treated as legally equal for all purposes. A possible such clause would read:*
- All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection and benefit of the law. Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their race, colour, tribe, place of birth, ethnic or social origin, religious belief, political or other opinion, sex, gender, marital status, pregnancy, age, disability, culture or other status.*

² Discrimination is encountered by **lesbians** - women who experience physical, romantic, emotional and/or spiritual attraction to other women, and by **bisexual women** – those whose physical, romantic, emotional and/or spiritual attractions are directed towards both men and women.

ARTICLE 2

LEGAL AND ADMINISTRATIVE MEASURES TO ELIMINATE DISCRIMINATION AGAINST WOMEN

AREAS OF CONCERN

3 Failure to Domesticate CEDAW and its Optional Protocol

3.1 CEDAW has not been domesticated. Section 111B of the current Constitution requires the formal adoption of any treaty or convention by an Act of Parliament before it can be part of the law in Zimbabwe. CEDAW has not as yet been incorporated into national law. Although incorporation of other international agreements in other spheres of law have taken place, none of the conventions affecting the rights and status of women have featured in the incorporation agenda. The Constitution still permits discrimination in relation to personal law and matters governed by customary law. Further, as noted above the Optional Protocol to CEDAW has not been signed.

4 Inadequate National Machinery for the Protection of Women's Rights

4.1 There is, as yet, no consideration of a Commission specifically charged with dealing with discrimination on the basis of sex or gender which would be pertinent to the needs of women, although the Human Rights Commission established by the Constitution could play this role. ZWLA is the view that the setting up of a Gender Commission would be a welcome initiative provided that adequate measures are put in place to ensure the effectiveness of the Commission.

5 Existence of Discrimination by Public Authorities and Institutions

5.1 It has come to the attention of CSOs that the conduct and attitude of officials in certain government departments has made it routinely impossible for women to enjoy their rights provided for under the law. The Office of the registrar general insists on imposing conditions to accessing essential documents and it has required nothing less than the supreme court to rule that women do not require the assistance of their husbands or former husbands to acquire passports for their children

5.2 similarly despite the progressive provisions of the Domestic Violence Act, women report that the general attitude of male police officers discourage them from reporting cases of domestic violence

Recommendations

- CEDAW should be incorporated into Zimbabwean law through legislation. And this should be accompanied by the repeal of subsection 3 of section 23 of the Constitution*
- Direct incorporation of ratified treaties and conventions should be provided for in any future Constitution.*
- The Optional Protocol to the CEDAW should be signed, ratified and incorporated into Zimbabwe forthwith.*
- The legislation formally establishing the Human Rights Commission must be passed without further delay.*
- A new Constitution should establish a Gender Equality Commission*
- Requirements for official documents must be clearly laid out in the law to avoid the application of arbitrary and discretionary criteria formulated to conform to the gender biases of public officials*
- Nationwide training should be undertaken to ensure that all government officials are aware of the right of women to retain their natal or whichever name they choose after marriage, but they may also adopt the name of their husband should they so desire..*
- sex and gender sensitization of all public officials, including police officers, should be made part of the initial training and refresher trainings regularly carried out and reinforced to minimize discriminatory practices against members of the public, especially women.*

ARTICLE 3

EQUALITY

AREAS OF CONCERN

3 Undermining of all Efforts at Equality by The Existence of Section 23(3) of The Constitution

- 3.1 Any discussion of fundamental rights and freedoms for women is sterile given s23 (3)(a) and (b) of the Constitution. Arguments extolling the affirmative action provisions in the Constitution s23 (3a), (5) are misleading as the underlying cultural, economic, social, familial and legal foundations of women's inequalities with men remain in place and largely unchecked.
- 3.2 There are no express legal provisions that preclude women's participation in any areas of social, political and economic life. In theory women are able to act on par and be treated as equals of males in the public sphere. The reality of women's lives, however, is that they are likely to continue to struggle to beneficially utilize these rights because women remain handicapped by the continued application of personal and customary discriminatory laws that hamper their access to the social and economic means to pursue and attain equality.
- 3.3 Feedback indicates that the machinery currently in place to ensure gender mainstreaming such as the Ministry of Women Affairs and Community Development, the National Gender Policy, gender focal points in all ministries, have not been very effective
- 3.4 Thus there has been no equality of treatment in the distribution of land and in decision making positions.
- 3.5 The Millennium Development Goals, the CEDAW, the Protocol to the African Charter on Human and People's Right on the Rights of Women and the SADC Protocol on Gender and Development have all been adopted or ratified by the Zimbabwe government but there is no evidence of timetables, or target dates for the realization of the rights and obligations they create. This lack of provision for time frames in which certain targets ought to have been reached has resulted in slow progress in achieving the ideal of equality.

Recommendations

- The new Constitution should provide in clear and unequivocal terms that men and women are equal and place an obligation on the state to take measures for the realisation of equality in all spheres of life*
- Positive measures to empower women economically and socially must be put in place*
- Prudent macroeconomic management and mainstreaming gender in all macroeconomic policies to ensure policy consistency is prerequisite for the country's development agenda.*
- Monitoring bodies, such as the Human Rights Commission, should be established and capacitated and in particular the Commission should be expressly charged with overseeing and monitoring the implementation and protection of non-discrimination legislation for the benefit of women and Constitutional provisions mandating gender equality. The pending Human Rights Commission Bill should be amended in line with the Paris Principles.*
- Specific and dedicated funding should be made available to tackle women's emancipation, genuine gendered budgeting and a comprehensive affirmative action programme are essential components for effective change.*
- Research needs to be undertaken to assess women's grounded needs in establishing themselves in business and in farming, and to assess the socio-economic barriers that they encounter. Top down creation of interventions that are dislocated from women's realities and imposed without regard to need or appropriateness of the activity to women's needs and capacities should cease.*
- Reporting on treaties and conventions should be formally regulated and State Reports should be placed before Parliament along with the comments and recommendations of the treaty bodies.*

All ministries should be engendered at their core and special attention should be paid to the assessment of the efficacy in each ministry of the 'gender desk' in engendering ministry policies and assessments and monitoring the outcomes of gender mainstreaming activities.

ARTICLE 4 SPECIAL MEASURES

AREAS OF CONCERN

8. Absence of Formal State Policy for Implementing Affirmative Action

8.1 The Constitution of Zimbabwe deals with the issue of affirmative action in s23 (g) which in essence provides that the implementation of affirmative action for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination, shall not be held to be in contravention of the non discrimination clause.

8.2 The affirmative action provision in the constitution has not been as effective as it could be because it is not mandatory. Its voluntary / discretionary nature has resulted in affirmative action not being adopted in many critical that could benefit women.

9 Absence of a Lack of Affirmative Action Policy in Relation to Land Redistribution

9.1 Section 23 (3a) of the Constitution further states that in implementing any land reform the Government shall treat men and women on equal basis with respect to the allocation or distribution of land or any right or interest there in under that programmed. The land allocation patterns do not show an attempt to effect affirmative action in favour of women

10 Lack of Affirmative Action Policy in Relation to Employment

10.1 **Affirmative action measures in education, training and access to resources** are critical areas that the government will need to pay particular attention to given that these areas are major determinants in the type of work that people may choose to do. As such affirmative action in these areas is important for women's increased participation in employment.

11 Lack of Affirmative Action Policy in Relation to Indigenisation

11.1 Zimbabwe has adopted an Indigenisation and Economic Empowerment Act (*Chapter 14:33*) of 2011 which seeks to ensure that at least 51% of shares of every public company and any other business shall be owned by indigenous Zimbabweans. In realising this objective, the Act states that the Government 'may' specifically implement indigenisation measures on behalf of groups such as women, young persons or the disabled. Whilst this is a measure of affirmative action, the weakness is that it does not specifically state how far the Government is prepared to go in advancing the rights of such marginalised groups. The wording is not obligatory as evidenced by the use of the word may instead of shall. Without affirmative action in accessing finance for example, women's participation is likely to be very minimal.

11.2 The lack of female representation on the indigenisation board has also been a cause for concern. The Act provides that the board should be made up of not less than 11 and not more than 15 members and that at least one of the members of the board should be a woman. The current board has 13 members and only 3 are women. As such women only have a 23% representation on the Board.

Recommendations

- The wording of the affirmative action clause that seeks to compensate for women's previous exclusion by adopting accelerative measures should be couched in a manner which makes the state's responsibility obligatory, albeit within a given time frame.*
- As regards distributive justice in relation to land, any land that is repossessed from those who are under utilising the land under the land reform programme should be redistributed to women.*
- Indigenisation measures that are also aimed at seeking distributive justice should also consider women as equal citizens who have been hitherto excluded from also benefitting from the country's resources. Affirmative action measures in this regard need to be more robust by ensuring that women have access to financial means to participate in the economy.*

³ See section 3 (3) of the Act

⁴ The Chairperson of the Board is David Chapfika. The three women members are Dr Ellen Gwaradzimba, ms Sitholakele Masuku and ms Sheila Sadambe. The other nine male members are Mr. Adam Molai, Engineer Musanhu, Mr. Thankful Musukutwa, Mr. Prince Mupazviri ho, Mr. Spencer Chihota, Mr. Farai Mutamangira and Dr Desire Sibanda, Mr. Dayford Nhema, Mr. T Mungoni.

- The state also needs to recognise that in situations that have suffered from inequality, which includes also that between the sexes, liberal market policies do not often favour redistribution of resources. As such unless concrete action is taken to ensure affirmative action measures for the marginalised, women are more likely to remain at the margins and the periphery of the economy while men only benefit.*

ARTICLE 5

ADDRESSING SOCIAL AND CULTURAL ATTITUDES AND GENDER STEREOTYPES

AREAS OF CONCERN

8 Failure by the State to Play a More Proactive Role in Dismantling Discriminatory Social and Cultural Attitudes on Gender Roles

- 8.1 Challenges in implementing the goal of equality in the Zimbabwean context emanate from society's continued adherence to cultural practices which more often than not, subordinate women to men as the State Report correctly points out.
- 8.2 While the State has taken measures to reform some gender stereotypes in its school curriculum especially at primary level, the reality is that not much ground has been covered. Women still continue to be regarded as having the primary responsibility for bringing up and caring for children.
- 8.3 Polygamy still exists in Zimbabwe. At the heart of practices such as polygamy is the continued recognition of the unequal status of women.
- 8.4 The recognition of the freedom of worship has been interpreted to allow discriminatory practices against women and female children to flourish. For example the apostolic faith sect still practices polygamy and child marriages in the name of religion and the state has not been able to address this.
- 8.5 Traditional practices which reinforce the inferior status of women and girls in society, such as witch hunting and virginity testing continues unabated.

⁵ Regarding efforts in this field see for example Chenai Chawafambira Gender Stereotypes in infant primary textbooks and the potential effect it has on the socialisation and educational advancement of the girl child: Analysis of selected Primary Schools in Harare (Dissertation submitted in partial fulfilment of the Masters in Women's Law , University of Zimbabwe 2010)

Recommendations

- The State should play a more proactive role in changing mindsets by seeking to ensure that conscientisation efforts reach all corners of the country. The task should not be left to NGOs alone.*
- More financial resources should be devoted to education in order to ensure that pupils and teachers have access to current books that address gender stereotypes.*
- The State should ensure that their social security scheme addresses maternity, paternity as well as parental leave.*
- Parallel systems of law contribute to continued gender stereotypes. The State should seek to be guided by human rights standards in reformulating national laws so that they address all citizens. As regards the continuation of negative beliefs such as witchcraft the State should actively seek to Promote education with an emphasis on rationalised thought and scientific explanation.*

ARTICLE 6: ERADICATION OF PROSTITUTION

AREAS OF CONCERN 8 Criminalisation of sex work

8.1 Application of the Criminal Law to Commercial Sex Workers

Article 6 places on states the obligation to suppress exploitation of prostitution of women. CSOs are deeply concerned by the approach of the state in addressing prostitution which does nothing to suppress the exploitation of women's prostitution. Women who are engaged in sex work are more likely than men who are engaged in the same profession to be regularly rounded up by police.

8.2 Whereas, clientele, men, are not expressly targeted by the legislation and there is a veneer of sex and gender neutrality in the drafting, women are the target of the legislation. The continued criminalization of sex work, perpetuates age old patterns of discrimination against women. As the State report explains the law has changed to 'ensure a higher degree of reasonable suspicion is applied before one is arrested for prostitution' (p.24). However, in reality, the law is persistently misapplied and sex workers still report being arrested for loitering. However, this speaks to a more serious issue of police abuse of power, deliberately arresting and detaining sex workers with no formal charges, denying them the right to legal representation, denying them access to their medication as well as subjecting them to torture, abuse and harassment.

8.3 The attitude of the police, the harassment of female sex workers and the violent treatment of sex workers whilst in detention are serious violations of women's rights. The State report notes that the police are influenced by societal beliefs that 'women should not be found in certain places at certain times', however, these societal beliefs result in serious violations of sex workers rights and it is a concern that the State has not taken more action to prevent the police from 'indiscriminately arresting women and girls.' Sex workers who have attempted to report cases of sexual violence have been told 'it is not possible to rape a sex worker' and 'what do you expect because women should not behave like that' – reference Sexual Rights Centre research.

8.4 The criminalisation of sex work has a several-fold impact on sex workers, particularly female sex workers. Sex workers are not provided with equal protection in the eyes of the law; sex workers are denied the highest attainable standard of health; sex workers are denied information and resources on sexual reproductive health rights; sex workers are subjected to violence, torture, inhumane and degrading treatment.

Recommendations

- The approach of the state towards prostitution should be oriented towards eradication of exploitation of the prostitution of women rather than criminalising it.*
- The criminal aspect in relation to sex work, if it must exist, must not unduly discriminate against women but must target the prostitute' clients as being equally culpable. Alternatively sex work should be decriminalised.*
- The state should adopt a comprehensive approach towards addressing trafficking including;*
 - i. Domesticating the Convention against Transnational Organized Crime*
 - ii. Expediting the enactment of an Anti-Trafficking Act, a process that has been ongoing since 2008.*
- Expediting the ratification and domestication of the Protocol to Prevent, Suppress and Punish Trafficking in Persons which addresses all aspects of trafficking in persons. At the moment Zimbabwe and Angola are the only two SADC states that have not ratified this protocol.*
- In its approach towards curbing human trafficking the state should distinguish between commercial sex workers and victims of trafficking for purposes of sexual exploitation. Commercial sex workers are adults who willingly and in some cases publicly solicit sex in order to derive a benefit for themselves. Victims of trafficking on the other hand are coerced to have sex, most of the activities are hidden and the financial benefit goes to the trafficker. Criminalizing commercial sex work does not address the problem of trafficking, if anything it drives the activities underground and the victims are subjected to even worse conditions than they would if they were paraded in the streets.*

⁶ 'I expect to be abused and I have fear': Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries. ASWA, 2011.

⁷ 'I expect to be abused and I have fear': Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries. ASWA, 2011

ARTICLE 7:

ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN POLITICAL AND PUBLIC LIFE

AREAS OF CONCERN

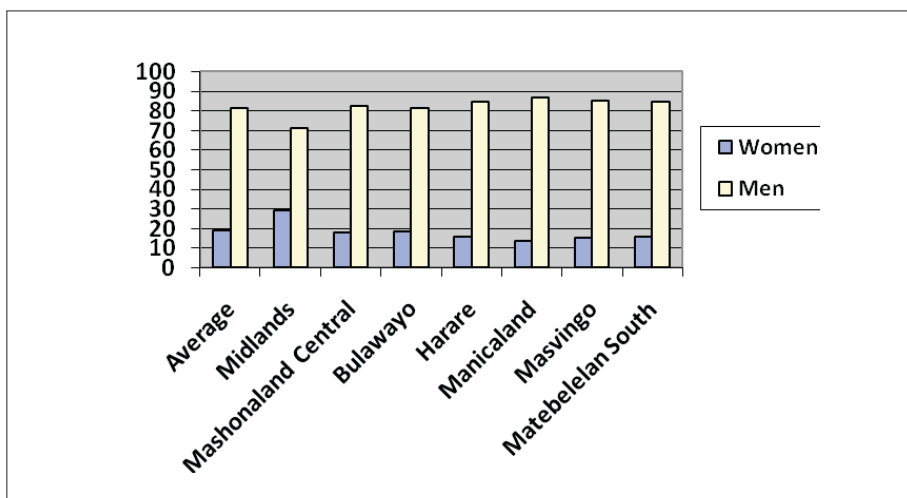
8 The State has not taken adequate Measures to Eliminate Discrimination against Women in Political and Public Life

8.1 . Political rights are recognized in the Constitution (sec 23A (1) of the Constitution), though the right of women to vote is not explicitly enshrined. The Electoral Act guarantees every citizen in Zimbabwe, without discrimination on the grounds of gender (sec 3 electoral Act), the right to vote upon fulfilling certain requirements set out in the electoral Act. Some progress in engendering equity in the appointment of public officers has been recently experienced. It is mandatory to appoint a certain number of women to key positions in the Zimbabwe Human Rights Commission (ZHRC), The Zimbabwe Electoral Commission (ZEC) and the Zimbabwe Media Commission (ZMC). Sec 100B, N, R of the Constitution. This again, in terms of representation of women in public offices, can only be effective once it is extended to apply to other institutions and departments across all government sectors.

8.2 Existing electoral laws do not provide any special measures to guarantee the equal participation of women in political activities. The Constitution and the Electoral Act are silent on measures to promote the participation of women in politics and there is no 'quota' requirement. Every political party has a right to sponsor one or more candidates in an election (3b of electoral Act), it is not mandatory for a certain number of sponsored candidates to be women. The law does not advance the rights of women to equal participation, leaving political parties with the wide discretion of sponsoring as many male candidates as they wish candidates as they creating room for discrimination.

8.3 Pre and post-electoral violence has impacted negatively on women's ability to participate effectively in the political life of the country. Representation of women in Parliament fell from 36% (for senatorial seats in November 2005) to 15.24% after the 2008 poll where women won only 32 of the seats available, whilst men retain 178 seats. Several factors conspire to keep women out of local government in Zimbabwe. These are ideological, social and financial and also political. Politics is a hostile environment for women and patriarchal beliefs that women do not belong in political are still strong.

8.1 9 Below is a diagrammatic representation of women and men councillors per province.



Recommendations

- The Constitution must have provisions for facilitating achievement of at least 50% representation of women in political office.*
- Women's equal access to public office appointments must not be limited to Constitutional Commissions or a few selected public offices only, but be extended across the board as a constitutional provision.*
- There must be a legal requirement for political parties to take measures to ensure the equal participation of women in political activities as a precondition for receiving funding*
The first past the post electoral system must be reviewed in favour of proportional Representation

ARTICLE 9

WOMEN AND CITIZENSHIP

AREAS OF CONCERN

8 Discrimination Against Women in Relation to Citizenship

8.1 Section 5 of the Constitution of Zimbabwe states: “Everyone born in Zimbabwe is a Zimbabwean citizen by birth if, when he or she was born, either of his or her parents was a Zimbabwean citizen; or either of his or her grandparents was a Zimbabwean citizen by birth or descent. In practice however, children born of one foreign parent are not automatically accorded Zimbabwean citizenship, and are required to first assume permanent residency, and then to renounce the fictitious foreign citizenship which they would have never acquired to begin with, thus effectively rendering such children stateless.

8.2 Further, dual citizenship is prohibited by section 9 of the Citizenship of Zimbabwe Act. While the law is gender neutral, it presents undue hardship for Zimbabwean women married to foreigners, who at marriage, naturally assume husband's domicile, and thus cease to be Zimbabwean citizens. This creates an onerous burden for such women, in the event of divorce, as they have to re-apply to become citizens, a position which is untenable. The situation is compounded by the lack of effective naturalisation procedures, as well as the fact that section 16 of the Act, states that where an application for Zimbabwean citizenship is made, the Minister does not have to give reasons in the event that he refuses the application.

⁹ Sebastian Piroro v Registrar General HC 5611/10, in which Piroro was asked to renounce his Mozambican “citizenship” on the grounds that he was a citizen of that nation because his father was born there

¹⁰ Interview with Sian Maseko, a British national, married to a Zimbabwean citizen.

¹¹ Chapter 4:01

Recommendations

- Implement Article 9 of CEDAW without reservation***
- Constitution should provide for an unfettered right to nationality from birth for children who would otherwise be stateless***
- Law should provide that a person has the right to documents that are necessary to Prove citizenship including birth certificates,***
- State must be compelled to give reasons in writing where application for citizenship is rejected***

ARTICLE 10 WOMEN AND EDUCATION

AREAS OF CONCERN

8 High dropout rate for female students

8.1 The State report cites correctly that since the country's independence in 1980, the government of Zimbabwe has invested immensely in the education sector and made significant progress. While all children have the right to education, they access it differently due to societal values and attitudes towards girls education. With the advent and adoption of free primary education policy in the early eighties, the country's literacy rate is reported to have averaged 99 %, ranking Zimbabwe the highest in Africa. According to MoESAC interim report, 2010 gender parity rate at primary school level is reported as 100 to 98. Primary and secondary school completion rates are currently pegged at 68% for girls and 69% for boys. National education figures, however, hide the various areas in which girls have made little or no progress and have even backtracked over the years. A recent study by Plan in the areas in which it works (ie. 10 districts out of Zimbabwe's 52 districts) found trends which suggest that while school enrolment increase significantly around 2008 with the introduction of the multi-currency economy, girls' subsequently had higher drop out rates while boys' seem to drop out at a far slower rate from 2009-2011.

8.2 The study found that schools reported on average 60% of girls who enrol for Form 1 do not sit for final secondary school exams, and 1% of respondents had never been to school.. The top 4 causes cited by girls and their families for high drop-out rates were lack of school fees, early pregnancy, child marriage and long distances to school. The roots of these drop-outs lie in son preference in the face of economic insecurity, traditional and religious beliefs. The numbers of girls dropping out to marry or because they are pregnant range from 13/year at one school and 22/month in another.

9 Failure to Address the Factors that Effect Girls' Access to Effective Education

9.1 Long distances to school – effects on girls education

Research done found that in some areas children walk 5-15km to the nearest school. Girl respondents cited facing violence on the way, mostly sexual harassment and rape.

9.2 Violence against girls in and around school

9.3 Girls reported facing violence from both male students and male teachers, with teachers at times turning a blind eye to this harassment. 19% of respondents had personally experienced some form of violence, only 2% reported having reported the violence and receiving any support. The study reports girls inability to get justice regarding issues of rape as families deal domestically with these and often marry the girl to her assailant or charge “damages” fines which they take as “compensation” to the family. Child Protection Committees reported often not being aware of violence against girls but hearing it from rumours around the school. Girls reported that justice through the police system is often delayed or cases just never take off.

Recommendations

- The state should incorporate sex education into the school curricula and embark on a country wide campaign to educate girls on sex education including family planning in order to reduce the prevalence of pregnancies among girls of school going age*
- There should be support systems in place for general retention of girls in schools and systems should be put in place to enable girls who have dropped out of school to continue with their education*
- The state should take a more robust approach in addressing violence in schools, mindful of the fact that girls more than boys are vulnerable in any environment where a culture of violence thrives*

ARTICLE 12

WOMEN AND HEALTH

AREAS OF CONCERN

8 Failure to enshrine the right to health in the law

8.1 ZWLA notes with concern that the right to health is not enshrined in the Constitution or the Public Health Act. There is no guarantee of this right in the Constitution whilst other pieces of legislation do not place a positive obligation on the state to ensure the realization of access to health by women. There is no law that obliges health institutions to provide free medical assistance for pregnant women.

9 Retention of Criminalisation of Abortion

9.1 Abortion still remains a crime in Zimbabwe unless when it falls within the legal exceptions. According to section 4 of the termination of Pregnancy Act, abortion is legal only when the life of the mother and her physical health is endangered by the continuation of the pregnancy; where there is serious risk that the child to be born will suffer from physical or mental defects of such a nature that it will be permanently or seriously be handicapped and where there is reasonable possibility that the foetus conceived is as a result of unlawful intercourse. Furthermore, even in such circumstances where the law provides for legal abortion the process and legal procedures are lengthy, and often results in traumatic experiences for women. For example in the **Mildred Mapingure case**. A woman who had been raped in the course of a robbery was forced to give birth because of delays in procuring a legal abortion: by the time she received authorisation, it was medically dangerous to terminate the pregnancy.

9.2 Due to the restrictive nature of abortion laws there is a high prevalence of illegal abortions taking place in the country.

10 Failure to Adequately Address the Gender Aspects of HIV/AIDS

10.1 HIV and AIDS continue to be a health challenge in Zimbabwe despite reports of a significant fall in the rates of infection. The ARV within the country are not free and many people particularly women who hardly have disposable income to access ART.

10.2 Maternal mortality rate has remained high, at 725 per 100 000 but the real numbers are likely to

¹²M. Mapingure vs. Minister of Home affairs & others HC455/07 Case by Zimbabwe Women Lawyers Association

¹³Report by Dr Munyanga (2007) which was adopted by the Ministry of Health and Child Welfare as the official reate

Recommendations

- The right to health should be enshrined in the constitution*
- There is need to decriminalize abortion to allow access to safe abortive measures thus reducing the number of women conducting illegal abortions*
- Increase women's access to arv through provision of free arv for instance to Pregnant women among others*
- Increase education programmes to fight against stigma*

ARTICLE 13

ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN AREAS OF ECONOMIC AND SOCIAL LIFE

AREAS OF CONCERN

8 Existence of Laws that Discriminate against Married Women in Accessing Family Benefits

- 8.1 The legal position in Zimbabwe is that the registered owner of immovable property has real rights in that property. This means that he or she may alienate or dispose of that property as he or she sees fit at will. This position has been applied to married people to mean that as between the spouses, the registered owner of immovable property that would ordinarily be regarded as matrimonial property may alienate it or sell it at will without recourse to the other spouse. This position was confirmed in the cases of *Dhlembeu V Dhlembeu* 1996 (1) LRZ 8 (SC), *Semwayo V Chatara* HH – 48 - 2007 and *Muswere V Makanza* HH 16/05.
- 8.2 It is ZWLA's submission that the law under consideration is discriminatory against women on the grounds of gender because it fails to take into account the reality in Zimbabwe that due to gender differences, in a marriage situation, it is the husband who is more likely than the wife to be the registered owner of immovable property.

9 Women have Limited Access to Bank Loans, Mortgages and Other Forms of Financial Credit

- 9.1 Although as the State Report indicates there has been an increase in funding for women's income generating projects the emphasis seems to remain on small projects. There is an underlying assumption that women can only be engaged as small players in the economic empowerment processes. Benefits to women from economic empowerment schemes may also be appropriated by husbands or other family males, as women continue to be treated as resource conduits or labour rather than partners in family businesses. The State Report recognises these problems and barriers and notes quite rightly, that, although, women constitute the majority of those involved in the informal sector women benefit from only a third of the available small scale financing measures.
- 9.2 Zimbabwe currently has a large number of financial institutions. Despite the large number of financial institutions that are serving low income groups, the sector continues to face challenges in accessing credit and finance mainly because of lack of collateral. A number of institutions demand security for their lending (because of the regulations in the banking sector which requires them to have secured lending), which most low income borrowers are not able to provide.

10 Failure to Adequately Implement Gender Budgeting

- 10.1 In 2007, Government introduced Gender Budgeting as a tool and strategy to address gender inequalities and promote fairness in the distribution of public resources between men and women, boys and girls.
- 10.2 Notwithstanding the commendable adoption of Gender Budgeting initiatives, several challenges, exist, including the current political, social and economic environment, and the brain-drain that has depleted the country's human resource base. Also statistics to indicate the

percentage of the budget geared towards advancement of women are not readily available.

11 Failure to Adequately Mainstream Gender in National Economic Policies

11.1 Since independence, Zimbabwe has embarked on a number of economic recovery and growth programmes, including the current one, STERP. Although these policies represented a deep desire to restructure the economy in a manner that would improve the standards of living of the majority of Zimbabweans (Koderu, 2005), to a large extent, the policy strategies were gender blind. The strategies focused on the monetized economy i.e. the formal sector and neglected the non monetized economy where women are concentrated (Mariwo, 2008).

Recommendations

- The common law position which states that when property is registered in the name of one spouse, the other spouse does not have a real right in that property must be amended for being discriminatory against women on the grounds of gender. Instead a matrimonial property regime which recognises the indirect contributions of the wife must be introduced*
- The state must take measures to improve women's access to loans, mortgages and other forms of credit by requiring banks to implement policies of affirmative action in favour of women. In addition, steps should be taken to train female entrepreneurs.*
- The criteria for accessing loans must be revised to take into account gender needs as traditional means of assessing credit worthiness result in the marginalisation of women. The government must always make a deliberate effort to mainstream gender into its economic Recovery and economic growth policies and programmes.*

ARTICLE 14 RURAL WOMEN

AREAS OF CONCERN

8 Failure by the State to Recognize and Address the Vulnerability of Rural Women to Harmful Cultural Practices and Beliefs

8.1 The State report notes the Committee's earlier concerns over the continued adherence to customary laws as this perpetuates discrimination against women particularly in the family context and that these rural women are particularly vulnerable to negative attitudes and discriminatory traditional practices. The State report further explains that the Constitutional provision of non discrimination applies to everyone including rural women and implies that this therefore means that they do not suffer discrimination.

8.2 CSO's experiences with working with rural women confirm that indeed rural women still lag far behind their urban counterparts in benefitting from the gender sensitive laws such as the laws relating to inheritance that have been passed in the last few years.

9 Failure by the state to address the Challenges faced by Rural women in Accessing the Law

9.1 The state report avers that the welfare of women living in rural areas in Zimbabwe is addressed through policies rather than legislative pronouncements. The law of Zimbabwe should apply equally to all citizens irrespective of location and section 18 of the Constitution provides that every person is entitled to protection of the law. The State has not actively taken the responsibility to raise awareness on the available laws and the new ones so that rural women have access to this information and can make choices regarding whether to use these or not.

10 Failure by the state to address the burden of Rural women's multiple roles

10.1 The State report notes the high level of participation by women in community development projects and public works programmes which government and other development agencies initiate and support. It does not however look at the effect of these added responsibilities on the women whom the Committee earlier on noted, work longer hours than any other group. Further they do not say whether this leads women to have more access to and control over resources. Culture continues to be a barrier to the self confident and autonomous economic activities of women in Zimbabwe as they still have to carry on with multiple roles as the primary family providers, look after the sick but yet defer to the man to make decisions on the resources they realize.

11 Failure by the state to address the Challenges faced by Rural women in Accessing Health Facilities

29.2 Women in rural and resettlement communities tend to face challenges in accessing health care facilities due to the fact that the provision of such services has not been centralised and the road networks in these newly forms rural communities are generally poor. The cost of travelling to the health centre, limited personnel and lack of medicines are other barriers to rural women accessing health facilities.

30 Failure by the State to Improve Rural Women's Access to the Measures Afforded by the Law to Address Gender Based Violence

30.1 It is common cause that Zimbabwe has in the recent past experienced politically

motivated violence. Such violence has had a disproportionate effect on women because they are more vulnerable to displacement, rape and exposure to HIV infection, unwanted pregnancies. The reluctance of women to engage in politics also emanates from their fear of political violence. Failure by the state to address politically motivated violence therefore has a worse effect on rural women than men.

31 Failure by the state to address the Challenges faced by Rural women in Accessing the Safe Water and Energy

31.1 In rural Zimbabwe, lack of clean water has become a reality for many communities. The percentage of rural coverage of sanitation facilities is 37% in Zimbabwe.

31.2 Government clearly notes that electricity use by rural women is currently low and this is because they have no access to this as it is only around a few growth points, chief's homesteads and a few rich people. This means that women have to struggle to get firewood as there are no renewable energy sources accessible to them and this adds to the length of their working hours

Recommendations

- Section 23(3)(a),(b) and (f) of the Constitution should be repealed*
- The state should prosecute crimes of harmful cultural practices such child pledging, child marriages etc.*
- Measures must be taken to ensure equality in inheritance in both rural and urban settings*
- Temporary special measures in land redistribution must be implemented*
- The state should address staffing challenges in health institutions by unfreezing posts and recruiting staff including training more midwives and other skilled birth attendants.*
- The state should maintain available health facilities and provide these in the rural and resettlement areas within an accessible area.*
- The state should build and maintain road networks to health facilities in rural areas.*
- The state should document and respond to cases of gender based politically motivated violence.*
- The state should facilitate the provision of accessible funding schemes for rural women for their economic empowerment.*
- The state should facilitate the provision of clean water and sanitation facilities in rural areas*
- The state should facilitate the provision of affordable renewable energy sources for rural areas.*
- The state should facilitate the provision of decent housing in rural areas.*

ARTICLE 16

MARRIAGE AND FAMILY LIFE

AREAS OF CONCERN

30 Failure by the State to Act on Proposed Amendments to Marriage Laws

30.1 CSOs take issue with the reference in the report to its family law project. The reality with regard to that “project” is that the government has done very little to act of proposals for law reform put forward by the women's movement. No actual Bill exists on the proposed harmonisation of Marriage laws as stated in the State report. What is in existence are concept papers at uncoordinated levels within departments in the Ministry of Justice and the NGO sector. These have had a gestation period longer than several elephants put together. The initiative to harmonise marriage reform has stalled over the last decade because it is regarded as something of a luxury amidst political turmoil yet democracy in the family is perhaps the fundamental starting point for building a culture of true democracy at the national level.

30.2 The reality is that challenges associated with the different marriage forms remain. Besides the need to harmonise the marriage age under the Marriages Act, the Customary Marriages Act remains steeped in the role of a guardian and the expectation of marriage consideration. Also the fact that no notice of intention to marry is required under the customary marriages Act has resulted in many marriages being registered without the first wife's knowledge.

30.3 The recognition of polygamy under customary law is problematic as it is the preserve of men only. Currently because polygamy is recognised, men are taking advantage of this and even mixing marriages despite the penalisation of bigamy where one has a civil marriage. Polygamy continues to make property distribution on divorce more difficult. Abolition is not likely to yield results as the practice has already mutated among those with civil marriages into what are now commonly known as “small houses” where a married man with a civil marriage simply leads a double life outside the official realm.

31 Women in Unregistered Customary Law Unions Continue to Face Discrimination in the Law

31.1 Unregistered customary law unions are the most prevalent form of marriage in Zimbabwe. Certain serious consequences for women arise from the informal nature of such marriages.

31.2 Upon “divorce” the property of an unregistered customary law union cannot be dealt with in terms of the Matrimonial Causes Act. This leaves the wife outside the protection of the law.

31.3 Whilst the Government has mitigated against prejudice of women in unregistered customary law unions through recognition by the courts of such concepts as universal partnership and unjust enrichment as reflected in its report, the burden of proving the existence of the partnership is too heavy on women and this has prejudiced women with respect of to their property rights.

31.4 Besides the burden of proving the existence of an universal partnership, the monetary jurisdiction of the Magistrates Court where most of the property sharing cases are dealt with, is

too low and most cases are referred to the High Court. The procedure at the High Court is cumbersome as the Rules of High Court are such as to require legal representation. The cases thus take too long to be completed.

31.5 The fact that the High Court is to be found in Harare and Bulawayo only further complicates matters for women who wish to divorce. Distance and cost and geographical inaccessibility, act as barriers to exiting marriage.

31.6 Therefore whilst the State is to be commended for taking the family court reform seriously, it needs to appreciate that to be truly effective the reformed family law courts can only operate optimally if accompanied by the necessary reforms in family laws.

32 Existence of Guardianship, Custody and Maintenance of Children Laws which Discriminate against Women

32.1 CSOs points out that the general and customary laws which provide that the father is the sole guardian of his marital children is undesirable and flies in the face of CEDAW as well as other international conventions which apportion common responsibilities to parents for the upbringing of children.

Recommendations

- In light of the above, there is therefore need for a family law and marriage law reform that addresses the following:-***
- Formalisation of the Family Law Courts throughout the Provinces to provide specialised legal services to family law related cases in an expeditious manner.***
- Establishment of a family Court to deal with custody, guardianship, access and maintenance and other family matters***
- The law should expressly provide that both parents have joint guardianship over their children***
- Harmonisation of marriage laws to make same age of consent for marriage for boys and girls(at 18 years)***
- Decentralisation of the Marriage Registry supported by computerisation of the Registry***
- Appointment as marriage officers of Headman, Chiefs, and District Administrators as provided for by the Customary Marriages Act(Chapter 5:07)***
- That the Matrimonial Causes Act that governs property distribution upon dissolution of Marriage be applicable to all types of marriages***

GENERAL RECOMMENDATION 19

VIOLENCE AGAINST WOMEN

AREAS OF CONCERN

35. Insufficient Resources For Effective Implementation of The Domestic Violence Act

- 35.1 The enactment of the Domestic Violence Act, (DVA) by the state as reported in the State report is commendable, but the effectiveness of the Act is being hampered the lack of resources. In particular, the state has not availed the monetary and human resources required for the effective functioning of the Anti Domestic Violence Council. There has also been a shortage of application
- 35.2 Apart from the resources required by the council, victims of domestic violence have also reported that their efforts to use the Act have been hampered by a chronic shortage of application forms for protection orders, counselling services and shelters for victims. Even in the cases where the application forms have been available, the forms have proved not to be user friendly in that too much detail is required.

36. Failure to Address the Cultural Beliefs and Norms which Underlie Domestic Violence

- 36.1 The causes of domestic violence are rooted in power dynamics between men and women in familial relationships. These dynamics, in turn, are premised on societal beliefs and cultural norms on how men and women relate to each other. Effectively addressing the roots of Domestic violence therefore requires that the custodians of culture and tradition in Zimbabwe be targeted. The lack of effort by the state to conscientise traditional leaders on the evils of domestic violence is therefore very concerning.

37. Failure to Address Politically Motivated Violence

Both the ruling party and the main opposition parties are on record as accepting that politically motivated violence exists in Zimbabwe and that the levels of this violence seem to escalate towards and during elections. This was particularly evident in the 2008 harmonised elections. Zimbabwean women, like all women in conflict situations have borne the brunt of politically motivated violence, particularly in rural areas. Failure by the state to address political motivated in Zimbabwe has therefore had a disproportionate impact on Zimbabwean women.

36. Complicity by the State in the Normalisation of Rape against Women

Recently there were press reports of a gang of women rapists (the alleged victims were male). These reports elicited a huge outcry from the public notwithstanding that women are raped by men almost every day with barely a shrug of shoulders from the public. This reaction is both a reflection and a reinforcement of the normalisation of the rape of women in Zimbabwe. The reaction of state institutions, particularly the police in parading the suspects shows complicity of the state in the normalisation of rape against women.

¹⁸See the Herald of 12 October 2011

Recommendations

- The State should create a simpler version of the application forms for protection Orders which ordinary women can harness without difficulties;*
- The state should increase its efforts to conscientise traditional leaders and the grassroots on the application of the DVA given that the success of the DVA is rooted in the transformation of societal attitudes towards domestic violence.*
- The processes of the Organ should place emphasis on the inclusion of women in conflict resolution and peace processes in order to achieve sustainable peace in line with UN Resolution 1325;*
- The state should prioritize the sensitization of the police and courts, key bodies that facilitate the protection and access to justice of women victims of PMV with a view to end impunity in line with UN Resolution 1820 as part of a comprehensive approach to seek sustainable peace, justice, truth, and national reconciliation;*
- The state should set up a multi-sectoral investigation into politically motivated rape, led by the Ministry of Health and Child Welfare, together with the Ministry of Women Affairs and Community Development, Ministry of Labor and Social Welfare, the Ministry of Home Affairs, and the Ministry of Justice and Legal Affairs, civil society actors and other stakeholders before the next elections to ensure that rape does not happen again;*
- The state should drive policies to end impunity for perpetrators of Politically Motivated Violence against women.*
- The state should end impunity on crimes perpetrated by state actors such as the police and ordinary civilians against commercial sex workers;*
- The state should intensify campaigns against sexual violence against women to eradicate the growing sentiment of the normalization of the rape of women as shown by the difference in outcries against the everyday rape of girls and women as compared to the huge outcry against suspected female rapists caught on the 11th of October 2011.*

¹⁹United Nations Security Council Resolution 1325 on Women, Peace and Security Adopted by the Security Council at its 4213th meeting, 31 October 2000. http://www.un.org/events/res_1325e.pdf.

²⁰United Nations Resolution 1820 on Women, Peace and Security June 2008
http://www.ifuw.org/advocacy/docs/UN_SC_Resolution1820.pdf.

²¹No victims should be turned away by the police as reported in the Zimbabwe Human Rights NGO Forum (2010) Taking Transitional Justice to the People: Outreach Report.

CONCLUSION

35 The state party report, while giving a largely accurate picture of the policy and regulatory environment for the advancement of women's rights, glosses over some important aspects which are essential to give the Committee a sufficient basis for assessing the situation in Zimbabwe. The existence of subsection 3 to section 23 of the Constitution is a major hurdle on the road to full implementation of CEDAW. CSOs contend that repealing this provision is an essential first step towards comprehensively addressing discrimination against women in Zimbabwe. Zimbabwe is currently undergoing a period of tremendous political, social and economic upheaval and may well be in the process of a major paradigm shift. Winners and losers will obviously emerge from this process. In this context, the marginalisation of women in politics is a major source of concern. The absence of women's voices in agenda setting forums during this period of Zimbabwe's history may well result in the formation and crystallisation of policies and paradigms that largely exclude women.

36 The state report comes at a time when Zimbabwe is undergoing a Constitutional review exercise. The timing is ideal for Zimbabwe to consider any recommendations which the Committee may wish to make with regard to how the Constitution can be used as a tool for social and political transformation for the advancement of women.

MATERIALS REFERRED TO

Legislation

1. Administration of Estates Act No. 6 of 1997
2. Criminal Law (Codification and Reform Act) Chapter 9:23
3. Customary Law and Local Courts Act(Chapter 7:05)
4. Customary Marriages Act(Chapter 5:07)
5. Domestic Violence Act(Chapter 5:16) Act No. 14/2006
6. Guardianship of Minors Act(Chapter 5:08)
7. Interpretation Act(Chapter 1:01)
8. Marriage Act (Chapter 5:11)
9. Matrimonial Causes Act(Chapter 5:13)
10. Wills Act (Chapter 6:06)

²² 3 female rapists, caught with 33 condoms full of sperms, named <http://www.bulawayo24.com/index-id-news-sc-regional-byo-8209-article-3+female+rapists,+caught+with+33+condoms+full+of+sperms,+named.html> (accessed on 11 October 2011).

Case Law/Decided Court cases

11. *Dhlembeu V Dhlembeu* 1996 (1) Lrz 8 (Sc).
12. *Semwayo V Chatara* HH – 48 - 2007
13. *Muswere V Makanza* HH 16/05.
14. *Margaret Dongo V. Attorney General And Registrar General*, SC-292/08 Judgment No. SC6/10
15. *Matibiri v. Kumire* 2000(1) ZLR(HC), Judgment delivered on April 12
16. *Mutyasiri v. Gonyoro & Anor*, S-80-06(Judgment delivered on the 28th of May 2007

Books/Publications

17. Kabasa, E(2006), *In search of Relief for the Rape Victim-making the Criminal Justice System Work For her* (Dissertation submitted in partial fulfillment of the requirements for the Post graduate Masters in Women's Law, Women's Law Centre, University of Zimbabwe.
18. Magorokosho,R(2010), *'Two years after enactment': Assessing the efficacy of Protection Orders in terms of the Domestic Violence Act (Chapter 5:16) No. 14/2006: A study conducted in Harare, Norton and Chitungwiza* (Dissertation submitted in partial fulfillment of the requirements for the Post graduate Masters in Women's Law, Women's Law Centre, University of Zimbabwe.
19. Maunga,M(2006), *An Analysis of the Efficacy of the Law of marital Rape in Zimbabwe* (Dissertation submitted in partial fulfillment of the requirements for the Post graduate Masters in Women's Law, Women's Law Centre, University of Zimbabwe.
20. Mutyamaenza,V(2001), *Property Distribution Upon Divorce: A Woman's Perspective* ((Dissertation submitted in partial fulfillment of the requirements for the Post graduate Diploma in Women's Law, Women's Law Centre, University of Zimbabwe.
21. Nkiwane, V(2000), *Marital Rape: What are the Consequences of Removing the Husband's Immunity from Prosecution* (Dissertation submitted in partial fulfilment of the requirements for the Post graduate Diploma in Women's Law, Women's Law Centre, University of Zimbabwe.
22. UNAIDS, 2008, *Addressing the vulnerability of young women and girls to stop the HIV epidemic in Southern Africa.*
23. Unicef, *A study on Street children in Zimbabwe Orphans and other vulnerable children and adolescents in Zimbabwe*
24. Zimbabwe Demographic Health Survey 2005/6
25. Zimbabwe Women Lawyers Association(ZWLA), *Law Reform and Lobbying Documents*, July 2001

Media Releases and other On-line materials

26. Newsday Newspaper, Saturday 9 April 2011
27. The Herald, Monday 5 September 2011
28. www.zimbabweblog.com/2008/11/12/the-atrocities-of-the-traditional-customary-practice-of-kuripa-ngozi/