



COUNTRY SECTION: Zimbabwe

Contents

Overview of the Zimbabwe Legal System

International Instruments
Regional Instruments
Domestic Laws

Overview of Gender Machinery

Useful Bodies and Organisations

Political Context

Experience of Women's Organisations in Zimbabwe

Written by Catherine Makoni

OVERVIEW OF THE ZIMBABWE LEGAL SYSTEM

The rights in the current Constitution in Zimbabwe do not fully take into account the specific interests, concerns and rights of women. While laws to ensure the protection of human rights exist, there is a failure when it comes to implementation of these laws, particularly with regards to guaranteeing access to justice for women. In addition, domestic laws are only enforceable to the extent to which they are consistent with the Constitution.

Zimbabwe is a signatory to a significant number of international covenants. However, a major obstacle to the operationalisation of regional or international treaties is Section 111B of the Constitution of Zimbabwe which provides that an international treaty signed, ratified or acceded to by Zimbabwe will not become part of domestic law unless domesticated through an Act of Parliament.

INTERNATIONAL INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)

CEDAW is an international treaty that requires states to eliminate all forms of discrimination against women. Zimbabwe acceded to the Convention on the 13th May 1991. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports to the CEDAW Committee, at least every four years, on measures they have taken to comply with their treaty obligations. Zimbabwe presented its latest country report in 2009. Zimbabwe has not ratified the Optional Protocol to CEDAW.

Universal Declaration of Human Rights 1948 (UDHR)

The Universal Declaration of Human Rights recognises the inherent dignity and the equal and inalienable rights of all members of the human family regardless of sex, race, colour, language, religion or distinction of any kind.

International Covenant on Civil and Political Rights 1966 (ICCPR)

The ICCPR deals in detail with the rights outlined in the Universal Declaration of Human rights and guarantees basic civil and political rights to all persons, "without distinction of any kind, such as race, colour, [or] sex..." [Article 2(1)]. These rights include, amongst others, the right to life, freedom of movement, equality before the law, privacy, freedom of religion and the right to participate in public affairs including the right to

vote. Zimbabwe acceded to the Covenant on 13 May 1991.

International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)

The ICESCR articulates important rights including the right to work and the right to fair wages and equal pay for equal work for women, the right to an adequate standard of living including adequate food, clothing and housing, the right to enjoyment of the highest standard of health and the right to education. Zimbabwe acceded to the Covenant on the 13th May 1991.

The Beijing Platform for Action 1995 (BPfA)

The Beijing Conference of 1995 identified 12 critical areas of concern that were impacting negatively on the ability of women to fully access their human rights. The Beijing Declaration and Platform for Action set out specific objectives and urgent priority actions in response to the identified critical areas. Zimbabwe signed the Platform for Action in 1995. The Platform also calls upon governments to develop strategies or national plans of action to implement the Platform locally and improve the situation of women in their country. Soon after the 1995 Beijing Conference, the Government of Zimbabwe adopted a National Plan of Action for the implementation of the Platform for Action.

Declaration on the Elimination of Violence Against Women 1993 (The Declaration)

The Declaration, adopted by the United Nations General Assembly, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women”. Article 4 requires states to “condemn violence against women and...not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”. In addition, article 4(d) states, “women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”.

Convention on the Rights of the Child 1989 (CRC)

The CRC applies to all children and prohibits discrimination against girls. Zimbabwe ratified the CRC in September 1990 but has not ratified the two Optional Protocols to CRC on the involvement of children in armed conflict and child prostitution and pornography.

Millennium Development Goals 2000

The 55th Session of the United Nations (UN) held in September 2000 adopted the United Nations Millennium Declaration which articulated among other things eight Millennium Development Goals with targets set to be achieved by 2015. The national priority goals for Zimbabwe are MDG 1- eradicating extreme poverty, MDG 3 – promoting gender equality and empowerment of women and MDG 6 – combating HIV and AIDS, Malaria and other diseases. Zimbabwe has been tracking its progress towards the achievement of these three priority goals and, in 2010, the country produced its Country Status Report.¹ The following table summarises progress to date:

Goal	Target	Status
Eradicate Extreme Hunger	1A Halve, between 2002 and 2015, the proportion of people whose income is less than the Total Consumption Poverty Line	<p>Population living below the TCPL stood at 72% in 2003 and may have increased due to the economic crisis that the country went through between 2000 and 2010.</p> <p>The report notes the issue of the feminisation of poverty which is manifested through a higher prevalence rate of poverty among female headed households – 68% of all female-headed households live under the Total Consumption Poverty Line.</p> <p>The report also cites the rate of unemployment in 2003 (when reliable statistics were last available) as being higher among females (70%) than males (53%).</p>
Achieve Universal Education	2A Ensure that by 2015 all Zimbabwean children, boys and girls alike, will be able to complete a full programme of primary education.	<p>The report shows that the Net Enrolment Ratio went down from 98.5% in 2002 to 91% in 2009.</p> <p>Primary school completion rates also went down from 82.6% in 1996 to 68.2% in 2006.</p>
Promote Gender Equality and Empower Women	Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015	<p>While the net enrolment ration decreased, there is near equality in lower secondary school by gender. However, girls comprise only 35% of the pupils in upper secondary school and secondary school completion rate is higher for boys.</p>

¹ UNDP and Government of Zimbabwe, 2010 Millennium Development Goals Status Report, Zimbabwe.

Goal	Target	Status
	<p>Increase the participation of women in decision-making in all sectors and at all levels (to 40% for women in senior civil service positions and to 30% for parliament) by 2005 and to 50:50 balance by 2015</p>	<p>Completion rates for primary school declined from 73% in 2001 to 68% in 2006 for boys and from 71% in 2001 to 69% in 2006 for girls.</p> <p>There was an increase of women in Parliament from 16% in 2005 to 18.5% in 2008.</p> <p>In 2010 women comprised 20% of cabinet ministers. 30% of ambassadors were women. Among the Supreme and High Court, women comprised 29% of the judges, while in the magistrates courts 41% of magistrates are women.</p>

REGIONAL INSTRUMENTS

African Decade for Women

The African Union declared 2010 to 2020 as a Decade of Women and identified ten themes around which member States are to take action. The goal of the Decade is to promote gender equality and women's empowerment from the grassroots to national, regional and continental levels by speeding up the implementation of commitments made by States through the various international treaties. The themes are: Women's health, reduce maternal mortality and address HIV/AIDS; Women's economic empowerment and entrepreneurship; Agriculture and food security; Education, science and technology; Environment, climate change and sustainable development; Peace, security and violence against women; Governance and Legal Protection; Gender financing and budgeting; Women in decision making; and Young Women's Movement. An African Women's Decade Fund has been established to support activities towards achieving objectives under the thematic areas.

The African Charter on Human and People's Rights (Banjul Charter)

The Banjul Charter is a regional human rights instrument which guarantees the rights of all individuals to equality, dignity, health, freedom from exploitation, and work under equitable and satisfactory circumstances. Article 18(3) requires states to "...ensure the elimination of every discrimination against women". Zimbabwe signed the Charter on the 20th February 1986 and ratified it on the 30th May 1986.

a The Charter is also important in that it creates mechanisms for monitoring the realisation of the commitments made. Article 30 establishes the African Commission on Human and People's Rights with a mandate to "promote human and people's rights and to ensure their protection in Africa". The Commission hears communications concerning alleged violations of the human rights provided for in the Charter and any protocols established under the Charter.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women 2005 (The Maputo Protocol)

The Maputo Protocol builds on the Banjul Charter, focusing specifically on the need to promote and protect women's rights. It includes articles relating to trafficking in women, violence against women, widow's rights, harmful practices, food security, equal partnership in marriage, sexual and reproductive rights, and the right to equal opportunity in work and career advancement. Zimbabwe ratified the Maputo Protocol in 2008.

The SADC Protocol on Gender and Development 2008

The Southern African Development Community (SADC) is an organisation comprised of 14 States from the Southern Africa region. The SADC Protocol calls for the empowerment of women, the elimination of discrimination, and the achievement of gender equality. Article 7 requires states to take action, including the enactment of legislation, to promote and ensure equality for women. This includes measures aimed at ensuring equality in the criminal justice system, addressing gender bias and stereotypes, and providing accessible and affordable legal services for all women, as well as specific articles to ensure equal rights in marriage, rights for widows, health care, education and an end to all discrimination against women and girls with regard to water and property rights. Zimbabwe has signed this Protocol.

DOMESTIC LAWS

The Government of Zimbabwe has passed a number of key laws aimed at addressing the discrimination that women in Zimbabwe face. However, domestic laws are only enforceable to the extent to which they are consistent with the Constitution.

The Constitution

The current Constitution in Zimbabwe, commonly referred to as the Lancaster House Constitution, has been in existence since it was negotiated as part of the settlement to end the decade long civil war in Zimbabwe in 1979. Given this context, it is concentrated on securing

SADC Protocol as an Advocacy Tool: The 50-50 Campaign

The Southern Africa Gender Protocol Alliance has been working towards the implementation of the Protocol provisions in SADC Countries. The Alliance is organised through 15 country networks and ten theme clusters that work through national and regional action plans to ensure that the 28 targets under the Gender Protocol are met.

Article 12 of the Protocol calls for 50% of decision-making positions in the public and private sectors to be held by women by 2015.

The Governance cluster of the Southern African Gender Protocol Alliance (led by the Zimbabwean organisation, Women in Politics Support Unit (WIPSU), has been monitoring the implementation of this commitment and producing reports that are submitted to the Heads of States and Governments at their summits. Representation of women in parliament has gone up from an average of 21% in 2005 to 25% in 2011 in the SADC region compared to 3% to 19% globally. SADC comes second to Nordic countries in terms of representation of women in Parliament.

Quota systems are gaining ground, with Mauritius about to join Lesotho and Tanzania in legislating quotas for women.²

civil and political rights, such as the right to life, freedom from arbitrary arrests and freedom of association and assembly. One major limitation is that these are freedoms guaranteed between the State and the individual and do not include private persons and institutions. In addition, the Constitution does not fully take into account the specific interests and concerns of women. The following sections are of particular interest for women's rights advocates:

- **Section 18** provides for protection under the law. However, the focus is on the public sphere and does not take into account the experiences of women in accessing justice.
- **Section 22** articulates the right to freedom of movement.
- **Section 23** prohibits discrimination on the grounds of race, creed, sex, gender and disability among others. However, the provision is limited in two respects – it is focused on the public sphere and discrimination is allowed in matters of customary law.
- **Section 108** provides for the establishment of a Human Rights Commission (although problems exist with under-resourcing of this body).

- **Section 111B** provides that any convention, treaty or agreement acceded to or concluded shall be subject to approval by Parliament and shall not form part of the law of Zimbabwe unless it has been incorporated into the law by an Act of Parliament.

Gender Equality:

The National Gender Policy (2000)

This Policy aims to mainstream gender into all sectors of the country. The Act allows individuals who have suffered unfair discrimination, hate speech or harassment to lodge a complaint with an Equality Court, which will then hold an enquiry. The Equality Court has wide powers to order remedies, including compensation.

Legal Age of Majority Act (LAMA) 1982 (Now the General Laws Amendment Act)

This Act conferred majority status on women who had hitherto been treated as minors.

Employment Rights:

Equal Pay Regulations (1980)

These regulations provide for equal pay for equal work. Prior to this, pay had been structured on the basis of race and sex, with black women paid the lowest.

Labour Relations Act (Chapter 28:01) 1984

This Act prohibits discrimination on the grounds of sex. Discrimination is prohibited, among other things, in the determination of wages, in the provision of training and in career advancement opportunities. The Act was amended in 2002 to provide for 3 months maternity leave on full salary for women. It also prohibits sexual harassment at work.

Public Service Pensions (Amendment Regulations) 1985

These Regulations provide women with the right to contribute to their pensions at the same rate as men. Employment Equity Act

Violence against women:

Sexual Offences Act (Now part of the Criminal Law [Codification and Reform] Act (2001)

This Act criminalised marital rape, deliberate transmission of HIV and AIDS and trafficking in persons, and introduced harsher penalties for sexual offences.

Domestic Violence Act [Chapter 5:16] (2007) and Domestic Violence Regulations (SI92/2008)

This Act and Regulations provide for the protection of victims of domestic violence. For the first time in Zimbabwe's history, the law recognised domestic violence as a specific crime. Section 3 of the Act defines domestic violence as; "any unlawful act or omission or behaviour which results in death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent' and includes physical abuse, sexual abuse, emotional abuse, economic abuse, harassment, stalking, malicious damage to property and forcible entry into the complainant's home.

Marriage and the Family:

Termination of Pregnancy Act

The Act provides for termination where pregnancy constitutes a serious risk to the life of the mother or baby or where the pregnancy is a result of an unlawful act such as rape or incest. However, the Act has not been reviewed since 1979 and the legal process a woman has to undergo to get the termination certified is extremely onerous.

Deeds Registry Amendment Act (1985)

This Act conferred on married women the right to have immovable property registered in their own names.

Marriage Act (1987) [Chapter 5:11]

This Act deals with rights and obligations of parties to a civil marriage and provides that there has to be consent of the man and woman who are parties to the marriage and sets the marriage age at 18 years. There is a need for the harmonisation of the different marriage law regimes to bring them into conformity with international human rights norms.

Matrimonial Causes Act (1987) [Chapter 5:13]

This Act provided guidelines for the equitable distribution of matrimonial property upon divorce. This Act only applies to women in registered marriages. It recognises contributions, including domestic work, as a factor to be taken into account when determining the distribution of property between parties.

Administration of Estates Amendment Act [Chapter 6:07] (1997)

This Act changed the customary law position to allow women and girls to inherit from the estates of their deceased husbands and fathers.

The Deceased Persons Family Maintenance Act 1987

This Act provided the surviving spouse and children with the right to

occupy the matrimonial home pending the final winding up of the estate. This was a response to the incidence of property grabbing that saw widows and children being evicted from their homes.

OVERVIEW OF GENDER MACHINERY

The Ministry of Women Affairs, Gender and Community Development was created after independence to manage the participation of women in development. The Ministry at present has 3 departments – the Department of Women Affairs, the Department of Gender, and the Department of Community Development.

The main department working with women's organisations in the Ministry is the Department of Gender. This department focuses on promoting gender equality and equitable access to resources between men and women. The department is responsible for coordinating the mainstreaming of gender in all sectors, advocating and lobbying for a gender sensitive legal framework and the promotion of women in politics and decision-making, and promoting an integrated approach towards eradicating gender-based violence. The department is also responsible for State Party reporting on all gender related treaties. The Ministry is guided by the National Gender Policy and plan of action.

The country has 10 provinces and nearly 60 districts and the Department has structures at the community and provincial level to coordinate its work. The Provincial Development Officer (PDO) coordinates the work of the department at Provincial level and works with a number of District Development Officers (DDOs). The DDOs in turn work with a number of Ward Coordination Officers who are responsible for coordinating the activities of Ward Development Officers, who work at Ward level.

POLITICAL CONTEXT

Zimbabwe is a semi-presidential republic, which has a parliamentary system of government. Under the constitutional changes in 2005, there are two houses of parliament - an upper chamber (the Senate) and a lower chamber (the House of Assembly).

Zimbabwe gained independence from Britain in 1980. From independence until early 2009, the ruling party of Zimbabwe was the Zimbabwe Africa National Union – Patriotic Front (ZANU-PF), led by President Mugabe. On 15 September 2008, Zimbabwe's three main political parties, ZANU-PF and the two MDC formations led by Morgan Tsvangirai and Arthur Mutambara, signed an agreement to form an

inclusive government. This led to the formation of a government of national unity in February 2009.

Political tensions arising from the ongoing constitutional reform process and possible national elections on the horizon for 2011 create some uncertainty regarding the future course of events in Zimbabwe.

EXPERIENCE OF WOMEN'S ORGANISATIONS IN ZIMBABWE

Women's organisations face a number of challenges in Zimbabwe. Many of the laws which exist do not reflect the realities of women's lives. For example, the Matrimonial Causes Act 1987 only applies to parties with registered marriages. The majority of women in Zimbabwe have unregistered marriages and are thus excluded from the protection offered by this Act.

In addition, Zimbabwe has gone through a period of political and economic crisis that lasted for a decade from 1999 to 2009. This has resulted in its own set of challenges, which has included an estimated 3 million Zimbabweans leaving the country.

Some of the key challenges and related opportunities facing women's organisations include:

- As the country transitions and the relationships between the government and external partners normalise, the role of the national gender machinery is becoming more critical. However, it does not have adequate resources to carry out its mandate. There is a need for donors to support the institutional strengthening of the national gender machinery so that it has the capacity to deliver on its mandate.
- For the last 10 years, as the country has struggled with multiple crises, coordination of the activities of various sectors has been assumed by different civil society organisations. The same is true of the women's rights movement. Part of the Ministry's role now is to coordinate strategies and actions, yet support is needed to enable proper transition mechanisms so that knowledge and processes can be transferred from civil society to the Ministry.
- Women's organisations need stronger capacity to influence critical national dialogue and must be recognised as important actors in this process, capable of setting the agenda and influencing the State on such issues as economic empowerment, security sector reforms, peace-building, electoral reforms, access to resources and the constitution reform agenda.

- For a long time, women's rights organisations have worked primarily in the area of personal law. The women's movement now needs to move beyond looking only at the personal sphere to advocating for the human rights of women in their totality.
- The hardships of the past decade have resulted in the erosion of gains made prior to 2000. For instance, improvements in reproductive health rights are reversing, characterised by high mortality rates and low contraceptive coverage. Women are also affected by issues of personal safety and security, arbitrary arrest and detention, and political violence.
- Various factors including the 'brain drain' from Zimbabwe and donor funding constraints have resulted in attrition of human capacity in women's organisations. There is need for leadership renewal and strategies to ensure young women are supported to participate in the women's rights movement. There is a particular need for academic institutions to support women to analyse, understand and critique the multiple issues impacting on them. This is critical for the long term survival and sustainability of the movement.
- A major challenge confronting women's organisations is the low level of funding. New funding mechanisms have also resulted in organisations competing for limited resources, and this has impacted negatively on their ability to work collaboratively. There is a need to engage donors on the issue of funding, in particular institutional funding, which impacts on the capacity of organisations to recruit and retain quality staff.

CONCLUSION

It is clear that while significant gains have been achieved in relation to legislative reform, gaps remain in the implementation of laws and policies which promote the rights of women. Transformation of attitudes is lagging behind legislative reform. Years of instability have seen Zimbabwe lose human development gains and have presented multiple challenges for women's organisations. As Zimbabwe transitions, there is great potential for the women's rights movement to influence the direction of the country so that the ideals of gender equality and women's empowerment are realised.

