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Constitutional Reform in Zimbabwe: Labour, Gender and Socio-Economic Rights



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**CONSTITUTIONAL REFORM IN ZIMBABWE:
LABOUR, GENDER AND SOCIO-ECONOMIC RIGHTS**

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An Outline of Fundamental Gender Rights under International and Regional Laws and National Constitutions

Simukai Mombeyarara and Shingai Barangwe.¹

Introduction

Whilst we concur with the fact that gender is not a synonym for women and that discussion on gender issues should be cross cutting between the sexes, we also strongly believe that because of historic and cultural inequalities, the fight for gender based rights is mostly the fight for women rights. The 21st century has become an era in which women have shown determination to unshackle the chains of oppression through social movements, organized labour, the anti-capitalist movements as well as the traditional bourgeois or middle class feminist groups. One socialist scholar put it very well when he said that women are the new vanguard of the anti-capitalist and anti-neo-liberal movement.

Capitalism has thrived mostly by adhering to the principle of divide and rule. Through manipulation of cultural, religious and traditional values and institutions, inherited from feudalism and patriarchy, capitalism has managed to perpetuate the oppression of women, through division of women and men from the working classes. Indeed the oldest and most intrusive form of discrimination in human history is that against women. This is why it constitutes what is termed "special discrimination." It emerged with the emergence of private property and the patriarchal monogamous family under the slavery mode of production about 10 000 years ago.²

However, capitalism has perpetuated and strengthened such oppression and exploitation. Under capitalism discrimination against women operates at different levels including. Firstly and most importantly is at the household or family level where women and the girl child carry by far the disproportionate burden of the domestic work necessary for the maintenance of the family and its members including children, the infirm and the elderly – which work under capitalism is unpaid and unrecognised social labour. In the process of work, whether in the formal sector, in the informal sector or in subsistence agriculture and in formal business and other economic spheres, women suffer horizontal and vertical segregation. They disproportionately occupy the least paid, least senior or secured jobs resulting in the feminization of certain jobs and economic activities. Women in employment are at the mess of managers, business owners and sometimes co-workers, often suffering various forms of sexual harassment. Generally the work women do is under-valued or not even valued at all, whilst the work-place is structured around a stereotyped male worker. The work done by women at home and in the formal and informal sectors, is in fact critical for society and individual families and is used to subsidize the wages paid all workers in the formal sector driving them down below their real worth.

Secondly is in the political and public decision – making platforms, where despite women constituting more than the majority of virtually all countries on the continent, they have much less representation in decision-making structures in state structures such as parliament, government, the judiciary and law enforcement agencies; in local authorities, statutory bodies, businesses, trade unions, NGOs, and in regional and international organizations. This perpetuates the lack of a gender perspective in state decisions, laws and programmes, as well as those of the private sector, in collective bargaining agreements or in advocacy programmes of civic society.

Finally in cultural, media and education systems and institutions certain values, principles, attitudes and stereotypes are maintained and promoted which perpetuate the oppression and exploitation of women seeing them as inferior to men. Values that are designed to maintain male or patriarchal control of women's bodies, their sexuality and reproductive rights in particular denying women a full right to state guaranteed abortion and generally to keep women in the house providing unpaid domestic labour, or if they do get into the formal sectors and public spheres, only to play secondary roles.

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² See generally: Engels F, *The Origins of the Family, Private Property and the State* (Lawrence & Wishart); German L, *Sex, class and socialism* (Bookmarks, 1989); and Davis A, *Women, Race & Class* (The Women's Press, 1981)

Women: the vanguard against neo-liberalism

Because women have the disproportionate share of family responsibility and it is because of that role that their participation in the formal sector and public sphere, is restricted, they are at the cutting edge of denial or lack of key socio-economic rights that has accelerated under neo-liberal capitalism. For that reason denial of socio-economic rights like food security, water, electricity and heat energy, housing and so forth has particular adverse gender dimensions.

It is also not surprising that at the end of the 20th century working class and poor women have moved to the forefront of struggles against neo-liberalism and for democratization of society, including appropriate constitutional reform. The crisis in Zimbabwe has been an eye opener with women being at the forefront of the struggle, contributing more than 55% of activists in every protest action in Zimbabwe dating back from the famous food riots of 1997/8 which saw the women of Mabvuku leading the riots against increase in the price of bread. And this is as it should be, women, like all oppressed groups, can only be their own liberators through their own self activity and mass action.

However, all struggles of the poor and oppressed, including those of women's rights, are drawn back when there is division and lack of solidarity from other sections of the oppressed and exploited, which in itself is often a reflection of low levels of class or ideological consciousness amongst the oppressed. Thus you may find working class men and women identifying with and supporting capitalist ruling class ideas or patriarchal values and institutions that oppress and exploit them. But these can be fought and it is necessary to do so, if we are to advance the struggles of the poor and oppressed, in particular the oppression and exploitation of women.

The oppression of women is the oldest form of oppression in class society now and yesterday. Whilst all oppression is unfair and intolerable, the oppression of women is the most unfair of all forms of oppression mainly because that kind of oppression is passed off as natural and acceptable and because no society that shackles more than 50% of its population can claim to be democratic. Lack of one undivided voice and united action and resistance between ordinary women and men makes the mobilization against dictatorship, neo-liberalism and capitalism that more difficult and a drawback on all working peoples' struggles for a just and democratic society. So comrades in Zimbabwe, comrades in the region and indeed comrades globally lets all put a good fight in ensuring that the outcome of the constitutional reform process in Zimbabwe becomes a victory for the downtrodden and the oppressed, in particular in reversing the oppression and exploitation of women. Because of the cross-cutting nature of women's grievances, their fulfillment will in fact mean the fulfillment of the demands of all poor people and working people.

Indeed we have the living example of how a century of united struggles by women and the working class has won important rights in international laws and national constitutions for women, including: protection from discrimination and sexual harassment, affirmative action provisions in the work, business and public spheres, control over their sexuality including the right to abortion, broad provisions of social security, and the recognition of domestic and informal work and socialization of child- domestic care. These gains are reflected in important international and regional laws that include: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Universal Declaration of Human Rights, (UDHR); the United Nations International Covenant on Economic, Social and Cultural Rights, (ICESCR); the African [Banjul] Charter on Human and Peoples' Rights, (ACHPR); the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, (PACHPRWA); and the SADC Declaration on Gender and Development. Important documents on the related rights of children include: the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

In countries where women and working people have engaged in serious struggles for democracy and against neoliberalism, women's rights have been a central feature of the new constitutions that emerged, incorporating and developing on most of the provisions of the international and regional laws. The most advanced of such examples have been seen in the constitutions of Venezuela, Bolivia and South Africa. To a lesser extent have been examples from other African countries emerging from conflict, including Uganda and Ethiopia. In terms of Zimbabwe, progressive constitutional norms are to be found in the NCA Draft Constitution and the Zimbabwe Peoples' Charter. Important gains for women's rights have been made in recent constitutional amendments, especially Constitution of Zimbabwe Amendment Acts Nos. 17, 18 and 19. However, generally the current Zimbabwe Constitution and the Kariba Draft Constitution is woefully lacking and inadequate in relation to the rights of women's rights in terms of Zimbabwe's obligations under regional, continental and international treaties.

As we engage in constitutional reform in Zimbabwe we can draw on and develop on some of the above important documents. The importance of the gender question, namely the struggle for women's rights cannot be over emphasized. The prevailing constitutional reform exercise demands that the entire working class movement and that of the poor in general seize the opportunity and rally behind in united struggles with our female comrades and demand provisions in the new constitution that provide full gender equity to achieve women's rights. We highlight some of the main rights that have been won in progressive constitutions and laws at the international, regional and national levels.

Right to Protection from all forms of Discrimination Against Women

All women have the right to protection from unfair discrimination based on gender and sex considerations and the State has the obligation to take appropriate measures and laws to eliminate all forms of discrimination against women in all spheres of life. This right is provided under various international laws, regional laws and progressive national constitutions and norms:

- Art. 2 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, hereafter called "the Protocol," places duties on the State:
 - ♦ To combat all forms of discrimination against women through appropriate legislative, institutional and other measures.
 - ♦ To include in the national constitution the principle of equality between women and men and full implementation of the equality principle.
 - ♦ To integrate a gender perspective in its policy decisions, legislation, development plans, programmes and activities and in all spheres of life.
 - ♦ To eliminate harmful cultural and traditional practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men, and to modify the social and cultural patterns of conduct of men and women through appropriate public education and information strategies.
- See also: Art. 2 CEDAW; Art 2 UDHR; and Art 2 of the African [Banjul] Charter on Human and Peoples Rights (ACHPR).
- In terms of national constitutions see: Section 9 of the Constitution of South Africa; Section 14, Malawi Constitution Art. 33, Uganda Constitution; Art. 35, Ethiopia Constitution; and Art. 14 of the Constitution of Bolivia.
- In terms of Zimbabwean constitutional laws and norms, the following apply:
 - ♦ Section 23 of the current constitution prohibits discrimination on the basis of gender but contains significant exemptions and restrictions based on African customs and culture in areas of personal and family law. This is not restricted to positive customs and culture as done in international law.
 - ♦ Section 43 of the Kariba Draft Constitution which provides: "Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their ... sex, gender, marital status, pregnancy, ...or natural difference or condition."
 - ♦ Section 41 of the NCA Draft Constitution which provides: "Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities; and equal rights in civil law. (2) All laws, customs and cultures that infringe the rights of women are prohibited."
 - ♦ Art. 6 of the Zimbabwe Peoples Charter provides "that all human beings are created equal, must live and be respected equally, with equitable access to all resources that our society offers regardless of their gender, and that gender equality is the responsibility of women and men equally..."

Right to Special Measures and Affirmative Action to counter past discrimination

Women have the right to temporary special measures to reverse historical and social unfair treatment and discrimination aimed at accelerating *de facto* equality between men and women, including provisions for affirmative action and gender quotas. Such measures are not considered unfair discrimination but shall in no way entail as a consequence the maintenance of unequal or separate standards. Such measures shall be discontinued when the objective of equality of opportunity and treatment has been achieved.

The right to special measures of gender affirmative action is provided in a number of international and regional laws and national constitutions and norms:

- Art. 2 CEDAW
- Paragraph H. ii of the SADC Declaration on Gender and Development
- In relation to national constitutions and norms, the following apply:
 - ♦ Section 9 of the Constitution of South Africa; Art. 23 (3) Namibia Constitution; Art. 35(3) Ethiopia Constitution; and Art. 32, Uganda Constitution;
 - ♦ Section 41 (3) NCA Draft
 - ♦ Section 43 (5) Kariba Draft
 - ♦ Section 23 Constitution of Zimbabwe

Right to Dignity

Every woman has the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. This right is provided under various international laws, regional laws, progressive national constitutions and norms:

- Art. 3 of the Protocol, details the minimum requirements of the right, including:
 - ♦ The right to respect as a person and to the free development of her personality;
 - ♦ The right to protection from exploitation, degradation, and all forms of violence, particularly sexual and verbal violence.
- In terms of national constitutions see: Section 15 of the Constitution of South Africa; Art. 33, Uganda Constitution; Art. 35, Ethiopia Constitution; and Section 42 of the Constitution of Venezuela.
- In terms of Zimbabwe, the following constitutional documents apply:
 - ♦ Section 4 of the Kariba Draft Constitution.
 - ♦ Section 41 of the NCA Draft Constitution.
 - ♦ Art. 6 of the Zimbabwe Peoples Charter provides: "that all human beings are created, must live and respected equally with equitable access to all resources that our society offers regardless of their gender, and that gender equality is the responsibility of women and men equally..."

The Rights to Life, Integrity and Security of the Person

Every woman has the right to respect for her life and the integrity and security for her person. This right is provided under various international laws, regional laws, and progressive national constitutions and norms:

- Arts. 4 and 5 of the Protocol provide details of key elements of the right, including on the duties on the State to:
 - ♦ Enact and enforce laws to prohibit all forms of violence against women whether the violence takes place in private or in public.
 - ♦ Adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.
 - ♦ Actively promote peace education through curricular and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes, which legitimize and exacerbate the persistence and tolerance of violence against women.
 - ♦ Prohibit "through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para medication of female genital mutilation" and all other similar harmful practices or forms of violence, abuse and intolerance.
- See also Paragraph H.iv of the SADC Declaration on Gender and Development.; Art. 35, Ethiopia Constitution; and Art. 33, Uganda Constitution.
- Section 41(2) of the NCA Draft provides for the prohibition of all "laws, customs and cultures that infringe on the rights of women."
- The Kariba Draft Constitution provides for such right in various provisions:

- ◆ Section 41 provides for an enforceable freedom from torture, inhuman or degrading treatment which “includes gender-based violence.”
- ◆ Section 30 provides for a right of personal liberty and personal security, whilst Section 42 provides for a right to dignity and reputation.
- ◆ Section 19 provides for a national objective duty on the state “to promote and preserve cultural values and practices which enhance the dignity and well-being of Zimbabweans.” Section 26 provides a duty on the state to take measures within the resources available to it to “prevent domestic violence.”

Right to Marriage and Equality in Marriage and Divorce

Every woman of adult age has the right to marry and found a family and no person may be forced to enter into marriage or be prevented from entering into marriage. Women and men are regarded as equal partners in marriage. This right is provided under various international laws, regional laws, and progressive national constitutions and norms:

- Art. 6 of the Protocol provides for:
 - ◆ The right of a married woman to retain her maiden name, to use it as she pleases jointly or separately with her husband’s surname.
 - ◆ Equal rights with men, with respect to the nationality of their children except where this is contrary to a provision in national legislation or contrary to national security interest.
 - ◆ The right to acquire her own property and administer and manage it freely in marriage.
- Article 7 of the Protocol provides that:
 - ◆ In cases of separation, divorce or annulment of marriage, women and men shall have the right to equitable sharing of the joint property deriving from the marriage.
 - ◆ Women and men shall have the same rights to seek separation, divorce and annulment of marriage.
 - ◆ In case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interest of the children shall be given paramount importance.
- Arts. 9 and 16 CEDAW provide further details of the right, including:
 - ◆ The same rights to decide freely and responsibly on the number and spacing of their children.
 - ◆ The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, with the interests of the child being paramount.
 - ◆ The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.
 - ◆ The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.
- Paragraph H. iv of the SADC Declaration on Gender and Development provides a duty on the states to repeal and reform “all laws, amending constitutions and changing social practices which will still subject women to discrimination, and enacting empowering gender-sensitive laws.”
- In terms of national constitutions see: Art. 34, Ethiopia Constitution; Art. 22, Malawi Constitution; Art. 31, Uganda Constitution; Art. 14 Namibia Constitution; Arts. 76 - 77 of Constitution of Venezuela which recognizes a “stable de facto union between a man and a woman.”
- In Zimbabwe Section 27 of the Kariba Draft Constitution under the “National Objectives” section provides for the right to marry of everyone of marriageable age and to “equality of rights and responsibilities of spouses during marriage and at its dissolution.”

Right of Access to Justice and Equal Protection before the Law

Women have the same rights as men before the law and shall have the right to equal protection and benefit of the law. This right is provided under various international laws, regional laws and progressive national constitutions and norms:

- Art. 8 of the Protocol provides the following duties on the state:
 - ◆ The effective access by women to judicial and legal services, including legal aid.
 - ◆ The establishment of adequate, educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women.

- ◆ That law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights.
- ◆ That women are represented equally in the judiciary and law enforcement organs.
- See Art. 15 CEDAW
- In Zimbabwe the following apply:
 - ◆ Section 38 of the NCA Draft Constitution.
 - ◆ Sections 32 and 41 of the Kariba Draft Constitution, with the former providing the state with a national objective duty of providing legal aid, including legal practitioners to those who need the services of a legal practitioner in civil and criminal matters but cannot afford it.

Right to Participation in the Political and Decision-Making Process

Women have the right to equal participation with men in the political and public life of their countries through affirmative action, enabling national legislation and other measures. This right is provided under various international laws, regional laws, and progressive national constitutions and norms:

- Art. 9 of the Protocol provides for the duty on the state to ensure:
 - ◆ Women participate without any discrimination in all elections.
 - ◆ Women are represented equally at all levels with men in all electoral processes.
 - ◆ Women are equal partners with men at all levels of development and implementation of State policies and development programmes.
- Article 10 of the Protocol provides for the "Right to Peace" for women, including women's participation in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women.
- Arts. 7 and 8 of CEDAW provide for the right of women to participate on equal terms with men in the political and public life of the country including in non-governmental organizations and associations concerned with the public and political life of the country; and to represent the Government at the international level and international organizations. Art. 4 provides a duty on states to adopt affirmative action through temporary special measures to accelerate de facto equality between men and women.
- The SADC Declaration on Gender and Development provides a duty on states to ensure "the equal representation of women and men in the decision-making of member states and SADC structures at all levels, and the achievement of at least thirty percent target of women in political and decision-making structures by year 2005." Also see: Art. 33 (4) Uganda Constitution; and Art. 35 (3), Ethiopia Constitution.
- Internationally and regionally examples of political parties that have adopted gender representation equality in parliament include: the ANC in South Africa (2008) and the MVR in Venezuela (2005). In Zimbabwe ZANU PF provides for a minimum 30% representation.
- In Zimbabwe the following apply:
 - ◆ The current Constitution of Zimbabwe provides 50% representation of women in certain constitutional commissions including: the Zimbabwe Electoral Commission (Section 61); and the Zimbabwe Human Rights Commission (Section 108B).
 - ◆ Section 19 (5) of the NCA Draft provides for affirmative action through "reasonable legislative and other measures" in order "to protect or advance people who have been disadvantaged by unfair discrimination."
 - ◆ Section 47(5) of the Kariba Draft provides a similarly worded right to affirmative action. Section 21 provides a National Objective duty on the state to: (1) ensure gender balance and a fair representation of marginalised groups on all constitutional and other governmental bodies;
 - ◆ (2) to promote full participation of women in all spheres of Zimbabwean society on the basis of equality with men.

The Right to Education and Training

Every woman has the right to equal opportunity and access to education and training, without any discrimination. This right includes the right to basic literacy and functional literacy. The right is provided in the following international and regional laws and progressive national constitutions and norms:

- Art. 12 of the Protocol provides the essential elements of the right as including:
 - ♦ Guaranteeing women equal opportunity and access in the sphere of education and training and promoting the enrollment and retention of girls in schools and other training institutions and to promote literacy among women.
 - ♦ Protection of women against all stereotypes in textbooks, syllabuses and the media, that perpetuate gender discrimination.
 - ♦ Protection of women especially the girl child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for effective sanctions against the perpetrators.
 - ♦ Integration of gender sensitization and human rights education curricula including teacher training.
 - ♦ Promotion of the enrollment and retention of girls in schools and other training institutions and the organization of programmes for women who leave school prematurely.
- Art. 10 of CEDAW.
- Paragraph H. v of the SADC Declaration on Gender and Development places an obligation on states to take measures to enhance “access to quality education by women and men, and removing gender stereotyping in the curriculum, career choices and professions.”

Women's Economic and Social Welfare Rights

Every woman has the right to be guaranteed equal opportunities in work, career advancement, rural development and other economic opportunities including the informal sector. This right is provided under various international laws, regional laws, and progressive national constitutions and norms as follows:

- Art. 13 of the Protocol provides key elements of the right as including:
 - ♦ Various rights in relation to work, including: the right to work, to equality of access to employment including in recruitment, promotion and dismissal, to equal remuneration and benefits for work of equal worth, to protection from sexual harassment and exploitation by employers, to protection from child labour, to adequate social security including to paid and adequate pre and post-natal maternity leave and to equal application of taxation laws.
 - ♦ The right to adequate conditions for the promotion and support of occupations and economic activities where many women are active, in particular the informal sector.
 - ♦ The right to recognition of the economic value of the work of women at home.
 - ♦ The right to social insurance and social security for women in the informal sector.
 - ♦ The right of recognition that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the state and the private sector have secondary responsibility.
- Further economic and social rights are provided in other articles of the Protocol including: the
 - ♦ The right to food security which includes the right to nutritious and adequate food, access to clean drinking water, sources of domestic fuel, land and the means of producing nutritious food. Art 15
 - ♦ The right to adequate housing and acceptable living conditions in a healthy environment and regardless of marital status. Art. 16
 - ♦ The right to a healthy and sustainable environment. Art. 18
- CEDAW has various provisions on such economic and social welfare rights:
 - ♦ Rights of women workers under Art. 11 including the right to social security in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work and the right to paid leave; the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction; and the right to protection from dismissal or discrimination on grounds of marriage, marital status, pregnancy or maternity leave; and the right to the necessary supporting social services to enable

parents to combine family obligations with work responsibilities and participation in public life in particular through the establishment and development of a network of child-care facilities.

- ◆ Art. 13 provides the right to elimination of discrimination in other areas of economic and social life, including the rights to: family benefits, the right to bank loans, mortgages and other forms of financial credit – Art. 13:
- ◆ Art. 14 provides the right to recognition of the work of rural women in the non-monetised sector, including:
 - √ The right to participate in the elaboration and implementation of development programmes.
 - √ The right to access to adequate health care facilities.
 - √ Right to social security programmes and to adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
 - √ Right to training and education, to functional literacy and to extension services.
 - √ Right to organize self-help groups, and co-operatives and access to agricultural credit, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.
- The SADC Declaration on Gender and Development Paragraph H. iii, commits states to the promotion of “women’s full access to, and control over productive resources such as land, livestock, markets, credit, modern technology, formal employment, and a good quality of life in order to reduce the level of poverty among women.”
- In relation to national constitutions examples include: Art. 35 (6 & 7), Ethiopia Constitution; Section 24, Malawi Constitution; Art. 33 (4), Uganda Constitution; Art. 57 Constitution of Mozambique; Art. 45 Bolivia Constitution.
 - ◆ Art. 88 of the Constitution of Venezuela provides that the “State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The state recognizes work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security in accordance with law.”
- In Zimbabwe the following constitutional provisions apply:
 - ◆ Section 23 (3a) of the current constitution provides for the non-application of African customary laws in land re-distribution and that in implementing any programme of land reform the Government shall treat men and women on an equal basis with respect to the allocation or distribution of land or any right or interest therein.
 - ◆ The Kariba Draft provides in Section 21 for a National Objective duty on the state to - “ensure gender balance and a fair representation of marginalised groups on all constitutional and other governmental bodies;” to “promote full participation of women in all spheres of Zimbabwean society on the basis of equality with men;” and “take all practical measures to ensure that women have access to land and other resources on the basis of equality with men.”
 - ◆ Section 41 of the NCA Draft provides women with the right to “equal opportunities in political, economic and social activities.”
 - ◆ Section 6 of the People’s Charter mandates the inclusion of a gender perspective in all government programmes.

Right to Health and Reproductive Rights

Every woman has the right to health, including sexual and reproductive health and to control her fertility, including the right to state guaranteed safe and free abortion. This right is recognized to varying degrees under various international laws, regional laws, progressive national constitutions and norms:

- Art. 14 of the Protocol provides the minimum requirements of the right as including women’s rights:
 - ◆ To control their fertility and to choose any method of contraception.
 - ◆ To decide whether to have children, the number of children and the spacing of the children.
 - ◆ To self protection and to be protected against sexually transmitted infections, including HIV/AIDS.
 - ◆ The right to access adequate, affordable and accessible health services, including education and communication programmes.
 - ◆ The right to pre-natal, delivery and post-natal health and nutritional services during pregnancy and during breast-feeding.
 - ◆ The right to medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

- Art. 12 of CEDAW provides for the right of access to health care services, including appropriate services in connection with pregnancy, confinement and the post-natal period, including free services where necessary and adequate nutrition during pregnancy and lactation.
- Paragraph H.vi and viii of the SADC Declaration on Gender and Development places an obligation on states to make "quality reproductive and other health services more accessible to women and men;" and to recognize, protect and promote "the reproductive and sexual rights of women and the girl child."
- In terms of national constitutions: Art. 31 (1), Uganda Constitution; Art. 35 (5) Ethiopia Constitution provides for the right to maternity and paternity leave with full pay; and Arts. 45-66, Bolivia Constitution; Art. 56 Mozambique Constitution; Art. 76 of the Constitution of Venezuela provides that: "Motherhood and fatherhood are fully protected, whatever the marital status of the mother or father. Couples have the right to decide freely and responsibly how many children they wish to conceive... The State guarantees overall assistance and protection for motherhood, in general, from the moment of conception, throughout pregnancy, delivery and the puerperal period, and guarantees full family planning services based on ethical and scientific values. The father and mother have the shared and inescapable obligation of raising, training, educating, maintaining and caring for their children, and the latter have the duty to provide care when the former are unable to do so by themselves. The necessary and proper measures to guarantee the enforceability of the obligation to provide alimony shall be established by law."
 - ♦ Section 27 (1) (a) of the Constitution of South Africa provides for the right to "health care services, including reproductive health care." National legislation provides for the right of women to abortion in all circumstances, including due to economic and other factors.
 - ♦ In Zimbabwe see - Section 6 of the People's Charter providing a duty on the state to provide "all health care and all sanitary requirements of women."

Right to Land and Sustainable Development

Women have the right to enjoy the right to sustainable development. This right is provided under various international laws, regional laws, progressive national constitutions and norms as detailed below:

- Art. 19 of the Protocol provides the minimum requirements of the right, including:
 - ♦ Introduction of a gender perspective in national development planning procedures.
 - ♦ Ensuring participation of women at all levels in the conceptualization, decision-making, implementation and evaluation of development policies and programmes.
 - ♦ Promotion of women's access to and control over productive resources such as land and guarantee their right to property.
 - ♦ Promotion of women's access to credit, training, skills development and extension services at rural and urban levels to reduce poverty and achieve a higher quality of life.
 - ♦ Ensuring that the negative effects of globalization and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.
- Paragraph H. iii of the SADC Declaration on Gender and Development quoted above provides for the full access to, and control over productive resources.
- Arts. 13 and 14 of CEDAW provide for the right for urban and rural women.
- Art. 1 of the ICESCR provides for the right of all peoples to the right of political, economic, social and cultural self-determination and development, including the right to freely dispose of their natural wealth and resources without prejudice to international law. In no case though "may a people be deprived of its own means of subsistence." Art. 2 (1) places a duty on the state to undertake steps, especially economic and technical, with a view to achieving progressively the full realization of the economic rights in the Covenant, "to the maximum of its available resources."
- The African Charter provides for the right in various provisions, including the right of all African peoples to: the right to economic development (Art. 22); the right to freely dispose of their wealth and natural resources, which right is to be exercised in the exclusive interest of the people, and in no case shall the people be deprived of it; and the

right to exercise the right as individual states and collectively or regionally – Art. 21; and the right to existence – Art. 20.

- In terms of national constitutions see: Arts. 40 (4-5) Ethiopia Constitution provides a right to land to peasants and pastoralists; Arts. 46-47, Mozambique Constitution; Arts. 311 – 313 and 316 of the Constitution of Bolivia; and Art. 87 - 88 of the Constitution of Venezuela.
- In terms of Zimbabwean constitutional documents, a general right to sustainable development is provided under:
 - ♦ Section 16 of the Constitution of Zimbabwe providing for the full right of the state to compulsorily acquire and for resettlement and agricultural purposes with payment of compensation subject to relevant historical factors of colonialism and the capacity or ability of the state to pay. And that in implementing any programme of land reform the Government shall treat men and women on an equal basis with respect to the allocation or distribution of land. See also Section 21 of the Kariba Draft Constitution.
 - ♦ Section 32 of the NCA Draft Constitution which recognizes that “Land is the basic resource available for food production and economic development... and must therefore be used for the benefit of all the people of Zimbabwe, and the state is entitled to compulsorily acquire land or other natural resources to achieve an equitable land ownership pattern or resource redistribution either to redress past racial discrimination or for the benefit of the people of Zimbabwe” on payment of fair and equitable compensation to the property owners and farm workers.
 - ♦ Section 4 of the Zimbabwe Peoples Charter which recognizes the right to transfer of land from the few to the many and economic justice .

Widows' Rights and the Right to Inheritance

Every widow has the right to enjoy all human rights, including women's rights under international and regional law and in progressive national constitutions.

- Arts. 20 and 21 of the Protocol provides the minimum requirements of the right, including:
 - ♦ The right not to be subjected to inhuman, humiliating or degrading treatment.
 - ♦ The right to automatically become the guardian and custodian of her children, after the death of her husband, subject to the interests of the child.
 - ♦ The right to remarry and marry the person of her choice.
 - ♦ The right to an equitable share in the inheritance of the property of her husband.
 - ♦ The right to continue to live in the matrimonial house. In case of remarriage she shall retain this right if the house belongs to her or she has inherited it.
 - ♦ Women and men shall have the right to inherit, in equitable shares, their parents' properties.
- See Art. 16 of CEDAW; and Art. 31 (2), Uganda Constitution.

Right to Special Protection for the Elderly, Disabled and Women in Distress

Every woman has the right to protection in the event of old age or disability or in circumstances of distress beyond her control. These rights are provided under various international laws, regional laws and progressive national constitutions:

- Art. 22 of the Protocol provides for:
 - ♦ The right of elderly women to special protection through appropriate state measures commensurate with their physical, economic and social needs as well as their access to employment and professional training.
 - ♦ The right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.
- Art. 23 of the Protocol provides for the:
 - ♦ The right of women with disabilities to special protection including state measures commensurate with their physical, economic and social needs as well as their access to employment, professional training and participation in decision-making.

- The right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.
- Art. 24 provides for the right to special protection of women in distress including poor women and women heads of family, pregnant or nursing women and women in detention and for their right to be provided with an environment suitable to their condition and their special physical, economic and social needs.
- For progressive national constitution documents see: Arts: 80 – 81 Constitution of Venezuela; Arts. 70 - 73 Constitution of Bolivia; Section 42 NCA Draft; and Section 23 Kariba Draft.

Right to a Positive Cultural Context

Every woman has the right to enjoy the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies This is right is provided under various international laws, regional laws, progressive national constitutions and norms including:

- Art. 17 of the Protocol;
- Art. 5 CEDAW
- Section 41 (2) NCA Draft; and Section 19 Kariba Draft.

Further Readings and Bibliography

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