

Gender Legal Reform in Zimbabwe: Wanting

By

**Ranjana Sinha
Simeon Djankov**

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Ranjana Sinha and Simeon Djankov¹

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Abstract

Zimbabwe has introduced some legal reforms towards women's rights in the first three dozen years since its independence in 1980, though these changes have been continuously challenged by customary law and Supreme Court rulings. The credit for this reform process goes to women-led organisations that mobilised women throughout the country to lobby for their rights. The pre-eminence of customary law has meant that the formal legal progress, however small, has not translated to gender equality in practice, since matters on property, inheritance, and marriage are still governed by customary law which does not recognise women as being equal to men.

¹ This research is funded by the John Templeton Foundation's grant 62616 "Women's Empowerment, Economic Freedom, and the Role of Law in Driving Prosperity." Both authors are with the Financial Markets Group at the London School of Economics. Contact: s.djankov@lse.ac.uk.

Introduction

In November 2009, Magodonga Mahlangu and Jenni Williams received the Robert F. Kennedy Human Rights Award from President Obama in recognition of their efforts in improving women's rights in Zimbabwe. The award for these leaders of the civic organization Women of Zimbabwe Arise brought to light the continued repression of women in the country (Thomas 2010).

Women in Zimbabwe have historically been looked down upon as subordinates, dependent on their male relatives for their livelihood, with no inheritance rights or personal freedom. During the period of colonial rule, no formal jobs for women were allowed. The law denied the ability of women as workers and confined them to subsistence agricultural production on communal land (Arrighi 1970). The diminished status of women was recorded in various studies, such as the World Bank's *Women Business and the Law* index, that recorded a score of 36.9 for Zimbabwe on the eve of its independence in 1980, meaning that women had just over 1/3rd of the legal rights of men as measured by the index. This measure is however based on the formal law. As customary law continues to prevail, women have few rights over family, inheritance and property matters.

Zimbabwean women's fight for legal rights is a story of customary law being a cover for prejudice in a male-dominated society. Zimbabwe's independence in 1980 coincided with the United Nations Decade for Women, putting the new leadership of the country under intense scrutiny for the unequal treatment of women (Nhongo-Simbanegavi 2000). Responding to extended offers for assistance, particularly from the United States Aid agency (USAID), the government ratified several international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women in 1991. However, the main motivation for reforms came from within the country, by women who had gained some political status during the country's independence struggle.

Previous studies have documented instances where legal reforms for the rights of women in low-income African countries were assisted by international agencies, as was the case in Zambia (Su and Djankov 2023). The role of such agencies – USAID in particular - was also important in Zimbabwe, as they provided support to women's organizations in the country who challenged the government for greater women's rights.

As in the case of neighbouring Zambia, legal reform has not translated into improved outcomes of an equivalent magnitude. Zimbabwe fares badly in the political empowerment of women, with women constituting only 30% of the members in Parliament and having no female head of state, head of parliament, head of the constitutional court or prime minister since independence (World Economic Forum 2022). This is in contrast to Rwanda, another African nation with a legal reform tradition led by women (Sinha and Djankov 2023), which has the highest female representation in Parliament and has had women politicians in top government positions.

The paper is organised as follows. Section 1 describes the legal status of women in Zimbabwe before and during the colonial rule. Section 2 gives an account of the main measurement on the legal rights of women, the World Bank's *Women Business and the Law* index. Section 3 highlights the role of women in the country's struggle for independence and describes the reforms in the 20 years post-independence, until the new millennium. Section 4 brings to light

the half-hearted nature of the first phase of reforms and the government's ambivalence on women's legal rights. Section 5 elaborates on the emergence of women's rights organizations and their role in achieving legal reform. Sections 6 and 7 discuss reforms related to female labour force participation and gender-based violence, respectively. Section 8 concludes.

1. The Legal Rights of Women in Pre-independence Zimbabwe

Both customary and colonial laws recognised Zimbabwean women as legal minors, under the custody of their father or husband. Under customary law, women had access to land solely by virtue of their subordinate familial ties to men (Jacobs 2007). The surplus produced by a woman could only be used to feed the family and not for her personal use or for sale or barter with other families (Kachingwe 1986). Women were treated as property; they would often be used as an object of exchange from a victorious chief to his loyal soldiers, or between clans. Husbands and fathers would sue other men for seducing their wives or daughters and receive damages, but the woman herself could not do the same (Armstrong 1990).

Polygamy was commonplace since additional wives were viewed as economic assets who provided farm labour and bore future generations. Men acquired these assets by paying lobola (bride wealth) to the woman's parents before marriage. Beyond making the inferior position of women a commonly accepted custom, this practice encouraged forced marriages of girls at a young age (Seidman 1984).

Since the establishment of colonial rule in 1890, the formal legal rules of women's place in society and the economy conflicted with customary law. While customary law did not recognize the equal rights of women, colonial law stripped women even of their role as economic actors. Colonial rules retained the demeaning practice of rewarding loyal soldiers with women. For instance, after subduing a rebellion by the chief Mapondera, British officials distributed his wives to African men loyal to the colonists (Isaacman, 1977). Customary and colonial laws coexisted for nearly a century in a way that they reinforced one another to the disadvantage of women (Seidman 1984).

Colonial laws went further and over time restricted access of all Zimbabweans to economic resources (Arrighi 1970). Women and children were displaced in large numbers to overcrowded, communal "tribal trust lands" where they engaged in subsistence agriculture while the men worked in towns or provided labour on farms owned by colonists. Customary law still considered women as being responsible for providing food for their families, while colonial law denied them access to land and other resources needed to fulfil those responsibilities (Seidman 1984). Many women fled these circumstances to find informal work in towns, but in doing so they became further marginalised. In order to provide for the family, women started to brew beer for sale in illegal bars and some were driven to prostitution (Muchena 1980).

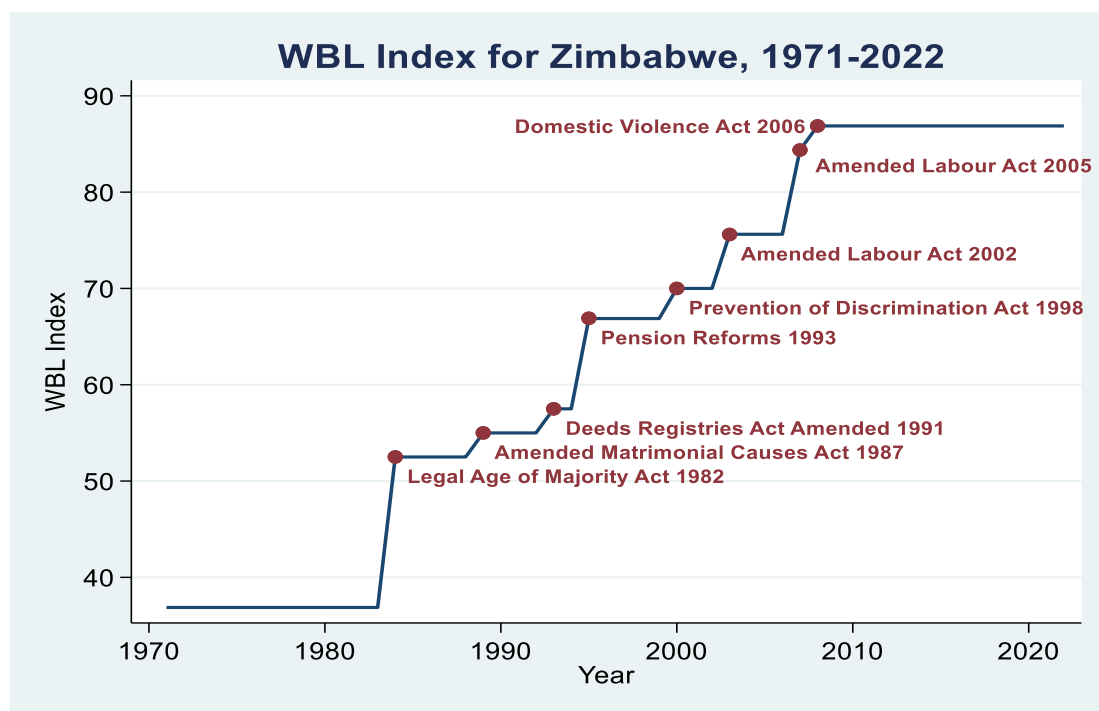
At the time of independence in 1980, the legal rights of women in Zimbabwe were non-existent, a vestige of both customary and colonial rules.

2. Measuring the Legal Rights of Women

An earlier paper (Hyland, Djankov, and Goldberg 2020) introduced the World Bank's *Women, Business and the Law* (WBL) index as a measure of legal equality between men and women. The WBL index charts the inequality in legislation that a woman faces as she navigates her working life, from the time she can enter the labour force through retirement. Scores range from 0 to 100, where a score of 100 implies that there are no legal inequalities between men and women in the areas covered by the index. The most recent data show that the global average WBL score in 2022 is 77.1 (World Bank 2023), implying that, on average, women around the world have about three-quarters the rights of men when it comes to laws affecting their economic opportunity.

Using the WBL index, we trace the evolution of legal rights for women in Zimbabwe over the fifty-year period from 1971 to 2023 (figure 1). The figure shows that legal change starts to happen around the time of the CEDAW in 1985 and goes in steps over two decades, to come to an abrupt stop in 2008, the year of the appointment of Morgan Tsvangirai as the Prime Minister of Zimbabwe. In the last fifteen years, no progress towards greater legal rights for women has been made.

Figure 1: Gender Legal Reforms in Zimbabwe, 1971-2023



The WBL index can serve only as a starting point of analysis on the evolution of legal rights of women. Hyland, Djankov, and Goldberg (2021) list several reasons to be sceptical about the relation between a de jure measure of gender equality and actual experience, especially in developing countries. A common finding in the literature is that deeply entrenched social norms render legal reforms ineffective. Holden and Chaudhary (2013) and Ahmad, Batool, and Dziegielewski (2016) find that despite a legal change, women in Pakistan were not able to

claim their entitled inheritances, because of factors such as lack of education and forced marriage. Gedzi (2012) highlights a similar result in Ghana, where reforms to inheritance laws led to few positive changes in terms of women's inheritance.

An issue that comes up frequently when studying legal reform of property rights in Africa is legal pluralism (Djurfeldt 2020). Ali, Deininger, and Goldstein (2014) note that the coexistence of different types of customary and formal laws can lead to a situation in which formal laws are disregarded if informal codes are less costly to execute, as is often the case. Reversion to informal courts, headed by village elders, leads to resolutions that favour men. Women's reluctance to resort to formal courts is also the subject of several studies. Vatuk (2013) notes that victims of domestic violence and other kinds of marital dissonance may not even consider turning to the state for support.

There is some evidence linking specific laws to better outcomes for women. Agarwal (2003) documents a link between women's land rights and their possibility of leaving a violent spouse. Deininger, Goyal, and Nagarajan (2013) show that reform of India's Hindu Succession Act increased daughters' likelihood of inheriting land. Reforms to the Succession Law in Rwanda made it more likely for women to leave their marriages while still receiving permanent rights to land and increased their ability to resist the customary practice of polygamy (Daley, Dore-Weeks, and Umuhoza 2010). Ali, Deininger, and Goldstein (2014) find that formalization of land rights in Rwanda increased women's investment in soil conservation.

Zimbabwe presents a larger challenge to the index than most other developing economies, in that customary law has long coexisted with formal law, particularly in the areas of property, inheritance and family disputes. As in neighbouring Zambia and Malawi, the preponderance of customary law in several areas of the index suggests that legal rights are in practice significantly less than in other countries with comparable formal legal protections (Bennett 1981; Schmidt 1990). Supreme court judges' decisions in Zimbabwe have also consistently upheld the preponderance of customary law over formal law. These actions suggest that customary law may serve as a convenient cover for prejudice in a male-dominated society. We return to this point throughout the study.

3. Role of Women in Independence

The success of the guerrilla warfare adopted by the pro-liberation fighters in the 1960s depended on the support of the rural population, particularly women who were the main agricultural laborers (Ranger 1988; Kriger 1992). In the early days of the struggle, women played auxiliary roles as providers of food and as messengers (O'Gorman 2011). Women, however, did not stay long within these gendered roles and soon became active combatants owing to a variety of triggers, such as murder of a relative, the burning of their village, or even a desire to escape from traditional restrictions (Mudeka 2014). Consequently, over the next decade many women fled the agricultural lands to join the rebel camps in Mozambique, eventually comprising one-quarter of the 30,000-strong force who fought for independence (Seidman 1984).

The leaders of the Zimbabwe African National Union (ZANU) realised the importance of training women to be combat soldiers. The social status of Zimbabwean women put them

outside the scope for surveillance by colonial officials, thus giving them the freedom to move about and conduct their affairs while men were subject to questioning, torture, and arrest (Mudeka 2014). Women rose through the ranks, some being promoted to the position of field commander. This was a striking departure from the rigid views of gender hierarchy embedded within Zimbabwean society (Martin and Johnson 1981).

In their role as messengers, women would travel far and wide, under dangerous conditions. Making their way through many villages, they shared their experiences with other women. This process mobilised women throughout the nation and built the network to view themselves in a new role in society. A similar awareness was also created among the women members of ZANU through exposure to feminism during their exile (Seidman 1984).

Women soldiers had different needs than their male colleagues, for example clothes for female combatants and supplies for young mothers. Meeting these needs led to the formation of the ZANU Women's League in 1977 (Chinomona 2020). The Women's League became the premier organisation for women at the time of Zimbabwe's independence, with close ties to the new political regime. The inaugural Secretary General of the League was Sally Mugabe, the wife of Robert Mugabe, the first Prime Minister of independent Zimbabwe. She was succeeded in that position by Joice Mujuru, one of the first commanders in the ZANU's military forces and subsequent Vice President (Pennington 2002, pp. 316-319).

The hope for women's improved legal status was further strengthened when Robert Mugabe, the leader of ZANU, praised the contributions made by women in the liberation struggle and expressed the party's commitment toward their emancipation at the first Women's Seminar held by ZANU in 1979 (Mugabe 1979).

Different strata of women had different expectations of what constituted more rights. While the ex-combatants wanted better access to employment and education, rural women desired the right to own land, exercise mobility and authority over family matters (Ranchod-Nilsson 2006). As a first step toward delivering its promise, the government set up the Ministry of Community Development and Women's Affairs in 1981 with the vision of involving women in national development. Staff at the new ministry started collecting data on the legal rights of women and introduced several legal reform drafts (Ranchod-Nilsson 2006). The Legal Age of Majority Act, passed in 1982, conferred upon women aged 18 and above full adult status for the first time. The Act gave women the right to open a bank account, register a business, enter a contract, and get a job in the same way as adult men, a big step up from when they had to seek permission from their male kin for all these tasks. This package of reforms corresponds to a significant jump in Zimbabwe's WBL score in 1984, from 36.9 to 52.5. Again, this index is based on formal rather than customary law, and should be taken with a grain of salt.

Other legal changes introduced in the first decade post-independence include the Labour Relations Act of 1985 that entitled women to 12 weeks of paid maternity leave and the Matrimonial Causes Act of 1985 that gave women rights in the areas of marriage, marital property, divorce, and child custody. An amendment to the Matrimonial Causes Act in 1987 provided for the valuation of nonmonetary contributions to family assets, as reflected in an increment in the country's WBL score to 55 in 1989 (figure 1). Finally, the amendment to the Deeds Registries Act in 1991 allowed a married woman to have equal ownership rights over immovable assets with her husband. This legal change raised the WBL index to 57.5 in 1993.

4. Enthusiasm Turns into Despair

The initial legal reforms in the 1980s seemed unusual in the extent to which political leaders declared themselves committed to feminist goals (Seidman 1994). The pace of legislative changes was in part due to the fact that Zimbabwe's independence was achieved in the middle of the UN's Decade of Women and international assistance, particularly from the United States, was high (Nhongo-Simbanegavi 2000; Ranchod-Nilsson 2006).

There were, however, warning signs too. The relegation of rural women to subservient status in the government's land resettlement schemes was the first sign (Goebel 1999). The recognition of women's role in subsistence agriculture and rightful access to land was one of the key demands of women during and after the independence struggle. In the various discussions for reform the demands of these women were not heard (Jacobs 1990).

Further signs were revealed in 1983 when the government carried out "Operation Clean-up" to round up the so-called vagrants in urban areas. Any woman who failed to provide a marriage certificate or a proof of employment was detained and sent to a rural resettlement camp (Seidman 1994). These were mostly women who, unable to feed their families through subsistence agriculture on communal lands, had fled in desperation to the cities and settled into informal employment in the years preceding independence. Those detained were humiliated while in custody, and eventually became evicted and ostracised (Ranchod-Nilsson 2006). The Department of Women's Affairs did not support the protests that ensued against this operation, instead towing the ZANU party line (Geisler 1995).

Government support for the Legal Age of Majority Act dwindled, influenced by the widespread public concern about the Act not corresponding to African values. Opposition culminated in some members of parliament calling for the Act to be repealed in 1999. The ultimate blow was dealt by the Supreme Court's decision in the *Magaya v. Magaya* case. After the death of her father in 1997, Vennia Magaya was designated as his heir by a community court in compliance with the Legal Age of Majority Act and entitled to their family home, being the eldest child. Her half-brother Nakayi appealed to the magistrates' court which removed Vennia and appointed him as the heir. The dispute went to the Supreme Court, which upheld the precedence of customary law that only allows males to inherit family property. In this verdict, the Court also overruled previous decisions where the provision for equality on the basis of gender as set out in civil law had been upheld (Majome 2022).

The bench of Supreme Court justices declared in subsequent decisions that customary laws come first in deciding how Zimbabwean people conduct their family and property matters. These verdicts exposed the merely symbolic nature of the Legal Age of Majority Act and more broadly of the legal rights accorded to women since independence. The initial enthusiasm for women's legal rights turned into despair.

5. The Emergence of Women's Organizations

Seeing the government and the ruling ZANU party use legal change as mere window-dressing in front of international donors, grassroots women's organizations started forming. This dynamic was to make up for the lack of conviction and commitment on the part of government

ministries and the official Women's League. A common feature of these new women's organizations was their critique of the Mugabe government and its ministries devoted to advocacy for women's rights. The Ministry had in fact become a deterrent to improvement in women's socio-economic conditions, as its leadership not only stalled reforms but also sought to repress and detain the members of women's organizations who criticised the government.

In the aftermath of Operation Clean-Up, a group of women formed the Women's Action Group (WAG) in 1983 to call out the hypocrisy of the government and the ineffectiveness of the ZANU Women's League. Being the first organization to openly challenge the government's actions, WAG received support from many international non-profit organizations and foundations, including Oxfam, the Ford Foundation, the Templeton Foundation, the Atlas Network and the Kellogg Foundation. By the 1990s, WAG started to engage with female parliamentarians and educate them about the issues facing women (Watson 1998).

In collaboration with the municipal police, WAG went about educating the public and policy makers in all forms of gender-based violence and sensitivity training for the victims of such violence (Stewart 1995). In 1990, another non-profit organization, the Zimbabwe Women's Resource Centre and Network, started to gather and disseminate information on the economic condition of women in an effort to garner public support for women's empowerment (Chigudu 1997; Ranchod-Nilsson 2006).

To address the government's discriminatory land resettlement programs, the Women's Land and Lobby Group was established in 1998. It lobbied the government to protect the property rights of women in land policy and criticised the laws for land resettlement that gave precedence to customary over civil laws (Ranchod-Nilsson 2006). In a similar vein, a civic movement by the name of Women of Zimbabwe Arise was established in 2003 to present a platform for ordinary women to speak out on the issues affecting them and encouraging community involvement in pressing the government for resolving women's issues. With support from Amnesty International, this civic movement quickly grew to be an internationally recognised force working for Zimbabwean women's rights (Thomas 2010). The two founders, Magodonga Mahlangu and Jenni Williams, received the Robert F. Kennedy Human Rights Award from President Obama in 2009.

The combined efforts of these non-profit women's organisations mobilised women all over Zimbabwe to push for legal reform. Their efforts were greatly helped by international foundations and non-profit organizations. These took the place of the large international or bilateral institutions like the World Bank or USAID, who continued to work with government-designated partners.

6. Women's Labour Reforms

In 1980, only 6.8% of the non-agricultural labour force in Zimbabwe was female, all in service jobs (Muchena 1980). Women in urban areas worked into the informal sector owing to the difficulty in securing formal income and flexible time requirements that did not interfere with childcare (Seidman 1984). They also worked as seasonal migrants, going back to the villages to produce and bring back crops for family consumption or sale in markets. Around the larger

towns, women sometimes found seasonal employment on commercial farms, making up a quarter of the temporary labour force there (May 1979).

During the independence struggle, female combatants had the taste of having status equal to that of men. Moreover, women who had fled the country to promote the cause for an independent Zimbabwe and gather support came back after observing the status of women in European society. They were determined to fight for similar rights for women in Zimbabwe, and their foremost demand was that the government provide better opportunities for women in education and employment (Ranchod-Nilsson 2006).

Zimbabwe has ratified several international and regional conventions on women's rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the South African Development Community's (SADC) Declaration on Gender and Development. By virtue of such ratifications the government is obligated to eliminate discrimination against women in all walks of life through constitutional or legal means (Tsanga 2002). However, until the early 2000s the government did not undertake any reform related to women's employment opportunities. In its periodic report to the United Nations on the ratification of CEDAW, the government reiterated its commitment to repeal all legal provisions that discriminate against women but stated that it wished to take a gradual approach in consideration of public backlash following the Legal Age of Majority Act (UN 2010).

Bending to the domestic push by women's non-profit organizations, the government amended the Labour Act of Zimbabwe in 2002. The amendment had two significant reforms for women in employment: it prohibited discrimination in employment opportunities based on gender and dismissal of female workers due to pregnancy or maternity leave. These reforms increased Zimbabwe's score on the WBL index from 70 to 75.6 in 2003. Zimbabwe's ratification of ILO Convention No. 183 on Maternity Protection led to a further amendment of the Labour Act in 2005. The new set of reforms increased the duration of paid maternity leave from 12 to 14 weeks. More importantly, the amendment addressed the issue of sexual harassment at the workplace, deeming it illegal and putting in place civil remedies for the perpetrators of workplace harassment. The second set of labour reforms increased Zimbabwe's WBL score to 84.4 in 2007. Again, these legal reforms affected a small part of the workforce, women in formal urban jobs. Even these concurrent Supreme Court rulings made it clear that customary law supersedes formal law.

7. Reforms against Gender-based Violence

The treatment of women as legal minors and the tradition of lobola payment under Zimbabwean customary laws meant that men could claim ownership over women. Consequently, gender-based violence was not only common, but also widely accepted. In fact, cultural sayings in Zimbabwe even condone such violence, calling it 'a sign of love' (Stewart 1995). The incidence of domestic violence increased in the 1990s with the economic decline in the country.

The Musasa Project started as a non-profit organization in 1988, specialising in the issues of domestic violence. The organisation went beyond focusing on providing support to the victims and survivors of violence and went on to launch a public education campaign. The most

distinguishing feature of their campaign was the collaboration with the municipal police. The police helped the Project identify the causes of domestic violence, reasons for withdrawal of charges or instances of multiple charges against the same individual(s). In doing so, the campaign raised awareness on the importance of reporting abuse and consequently took on a broader dimension, demanding more rights for women with respect to land ownership, being heads of households, and having economic freedom.

Despite the rampancy of gender-based violence, there was no legal provision criminalising or otherwise punishing it. As the first attempt at bringing to light the immorality of such acts, the Zimbabwe Women Lawyers Association drafted a Domestic Violence Bill in 1995 (Makahamadze et al 2011). The bill went unheeded for almost a decade until 2003, when it resurfaced owing primarily to pressure from women's organisations such as the Musasa Project, international organisations such as the Committee on the Elimination of Discrimination against Women, and a gradual rise in the reported instances of domestic violence (Christiansen 2010; UN 2010).

The discussion was marred in controversies, as the public sentiment toward the bill was unfavourable. Many members of parliament claimed that the bill was dangerous and that passing it would strip men of their rights, privilege and status. However, committed advocacy by women's groups led the government to pass the Domestic Violence Act in 2006 after much consultation with the stakeholders on both sides (UN 2010). This legal change raised the WBL score for Zimbabwe from 84.4 to 86.9 in 2008, the last reform of any kind undertaken by the Zimbabwean government.

8. Conclusions

The pace of legal reform towards women's rights in Zimbabwe has been slow, with these reforms being constantly challenged in practice due to the preponderance of customary law. The history of these reforms makes a compelling case for the effectiveness of local women's organisation in lobbying for their rights. Moreover, the role of female combatants in the country's struggle for independence further bears proof to the strength of women in fighting for their cause.

It is also important to remember that these legal changes have not meant better outcomes for women. The primary reason for this gap between law and practice is the legal plurality that exists in Zimbabwe. A thorough examination of the actual legal rights of women in Zimbabwe will likely place Zimbabwe at the very bottom of the global ladder of gender equality.

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