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THE 2013 CONSTITUTIONAL REFORM AND THE PROTECTION OF WOMEN'S RIGHTS IN ZIMBABWE

*Cowen Dziva*²

Abstract: Zimbabwe adopted a new Constitution in 2013 to replace the gender-insensitive Lancaster House Constitution of 1979. This article largely relies on extant literature to analyze the adequacy of the 2013 Constitution in advancing women's rights and needs. The study shows that the 2013 Constitution contains an elaborated Declaration of Rights that protects women against the major challenges they face in society, including exclusion in public life, vulnerability to abuse, violence and harmful practices. It also speaks to women's access to quality and affordable health, capital and employment opportunities. Courtesy of the 2013 Constitution, women in Zimbabwe have equal rights and opportunities as men in relation to guardianship of children. Although some gender provisions in the Constitution lack conceptual clarity and the government is showing limited political will for constitutionalism, the 2013 Constitution of Zimbabwe has been found to be a progressive instrument poised to ensure for the recognition, inclusion, equality and protection of women as equal human beings in society.

Keywords: Constitution of Zimbabwe, gender equality, protection, women's rights

1. INTRODUCTION AND BACKGROUND

Since independence in 1980, Zimbabwe was governed by the Lancaster House Constitution, a document that was part of a negotiated settlement between the white Rhodesian government, the British government and a coalition of liberation movements prominently featuring the former President of Zimbabwe (1980-2017), Robert Mugabe (ZLHR, NCA and HRC 2009). The Lancaster House Constitution was drawn up primarily for the transfer of power from the minority colonial authority to majority indigenous Zimbabweans after a protracted war of liberation which started in the 1960s. The Lancaster Constitution had a limited Bill of Rights which failed to exhaust women's needs and lacked conceptual clarity on women's rights. Zanzi (2013) concurs with this position and states that the provisions of the Lancaster House Constitution were retrogressive with regards to best practices in gender equality, allowing discrimination in areas where personal law was applicable. The weaknesses of the 1979 Constitution was prejudiced women's enjoyment of rights in critical areas such as access to land, education, health and participation in socio-economic and political development. Without constitutional protection, women were vulnerable to

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abject poverty, violence, and were excluded from accessing employment, productive resources, business opportunities, and were largely discriminated in politics.

The inadequacies of the Lancaster House Constitution resulted in persistent calls by feminists and gender activists to replace it with a democratic constitution that protects and enforces the rights of women (Magaisa 2011, Baines & Rubio-Marin 2005, Agosin 2001, Banda 2005, Aldelman 1998, Kersting 2009, WOZA 2010). An attempt to write a new constitution was made in 1999 and 2000, but a majority of Zimbabweans voted against the proposed Constitution through a referendum (Kersting 2009). In 2008, the Government of National Unity (GNU) between three major political parties in Zimbabwe, amongst other things, was mandated to come up with a democratic 'people driven' Constitution. This presented a glorious opportunity for gender activists and feminists to contribute towards a new gender-sensitive Constitution. Notably, the Woman Action Group (WAG), Zimbabwe Women Lawyers Association (ZWLA), Women of Zimbabwe Arise (WOZA), and several women organizations submitted position papers to the drafting team, and mobilised gender activists and feminists from all walks of life for continued calls for gender equality during outreach meetings held to canvass people on what they wanted to see in the new Constitution. Specifically, women and gender activists called for inclusion of clauses to deal with violence against women and girls, abolition of harmful practices, access to affordable health care and maternity services, access to capital and land, equal treatment within marriages and ownership of property (Gender Links 2013). All these demands were meant to address the weaknesses of the Lancaster House Constitution which was silent in relation to the protection of women's critical needs.

A new dawn came with the signing of the 2013 Constitution into law on 22 May 2013. The Constitution entered into force on 22 August 2013 after 94.5 per cent voted for its adoption in the Referendum held on 16 March 2013. By promulgating a new Constitution, Zimbabwe integrated the human rights-based approach and liberal feminism, which emphasise on legal, policy and institutional reforms to strengthen equality between women and men in society. In addition, Zimbabwe's constitutional reform implemented best international and national human rights standards calling for member states to reform supreme laws and policies to ensure gender equality and non-discrimination. These include the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), and the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol). In particular, article 4 of the SADC Gender Protocol, article 2 (1) (a) of the Maputo Protocol and article 2 (a) of CEDAW enjoin member states to have Constitutions which adequately address the rights and needs of women.

Notwithstanding with this positive constitutional reform, few studies have bothered to examine the extent to which this supreme law protects women's rights. Many studies on the adequacy of the Constitution to protect women's rights precede 2013 in Zimbabwe, (Baines & Rubio-Marin 2005, Agosin 2001, Banda 2005, Aldelman 1998), and were lamenting limited constitutional protections for women. These studies were important in strengthening the impetus for a democratic and gender sensitive Constitution in Zimbabwe. In the post 2013 Constitution era, attempts to analyze women provisions in the Constitution focused on single gender issues, where civil society organizations and researchers scrutinised gender issues of concern to their mandates, including land, marriage, political rights without a comprehensive analysis of constitutional provisions in relation to the broader rights and needs in society. The failure to come up with a comprehensive analysis of the 2013 Constitution deprives women rights defenders, advocates, feminist, students and researchers of critical understanding of the strengths and weaknesses of the Constitution in relation to women's rights.

This paper finds it strategic to provide a critical feminist analysis of the 2013 Constitution of Zimbabwe to determine the extent to which it included and conceptualised women's rights and needs. This assessment commends constitutional provisions poised to adequately address women's needs, while at the same time lamenting inadequacies and in some cases the extent of implementation of the provisions. The identified constitutional provisions that speak to women's rights and needs are assessed against the best international human rights standards. A feminist analysis of the 2013 Constitution is found critical not only in terms of creating a knowledge base for lobbying, advocacy and research, but also to give impetus to the Parliament and judicial institutions to prioritise alignment of gender-insensitive constitutional provisions with best practices. In addition, other countries in the process of developing new constitutions can also benefit from this analysis.

Methodologically, this qualitative methodology was based on descriptive and comparative review of constitutional provisions against international and regional instruments: the SADC Gender Protocol, Maputo Protocol and the CEDAW as yardsticks for best practices. The study also reviewed extant literature including books, journal articles, constitutions, reports, newspaper articles. Secondary data were bolstered with information and thoughts of seven purposively selected key informants, which included a constitutional expert, and individuals drawn from major political parties, a female leader in civil society and government institutions working for gender equality and women's rights in Zimbabwe. The interviews took the form of face to face interviews with three of the respondents, and via cell phone and Skype with other four respondents based in other parts of Zimbabwe.

The paper has three sections starting with this introduction and background segment, followed by a critical appraisal of the gender related provisions in the 2013 Constitution. The last section is the conclusion. The conclusion section summaries the discussion and proffers what needs to be done with regards to full and effective realisation of the rights of women in the post constitutional reform phase.

2. CONSTITUTIONAL PROVISIONS FOR WOMEN'S NEEDS AND RIGHTS

a. Commitment to Democracy, Human Rights and Dignity

The preamble of the Constitution of Zimbabwe (2013) affirms a commitment to democracy, the rule of law and respect for human rights and freedoms of all human beings, including women. The Constitution includes an expanded Declaration of Rights under Section 80 (1), which guarantees women's political, economic and social rights. Importantly, Section 80 does not make the realisation of the economic, social and cultural rights of women contingent upon resources that are available to the State, but rather underscores that the State has a duty to ensure the progressive realisation of such rights. The emphasis on the respect for rule of law and respect for human rights of all human beings is important for women who endure human rights violations in society.

Similarly, the founding values and principles under 3 (1) (e) domestic article 3 of the Maputo Protocol by explicitly guaranteeing inherent dignity and equal worth of each human being, including women (Constitution of Zimbabwe 2013). Respect for inherent dignity and the acceptance of women as part of human diversity and humanity is reinforced under Section 51, which reiterates on the right to human dignity for all human beings (Constitution of Zimbabwe 2013). Together sections 3 and 51 of the Constitution speak to article 3 of the Maputo Protocol, and it is a strong confirmation of women as valued members of society.

The recognition of the inherent dignity of all human beings further addresses some of the critical challenges of women in society. Various studies in Zimbabwe have shown how the dignity of women with various forms of disability are abused, discriminated and subjugated to poverty (UN Enable 2010, Lang & Charowa 2008). Similarly, divorcees, unmarried women adults and those who wear mini-skirts are despised, harassed and viewed as people of low morals in most Zimbabwean societies. On 17 December 2014, touts jeered and stripped a woman wearing a mini-skirt in Harare, and the identified culprits were sentenced to 12 months in prison. In passing the sentence, the Magistrate said, "Zimbabwe as a nation which according to the Constitution recognises that we have the right to dignity, hence as a nation we will not support that behaviour" (Dengu 2015). Thus, the inclusion of inherent dignity and equal worth of all human beings in the Constitution strengthens the position for women victims and courts of law to question the legality of behaviours or practices that undermine the dignity and value of various groups of women in society.

b. Women Empowerment and Affirmative Action

Under Section 14, the Constitution of Zimbabwe (2013, 19) government agencies are mandated to facilitate and take appropriate measures, including affirmative action to empower marginalised groups of the society. Section 14 (1) does not categorically mention women but refers to all previously disadvantaged groups, and it is assumed women comprise the majority of this group. The provision comes at a time of pervasive unequal access to economic opportunities and gender gaps in productivity and earnings (World Bank 2012). In Zimbabwe, women remain marginalised in key economic sectors and access to productive resources in spite of the adoption of the indigenisation and economic empowerment policies which encourages the empowerment of disadvantaged groups.

Similarly, the government is mandated under Section 27 (2) to take appropriate measures to ensure that girls are afforded the same opportunities as boys to obtain education at all levels (Constitution of Zimbabwe 2013). The calls by section 14 and 27 are in line with article 4 (3) of the SADC Gender Protocol, reiterating on the need for countries to put in place affirmative action measures to eliminate the barriers for the meaningful participation of women in all spheres of life. Empowerment and affirmative action measures break inequalities that hinder the advancement of women such as limited access to education and productive resources, exploitation and abuse, and the right to live a decent life.

In relation to economic empowerment of women, Section 17 (c-d) directs the State and all its institutions to: "...take practical measures to ensure that women have access to resources including land on the basis of equality with men", and to "...take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies" (Constitution of Zimbabwe 2013, 20).

Thus, the Constitution domesticates provisions of Maputo Protocol, particularly article 19 (c) which mandates states to ensure women have access to and control over productive resources including land. Since 2000, Zimbabwe has been redistributing land to indigenous people as a form of economic empowerment. Women benefited and acquired between 14 to 25 per cent of land, courtesy of the land reform program (Mutopo 2011). Women remain marginalized during land allocation and distribution of capital and inputs as well as being denied a chance to effectively contribute towards food security and national development despite the fact that women contribute 60 per cent of labour in farming activities (Gender Links 2013). Hence, the inclusion of this clause is hoped to change the status quo and improve women's access to land.

Notwithstanding that women empowerment and affirmative action are paramount means for uplifting the status of women; the approaches are likely to face resource challenges and resistance from men. These sentiments were also uttered by the Combined Report of the Republic of

Zimbabwe in terms of the CEDAW in 2009, that empowerment measures and affirmative efforts by the Zimbabwean government were affected by the declining economic situation and stiff resistance from males to be effective. In previous years, political parties tried to implement affirmative action to improve the participation of women in decision making. However, the endeavour faced resistance from political parties during the run up to the 2013 harmonised elections, when men raised the backlash arguments of “quality versus quantity” through the media (Gender Links 2013, 21).

c. Right to Employment and Fair Labour Practices

The Constitution speaks of employment creation for women under Section 14 (2). This provision effectively domesticates article 7 (6) (a) of the SADC Gender Protocol which mandates State parties to create opportunities for women’s employment. Women’s access to employment is important for ending their vulnerability to poverty and abuse. Due to high unemployment rates in Zimbabwe, many women are victims of abuse, and are falling prey to human traffickers in the pretext of being linked to greener pastures (Bishi 2016, Razemba 2016 & Gender Links 2013). Thus, the inclusion of section 14 in the Constitution becomes a gate way for women to escape the various human rights violation traps that comes with unemployment.

In addition, the Constitution of Zimbabwe (2013) under Section 65 (6-7) provides for fair and reasonable labour practices on all human beings. Like article 4 (5d) and 7 11(a) of the SADC Gender Protocol and article 11 (1) (d) and 11 (2) (a-b) of the CEDAW, Section 65 (6-7) guarantees the right to equal pay for women and fully paid maternity leave for a period of at least three months. The clause came as a relief to women employees, especially in the private sector where the right to full pay during maternity leave and guarantee of being reinstated after maternity leave was at the discretion of the employer.

Nevertheless, the provision for maternity leave has failed to provide for a minimum one-month paternity leave as called for by article 4 (5e) of the SADC Gender Protocol and article 5 (a) of the CEDAW. This oversight might result in detrimental effects to women. One way to effectively address discrimination against women is to modify the social and cultural patterns of women and men’s conduct by way of challenging customary and other practices which stereotype women in society. Giving both men and women maternity and paternity leave respectively may change stereotypes and confirm that both men and women are nurturers, caregivers and productive employees. Modification of social and cultural attitudes on stereotyped roles for women goes hand in hand with article 5 (a) of the CEDAW, which calls on 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.

d. Gender Balance

The Constitution of Zimbabwe (2013, 19) under Section 17 (1) mandates the State fully promote gender balance in Zimbabwean society. Specifically, Section 17(b) mandates the State and its agencies to ensure equal representation between women and men in all institutions and agencies of government. In the same language, Section 17 (d) (ii) vouches for women to "...constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this constitution or any act of parliament" (Constitution of Zimbabwe 2013, 20). This provision resembles article 5 of SADC Gender Protocol, article 8 (e) of the Maputo Protocol and article 11 of CEDAW which encourages and views gender balance as a step towards justice and sustainable development.

The inclusion of gender balance clause in the Constitution is beginning to yield positive results as some government agencies endeavour to have gender balance in their senior management. As of July 2017, the Zimbabwe Electoral Commission (ZEC), Zimbabwe Gender Commission (ZGC), Zimbabwe Human Rights Commission (ZHRC) had gender balanced Commissioners, with ZEC and ZGC being headed by women Chairpersons. Meanwhile, women representation in public service rose up to 33% from the pathetic statistics before the promulgation of the 2013 Constitution (Gender Links 2013). Even with the Constitution in place, institutions find it difficult to achieve 50-50 representation due to limited political will and male resistance to gender equality. Indeed, some activists mentioned male resistance and limited political will by male executives as some of the main stumbling blocks to 50-50 men and women representation in state institutions. Although the 33% women representation figures remain far below the 50-50 desired by article 5 of SADC Gender Protocol, there is an improvement from the lower figures which saw Zimbabwe ranked number 88 globally and last in Southern Africa in 2012, with regards to women's representation in decision making positions (Gender Links 2013). In a way the gender balance provision in the Constitution continues to remind government agencies to show political will to achieve gender balance.

Regardless of this positive impacts of the Constitution, this study noted instances where some state institutions have remained male-bloated after 2013. In local governance, women representation has not improved but rather decreased from 19 percent in 2008 to 16 per cent in 2013 (Gender Links 2013). A study by Zanzi (2013) further revealed the presence of only one female town clerk, and no female mayors in Zimbabwe's local councils. Key informants from the government also indicated that women representation remain below 30% in various government departments, sections and ministries. A study by the Gender (Links (2015) also lamented how the Ministry responsible for Gender comprised 30% or less of their senior managers (Gender Links 2015). Similarly, a majority of Parastatal boards have male bloated leadership, including the Zimbabwe Broadcasting

Corporation (ZBC) which was reconstituted after the 2013 Constitution (Gender Links 2013). In explaining this scenario, one gender activist uttered that “it is clearly a sign of limited political will to walk the talk on gender equality when leaders are empowered by the Constitution to ensure gender equality fail to practice constitutionalism.”

The Constitution also speaks to gender balance in cabinet. Section 104 (4) of the Constitution states that “[i]n appointing Ministers and Deputy Ministers, the President must be guided by considerations of ... gender balance” (Constitution of Zimbabwe 2013, 46). Despite this constitutionalisation of gender balance in 2013, the executive appointed a male-bloated cabinet in 2013, with only 3 female Ministers in a 26-member cabinet (Gender Links 2015). The cabinet reshuffles that followed after 2014 never bothered ensure gender balance. The appointment of a male bloated cabinet stance was not only retrogressive to the 2013 Constitution, but also contrary to article 12 of the SADC Gender Protocol. The failure by leaders to ensure gender balance raises questions on their sincerity and political will to realise parity. Gender imbalance in cabinet comes with consequences to development since the cabinet is the effective arm of government responsible for policy formulation, implementation and evaluation in a country (Dube & Dziva 2014). Consequently, a male bloated cabinet means the nation miss the voices of the majority [women], and such as country produce gender blind and insensitive development priorities.

e. Women’s Political Participation and Gender Equality

The Constitution of Zimbabwe (2013) embraces gender equality as one of the founding values and principles upon which the country is bed rocked under Section 3 1 (g). Placed alongside the values of good governance (Section 3 1 (h)), and supremacy of the Constitution (Section 3 1 (a)), this clearly shows that gender equality occupies a significant place in society. The inclusion of gender equality as one of the founding values and principles shows an appreciation for the equal worth of all human beings, and above all the commitment placed by the government of Zimbabwe in achieving the same (Zvobgo & Dziva 2017). In practice, the founding values and principles under section 3 of the Constitution are non-derogable pronouncements which guide the interpretation and understanding of the Constitution and all other laws in resolving legal disputes in courts and other quasi-judicial platforms.

The Constitution further gives the State power to ensure women participation in Senate and Parliament under sections 120 (2) and 124. Section 120 (2) (a) provides for the election of senators under a party system of proportional representation, in which male and female candidates are listed alternately, with females heading the list (Constitution of Zimbabwe 2013). Furthermore, Section 124 provides that for the first two parliaments after the 2013 Constitution entered into force, an additional sixty women, six from each of the ten provinces of Zimbabwe shall be

elected on a proportional representation basis to the 270 existing National Assembly seats that are open to women and men (Constitution of Zimbabwe 2013). The clauses effectively domesticate standards set out in article 6 of the SADC Gender Protocol and article 7 of the CEDAW, which calls for measures to ensure participation of women in decision making positions. Courtesy of this constitutional clause, the representation of women has improved to 32% and 48% in parliament and Senate, respectively (Gender Links 2015, Zvobgo & Dziva 2017). With this achievement, Zimbabwe can be said to be in the right direction to achieve the 50-50 representation of men and women in National Assembly.

It also emerged from the study that some gender activists viewed the use of quotas to increase women in key decision making positions as tokenism for increasing just the number and not the quality of female leaders in decision making. Previous studies have also shown the existence of people against the use of quota systems in politics (Dziva *et al* 2014, Zvobgo & Dziva 2017). Another challenge noted pertaining to section 120 pertains to its applicability during the life of the first two Parliaments, and to be scrapped thereafter. It is unconvincing to many gender activists interviewed for this study that the social entrenched barriers to women's political participation would have not been addressed by the quota systems in a space of two Parliaments. Hence, there is likelihood for women to return to square one and to be starved of any political representation after 2023 (Zvobgo & Dziva 2017). For sustainable participation of women in decision making positions, the clause should be extended for more Parliamentary terms. In addition, the prerogative should be expanded to reserve seats for women in local authority elections in order to mitigate the daunting challenges that deter women's participation in local governance.

f. Non-Discrimination

The Constitution speaks to non-discrimination of women under section 56. The clause states that that "women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres" (Constitution of Zimbabwe 2013, 29). Section 56 of the Constitution presumes any discrimination to be unfair unless such treatment is established to be fair in a democratic society that comports with principles of "... openness, justice, human dignity, equality and freedom" (Constitution of Zimbabwe 2013, 30). Section 56 (3) includes gender, sex, marital status and pregnancy as grounds of prohibited discrimination. These are crucial variables on which women have been discriminated in society. For instance, the inclusion of pregnancy as a ground for non-discrimination ensures protection of pregnant women against discrimination and human rights violations in employment and public institutions such as hospitals and schools. Prior to the 2013 Constitution, girls were expelled from nursing and secondary education schools for falling pregnant whilst pursuing their studies. As for the recruitment of pregnant women, the Labour Act of Zimbabwe does not

explicitly protect their right to be recruited, thereby creating room for discrimination. In fact, Section 17 (3) (i) Labour Act give powers to the Minister of Labour to restrict the trades and occupations that pregnant women can pursue. Therefore, Section 56 (2) of the Constitution (2013) becomes a clause in ending discrimination of pregnant women in recruitment.

Notwithstanding that Zimbabwe is moving towards non-discrimination of women as called by international instruments, the non-discrimination clause excludes the natural condition amongst the grounds for non-discrimination. Natural condition is proving to be an important ground on which women are abused every day in society. There is a growing tendency by men to utter derogatory comments to heavily built women in streets. Interviews with gender advocates revealed that men often utter comments such as “*MutumbawaSekuru*” (*big, fat one*) (sexually connoting heavily built women with big buttocks), or ‘*Honamwanawako, honamwanawako*’ (*look at your child, look at your child*).” Thus, the inclusion of the natural condition in the Constitution was going to make a stronger case against such stereotypes. In addition, inclusion of the natural condition as a discrimination ground was going to deal with the consequences of sexual objectification and the discriminatory hiring of women based on appearance which is rampant in Zimbabwe (Gender Links 2013).

g. Protection of The Family and Custody of Children

The Constitution of Zimbabwe (2013) under Section 25 directs the State and its institutions to ensure equality of rights and responsibilities of spouses during marriage and at its dissolution. In the event of marriage dissolution through either death or divorce, provisions must be made for necessary protection of children and spouses. Many gender advocates interviewed for this study stated that this clause was long overdue as women used to lose property to their husbands’ relatives upon the death of the husband. Relatedly, Section 80 (2) confers the rights of women as of “...men regarding the custody and guardianship of children” (Constitution of Zimbabwe 2013, 38). Before the coming in of the 2013 Constitution, women found it difficult to have custody and guardianship of children as compared to men since the now repealed Lancaster House Constitution gave the guardianship of children to men alone. By giving women the guardianship of children, Zimbabwe domesticated article 4 (12 b) of the SADC Gender Protocol, article 20 (b) of the Maputo Protocol and article 16 (1) (f) of the CEDAW.

The Constitution protects women from domestic violence under section 25 (b). The call for the prevention of domestic violence is timely and most welcome for women, who comprise the majority of domestic violence victims in Zimbabwe. A study conducted by the Gender Links (2013) revealed that 68% of the 3326 women interviewed had experienced some form of gender-based violence in their life time while 46% of the interviewed men confirmed to have perpetrated some form of violence in

their life time. Domestic violence against women is devastating, constitutes a contravention of basic fundamental rights, and undermines women's confidence. Women victims of violence are intensive long-term users of health services; they often experience life-long problems of mental health, emotional distress, and poor reproductive health, as well as being at higher risk of acquiring sexually transmitted diseases. With the calls by Section 25 for combined efforts from all State institutions, it is expected that of domestic violence cases will significantly decrease.

h. Marriage rights and abolition of harmful practices

Under Section 78, the Constitution of Zimbabwe (2013, 38) sets 18 years as the minimum marriageable age for both boys and girls. Further, Section 78 (2) states that “[n]o person may be compelled to enter into marriage against their will” (Constitution of Zimbabwe 2013). These provisions domesticate article 4 (8 a & b) of the SADC Gender Protocol, and article 6 (a-b) of the Maputo Protocol and CEDAW which emphasise on consent in marriage, and sets 18 years as the age for one to enter in to marriage. The inclusion of Section 78 is important considering that a majority of girl children are married before the age of 18 in Zimbabwe owing to inconsistencies of marriage laws (Dziva & Mazambani 2017). Marriage laws in Zimbabwe failed to agree on the marriageable age, and continue to tolerate a harmful cultural and traditional practice that breeds child marriages. Therefore, the setting of 18 years as the age of marriage and the emphasis given for consent in the Constitution, effectively ban child marriages in Zimbabwe. This is supported by Section 80 (3) of the Constitution, which states that all practices and traditions harmful to women are deemed to be void to the extent of the infringement (Constitution of Zimbabwe 2013). Thus, domesticating provisions of article 2 of the Maputo Protocol and article 2 (f) of the CEDAW, which mandate the undoing of all laws, customs, traditions and cultural practices that infringe on the rights of women.

The inclusion of the Section 78 and 80 (3) in the Constitution has significantly improved litigation and the protection of the girl child from child marriages and other harmful practices. Courtesy of Section 78 and 80 (3) of the Constitution, two young women in 2015, approached the Constitutional Court of Zimbabwe seeking for the Court to declare the Marriage Act (1964) and Customary Marriage Act (2004) unconstitutional for failure to give equal treatment and protection of girls under the age of 18 years. In making their request, applicants relied on Section 78 (1) of the Constitution of Zimbabwe, arguing that the Constitution had the effect of setting 18 years as the minimum age of marriage. The Constitutional Court ruled in favour of the applicants, and denounced all other laws and customs that violate the stipulated 18 years of marriage as void and inconsistency with best practices. The judgement further called for alignment of marriage laws to the Constitution and best international practices.

i. Access to Health and Reproductive Services

The Constitution provides for the right to health and reproductive care services for women. Section 29 (1) mandates that “[t]he State must take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe” (Constitution of Zimbabwe 2013 23). Section 29 of the Constitution domesticates article 12 (1) of the CEDAW, enjoining State parties to take appropriate measures to ensure women’s access to health care services. In the same way, the constitutionalisation of the right to reproductive health services under Section 76 (1) of the Constitution domesticates article 16 (1) (e) of CEDAW, mandating State parties to protect and promote women and men’s right to reproductive health. The inclusion of reproductive rights addresses key women challenges, and enables women to assert their rights, reduce their vulnerability to HIV and AIDS, and other related diseases (Gender Links 2013).

Regardless of this important guarantee to women’s access to health and reproductive services, many interviewed gender advocates questioned the sincerity of the government’s commitment to women’s enjoyment of these rights. Those pessimistic about the clause mentioned the inclusion of section 76 (4), which state that the State must implement the right to health care “...within the limits of the resources available...” (Constitution of Zimbabwe 2013, 38). The section in question lead to non-prioritization of health rights by the State.

j. Institutions for Advancing Women’s Rights

The Constitution further creates Zimbabwe Human Rights Commission (ZHRC) and the Zimbabwe Gender Commission (ZGC) to protect and promote women’s rights. The ZGC is mandated under Section 245 to keep a close watch on the advancement of gender equality and the protection of women’s rights in society (Constitution of Zimbabwe 2013 & Gender Links 2013). The ZGC “receives and considers complaints from the public and to take such action in regard to the complaints as it considers appropriate” (Constitution of Zimbabwe 2013 96). The ZHRC was established in terms of Section 242 to promote, protect and enforce human rights and freedoms. To effectively promote women’s rights the ZHRC established and operationalized the Gender Equality and Women’s Rights Thematic Working Group which collaborates with other gender organizations to research, raise awareness and advance gender issues in Zimbabwe. The establishment of ZGC and the ZHRC effectively domesticates article 2 (c) of the CEDAW, which calls for States to “establish legal protection of the rights of women ... through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.” It however emerged from this study that the ZRC the ZGC and the ZHRC face numerous challenges including resource constraints and high staff turnover which limit their effective advancement of women’s rights. In 2015, the ZGC was only given

a budget of US\$120 000 for operationalization, covering salaries and furniture (Gender Links 2015). With this paltry budget the ZGC cannot be expected to effectively implement the Constitution.

3. CONCLUSION

The new Constitution of Zimbabwe signifies a new dawn with regards to the protection and fulfilment of women's rights and gender equality. Unlike the repealed Lancaster House Constitution which failed to provide for the rights of women, the 2013 Constitution provides a historic bridge between the past of extreme marginalization of women and a future founded on the recognition and realization of the rights of all human beings. Notably, the Constitution contains an elaborated Declaration of Rights that includes rights of women, calls for gender balance in State and all other institutions, provides for a quota of women representation in key decision-making positions, creates the ZGC to advance rights of women. Women now have equal rights as men in relation to guardianship of children, all cultural practices and beliefs detrimental to girl child and women's rights were abolished. A positive change is evident in the language of the new Constitution, where the word 'must' be used to clearly place an obligation on the State to advance women issues. This language resembles the best international practices and obligates the State to ensure that women enjoy their fundamental rights and access opportunities. To this end Zimbabwe can be applauded for taking a progressive stance in women's rights protection.

As the study was not solely concerned on the level of implementation, further studies are proposed to evaluate the constitutionalism of women issues to date since the inception of the Constitution in 2013. The government is also vouched to exercise will and power within their mandates to ensure constitutionalism in relation to gender balance and equality. Thus, government officials must walk the talk in appointing women in decision making positions, gender mainstreaming and expeditious alignment of the gender related laws including the Marriage Act with the Constitution and other best practices.

Litigious and non-litigious efforts to advance women's rights are of paramount importance. The Constitution and other laws that protect women's rights can be enforced through litigious means such as the case of two young women who approached the Constitutional Court of Zimbabwe challenging inconsistent marriage laws and harmful practices. In this respect, more referrals are needed on women violations to courts and other quasi-judicial bodies so as to provide impetus for the development of domestic jurisprudence on gender equality. In addition, other non-litigious efforts such as lobbying by citizens and pressurization of the government to give effect to their rights are also recommended.

Women whose rights have been violated can only challenge the violations only if they are aware of their constitutional rights. As called for by the

Section 7 of the Constitution, government agencies such as the Ministries, ZGC and the ZHRC and non-state actors must be funded to disseminate awareness and knowledge of the Constitution through the introduction of human rights education in curricula, and translations into all official languages for wider understanding.

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