

ZIMBABWE HUMAN RIGHTS NGO FORUM

Gender and Constitutional Issues

A report by the Research Unit of the
Zimbabwe Human Rights NGO Forum

Special Report 2

March 2001

The Zimbabwe Human Rights NGO Forum (also known as the “Human Rights Forum”) has been in existence since January 1998. Nine non-governmental organisations working in the field of human rights came together to provide legal and psycho-social assistance to the victims of the Food Riots of January 1998.

The Human Rights Forum has now expanded its objectives to assist victims of organised violence, using the following definition:

“organised violence” means the interhuman infliction of significant avoidable pain and suffering by an organised group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action which is unacceptable by general human standards, and relates to the victims’ mental and physical wellbeing.

The Human Rights Forum operates a Legal Unit and a Research and Documentation Unit.

Core member organisations of the Human Forum are:

- The Amani Trust
- The Catholic Commission for Justice and Peace
- The Legal Resources Foundation
- Transparency International (Zimbabwe)
- The University of Zimbabwe Legal Aid and Advice Scheme
- Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender
- Zimbabwe Human Rights Association
- Zimbabwe Lawyers for Human Rights
- Zimbabwe Women Lawyers Association

Associate members are: GALZ and ZIMCET

The Human Rights Forum can be contacted through any member organisation or the following personnel:

The Administrator, c/o P O Box 5465, Harare – email: admin@hrforum.co.zw

The Lawyer Unit, c/o P O Box 5465, Harare – email: legal@hrforum.co.zw

The Research Unit c/o P O Box 5465, Harare – email: research@hrforum.co.zw

Telephone/fax: 79222,2 737509, 731660

Website: www.hrforumzim.com

All earlier reports of the Human Rights Forum can be found on the website.

Table of Contents

| | |
|---|----|
| Introduction..... | 2 |
| Chapter 1. Historical background: Women’s Rights in Zimbabwe | 4 |
| Women in the Liberation Struggle | 4 |
| Gender Policy..... | 5 |
| Chapter 2. The Current Constitutional Position | 7 |
| Sex and gender | 7 |
| Constitutional protection against sex and/or gender discrimination..... | 8 |
| The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) | 9 |
| Chapter 3. The 1999 Proposed Constitutional Changes | 10 |
| Chapter 4. Gender Discrimination..... | 13 |
| Marriage and gender discrimination | 13 |
| Social class and gender discrimination..... | 14 |
| Domestic violence | 15 |
| Gender discrimination in employment..... | 16 |
| Gender discrimination in politics | 17 |
| Chapter 5. The Women’s Charter | 19 |
| Chapter 6. Future Possibilities | 25 |
| References | 27 |

Introduction

In 1948, the *Universal Declaration of Human Rights (UDHR)* assumed that all humans had the same rights. Nearly half a century later, the Vienna Conference reiterated that ‘Human rights are the rights every human being is entitled to enjoy and to have protected’.¹ It is true that human rights are entitlements by virtue of each person’s humanity.

However, the language of the *UDHR* generally reflected the unconscious masculine bias of its time, despite its conscious and admirable attempts to include women. The *UDHR* in its Preamble asserted ‘the equal rights of men and women’ and in Article 26(2) special entitlements to ‘care and assistance’ for ‘motherhood and childhood’. Gender-sensitivity and gender-neutral language had still to emerge, even in the rhetoric of human rights in ‘advanced economies’. That the human rights of women and children are not identical to those of adult men was yet to be recognised.

Another quarter-century passed before this recognition began, slowly, to emerge. Its emergence tracked the position of 1970s ‘second-wave’ feminism, namely that biological differences between the sexes must be built systematically into gender equality. Bearing and rearing children differentiate women from men. These biological differences must be taken into account in the creation of social equality between the sexes. The construction of social equality – and equity of human rights - between men and women must rest on their different, gendered responsibilities in the reproduction of society.

This position sounds so simple and obvious that it doesn’t need stating. But it is not simple to implement, and a majority of countries – including Zimbabwe – have not yet guaranteed equal rights for women in law and/or practice. They have not yet achieved gender equality. Why? Because in many societies men make policies for everyone. But men do not need to worry about falling pregnant, giving birth, and bringing up unwanted children. They do not have to live with the consequences of their sexual choices, even though many voluntarily do so and most want children. For men, fully in control of their own sexuality, such control is simply not an issue. For women, especially in the era of AIDS, such control is perhaps the most fundamental human ‘right’ which may affect everything else in their lives. And for many women, their sexuality is controlled by men.

Rights of women to their own sexuality and fecundity remain deeply problematic in many societies. Whether rights over personal sexuality and reproduction are classified as civil or social, they are still the subject of bitter conflict for women worldwide. The rights to control their own sexual behaviour, to prevent conception without reference to any sexual partner, and to abortion, are not yet secured for the majority of the world’s women. The quality of poor women’s lives in developing countries is negatively affected by pro-life, anti-abortion stances in countries such as the United States of America, which prohibit funding for non-governmental organisations encouraging or permitting abortion as an option.

The reason why men control women’s sexuality relates to male control of society and social reproduction, though marriage and family relationships. Although as a child of its time the *UDHR* is silent on the control of women’s sexuality, it does recognise that where their marriages are ‘arranged’ by others, women’s right to marry and found a family is restricted by lack of free choice of partner. It therefore asserts everyone’s right to choose their spouse freely, **without** addressing the underlying problem that produces this lack of choice among women – namely, male control of female sexuality.

Demands for human rights by men usually start with political and civil rights, because these are the rights which affect men most fundamentally. The political right to vote is usually regarded as gender-blind. It is all too easy to forget how recently Swiss women were enfranchised when we condemn the refusal of the all-male legislature to enfranchise Kuwaiti women in the year 2000. The point is that, in the initial instance, getting women the vote has everywhere required male consent. Women can never enfranchise themselves. Yet people often talk as if women can ‘empower’ themselves with political as well as economic and other ‘rights’ over which they have an equivalent lack of control.

1 David Jamali, ‘Delivering human rights education: ZimRights’ experience. Supplement to the Financial Gazette 3-9 May 2001.

The civil rights of citizenship are still more gender-complicated. As well as individual entitlements to identity and mobility, there is the issue of who may transmit their citizenship and its rights to their biological and/or adoptive children. The rights of women to transmit their citizenship have only recently, and still only in some countries, become equal to those of men.

In 2001, we also accept that civil and political rights are perhaps less relevant to systematically-impooverished social categories – such as women and children – than are economic and social rights. These socio-economic rights are differentially distributed. They are taken for granted by men as the social category that controls property ownership, wealth and economic opportunity. Women comprise the vast majority of the world's poor. They are widely quoted as doing 80% of the world's manual labour but owning less than 10% of the world's property. Women are, throughout the third world, poor, landless agricultural workers, but only infrequently the beneficiaries of 'land reform'. The education of girls is still an important social issue in many countries. Gender discrimination in employment and sexual harassment in the workplace are generally female, not male, problems. Economic rights are critical to women.

Finally, women are frequently the victims of 'traditional cultures' which deprive them of their human rights as specifically **female** individuals. 'Cultural rights' are often the rationale for masculine domination of domestic as well as national affairs. Even where women have the vote, 'traditional culture' often asserts that they should not stand for political office, for governance is the domain of men. Moreover, men's political behaviour may be so aggressive and unattractive that women shun participation in such 'dirty games' of power. Domestic violence against women and children is also often legitimated by 'culture' and religion. 'Cultural rights' claimed by men are therefore also problematic for women.

So it is high time we unpacked the gender dimensions of human rights. We need to look more carefully at the human rights specifically of women, at how far these are recognised and protected in our Constitution and law, at how well both the recognition of women's human rights and these rights themselves work in practice. This report attempts such an analysis for Zimbabwe, and ends with the most up-to-date statement by Zimbabwean women of their demands, articulated in the *Women's Charter*.

Chapter 1

The Historical Background to Women's Rights in Contemporary Zimbabwe

Colonial Rhodesia was a patriarchal society across the board, for all racial categories, notwithstanding its apparent liberal attitude to gender in the sphere of settler politics. After women had obtained the vote in 1919² in Southern Rhodesia, Ethel Tawse Jolly was elected the first woman parliamentarian 'in the British overseas empire' (Lowry 1997:259). During the second world war, Harare (then Salisbury) elected its first woman mayor.

But married settler women in this country suffered various disabilities in law and practice, many of which arose from the assumption of 'marital power' in Roman-Dutch law. For example, in 1974, a white married woman had to sign special indemnification to her bank, stating that **as a married woman** she had understood the contract, in order to stand guarantor for someone else's overdraft. Since no other category of guarantor had to sign such an undertaking, the assumption seemed to be that marriage caused a woman to lose her capacity to understand contracts. A few years later, a female university lecturer in a permanent, tenured post with the advantage of an additional employer's guarantee was refused a mortgage bond by the country's largest building society. 'We do not give mortgages to married women', she was told, ostensibly because married women fall pregnant and abandon their jobs. However, on being offered a certificate of spaying, the man who told her this only blushed. Perhaps he was at too low a level in the hierarchy to rethink the nature of his institution's gender discrimination.

Black women suffered even greater disabilities, being subordinated by 'African customary law' as well as 'general law'. They were generally regarded, by the colonial settler state, as perpetual minors at law.

Women in the Liberation Struggle

Having recurrently been discriminated against by differently-qualified franchises and racially-separated voting rolls, black Zimbabweans went to war to wrest their political rights from the discriminatory settler state. Young women were among those who joined the struggle intending to fight. Very few achieved this objective.³ Most were sidelined into refugee camps. Some acted as couriers and porters. Many were abused. All have been the subject of intense curiosity and academic investigation, in numerous doctoral theses and published articles. (A representative selection of these publications appears in the References, which are by no means comprehensive.)

As in most 'revolutions', the issue of gender equality was regarded as less pressing than other inequalities, by those men who fought for liberation and settled at Lancaster House in 1979. In particular, no provision was made to regularise the social position of the children born to young women who had participated in the struggle. Paternity was often known but not publicly acknowledged. On return to Zimbabwe, they were often raised by their mothers' families. The children themselves often lacked birth certificates and, as a result, later experienced great difficulty in obtaining identity cards. Their civil rights have been impaired by their problematic conception and childhood.

Their mothers experienced even greater social difficulties. 'Female ex-combatants' were widely perceived as rough and ready to fight at the slightest provocation, as 'culturally' unmanageable and unmarried, by their own families as well as potential spouses. As a small minority, they were subject to considerable social pressure after Independence to abandon their liberationist role and credentials, and to re-create their identities as demure, outwardly-submissive, respectably-married women. Some, like Margaret Dongo, resisted these pressures and played prominent roles in the more recent struggle for gender equality. Others negotiated a middle path within their political parties, assuming political

2 In the same year as women were enfranchised in the UK.

3 See Pathisa Nyathi 'Women and the liberation struggle', *The Zimbabwe Mirror* 18 June 1999; Zimbabwe Women Writers *Women of Resilience*; Lyons (1999); Nhongo-Simbanegavi (2000).

prominence while enunciating culturally-acceptable views on the proper role of women. There is, for example, a wide discrepancy between views attributed to Minister Mujuru as a young fighter in the Mocambican camps, and her later views which seem to advocate working within, rather than confronting, patriarchal relationships and gender inequities. After Independence she dropped her *Chimurenga* name of *Teurai Ropa* (meaning 'spill blood') and reverted to her given name, Joyce.

Gender Policy

Zimbabwe has long lacked a gender policy, even though it sent delegations to the Nairobi and Beijing conferences and is a signatory to several international conventions on gender, including the Beijing Platform for Action and the 1997 Southern African Development Community *Declaration on Gender and Development*. The SADC *Declaration* commits member States to appointing women to at least 30% of decision-making posts in politics and the public service by 2005.

However, Zimbabwe has thus far shown extremely limited State budgetary and staffing commitment to achieving gender equity and integrating women into all of its development programmes. Both the 30% target and the Government's slowness in working toward it have been severely criticised by Zimbabwe's women's movement, which feels that 52% of the population should be entitled to 52% of these posts. Until mid-2000, for nearly four years ministerial responsibility for gender issues had been split between the President's Office and the former Ministry for National Affairs, Employment Creation and Co-operatives. This ministry ranked the promotion of gender equality eighth of its eleven objectives. When the new cabinet was announced, this competitive duplication of functions was collapsed into the renamed Ministry for Youth Development, Gender and Employment Creation, under a male minister. Its ability to expand its gender portfolio was not enhanced by the withdrawal of donor funding for specific programmes, nor by increased staff.

The first political party to give gender relations a reasonably prominent place in its policy profile was ZANU (the precursor of Zanu-PF). Its 1980 election manifesto listed 13 Fundamental Rights and Freedoms. Ranked at number eight was the right of women to equality with men 'in all spheres of political, economic, cultural and family life', based on the principles of equal pay for equal work and free choice of partner for both parties to a marriage (ZANU 1980:16).

In government, ZANU indeed delivered formal gender equality before the law, fairly quickly. In 1982, the Legal Age of Majority Act (LAMA) gave persons of both sexes full legal capacity on reaching 18 years of age.⁴ LAMA gave women the right to own property as well as control over their own sexuality by vesting in each woman (rather than, as previously, in her legal guardian) the capacity to sue for seduction damages. It was followed by a flurry of statutes (the Matrimonial Causes Act, the Maintenance Act, the Taxation Amendment Act). These recognised women's property rights on the dissolution of marriage, their right to maintenance for themselves as well as their children, and their status as individual taxpayers in their own right, if working.

The tax issue was important for women. Women generally earn less than men, even when they do the same jobs. In the old tax system, the State recognised the male head of each married household as a 'family taxpayer'. The earnings of 'family taxpayers' were taxed as 'primary' income in the lower bands. The 'secondary' income of their wives was taxed at higher rates. Yet any tax refund was directed to the 'family taxpayer'. So wives, who generally earned less than their husbands, were taxed at higher rates but never themselves received refunds on their own tax paid. Their earned incomes were significantly reduced by this gender-discriminatory taxation. Where a married man and a married woman earned identical salaries, their after-tax incomes could differ by as much as 25%. In discriminating against married women, this tax policy actually discouraged women (and to a lesser extent men) from marrying. A man and a woman living together retained more of their income after paying tax than if they were married, and it was equitably distributed in accordance with their respective earnings. So the 1985

⁴ However, as Cheater (1993:110) has noted, there was 'deliberate intent to mislead' in the publicity given to this act immediately after it was passed, with the Zanu-PF Women's League being told, in Shona, that it would involve no change in parental control of daughters' sexuality.

recognition of all women, irrespective of their marital status, as individual taxpayers, was a major move towards gender equity in respect of women's economic rights.

Yet gender equality was not written into the Constitution of Zimbabwe until the end of 1996, and when it was so recognised, it was massively diluted by the retention of the much-hated 'Section 23'. Section 23, sub-sections (3)(a) and (b) of the Constitution have since 1980 exempted all customary, family and personal law from Constitutional regulation. Thus our Constitution itself permits, even encourages, men to discriminate against women in innumerable ways, provided these are recognised 'customs', or fall within the ambit of family or personal law. What the governing party has given in statute, it has taken back in two ways: in the names of 'culture' and 'customary law'. Both were created by State administrators and judicial officers during the colonial and post-colonial periods (Bourdillon 1975; Cheater 1986). They bear little, if any, relationship to pre-colonial practices.

Moreover, section 111B of the Constitution of Zimbabwe also specifies that international agreements are not binding unless they have been incorporated into our law as acts passed by our Parliament. Our Parliament has **not** yet incorporated as domestic statutes any of the international treaties and conventions on women's rights. In particular, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) cannot yet be used in Zimbabwean law, even though Zimbabwe signed it in 1991.

Even after the 1996 landmark 14th Amendment to the Constitution, then, major problems still remain with gender equality in practice. As the editor of *The Herald* noted: 'the new battle is to change attitudes of many men, to make them start thinking seriously about how their own behaviour denies half the human race its right to be treated as truly human ... to find ways of restoring that spirit [of the past], rather than enforcing obsolete customs'.⁵

⁵ *The Herald* 9 March 1999.

Chapter 2

The Current Constitutional Position

Sex and gender

The women's movement in Zimbabwe has worked long and hard to publicise the distinction between sex and gender. To judge by the constitutional confusion discussed below, it has not succeeded very well. So let us remind ourselves of the difference between them.

Sex is an anatomical and physiological fact. With few exceptions, people are born male or female.

Gender is a construction by society of the **social** differences between the male and female sexes. The social construction of gendered roles differs from one society to the next. What is traditionally 'men's work' in one system may be 'women's work' in another. For example, Zulu women are not supposed to handle livestock and therefore they are not supposed to be involved in ox-ploughing. In Zimbabwe, mixed-sex and all-women teams have competed in public ox-ploughing contests for at least three decades.

In respect of women's human rights, the distinction between sex and gender is absolutely critical.

To allow discrimination on the basis of sex while prohibiting gender discrimination would allow women to be discriminated against on the basis of menstruation and pregnancy, child-bearing and lactation, for these are anatomical and physiological matters of sex.

But to outlaw sex discrimination while permitting gender discrimination would allow women (and men) to be excluded from the workforce as well as specific jobs, on grounds of 'tradition' and past practice. Gender discrimination already practised in our society is based on ideas such as - women are not career-oriented because they get married and devote themselves to bringing up children; men are 'naturally' suited to leadership while women are 'naturally' suited to 'caring' jobs such as nursing; women make the best infant school teachers while men should teach adolescents in secondary school because they can 'maintain order' in classrooms; women can't do mathematics or engineering and men can't cook *sadza*. And so on. We are all too familiar with these and many other stereotypes which underpin gender discrimination. They have nothing to do with the anatomy or physiology of sexual difference, but arise from socio-cultural experiences and ideas.

The current Constitution of Zimbabwe seems unclear about the distinction between sex and gender. Its drafters appear to have thought sex and gender were interchangeable synonyms. For **if** they were clear about this distinction, and why **both** should be prohibited as grounds for discrimination, then one can only conclude that our Constitution has been crafted deliberately to discriminate against women.

'Discrimination against women' is defined in Article 1 of the United Nations' Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as:

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

The CEDAW definition of discrimination against women underpins this report.

Constitutional protection against sex and/or gender discrimination

Until 1996, section 11 of the Constitution, introducing the Declaration of Rights, contained the only reference to sex or gender in the entire document. It began as follows:

'every person in Zimbabwe is entitled to the fundamental rights and freedoms of the individual, that is to say, the right whatever his race, tribe, place of origin, political opinions, colour, creed or sex ...'

This provision was successfully used to change the policy and regulations of tertiary educational institutions. In 1995, a teacher training college expelled a married female student when she fell pregnant and had a child during her three-year course of study. She used section 11 of the Constitution to appeal against the college's decision not to allow her to write her final examinations and qualify as a teacher. The Supreme Court held that section 11 was 'not merely a preamble without any legal effect' and found the college's regulation prohibiting pregnancy to be 'discriminatory against females' on the basis of their child-bearing capability – that is, their sex.⁶

But by the time this judgement had been made in 1997, section 11 of the Constitution had already been changed by the 14th Amendment which came into force on 6 December 1996. Section 11 now omits any reference to specific rights and freedoms, reading as follows:

Whereas persons in Zimbabwe are entitled, subject to the provisions of this Constitution, to the fundamental rights and freedoms of the individual specified in this Chapter, and whereas it is the duty of every person to respect and abide by the Constitution and the laws of Zimbabwe, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations on that protection as are contained herein, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the public interest or the rights and freedoms of other persons.

The 14th Amendment removed 'sex' as a ground for unlawful discrimination, but it also added 'gender' to the list of prohibited grounds specified in section 23, sub-sections (2) and (3), and inserted a new sub-section (5) into this section. From the confusion between 'sex' and 'gender' in this new sub-section, it is clear that discrimination on the basis of sex is now constitutionally permissible. Section 23(5) notes that:

Nothing contained in or done under the authority of any law that discriminates between persons on the ground of their gender shall be held to be in contravention of sub-section (1)(a) or (b) to the extent that the law in question –
 ... (b) takes due account of physiological differences between persons of different gender ...
 except in so far as that law or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Moreover, section 23 sub-sections (3)(a) and (b) were not amended, and continue to give blanket exemptions to gender discrimination:

Nothing contained in any law shall be held to be in contravention of sub-section (1)(a) to the extent that the law in question relates to any of the following matters –
 (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
 (b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans, where such persons have consented to the application of African customary law in that case.

At the heart of the problem of operationalising women's human rights in Zimbabwe, then, is the conflict between 'customary law' and personal 'traditions' on the one hand, and the Constitution and statutes on the other. The male-dominated Zimbabwean State has made what it thinks are appropriate symbolic concessions to women's rights, while maintaining intact patriarchal power. It upholds gender equality in the public domain while repeatedly affirming that in the domestic realm of family and home men are the bosses. It is in the domestic sphere that girls are socialised and educated into accepting their inequality.

The problem is simple. Zimbabwe's Constitution ostensibly protects women against gender (but not sex) discrimination, but exempts from constitutional regulation those areas of law in which this gender discrimination is most deeply entrenched. It is, from our women's perspective, a constitution of smoke and mirrors, which hardly encourages women to trust our 'supreme law' as a neutral arbiter.

⁶ *Wazara v Principal, Belvedere Technical Teachers' College & Anor*, 1997 (2) ZLR 508.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

Many Zimbabwean women think that the United Nations' Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)⁷ should protect their rights even if our own Constitution does not. After all, Zimbabwe ratified CEDAW on 13 May 1991.

CEDAW's Article 2(f) requires all governments which have signed it 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'. Article 5(a) requires 'states parties' to take all appropriate 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'.

But ten years after signing this convention, our government has not yet incorporated CEDAW into its own laws, in accordance with section 111B of our Constitution. CEDAW's provisions, therefore, do **not** protect women in Zimbabwe. In our High Court, Justice Gillespie⁸ noted two years ago that the denial of rights to immovable property to women in unsolemnised and unregistered customary unions contravenes Article 16 of CEDAW.

⁷ Adopted by the General Assembly in 1979, CEDAW entered into force on 3 September 1981.

⁸ *Jengwa v Jengwa* (HH-152-99), 1999 (2) ZLR 121 (H).

Chapter 3

The 1999 Proposed Constitutional Changes

In the 1999 draft constitutional proposals, a concerted effort was made to address and rectify these problems. However, when voters were required to accept or reject this draft as a package, the proposals were rejected in the February 2000 Referendum. Had voters been allowed to vote separately on each clause or chapter of these proposals, it is likely that they would have accepted the proposed *Chapter III: Fundamental Human Rights and Freedoms* as a significant improvement on the existing Declaration of Rights, even though women's groups were **not** satisfied with the proposals.

Among other lobbies, Zanu-PF (1999:3) suggested to the Constitutional Commission that a 'founding charter' should include among its 'fundamental principles' the prevention of 'all forms of discrimination on the basis of ... gender', but did **not** include sex as a prohibited basis for discrimination. Unless Zanu-PF is also confused about the difference between sex and gender, this omission can be presumed to have been deliberate.

Zanu-PF did **not** suggest that the prevention of **any** form of discrimination (including gender) should be part of a justiciable declaration of rights.

The Constitutional Commission's final draft proposals⁹ (Chapter I s.7) made the Constitution the supreme law of Zimbabwe, and determined 'if any other law or conduct is inconsistent with this Constitution that law or conduct is invalid to the extent of the inconsistency'. It included non-justiciable objectives (in Chapter II) relevant to gender equality as follows:

- 19(1) The State must
 - (a) promote and preserve cultural values which enhance the dignity and well-being of Zimbabweans.
- 21 (1) The State must ensure gender balance and a fair representation of marginalised groups on all constitutional and other governmental bodies;
- 21(2) The State must promote full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
- 21(3) The State must take all practical measures to ensure that women have access to land and other resources on the basis of equality with men.
- 25(2) In particular, the State must endeavour to secure ...
 - (iv) maternity leave
- 26(1) The State must protect and foster the institution of the family as the basic unit of society;
- 26(2) In particular, the State must endeavour, within the resources available to it, to adopt measures for
 - (a) the provision of care and assistance to mothers, fathers and other family members who have charge of children; and
 - (b) the prevention of domestic violence.
- 27(a) Everyone of marriageable age is free to marry another such person of the opposite sex and to found a family;
- 27(b) No marriage is entered into without the free and full consent of the intending spouses;
- 27(c) There is equality of rights and responsibilities of spouses during the marriage; and
- 27(d) In the event of dissolution of a marriage, provision is made for the necessary protection of any children and spouses.

⁹ *The Herald* 1 December 1999 (Draft New Constitution: The Full Text); *Zimbabwe Independent* 28 January 2000 (Corrections and Clarifications).

None of these admirable proposals would actually have been guaranteed **rights**. Moreover, Chapter II did not include an overall ‘equality clause’ specifying gender equity or governing employment opportunities, parallel to that concerning access to land. No particular protections were specified for girls in accessing educational opportunities; or for pregnant women in respect of health care. Only war veterans were singled out for special mention in accessing ‘social security and social care’ (s31).

Chapter III: Fundamental Human Rights and Freedoms (ss33, 34) bound ‘the Executive, Parliament, the Judiciary ... and all organs and agencies of the State and Government, including local government’, plus ‘all persons, including juristic persons’ to ‘respect, protect, promote and fulfil the rights and freedoms set out in this Chapter’. All courts were to be ‘guided by the spirit and objects of this Chapter’ (s35(2)). *Chapter III* twice came close to an equality clause. Section 35(2)(b) required any ‘court, tribunal or forum’ to ‘promote the values that underlie an open and democratic society based on human dignity, equality and freedom’. Section 49 noted that ‘Everyone is equal before the law and has the right to equal protection and benefit of the law’. But neither clause gave the requisite overall guarantee of equality between men and women in our society.

Section 43 was the anti-discrimination clause and included both sex and gender:

- 43(1) 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, language, class, religious belief, political or other opinion, culture, sex, gender, marital status, pregnancy, age, disability or natural difference or condition;
- 43(2) A person is treated in a discriminatory manner for the purposes of sub-section (1) if he or she is prejudiced –
- (a) by being subjected to a condition, restriction or disability to which other people are not subjected; or
 - (b) through other people being accorded a privilege or advantage which he or she is not accorded;
- 43(3) Discrimination on one or more of the grounds listed in sub-section (1) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;
- 43(4) Any law which, in itself or in its effect, discriminates unfairly between people on one or more of the grounds listed in sub-section (1) is void;
- 43(5) To promote the achievement of equality, legislative and other measures may be taken by way of affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination.

Compared to other constitutions in southern Africa, this draft appeared to lack both political will and legal teeth. There were almost as many hedges as rights themselves, including an entire ‘hedge section’ in *Chapter III Part III*.

- 34(3) Human beings and juristic persons are entitled to the rights and freedoms set out in the Chapter to the extent that these rights and freedoms can appropriately be extended to them.
- 62(1) The rights and freedoms set out in Part II must be exercised reasonably and with due regard for the rights and freedoms of other persons under that Part;
- 62(2) Subject to this Constitution, the rights and freedoms set out in Part II may be limited in terms of a law that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;
- 62(3) In determining whether or not a law limiting a right or freedom is reasonable and justifiable for the purposes of sub-section (1), all relevant factors must be taken into consideration, including –
- (a) the nature of the right or freedom;
 - (b) the purpose of the limitation, in particular whether it is imposed in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest;
 - (c) the extent of the limitation, in particular whether it permits due recognition to be given to the rights and freedoms of others;

- (d) the relationship between the limitation and its purpose, in particular whether it imposes greater restrictions on the right or freedom concerned than are necessary to achieve its purpose;
- (e) whether there are any less restrictive means of achieving the purpose of the limitation.

63. In addition to the limitations permitted by s 62, the rights and freedoms set out in Part II may be further limited by a written law providing for measures to deal with situations arising during a period of public emergency, but only to the extent permitted by the Second Schedule.¹⁰

69. A court must not decide that a law infringes a right or freedom set out in Part II on the ground that the law is not reasonable or justifiable in an open and democratic society based on human dignity, equality and freedom, unless the court has given the Minister responsible for that law a reasonable opportunity to make representations on the issue.

What the draft proposed to ‘give’ to women was superficially attractive, but in some respects actually weakened existing protections. To many women, it appeared to repeat past male strategies of giving symbolic rights that had little substance in practice. The Women’s Coalition therefore successfully urged women to vote against these proposals in the referendum. It later drafted the *Women’s Charter*, which was adopted by a specially-convened conference in October 2000.

10 The small print of the Second Schedule specified that certain rights were inviolable in public emergencies. These included the rights to life, to be treated with humanity and human dignity, to a fair trial and to challenge the lawfulness of arrest or detention, and not to be subjected to medical experiments, slavery, servitude or unfair discrimination.

Chapter 4

Gender Discrimination

Marriage and gender discrimination

Gender discrimination affects how women participate in our economy. It starts with the assumption that girls will get married and their major work will be to produce children for their husbands' families. Their obligation to bear children for their in-laws arises from the payment of bridewealth (*roora, lobolo*) by husbands to their wives' fathers, brothers, or guardians. Bridewealth transfers rights in the children from the woman's family to her husband's lineage. It also compensates her own family for the loss of her labour. When bridewealth is paid, therefore, the bride must work and bear children for her husband and his family.

Certain attitudes accompany the payment of bridewealth. Fathers of girl children may see their daughters' education as not worth investing in, because the girls will marry out and their own investment will then benefit others. This attitude is unjustified. Firstly, many families are assisted financially by their well-educated, adult, married daughters more than by their sons. Secondly, fathers often charge exorbitant amounts of bridewealth for their well-educated daughters. Education, like chiefly status, commands a premium in the marriage market. So bridewealth alone is no reason for not educating girls; but it is often used as an excuse for not doing so. Of an estimated two million functional illiterates in Zimbabwe, three-quarters are apparently women.¹¹ And our school enrolment figures show increasing drop-out rates of girls in the higher grades. Equal enrolment of boys and girls in Grade 1 becomes, by first-year university, two young men enrolled for every one young woman. Organisations such as the Adult Literacy Association of Zimbabwe and the Zimbabwe chapter of the Forum for African Women Educationalists are concerned with countering women's low self-esteem and the negative attitudes towards educating girls, as well as imparting skills to and sponsoring school fees for females.

Husbands may regard themselves as having 'paid for' their wives.¹² In the heat of domestic arguments, they often tell their wives that they must obey, and can be beaten, because they have been paid for. As the amounts paid in bridewealth have risen, this problem also appears to have worsened. Yet such power struggles in the home appear to be recent. The ideology of bridewealth says it is **not** an indemnity payment for a woman's labour or fecundity, but rather expresses gratitude to her family for raising her properly, and binds the two families in an ongoing relationship. In reality bridewealth does **all** of these things, and can be used in different ways in marital disputes. But traditionally its payment did **not** give husbands the right to beat their wives, whose own families had the obligation as well as the right to protect their daughters against marital abuse.

However, bridewealth was – and remains – part of our patriarchal society. It affects especially elites, who can afford to pay. Poor Zimbabweans cannot afford bridewealth or church weddings. They shack up together, sharing pots and beds in what we call *mapoto* relationships. These have not yet been recognised as common-law marriages by Zimbabwe's Parliament or judiciary. While *mapoto* relationships lack legal recognition, they confer much greater freedom on the women involved than do formal marriages. Ironically, perhaps, the constraints of patriarchy affect the wealthy more than the poor. But the social classes are also affected differently by patriarchal power relations.

In patriarchies, women are subordinated to men. Modernising patriarchies find many ways to continue subordinating women to men, even in new institutions. Christian churches preach the equality of all humans before God; but many still recruit their priests only from the male population and may regard female ordination as an affront to their God. Constitutions may guarantee gender equality, but few

¹¹ Parliamentary Debates 27,36:3776.

¹² In fact, some women contribute to their own bridewealth in order to marry men they love who may not be able to pay what their fathers demand.

countries – modern or ancient – have been governed by women. Religion, politics, education, economy and society are all riddled with the gender discriminations created by patriarchy.

Gender inequality is rooted in social and cultural attitudes. It is entrenched by discriminatory education practices, which disadvantage women in the labour market and render marriage the only sensible option for most women. Gender discrimination is further entrenched by defining low-paid jobs (domestic service, teaching, nursing, secretarial, clerical and data entry work) as ‘women’s work’ especially suitable for young women **before** they marry. Such jobs carry low pay, because they are not regarded as appropriate for men, especially married men with families to support. But even female professionals are often paid less than their male counterparts.

In order to resist this ongoing inequality, the Zimbabwean Women’s Coalition drew up the *Women’s Charter*,¹³ which was adopted by a national conference on 12-13 October 2000. This charter is reproduced in full in Chapter 5. It ‘articulates women’s demands for formal legal equality’ and ‘challenges the roots of women’s subordination’. It rejects ‘male power and control manifested in [domestic] violence, bride payments and the control of female sexuality’, as well as marital rape. As the Women’s Coalition found, there are differences of social class as well as ideology concerning these issues. Criticising our own ‘culture’ is politically as well as culturally sensitive. But without such criticism, women are unlikely to achieve equality with men in our society.

Social class and gender discrimination

In Zimbabwe, there are wide disparities between the towns and the countryside. In general, rural folk are poorer than their urban relatives. Because the towns are seen as having better facilities (education, jobs, health, housing), ambitious people want to live and work there – at least they did before our economic collapse impoverished urbanites too. There is, then, a broad class difference between urban and rural Zimbabweans.

Gender discrimination also varies between these urban and rural classes.

In the countryside, the major discrimination against women arises from custom and customary law. Since early colonial times, men have been seen as ‘traditionally’ the ‘land-owners’. Women were thought to cultivate land on behalf of its male owners (their fathers, brothers, or husbands). At best, in some regions married women might claim gardens for themselves in which to grow food crops for their families. Today less than a quarter of all married women are reported to have such gardens.

There are good reasons to query this colonial construction of ‘traditional’ landholding (see Cheater 1990). Here we simply note one. Pre-colonial travellers and hunters in what is today Zimbabwe recorded that, everywhere they went, they bought food from **women**, not men. It is unlikely, if women had no rights to the land, that they would have controlled the disposal of its products, even those produced by their own labour. And women **did** control the products of their own labour. They could invest what they earned from selling the vegetables and pottery they produced, and from midwifery and healing, in livestock inherited by their own children and siblings, not their husband’s family. However, during the colonial period, women’s control over the products of their ‘hands’ was inverted into the ideology that they were totally dependent on men. An expectation developed that the wages of employed women would be paid directly to their husbands.

So rural women are today mostly severely discriminated against by not being allowed to control the means of agricultural production in the communal lands. Both colonial and independent governments have also chosen to by-pass women as potentially independent lessees on irrigation and resettlement schemes. Our State has recurrently treated women farmers as the dependants of men, not as farmers in their own right. This discrimination was institutionalised by colonial and neo-colonial patriarchy in the name of ‘custom’. Customary and family law (as noted earlier) remain beyond Constitutional regulation.

Without personal control over land, rural women as producers are rendered dependent on men as landholders. Those who exploit unpaid female labour within family structures cannot be expected to

¹³ *ZWLA Update* November 2000, p. 3. Circulation of the Charter itself is still pending.

forego this privilege by educating daughters who will get married and work for another family. Without land or education, rural women have no option except to perpetuate their dependence on others through the cycle of marriage and reproduction. Ironically, the most vocal and active organisation seeking land rights for women is the Women and Land Lobby Group (WLLG), composed of well-educated urban women who themselves have little if any interest in farming.

WLLG¹⁴ has severely criticised Government policy on and results of land resettlement for being insufficiently gender-sensitive, and reported that:

‘Although females heading households¹⁵ can access land and be given permits in resettlement areas, their married counterparts still had to access land through their husbands and have no security of tenure should their husbands die;
There are not many women who own land in small scale commercial areas as most women are poor;
Legal and policy framework has not incorporated inheritance rights pertaining to land for widows;
The fact of women's lack of access and control over land leads to them being excluded from credit,¹⁶ marketing facilities, decision-making powers over agricultural production activities and benefits, negatively impacting on the productive capacity of women;
Only 23% of the women in communal areas have secondary access to their own land parcels allocated to them by their husbands.’

Urban women, who are generally better educated than their rural counterparts and often employed, have a different property problem. Their problem is how to secure, in their own right and names, extremely scarce urban housing. This problem entails ensuring that property jointly owned with husbands is registered in **both** names, to avoid a husband's patrilineal kin claiming 'his' property on his death and evicting his wife and children. A growing number of sons who inherit such family homes are reported to sell them without informing their widowed mothers. Such sales often entail legal difficulties, as a result of which these elderly women end up homeless. There are many such cases reported in our press. In a particularly vexatious case, the State required 67-year-old Mrs Ednah Mahureva to serve three months' imprisonment for contempt of court when she refused to vacate her former matrimonial home to the purchaser to whom it had been sold without her knowledge by her son. Single or divorced women may experience difficulty in negotiating a lease or a mortgage bond to acquire property from municipal or private owners. Self-employed women may have particular difficulty in proving their income level, while most female employees earn salaries lower than those of men seeking to lease or own homes.

Urban women want secure homes in town because home ownership expands their economic and financial options. They can increase their incomes through letting rooms, and invest such income in trade-goods which are safely stored in the house. As self-financed small entrepreneurs, women with little education can become independent heads of household and educate their children for greater upward social mobility. Such female independence, for Zimbabwe's increasing number of young widows, is particularly important in the era of AIDS.

Domestic violence

Like child sex abuse, domestic violence affects all social classes. Although there are cases reported of domestic violence perpetrated by women against men, the overwhelming majority of cases are by men against women. Domestic violence is in practice discriminatory by sex, although it does not feature in the Convention on the Elimination of all forms of Discrimination Against Women.

According to Justice Elizabeth Gwaunza, a former High Court judge who specialises in family law and chairs the Musasa Project, one in four women is beaten, raped or molested by her male partner and one in

14 WLLG 2001a (p. 10).

15 Single, divorced and widowed women.

16 Women receive less than 10% of the credit advanced to small farmers in Zimbabwe, despite being more reliable in their repayment of loans (WLLG 2001b, p. 11).

25 women is assaulted while pregnant.¹⁷ From the report of her address, it is unclear from which country these figures come, but from the context they seem to refer to Zimbabwean women. Certainly the Musasa Project deals primarily with domestic violence affecting women in Zimbabwe.

In 2000, the Law Development Commission (for which Justice Gwaunza now works), drafted the *Domestic Violence Bill*. Its committee consulted with women's organisations at various stages of the drafting process. The final, wide-ranging bill has not yet come before Parliament, but it seeks to protect both parties to all types of relationship, not just those legally married, from a wide range of physical, psychological and economic abuse. If passed into law, the *Domestic Violence Bill* will enact one intent of the rejected 1999 Draft Constitution (s 39(a)), to protect everyone's right 'to be free from all forms of violence from both public and private sources'.¹⁸

Gender discrimination in employment

CEDAW is particularly concerned that women should have equal opportunities with men in all forms of income generation, including employment. Historically, in most societies, women have suffered rampant discrimination by employers, except in times of war, when male workers are called up into armies and women are mobilised temporarily to replace them as producers.

Discrimination against women as employees is often based as much on sex as gender. Because women take work-time off to have babies and feed them, some employers argue that their productivity and reliability are both lower than those of men. Women, this argument goes, put their children before their work responsibilities. They are therefore more expensive employees than men.

It is true that the records of many workplaces show that women with children are absent from work more frequently than other categories of worker. Breast-feeding mothers do have legal entitlements to feed their infants during work hours. However, women may also be regarded as more responsible workers than men. Men's productivity regularly falls on Friday afternoons and Monday mornings as they anticipate and then recover from weekends. Women may take more time off to attend to children, but they work harder and more effectively while at work. For some managers, therefore, these inefficiencies of male and female workers cancel each other out, leaving nothing really to choose between the sexes in respect of their overall productivity. But managers can only come to this conclusion if they have employed both women and men, and noted their experience. If they simply believe, in line with gender stereotypes and without examining the evidence, that men make 'better' employees, they will continue to discriminate against women in employment.

The figures suggest that the majority of Zimbabwean employers do just that. In 1999, women comprised only some 18% of all formally-employed workers. As the table below shows, wide variations between sectors were hidden in this average figure, with health and education (nurses and teachers) accounting for the lion's share.

| | |
|-------------------------|------|
| health | 57.2 |
| education | 33.9 |
| finance | 31.2 |
| private sector | 26.3 |
| agriculture | 26.0 |
| distribution | 15.0 |
| services | 14.5 |
| public administration | 10.2 |
| other sectors less than | 10.0 |
| overall | 18.0 |

Despite its public commitment of some years' standing to employ women in at least 30% of all managerial positions in the public service, Government has failed to achieve this target. In 1999 only two women were among 23 permanent secretaries to ministries in the civil service. In the judiciary, only six of

¹⁷ *Sunday Mail* 8 April 2001.

¹⁸ This intent rings very hollow against the deliberate and orchestrated public political violence to which so many Zimbabweans have been subjected since rejecting the Draft Constitution and electing 58 parliamentarians from opposition parties four months later.

24 High Court judges are currently women, three of whom were appointed in 2001. No women serve on the Supreme Court bench. Four years ago the Faculty of Law at the University of Zimbabwe became the first to have a majority of women students, but women are still a small minority of the faculty's academic staff, among the partners in legal firms and on the magistrate's bench. As of April 2001, Zimbabwe's seven universities had only one female pro-vice-chancellor and not even one female professor. Only a small minority of their associate professors are women. Indeed, women form less than one-quarter of all their academic staff. In March 2001, Wing Commander Rufaro Prisca Maureen Chiweshe became the highest-ranking woman in the Air Force of Zimbabwe when she was promoted to Group Captain.¹⁹ The first female Assistant Commissioner in the Zimbabwe Republic Police took legal action against the force and won her case against discriminatory posting.

In the private sector the story is similar. Although competent women may find it easier to gain appointment or promotion to executive posts, the ratio appears, from press reports and company advertisements, to run at four to eight men to every one woman.

In 1999, according to the then ZCTU president, Gibson Sibanda,²⁰ only 25% of Zimbabwean workers were union members. Of these members, only one in five were women. What was the ZCTU Women's Desk became a Gender Desk emphasising gender integration in the labour movement. The ZCTU's policy of having 30% of decision-making positions filled by women proved difficult to implement through the democratic electoral process in such a heavily male-dominated organisation. However, in the most recent elections (March 2001), three women were elected to the nine-member executive.

And yet women are not incompetent managers of domestic, public or private sector resources. In Masvingo Province, micro-lender Credit Against Poverty enjoyed a repayment rate of 98,6% from its predominantly-female debtors. It has reportedly loaned over Z\$9 million to 3 200 small borrowers (95% of them women) since it started in 1996.²¹

Gender discrimination in politics

Very few women participate in Zimbabwean politics at either local or national level in any organised party. Various initiatives have been taken to increase women's political representation, by the Working Group on Gender Politics (WGGP), Women and Politics for Democracy and Equality (WOPODE), the Women's Coalition, the newly-formed Women's Election Network, and the Women In Politics and Decision-Making project (WIPDM). The latter was physically housed in Zanu-PF headquarters and located in the Ministry for National Affairs, Employment Creation and Co-operation. In January 2000, opposition parties boycotted a UNDP-sponsored WIPDM workshop designed to involve more women in national politics. Only Zanu-PF members attended. The project then moved to a more neutral location, but its donor-funding was still withdrawn after review.

In 2001, there are even fewer elected female representatives in our democratic institutions than in the outgoing fourth Parliament, which had 21 women MPs. The Women's Coalition supported women candidates for Parliament irrespective of their political affiliation. There are 13 elected and one appointed women in our fifth Parliament. The MDC's 7 elected women MPs are: Nomalanga Khumalo (Umzingwane), Thokozani Khupe (Makokoba), Hilda Mafudze (Mhondoro), Evelyn Masaiti (Mutasa), Priscilla Misihairabwi-Mushonga (Glen Norah), Paulina Mpariwa (Mufakose) and Trudy Stevenson (Harare North). For Zanu-PF, the six elected were: Flora Bhuka (Gokwe East), Shuvai Mahofa (Gutu South), Olivia Muchena (Murehwa South), Sabina Mugabe (Zvimba South), Joyce Mujuru (Mt Darwin North) and Esther Nyauchi (Gokwe West). Regrettably, all of the latter six victories were in constituencies wracked by significant violence, including against women; as was Evelyn Masaiti's in Mutasa. In April 2001, Justice Devittie annulled Olivia Muchena's election to the Mutoko South seat because of this violence.²² Among the State President's 12 handpicked non-constituency MPs was only

¹⁹ *The Herald* 24 March 2001.

²⁰ Interview, *Social Change and Development* 1999, no. 46, p.10.

²¹ *Financial Gazette* 5.10.00.

²² At the time of writing, no change had been announced to her Cabinet position as a result of his judgment.

one woman, Mrs. Edna Madzongwe. (Her Chegutu constituency had been abolished by the Delimitation Commission.) She was re-elected Deputy Speaker. Four women were appointed as ministers or deputy ministers, but only one to a portfolio post. Joyce Mujuru retained her Ministry of Rural Resources and Water Development. Flora Bhuka and Olivia Muchena were appointed non-portfolio Ministers of State in the Offices of Vice-Presidents Muzenda and Msika respectively. Shuvai Mahofa became a deputy minister. Oppah Muchinguri (who lost the Mutare North constituency) became Zimbabwe's first female Provincial Governor, of Manicaland.

In local government, Zimbabwe now has one (suspended) woman mayor. Catherine Gumpo was elected by Kariba ratepayers in 2000. In 1999, 38 women were among 1 377 Rural District Councillors, and four women plus 260 men were installed as chiefs.²³ Updates on these figures were not available.

Complaints were levelled against all parties regarding their tiny proportions of female candidates for the June 2000 parliamentary elections. Not a single woman contested 77 of the 120 seats (64,2%), while in five the two major parties both fielded female candidates. In two of these five, there were additional women seeking election. It would seem that the majority of constituencies are 'no-go' areas for women, while a few may be 'female-friendly'. Of 57 women candidates in total, 13 (22,8%) were elected, compared to 107 of 416 (25,7%) men. Zanu-PF nominated 21 women (17,5%), the same as the number of its own outgoing women MPs. Eight stood in Harare and Bulawayo constituencies. Along with Zanu-PF's male candidates in these cities, they were whitewashed. Only six of Zanu-PF's 21 female candidates (28,6%) were returned, all in rural constituencies. The MDC eventually mustered only 11 candidates, 9,2% of its total. However, seven (63,6%) were elected, four in wholly-urban constituencies. The smaller parties, which were almost completely removed from Zimbabwe's political map, nominated 21 women (15%). Interestingly, and perhaps signalling a new view of politics by women, four women stood as Independents aligned to no party.

Within the two major parties, only one-fifth of the MDC's first elected executive were women despite its goal of one-third. They included three female trade unionists. Three women were appointed, two to mainstream portfolios, in the MDC 'shadow cabinet': Pauline Gwanyanya (Employment), Hilda Mafudze (Environment and Tourism), and Evelyn Masaiti (Gender, Youth and Culture). Many women disagreed with the MDC's proposed Gender Forum, preferring to incorporate women into mainstream structures rather than ghettoise them in a potential clone of Zanu-PF's Women's League.

In December 2000, Zanu-PF enlarged its Central Committee to include an extra 50 members of its Women's League, five from each province. However, real power remains with the Politburo, now expanded to 30 members personally chosen by the State President and Zanu-PF Secretary-General, Robert Mugabe. The current Politburo remains an almost exclusively male preserve.

It is clear, from the information presented here, that Zimbabwean women have a long way to go in achieving recognition of their human rights and equitable decision-making in social and political institutions. A new Constitution, recognising and entrenching gendered human rights, would be a great help in achieving gender equality in our economy, polity, and society.

²³ *The Herald* 21 January; *Sunday Mail* 7 February 1999.

Chapter 5

The Women's Charter

The *Women's Charter*, drafted by the Women's Coalition and adopted in October 2000 at a special women's conference, identifies the gendered dimensions of human rights in Zimbabwe and lists women's demands for their basic human rights as women. It is reproduced in full below.

Preamble

We the women of Zimbabwe, as full citizens representing over half the Zimbabwean people;

Having contributed equally to the development of the nation throughout its history;

Having contributed equally to the struggle for the independence of our nation;

Having suffered oppression through patriarchy, custom and tradition, colonialism, racism, male-dominated totalitarianism and capitalism;

Finding ourselves still discriminated against in all aspects of national life – legal, political, economic and social, cultural and religious;

As workers in every sphere of national life;

As the mothers of the people and of future generations;

Claiming the birthright of every human being to have freedom and equality;

In recognition of our role in the foundation and development of the country;

Make the following basic demands:

1. constitutional, legislative and policy measures that actively address gender imbalances;
2. full and equal participation in all aspects of national life;
3. freedom from all forms of oppression;
4. full and equal rights in the legal, political, economic, social and cultural framework of our nation;
5. the removal of discrimination against women in all aspects of public, corporate and private life;
6. affirmative action where necessary to right the injustices of the past against women and to give women equal partnership in the future;
7. guarantees of safety of person and property and active measures to end violence against women;
8. a plan of action, a time frame for implementation and a realistic allocation of national resources to fulfil these objectives.

In order to implement these demands the following need to be addressed.

EQUALITY AND NON-DISCRIMINATION

Women claim full equality with men in all aspects of national life. Their right to constitutional, legal, political, economic and social equality is unalienable and indivisible. To achieve equality, the State, in all its organisational aspects, must recognise the oppression and disadvantages women have suffered and rectify this imbalance through affirmative action policies. In addition, non-discrimination against women should be enshrined in the Constitution and in all domestic law as an unqualified and non-derogable principle.

1. The principle of equality between women and men should be addressed in all legislation and policy instruments and additional legislation should be developed to rectify the imbalances of the past and all discriminatory laws must be repealed immediately.
2. There should be a justiciable Bill of Rights in a new Constitution to protect human rights and it should include a clear and unambiguous statement of full equality between women and men.
3. The Government should promote equality between men and women in all aspects of public, corporate and private life and women shall not be discriminated against on the basis of marital status, pregnancy, etc.
4. Women should have equal rights within all aspects of family life, equal rights to custodianship and guardianship of children and equal rights in budgetary and family planning decisions.

5. The equal right to basic livelihood is mandatory and to achieve this women demand equality at work.
6. Female and male family members must be accorded equal rights to inheritance, including inheritance of land and housing.
7. The State has an obligation to educate its people on their rights to equality, both before the law and in all aspects of society.
8. Whilst fully respecting the role culture and religion play in family and all other aspects of life, these must not undermine the attainment of full equality between men and women in the public and private spheres.

LAW AND THE ADMINISTRATION OF JUSTICE

The principle of equality in all areas and aspects of life, including national life, must be supported, protected and advanced by laws that actively confer equality of rights and opportunities on women and the girl child. Equality for all must be supported by a gender-sensitive and socially-sensitive judicial and law enforcement system. All citizens must be able to have ready access to the appropriate court to enforce their legal rights and entitlements.

1. Women must participate fully in local adjudication and mediation processes, there must be affirmative action to ensure that women are equally represented at all levels of the judicial process, in the administration of justice and in national law enforcement bodies including customary law courts, as magistrates, judges, etc.
2. All laws and Government policies should recognise, protect and enforce the right of women to an independent identity and their right to self-determination as individuals and to exercise their rights and duties as parents.
3. Provisions must be included in the law and in the processes and procedures of the administration of justice to ensure that all courts are litigant- and victim-friendly. This must be specially implemented for the benefit of rape victims, victims of domestic violence, and victims of child sexual and other abuse.
4. Special assistance and protection must be made available to those who are mentally or physically disabled when they engage with any judicial processes.
5. The judiciary must be a gender-sensitive, independent and autonomous body, composed of persons of the highest moral integrity and reflecting gender equality.
6. For the effective enforcement of human, civil and legal rights, legal aid and assistance services should be made available to all citizens who are unable to afford the services of a legal practitioner.
7. To ensure that the judicial system and law enforcement processes are adequately funded and supported there should be a separate budget, voted annually by Parliament.
8. The criminal justice system should be made more sensitive to the needs of women in cases of violence against women, including domestic violence.
9. Police officers must be compelled to and receive gender training to ensure they are sensitive to women's cases.
10. Police officers must be compelled to provide protection for women against all forms of violence.
11. All citizens must have free and full access to information regarding their legal and constitutional rights.

PROPERTY, RESOURCES, LAND AND ENVIRONMENTAL RIGHTS

All women should have the right to full participation in the economy. Women have a right to employment, the right to own or occupy land in their own name and in their individual capacity. Women and men must have equality of rights to matrimonial and family property. A clean and healthy environment, protection and equality of access to natural resources for women and men are fundamental elements in women's enjoyment of property and resource rights.

1. Women must have the rights to enter and pursue careers of their own choice.

2. Women have a right to employment in all sectors of the economy and to work in an environment free of sexual harassment and must fully participate in employment, including rights of advancement and promotion.
3. All women have a right to maternity benefits provided by the State and the employer.
4. Women must in their own rights have equality of access to credit and other facilities to ensure their full participation in the economic life of the nation with special schemes being established for them by Government.
5. Women must have equality of rights to own, acquire and utilise agricultural, residential and industrial land on the same basis as men.
6. Married persons must be deemed to have joint title and rights to land and housing acquired by them.
7. Women must retain rights over the product of their work, to control their own incomes and the sale of the produce from their labour.
8. Government must institute a gender-balanced, transparent, financially-supported land resettlement programme. Such programmes must be supported by adequate information and support to enable women to apply for and obtain resettlement land.
9. The State must ensure the preservation of national and natural resources and must create and protect a clean and healthy environment.
10. Resources must be managed by the State and local communities so as to ensure that local communities and individuals benefit from those resources. Local resource utilisation must be designed, wherever possible, to enhance local economic employment and financial opportunities.
11. Access to clean water, adequate and safe sanitation provisions must be available to all citizens regardless of where they live in Zimbabwe.

CULTURE AND RELIGION

Cultural and religious practices that discriminate against women, either directly or indirectly, must be abolished. Women must have full and free self-determination. Cultural and religious practices that deny or fetter women's rights to such self-determination must be treated as unenforceable and every measure taken to ensure that they are abolished or suitably modified to eliminate such discrimination.

1. All cultural and religious practices that discriminate against women, whether in the public or private sphere, must be eliminated by active legal, social and educational measures that are fully supported and funded by the State.
2. The State must take measures to ensure that all forms of marriage, including unregistered customary marriages, are given equal recognition and confer equal rights on the parties to that marriage.
3. Women must have the right to freely choose their marriage partners.
4. Partners to a marriage must be granted equality of rights in matters regarding the marriage or the family that is produced from that marriage.
5. Women must have equality of access to matrimonial property with men, regardless of the form of marriage and whether under general or customary law.
6. *Lobola/roora* must be regulated so as to ensure that it is not used to oppress women, it should be regarded as no more than a token of the relationship between two families and should have no bearing or influence on the rights of the spouses to a marriage to any rights or entitlements that may accrue within that marriage. Women, where *lobola/roora* is exchanged between families must, as the mothers and nurturers of the bride be entitled to an equal share of the *lobola/roora* to that of the fathers of the bride.
7. Women must have the right to participate fully in the cultural, artistic and sporting life and the nation regardless of their cultural, ethnic or religious backgrounds.
8. The State has an obligation to ensure that women with disabilities are afforded every opportunity to enjoy their womanhood, including educational rights and the right to participate in cultural and sporting activities of their choice.
9. Women must have free choice over matters of reproduction and the regulation of their fertility regardless of religious, cultural or ethnic considerations, this right of choice and the right to a family must be especially protected and advanced for women with disabilities.

VIOLENCE AGAINST WOMEN

Violence in all its forms is endemic in Zimbabwean society. In most instances violence against women occurs in the family or the community. Although there are legal provisions that guarantee protection of under-age girls from statutory rape, they are not sufficiently protected within the family or community. There also appears to be a cultural acceptance of men assaulting their wives. Violence cannot be eliminated if it is narrowly perceived as a family or personal affair. Violence denies women the right to personal development, security, respect and dignity. Public, political and domestic violence against women should be condemned by the State.

1. Women victims of violence shall be entitled to be treated with respect and dignity by agents such as the police, medical staff and counsellors.
2. The police, prosecutors, magistrates and judges shall be provided with appropriate education and training in human rights and gender sensitivity to enable them to protect women victims effectively.
3. Government should provide victims with counselling services and shelter.
4. Government should put in place public education programmes to sensitise women and men to the fact that domestic violence violates the basic human rights of victims.
5. Legal provisions should be made which specifically define domestic violence as a criminal offence. Rape charges should be stiffer in cases where a victim is infected with disease.
6. The definition of rape should be expanded to include marital rape.
7. There should be legal protection for all women against sexual harassment, all forms of abuse and assault. Sexual harassment should be made a criminal offence.

WOMEN AND GOVERNANCE

The participation of women in decision-making and governance is a human rights issue. Women should have the right to participate fully at all levels of political, civic and community life.

1. Government and all political parties should ensure equal participation of women and men and also women's representation in all national and local legislative and decision-making bodies.
2. Any strategies that seek to address power-sharing between women and men should target all levels of public and private life.
3. Awareness of women's political rights should be actively promoted.
4. All political parties must establish a quota system and implement it within their structures and constituencies to ensure that equality of numbers is attained between female and male candidates who stand for leadership positions.
5. Women should be equally represented at all levels of local and national government and on all policy-making boards and institutions.

EDUCATION AND TRAINING

The education of all citizens is essential to the proper development of the nation. Under certain practices, girl children have been denied access to education. The education of the girl child must therefore be a priority of the State and society. The State must also reprioritise its budgetary expenditures to the development of its citizens.

1. Every child shall have access to free, compulsory and quality education. The State shall provide free education at least through secondary school.
2. Free and quality pre-schools shall be established for the benefit of working mothers, and for the proper intellectual, emotional and physical development of all children.
3. The State shall institute affirmative action programmes for higher education and training institutions to rectify the historic disadvantages of female students. Affirmative action initiatives should also be enacted for the hiring of female teachers and lecturers as well as administrators to ensure the equal and full participation by women in educational policy-making and the management of educational institutions.

4. Women and girls shall not be denied their right to education on the basis of sex, gender, pregnancy, marital status, physical or mental disability or age. Childcare facilities shall be established in schools or training institutions for the benefit of teachers and students with children.
5. Appropriate measures shall be taken to increase the participation of female students in the fields of science and technology. Textbooks should also be revised to avoid gender stereotyping of women.
6. Female students shall be protected from violence, including physical and sexual abuse and harassment, in all schools, universities and training institutions.
7. Sex, human rights and gender education shall be components of the curriculum from primary through secondary school, as well as in skills training and adult education programmes.
8. Gender awareness training shall be included as part of the training of all teachers.
9. The State shall promote the linguistic, literary and cultural integrity of African languages by designating the language of the predominant linguistic group of a region as the primary language of instruction.

HEALTH AND REPRODUCTIVE AND SEXUAL RIGHTS

The most urgent and devastating health issue in Zimbabwe is the spread of HIV/AIDS. Women, especially poor women, are being infected at an increasing rate because of their disadvantaged political, economic and cultural status. The State and the private sector must collaborate and take aggressive, immediate action in terms of providing: information about sexuality, contraception and Sexually Transmitted Diseases, affordable treatment for people living with HIV/AIDS, and free contraception to both women and men, including sexually-active teenagers. However, because general and reproductive health is inseparable from the wider political, socio-economic context, the State must also empower women politically, economically and socially.

1. Women and children have the right to free/affordable, accessible and quality health services, including free/affordable maternal care, pre-natal, labour and post-natal care. Women must have access to reproductive health and family planning services, including the right to information on sexual, reproductive and family planning matters.
2. Health care should be made responsive to the needs of disabled women.
3. Women have the right to control over their bodies and sexuality. Therefore, women have the right to choose their sexual partners, the right to decide on when and how often to have sex and the right to exercise the option to refuse sex even within marital relationships. Women also have the right to decide when and how often they desire to have children.
4. Women and children must be treated with respect and dignity at all health and family planning facilities.

INTERNATIONAL CONVENTIONS

1. All international conventions promoting human and women's rights that have been signed and ratified by the Government of Zimbabwe should be automatically incorporated into domestic law.
2. The Government should educate all people on the content of these international conventions. To facilitate the mass education campaign, the conventions should be translated into all the vernacular languages.
3. The preservation of peace and declaration of war are aspects of international life which affect women profoundly and there should be mechanisms in place to ensure equal representation of women at all levels in any such negotiations.

IMPLEMENTATION MECHANISMS

The national institutional mechanisms for implementing programmes to promote gender equality and women's rights and to monitor progress are not yet fully developed. Gender equality is not yet integrated into policies and development programmes and practices at all political, economic, social, private and public institutions.

1. An independent Gender Commission should be established to guide, monitor and evaluate the implementation of legislation and policy in relation to women's gender issues. The national budget should provide adequate funding for the Commission.
2. Measures must be taken to strengthen the capacity of those engaged in gender-focussed research and to increase the production of gender-sensitive information.
3. Government, political parties, the private sector and civil society organisations should adopt the goal of bringing gender into the mainstream in all aspects of their management, policies, programmes, procedures and organisational behaviour.
4. Public interest litigation should be established to enforce women's gender rights.
5. There must be a consistent gender audit of policies, the budget, and legislation.

Chapter 6

Future Possibilities

Many of the demands made in the *Women's Charter* are addressed in the National Constitutional Assembly's *Working Draft Constitution for Zimbabwe*. This draft was compiled by the NCA Taskforce from submissions made to the NCA during the constitution-drafting exercise in 1999. It was produced for discussion by the NCA's membership of more than 500 institutions and over 180 000 individuals throughout Zimbabwe.²⁴ It was presented to the NCA's All-Stakeholders' Conference on a new constitution at the end of March 2001, which decided that this draft is to be finalised within six months. But what is presented below still has draft status only.

Some proposals in this *Working Draft Constitution* were 'contentious' in that diametrically-opposed suggestions were received. In such cases, including the issue of abortion, alternatives were suggested. The NCA working proposals that are relevant to gender issues are as follows.

Most importantly, in Section 1 the Constitution was proposed as 'the supreme and fundamental law of Zimbabwe' and as such 'Any law, custom, practice or measure which is inconsistent with the Constitution is illegal and invalid'. This provision means that customary and family law would no longer be exempted from Constitutional regulation. All law and social practice in Zimbabwe would have to comply with the Constitution, if necessary by abolition or major change. Customary law would no longer be able to discriminate against women.

Section 5(1)(b) requires that 'When interpreting the Bill of Rights, a Court, tribunal or body must take into account international human rights law and adopt in every case an interpretation of the law that is in conformity with international human rights norms'. This means that CEDAW would become the norm for women's rights in Zimbabwe.

Section 7, dealing with the right to life, sets out a range of three options for abortion. At one extreme, 'The life of the unborn child must be protected'. In complete contrast, 'Nothing contained in this section shall deprive a woman of the right to terminate a pregnancy'. In between, a 'middle' position specifies qualifying conditions for abortion. The NCA proposes that Zimbabweans decide by a majority vote on which option they want.

Section 11(1) states unequivocally that 'Every person is entitled to equal recognition and respect before the law and in society. All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law'. Sub-section 2 prohibits discrimination on the basis, among other grounds, of sex, gender and pregnancy. However, there is no proposed constitutional protection for women to control their own sexuality or decisions on reproductive health among the more specific women's rights recognised in sub-sections 3 and 4:

- (3) Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status, which includes the right to be accorded the same rights as men in civil law, including equal capacity –
 - (a) to enter into contracts;
 - (b) to acquire and maintain rights in property, independently or in association with others, regardless of their marital status;
 - (c) to acquire and retain custody, guardianship and care of children and to have an equal right in the making of decisions that affect their upbringing;
 - (d) to acquire and retain citizenship and nationality; and
 - (e) on the dissolution of marriage –
 - i. to a fair disposition of property that is held jointly with her husband; and
 - ii. to fair maintenance, taking into consideration all the circumstances and, in particular, the means of the former husband and the needs of any children.

²⁴ NCA *Supplement to Zimbabwe Independent*, 30 March 2001.

(4) Any law that discriminates against women on the basis of gender or marital status is invalid and legislation must be passed to eliminate customs and practices that discriminate against women, particularly practices such as:

- (a) sexual abuse, harassment and violence;
- (b) discrimination in work, business and public affairs; and
- (c) deprivation of property, including property obtained by inheritance.

Section 5 provides for 'affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination in the past'. It does not specify any examples of such classes or people.

Section 17 deals with the social institutions of marriage and the family, recognising the latter as 'a natural and fundamental unit of society ... entitled to protection by society and the State'. It protects the rights of all persons over 18 years to enter into marriages in which partners have equal rights, but does not explicitly affirm freedom of choice of partner although it does protect choice of marriage law (general or customary law). Underage marriages (between 16 and 18 years) would require parental (or guardian) consent.

Under section 34, the right to citizenship is affirmed without discrimination, together with the right to acquire Zimbabwean citizenship through marriage to a partner of either sex.

Finally, in Chapter 10 Part 5 the NCA proposed to establish a statutory Gender and Sexual Equality Commission (GSEC) chaired by a woman (qualified to be a) judge selected by the Judicial Services Commission. Two of its five members would be 'elected by civic organisations representing women's rights'. GSEC, with a research capacity, would act as an investigatory and advisory watchdog for discriminatory breaches of gender and sexual equality. Its major brief would be undertake any functions necessary 'to promote gender equality and to prevent gender discrimination'.

It remains to be seen whether the NCA's constitutional proposals will prove acceptable to Zimbabwean women.

References

- Bourdillon, M.F.C. 1975 Is “customary” law customary? *Native Affairs Department Annual (NADA)* XI, ii, pp. 140-9.
- Cheater, A.P. 1986 The role and position of women in colonial and pre-colonial Zimbabwe. *Zambezia* 13, ii, pp. 65-79.
- Cheater, A.P. 1990 The ideology of ‘communal’ land tenure in Zimbabwe: mythogenesis enacted? *Africa* 60,2:188-206.
- Cheater, A.P. 1993 Ambiguities and contradictions in the political management of culture in Zimbabwe’s reversed transition to socialism. In *Socialism: Ideals, Ideologies and Local Practice* (ed) C.M. Hann. London/New York: Routledge.
- Chenau-Repond, M. 1999 *Women’s Rights in the Constitution of Zimbabwe*. Harare: Working Group on Gender Politics.
- Chenau-Repond, M. 1999 *Contradictions between “Customary Law” and Women’s Equality*. Harare: Working Group on Gender Politics.
- Chihwanha-Denga, A.B. 2000 Is sexual harassment corruption? Defining corruption through a gender lens. *Legal Forum* 12,1:18-23.
- Dube, C.F. 2000 Addressing the gap between customary and statute law and international conventions: Zimbabwe’s twists and turns. *Legal Forum* 12,1:11-14.
- Kerr, J. (ed) 1993 *Ours by Right: Women’s Rights as Human Rights*. London: Zed Books / North-South Institute.
- Lowry, D. 1997 ‘White Woman’S Country’: Ethel Tawse Jolly and the making of white Rhodesia. *Journal of Southern African Studies* 23,2:259-81.
- Lyons, T. 1999 *Guns and Guerrilla Girls: Women in the Zimbabwean Liberation Struggle*. (Ph.D. Thesis) Adelaide, South Australia: University of South Australia.
- National Constitutional Assembly no date (2000) *Working Draft Constitution for Zimbabwe* (For circulation to NCA members only). Harare: NCA.
- Nhongo-Simbanegavi, J. 2000 *For Better or Worse? Women and ZANLA in Zimbabwe’s Liberation Struggle*. Harare: Weaver Press.
- Schmidt, E. 1992 *Peasants, Traders and Wives: Shona Women in the History of Zimbabwe, 1870-1938*. London: James Currey.
- Staunton, I. 1990 *Mothers of the Revolution*. Harare: Baobab Books.
- Women and Land Lobby Group 2001a *Untitled report on WLLG workshop on Women’s Land Rights (held 27-28 November 2000)*. Harare: WLLG. (Electronic report)
- Women and Land Lobby Group 2001b *Women’s Land Rights in Southern Africa (held 27-28 November 2000)*. Harare: WLLG/Friedrich Ebert Stiftung.
- Zimbabwe African National Union (ZANU) 1980 *Election Manifesto*. Salisbury (now Harare): ZANU.
- ZANU-PF 1999 *Draft Constitutional Proposals*. Harare: Zanu-PF, Central Committee Papers, Legal Affairs Department (August 1999).
- Zimbabwe Women Writers 2000 *Women of Resilience*. Harare: ZWW