

WOMEN'S RIGHTS

1 What is Gender?

Sex refers to the biological differences according to which people are defined as male or female at birth. *Gender* refers to the way society views and treats women and men differently. In most societies males and females have historically had different roles, responsibilities, opportunities and rights. As boys and girls grow up, they learn from their families and society about how men and women are supposed to behave. What is regarded as 'normal' behaviour for women and men differs from one society to the next. These differences have in the past and up to this day still usually lead to men having more economic, political and social power than women do. When these inequalities persist, they lead to gender discrimination but they can be eliminated by the society which defined and created them initially.

Women's Rights in Zimbabwe

In this *Human Rights Monthly* we examine gender roles and inequalities that prohibit women from enjoying their rights. We look at the human rights of women in Zimbabwe and how well they are acknowledged and protected in the Zimbabwean Constitution and laws. 8 March is a day set aside every year by the United Nations to recognise women's rights. On International Women's Day this year, the Zimbabwean Government launched the *National Gender Policy* which seeks to address all forms of gender imbalances in the country. Its objectives include the promotion of equal and equitable access to resources between men and women. The policy also seeks to create equal opportunities for men and women in decision-making in all areas and at all levels of decision-making. However, these objectives are not yet supported by any laws that will enable them to protect women. The necessary political will and sufficient state budgetary allocations to the relevant Ministries are required if Zimbabwe is to achieve equal rights for women in social, economic and political spheres. In addition, the rights of Zimbabwean women are still largely accorded to them within the confines of customary law. S23 of the Constitution protects Zimbabwean citizens from discrimination but also allows for discrimination on the grounds of "*African customary law in any case involving Africans*" according to s23(3)(b) of the Constitution.

Women's Rights and Zimbabwe's International Obligations

Article 1 of the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), defines discrimination against women 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'.

Zimbabwe has ratified CEDAW and the *Convention on the Political Rights of Women*. Zimbabwe has also signed the *Treaty of the Southern African Development Community (SADC)*, the *SADC Declaration on Gender and Development* and its addendum on the *Prevention of Violence Against Women and Children*, which all acknowledge gendered rights as fundamental human rights. Zimbabwe also adopted the *Dakar Platform for Action* and *Beijing Declaration* in 1995 thereby acknowledging and committing it to take strategic action to promote the human rights of women and eliminate all

forms of discrimination. However these international agreements cannot protect Zimbabwean women in the manner that they are meant to as under *Section 111B* of the Constitution of Zimbabwe they 'shall not form part of the law of Zimbabwe unless incorporated into the law' as Acts of Parliament. Thus, Zimbabwe has failed to honour its international duties according to the international treaties that it has ratified.

Gender-based Discrimination Against Women in Zimbabwe

i) Land redistribution

Women in Zimbabwe form 52% of the population of the country, and 86% of them depend on the land for their livelihood and that of their families. Women also constitute 70% of all agricultural labour and are the primary managers of homes in communal areas. Accordingly, *Article 14 (g)* of the CEDAW asserts that: '*State parties shall take all appropriate measures to ensure that women have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in agrarian reform as well as in land resettlement schemes.*'

There is no enabling legal framework to ensure equality in the redistribution of land. Colonial land tenure arrangements that discriminated against women have been perpetuated in the present day through the *Communal Lands Act of 1982* and the *Traditional Leaders Act of 2000*. Under these laws, women in communal areas, where most rural Zimbabweans live, are still expected to depend on men for land, denying them tenure rights. Even though *s16* of the Zimbabwean Constitution stipulates that every citizen has an equal right to ownership of property, another Constitutional provision, *s23*, has allowed for discrimination against women under customary law. Given the fact that customary law places heavy emphasis on land rights being enjoyed by the head of the household who in the context of Zimbabwean customary law is generally considered to be a male, women's land rights are not adequately protected. The fact that women lack access to and control over land makes them unable to acquire credit, marketing facilities and excludes them from decision-making powers over agricultural production activities and benefits.

In October 2000, the Government of Zimbabwe undertook to allocate at least 20% of all land identified for resettlement to women. It was discrimination in itself to allocate only 20% to women when they make up 52% of the population. Despite this, by August 2002 when the President announced that the Fast Track Land Reform Program had been officially completed, the land quota for women had not been put into law and the number of females allocated land was very low countrywide. According to the 2003 Utete Land Report, female-headed households who benefited under Model A1 (peasant farmers) constituted only 18% of the total number of households while female beneficiaries under the Model A2 (commercial farmers) constituted only 12%.

ii) Political participation

The participation of women in decision-making and governance is an important human rights issue. Women have the right to participate fully at all levels of political, civic and community life. However, very few women participate in Zimbabwean politics at either local or national level. The 1997 *SADC Gender and Development Declaration*, to which Zimbabwe is a signatory, upholds the status of women in politics. The Declaration commits member States to appoint women to at least 30% of decision-making posts in politics and the public service by 2005. Out of Zimbabwe's 150 Parliamentarians, only 13 (8.7%) are women. Of the 29 Ministers in government, only 4 (13%) are women. Of Zimbabwe's ten Provincial Governors, only two (10%) are women. In local government structures only 46 (13%) out of 347 urban councilors are women.

There are far less women councilors in Rural District Councils. Government has failed to reach the 30% mark stipulated by the SADC Declaration, however it is already promising women 52% representation in decision-making and politics in its newly launched *National Gender Policy*. With no steps having been taken to ensure political participation of women, it is unlikely that the situation will improve in Zimbabwe's Parliamentary Elections scheduled for March 2005.

Marriage Laws and Women's Rights

Zimbabwe has two marriage laws: the *Marriages Act* [Chapter 5:11], and the *Customary Marriages Act* [Chapter 5:07]. Due to the dual system of customary and general law that is used in Zimbabwe, these types of marriages have been given different status by the law with negative consequences on women's rights. In addition there is an *Unregistered Customary Law Marriage* which unlike the former two marriages, is not valid at law. Upon separation or divorce, a spouse can only get property or a share of it if she can prove to have purchased or contributed towards it because the *Matrimonial Causes Act* does not apply to this type of marriage.

The *Marriages Act* [Chapter 5:11] discriminates against women in the sense that it sets different age limits for marriage between females and males. Under this legislation, a man may marry at the minimum age of eighteen while a woman may marry at the minimum age of sixteen. This makes the girl child more vulnerable to early marriages, early pregnancies and premature motherhood. Furthermore, the assumption in this legislation that girls attain maturity at an earlier age than boys is patently wrong and discriminatory based on sex.

The *Customary Marriages Act* [Chapter 5:07] allows men to have as many wives as they want, but does not accord the same privilege to women. Under this Act, a husband can sue for adultery but the wife cannot do the same. In the advent of HIV/AIDS, this presents special problems to women who at most times do not have the power or the authority to ask their husbands to practice safe sex even when they know that their husbands have multiple sex partners.

In *General Recommendation Number 21 of 1994* on equality in marriage and family relations, the *Committee on the Elimination of Discrimination Against Women* observed that legislation which grants men a greater share of property upon divorce is discriminatory and will seriously affect a woman's practical ability to divorce her husband, support her family and live in dignity as an independent person. One reason for the unequal distribution of wealth can often be found in the neglect to take appropriate account of women's non-financial contributions such as childcare and domestic work when the marital property is divided. The Committee further noted that since non-financial contributions by the wife often enable the husband to earn an income and increase matrimonial assets, financial and non-financial contributions should be accorded the same weight.

2 Political Human Rights Violations – March 2004

The Zengeza By-election: 27-28 March 2004

Inter-party violence prevailed throughout the campaign period of the Zengeza by-election. Seventy-five percent of the politically-motivated assaults that were perpetrated in March 2004 occurred in Zengeza during the campaign and polling period. There were allegations that Christopher Chigumba (ZANU PF candidate, Zengeza by-election) was involved in intimidation of MDC supporters.

Incidents of assault were indiscriminate with several reports of assaults of elderly persons over the age of 60. Three pregnant women were reportedly assaulted in March 2004. WC, who was four months pregnant, was allegedly assaulted by some ZANU PF youths based at the home of a Mrs Hungwe (the ZANU PF Women's League Leader in the area). The youths reportedly assaulted her with a chain on her back, buttocks and legs and also broke her arm as she was trying to shield her face from a blow and protect her stomach. JN, who was one month pregnant, was reportedly assaulted by ZANU PF supporters in Zengeza. She was allegedly beaten on the left side of her head, thighs and buttocks with a hosepipe then kicked with booted feet in the stomach and subsequently began to bleed. It is further alleged that riot police were involved in the assault of a woman in Zengeza who was nine-months pregnant. This assault of this woman, with an undoubtedly visible pregnancy, is highly condemned.

Widely reported incidents of violence in Zengeza eliminated prospects for a peaceful electoral environment in the constituency prior to the election. The murder of **Francis Chinozvina** on the second day of polling also had a negative effect on the voting process and most likely induced a climate of fear amongst the electorate. The events that transpired in Zengeza in March raise serious doubts regarding the possibility of free, fair and violence-free elections in the Parliamentary Elections planned for March 2005.

3 Zimbabwe Human Rights NGO Forum Member Focus:

The Zimbabwe Human Rights NGO Forum is a coalition of 17 Non-Governmental Organisations in Zimbabwe working towards the elimination of organised violence in the country. The *Human Rights Monthly* carries a brief narrative on the activities of one of its members in each issue to help readers understand the activities of the coalition and the services offered by each member NGO. This month we feature Amnesty International (Zimbabwe).

Amnesty International Zimbabwe (AI(Z))

Background Information

Amnesty International is a worldwide campaigning movement that works to promote internationally recognised human rights. Amnesty International focuses on governments' and armed groups respect of international human rights treaties. AI's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience, expression and freedom from discrimination.

The organisation is independent of any government, political ideology, economic interest or religion. To achieve its goal of impartial protection of human rights of people, AI does not support or oppose the views of the victims whose rights it seeks to protect. AI mobilises volunteer activists in more than 140 countries and territories in every part of the world. There are more than 1 million AI members and subscribers from many different backgrounds, with widely different political and religious beliefs, united by a determination to work for a world where everyone enjoys human rights.

How does Amnesty international assist members of the community/ society?

The Zimbabwe Chapter of Amnesty International, AI (Z), runs various initiatives to promote the objectives of upholding human rights. In Zimbabwe the volunteers are formed into groups throughout the country to promote the same objectives. AI (Z)'s first local group was established in 1991. After its formation, the group embarked on various activities such as campaigning on behalf of prisoners of conscience, calling for the fair and prompt trials of all political prisoners, and also against the Death Penalty as well torture and other inhuman or degrading treatment. Members of AI (Z) carry out human rights education campaigns throughout the towns where they have groups.

Amnesty International believes that it has achieved some of its goals locally and internationally. Many prisoners of conscience have been released and those sentenced to death have had such sentences commuted to life imprisonment, for instance in Saudi Arabia. With the help of lobbying by AI, President Muluzi of Malawi has declared that he would not authorise any prisoner to be sent to the gallows. Countries such as Venezuela, Solomon Islands, Portugal, Panama, and Norway have abolished the death penalty completely both in practice and law. Other countries, like the United Kingdom, Argentina, Brazil and Canada have abolished the death penalty except where violent crimes are involved. The disappeared have been reunited with their families after AI including the Zimbabwe Chapter's campaign for their relocation. An example is Astrid Patino Caravelle who was three when she and her mother Gabriella were abducted in Cordoba, Nicaragua in April 1976. She was located in January 1984, and is now in touch with her real family.

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