

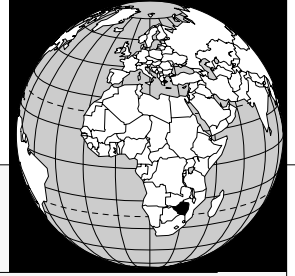


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8. Zimbabwe



Statistics

GENERAL

Population

■ Zimbabwe's total population was 10.7 million as of 1993,¹ of which approximately 51% were women.² Annual population growth for 1980-1993 was 3.2%;³ the median age of the population was 16.6 years in 1988.⁴

■ While 31% of Zimbabweans live in urban areas,⁵ 86% of women live in rural areas.⁶

Economy

■ In 1993 the gross national product ("GNP") per capita was U.S.\$520.⁷ Estimated gross national income per capita in 1993 was \$310 (in 1987 U.S. dollars).⁸

■ The gross domestic product ("GDP") grew 4.6% in 1993 after falling 5.3% in 1992.⁹ The government spent approximately 6.2% of its GDP on health in 1990, as compared with the U.S., which spent approximately 12.7% of its GDP on health in the same year.¹⁰

Employment

■ Zimbabwe's labor force numbered approximately 4.3 million in 1993.¹¹ Women accounted for 34% of the total labor force in 1993.¹²

■ As of 1995, 1.3 million women were participating in the labor force. However, through the 1980s, average wages for women were lower than those for men in most categories of labor.¹³ Women constitute approximately 76% of the economically inactive population.¹⁴

WOMEN'S STATUS

■ Zimbabwe's Central Statistical Office estimated life expectancy in 1992 at 62 years for women and 58 years for men.¹⁵

■ Polygamy is practiced within customary law marriages and unregistered customary unions. One in five married Zimbabwean women are in polygamous unions. The average union consists of 2.3 wives per man.¹⁶

■ In 1992, 79 women attended secondary schools for every 100 men.¹⁷ The adult female literacy rate was 60% in 1990, while the general literacy rate was 67%.¹⁸

■ In 1993, there were 2,315 reported cases of rape and 274 reported cases of attempted rape in Zimbabwe.¹⁹

ADOLESCENTS

■ In 1993, 14% of all births were to women under the age of 20.²⁰

■ In 1994, 62% of Zimbabwean women were married by the age of 20.²¹ The median age for women at first marriage is 19.²²

MATERNAL HEALTH

■ The maternal mortality rate in Zimbabwe is estimated to be 283 per 100,000 live births.²³

■ The infant mortality rate for Zimbabwe is estimated to be 53 per 1,000 live births. The under-five mortality rate is estimated to be 77 per 1,000 live births.²⁴

CONTRACEPTION AND ABORTION

■ In 1994, 35.1% of women reported use of a contraceptive method, compared with 41.4% for men.²⁵

■ The most common method of contraception currently in use among women is the pill, which has a prevalence rate of 23.6%;²⁶ 14% of men report using condoms.²⁷

■ In 1994, induced abortions were estimated to occur at an annual rate of 80,000.²⁸

HIV/AIDS AND STDs

- The first official AIDS case was reported in 1987; since then, over 48,000 cases have been reported.²⁹ Women account for 43% of all AIDS cases.³⁰
- There were nearly one million reported cases of STDs in Zimbabwe in 1987.³¹

ENDNOTES

1. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1995 162 (1995) [hereinafter WORLD DEVELOPMENT REPORT 1995].
2. ZIMBABWE MINISTRY OF HEALTH AND CHILD WELFARE, HEALTH HUMAN RESOURCES MASTER PLAN, PART I, 1993-1997 2 (undated).
3. WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 210.
4. GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME, UNITED NATIONS POPULATION FUND PROPOSED PROGRAMMES AND PROJECTS, RECOMMENDATION BY THE EXECUTIVE DIRECTOR: ASSISTANCE TO THE GOVERNMENT OF ZIMBABWE: SUPPORT FOR A COMPREHENSIVE POPULATION PROGRAMME 2, U.N. Doc. DP/FPA/CP/59 (10 May 1989).
5. CENTRAL STATISTICAL OFFICE, HARARE, ZIMBABWE, CENSUS 1992: ZIMBABWE NATIONAL REPORT 24 (1992) [hereinafter CENSUS 1992]. *But cf.* WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 222.
6. REPUBLIC OF ZIMBABWE, FRAMEWORK FOR ECONOMIC REFORM, Technical Note 7 (1991).
7. WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 162.
8. THE WORLD BANK, WORLD TABLES 1995 11 (1995) [hereinafter WORLD TABLES].
9. *Id.* at 23.
10. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1993: INVESTING IN HEALTH: WORLD DEVELOPMENT INDICATORS 210, 211 (1993).
11. WORLD TABLES, *supra* note 8, at 747.
12. WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 218.
13. RENE LOWENSON, LORNA EDWARDS AND PRISCILLA NDLOVU-HOVE, REPRODUCTIVE HEALTH IN ZIMBABWE IN A FRAMEWORK OF REPRODUCTIVE HEALTH RIGHTS 35 (1996) [hereinafter REPRODUCTIVE HEALTH IN ZIMBABWE].
14. MINISTRY OF HEALTH AND CHILD WELFARE, GOVERNMENT OF ZIMBABWE, WOMEN'S HEALTH IN ZIMBABWE: A PATH TO DEVELOPMENT 25 (1994) [hereinafter PATH TO DEVELOPMENT].
15. CENSUS 1992, *supra* note 5, at 153; *but see*, WORLD TABLES, *supra* note 8, at 747, which gives life expectancies in the low 50s for both sexes for the 1990s.
16. CENTRAL STATISTICAL OFFICE, HARARE, ZIMBABWE AND DEMOGRAPHIC AND HEALTH SURVEYS, MACRO INTERNATIONAL, DEMOGRAPHIC AND HEALTH SURVEY 72 (1994) [hereinafter DEMOGRAPHIC AND HEALTH SURVEY].
17. WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 218.
18. *Id.* at 162.
19. PATH TO DEVELOPMENT, *supra* note 14, at 26.
20. WORLD DEVELOPMENT REPORT 1995, *supra* note 1, at 212.
21. DEMOGRAPHIC AND HEALTH SURVEY, *supra* note 16, at 77, 78.
22. *Id.* at 77-78.
23. *Id.* at 173.
24. *Id.* at 100.
25. The reported contraceptive prevalence rate for married women in Zimbabwe was 48%. DEMOGRAPHIC AND HEALTH SURVEY, *supra* note 16, at 43, 45.
26. *Id.* at 43.
27. *Id.* at 45.
28. PATH TO DEVELOPMENT, *supra* note 14, at 39.
29. Health Information Unit & National AIDS Coordination Programme, Ministry of Health and Child Welfare, *HIV, STD and AIDS Surveillance Zimbabwe*, QUARTERLY REPORT 2 (July-Sept. 1995).
30. PATH TO DEVELOPMENT, *supra* note 14, at 44.
31. REPRODUCTIVE HEALTH IN ZIMBABWE, *supra* note 13, at 30.

In 1965, the white minority in the British colony of Rhodesia seized control of the local government and unilaterally declared independence from the United Kingdom.¹ Following a lengthy civil war between the African majority and the newly constituted Rhodesian government, and a negotiated settlement (Lancaster House Agreement) in 1979, Zimbabwe became an independent republic on April 18, 1980.² Elections under the new constitution were held in 1980, at which time the country received international recognition.³ For the past 16 years, Zimbabwe has retained a representative form of government.

In 1992, Zimbabwe had a population of 10.4 million, including roughly 5.3 million women.⁴ Over 60% of Zimbabweans live in communal farming areas.⁵ Christian and traditional beliefs predominate; fewer than one percent of Zimbabweans are Muslim.⁶ Shona is the predominant ethnic group, comprising 77% of the population; the remainder of the population is Ndebele (14%), Kalanga (5%), white (1%), or from another ethnic group (3%).⁷ The official language is English, and a majority of Zimbabweans also speak Chishona or Sindebele, the languages of the dominant ethnic groups.⁸

I. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Zimbabwe, it is necessary to consider the legal and political systems of the country. Without this background, it is difficult to determine the manner in which laws and policies are enacted, interpreted, modified, and challenged. The passage and enforcement of law often involves specific formal procedures. Policy enactments, however, are not subject to such a process.

A. THE STRUCTURE OF GOVERNMENT

The Constitution of Zimbabwe (the "Constitution") establishes a tripartite division of government consisting of the executive, the legislature, and the judiciary.⁹ Each of the country's nine provinces forms an electoral district and is administered by a governor appointed by the president.¹⁰ City, municipal, town, and rural councils administer government programming and services. In addition, the Constitution recognizes the authority of tribal chiefs, whom the president appoints, with consideration given to customary principles of succession.¹¹

The executive authority of the government vests in the president and may be exercised directly or through the Cabinet and designated ministers.¹² The president functions as

head of state, head of the government, and commander-in-chief of the defense forces.¹³ He or she may appoint ministers, deputy ministers, and up to two vice-presidents from among the members of Parliament to assist in the discharge of executive authority or to perform such administrative functions as may be assigned to them.¹⁴ An executive cabinet, consisting of the president, the vice-presidents, the attorney-general,¹⁵ and ministers appointed by the president, advises the president in the exercise of executive functions.¹⁶ From independence until 1990, the executive operated with enhanced powers under a declared state of emergency.¹⁷

The legislature of Zimbabwe consists of the Parliament and the president. The Constitution empowers the Parliament to make laws "for the peace, order and good government of Zimbabwe."¹⁸ The unicameral Parliament consists of 150 members, of whom 120 are directly elected.¹⁹ The remaining 30 seats are occupied by 12 non-constituency members appointed by the president,²⁰ ten traditional chiefs,²¹ and eight provincial governors.²² The president and other members of the executive ministry may address the assembly; in addition, the president has veto power over legislation.²³ The Constitution also established a Parliamentary Legal Committee, which reviews the constitutionality of bills, draft legislation, and statutory instruments.²⁴

Zimbabwe has a constitutionally protected, independent judiciary. The Constitution provides that members of the judiciary "shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him [or her] under the direction or control of another member of the judiciary."²⁵ The Supreme Court of Zimbabwe is the highest court in the country and the final court of appeal.²⁶ The Constitution provides that Supreme Court justices are appointed by the president.²⁷ Furthermore, Supreme Court justices may only be removed for infirmity or gross misconduct.²⁸

Courts both create and interpret law. The judicial system can have a significant impact on legislation, including that affecting reproductive rights, because it is able to enforce the law and deal with complaints from individuals challenging the constitutionality of specific laws.

The 1990 Customary Law and Local Courts Act²⁹ (the "Local Courts Act") establishes a unified court system for the integrated administration of both customary and civil law.³⁰ Pursuant to the Local Courts Act, all levels of the judiciary, including magistrates courts, the High Court, and the Supreme Court, have jurisdiction to hear customary law cases.³¹ The Local Courts Act also establishes primary and community courts of first instance ("local courts") and sets forth their jurisdiction.³² Local courts are presided over by chiefs or

headmen, and only have jurisdiction over civil customary law disputes.³³ In addition, certain types of claims cannot be heard by the local courts, including: claims that involve the interpretation of wills; the dissolution of a registered marriage; or the determination of custody, guardianship, maintenance, or rights in land or other “immovable property.”³⁴ Writs of the local courts carry the same level of authority as writs from the magistrates courts.³⁵ Furthermore, the local courts provide access to the formal legal system in rural areas.³⁶ The Local Courts Act mandates that proceedings in local courts “shall be conducted in as simple and informal a manner as is reasonably possible” and bars legal practitioners from appearing on behalf of parties to a dispute.³⁷

The Local Courts Act limits the application of customary law to cases where the parties have agreed that customary law should apply, or where “it appears just and proper that it should apply.”³⁸ Absent any other, controlling legislation, courts deciding whether customary law should apply to a dispute may consider, *inter alia*:

- (a) the mode of life of the parties; (b) the subject matter of the case; (c) the understanding by the parties of the provisions of customary law or the general law of Zimbabwe, as the case may be, which apply to the case; [and] (d) the relative closeness of the case and the parties to the customary law or the general law of Zimbabwe, as the case may be.³⁹

Generally, customary law only applies to Africans.⁴⁰

Similar principles govern the choice between conflicting systems of customary law.⁴¹ African customary law in Zimbabwe is diverse, often differing from tribe to tribe, and different systems of customary law may be implicated by a single claim.⁴² The Local Courts Act also establishes a general procedure to determine substantive issues in customary law.⁴³

B. SOURCES OF LAW

Domestic Sources of Law

Laws that affect women’s legal status — including their reproductive rights — derive from a variety of sources. The Constitution declares itself the supreme law of Zimbabwe.⁴⁴ It includes a Declaration of Rights that articulates and seeks to protect “the fundamental rights and freedoms of the individual.”⁴⁵ The Supreme Court has the authority to enforce the provisions contained in the Declaration of Rights.⁴⁶ Zimbabwe has had a dual set of laws in place since the colonial period: the Constitution provides for the administration of both African customary law and general law following the Roman-Dutch common law tradition.⁴⁷ In a case of conflict between the two systems, statutory provisions govern the legal regime to be applied.⁴⁸ Most criminal law is not codified.

International Sources of Law

International laws are not included as sources of law in the Constitution; they must be enacted by Parliament in order to become domestic law.⁴⁹ Principles expressed in international treaties become law upon incorporation into national legislation. Although international treaties are not legally binding, they form a foundation for legislative change in Zimbabwe. Moreover, international covenants may be cited by advocates to challenge the unfairness of or lack of adequate protections within existing laws. Zimbabwe has ratified a number of major international and regional human rights instruments, including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights;⁵⁰ the African Charter on Human and Peoples’ Rights;⁵¹ the Convention on the Elimination of all Forms of Discrimination Against Women⁵² (“CEDAW”); the International Convention on the Elimination of All Forms of Racial Discrimination;⁵³ and the Convention on the Rights of the Child.⁵⁴ International law can be an additional tool for the advancement of women’s rights and reproductive rights. A number of international human rights treaties, particularly CEDAW, recognize and promote specific reproductive rights. Because international instruments are legally binding, they create an obligation on the part of the government to undertake numerous actions, including those at a national level.

II. Examining Reproductive Health and Rights

Issues of reproductive health and rights are dealt with in Zimbabwe within the context of the country’s health and population policies. Thus, an understanding of reproductive rights in Zimbabwe must be based on an examination of those policies.

A. HEALTH LAWS AND POLICIES

Objectives of the Health Policy

The government of Zimbabwe has identified health as a human right and prioritized the improvement and extension of health services as “a necessary and primary condition of development.”⁵⁵ Between 1985 and 1991, 80% of the rural population and 90% of the urban population had access to health care.⁵⁶ The Ministry of Health and Child Welfare (“MHCW”) administers the national health policy, which establishes the framework for health services in Zimbabwe. The MHCW has identified as its overall purpose the promotion of “the health and quality of life of the people of Zimbabwe.”⁵⁷ Primary health care, as defined by the World Health Organization’s (“WHO”) Health Care for All by the

Year 2000 mandate, is a central component of this policy.⁵⁸ The approach to primary health care in Zimbabwe embodies the basic idea “that the promotion of health depends fundamentally on improving socio-economic conditions, and on the elimination of poverty and under-development.”⁵⁹

MHCW strategies have focused on integrating the delivery of basic health, as well as informational and educational services, and increasing access to health facilities “to support health activities at the primary level, which respond to the health needs of the people.”⁶⁰ Health facilities offer comprehensive services in promotive and preventive care, including: basic and essential preventive and curative care; immunization; maternal and child health services; family planning programming; health and nutrition education; and the control of communicable diseases.⁶¹ In addition, the MHCW provides fee exemptions for families earning less than a threshold monthly income.⁶²

Although the government has adopted the WHO’s definition of health as “a state of complete physical, mental and social well-being,” the national health policy does not address reproductive health.⁶³ However, maternal and child health (“MCH”) programs are a major component of the health care system. Under the design and implementation of its MCH department, the MHCW has improved ante- and postnatal care, the monitoring of births, and child immunization and nutrition programs.⁶⁴ The MCH department has also instituted training for health personnel in maternity services and improved telecommunications and transportation systems in rural areas to facilitate referral and supervision in obstetric emergencies.⁶⁵ The MCH department has advocated for the improvement of employment conditions affecting the health status of women workers, lobbying for state-guaranteed maternity leave and breast-feeding time.⁶⁶ In addition, the MHCW monitors work environments and worker health in the industrial and commercial sectors.⁶⁷

Infrastructure of Health Services

The MHCW, local government authorities, church organizations, and the private sector are the major providers of modern health care in Zimbabwe.⁶⁸ Traditional and alternative medical care is provided by traditional practitioners,⁶⁹ midwives, and “natural therapists.”⁷⁰

The MHCW is the largest provider of health care in Zimbabwe, employing 90% of all health personnel and providing financial support to other health care providers in the country.⁷¹ The MHCW utilizes a four-tiered system of facilities, with a centralized public health administration.⁷² At the primary level, urban primary care clinics and rural health centers are staffed with state-certified nurses and midwives, and rural health centers also have environmental health technicians.⁷³

In addition, community-based family planning personnel and “village community workers” provide basic treatment and preventive care, and conduct educational activities outside of the clinics.⁷⁴ At the secondary, tertiary, and quaternary levels, hospitals are staffed with doctors and nurses and are equipped for surgical procedures and laboratory tests.⁷⁵ An internal referral system facilitates access to specialized services and more sophisticated equipment.⁷⁶ However, internal evaluations by the MHCW have concluded that the referral system functions poorly.⁷⁷

The secondary, district level is the planning unit for MHCW programming.⁷⁸ Each district is under the responsibility of a provincial health executive, who is responsible for the coordination and integration of services throughout the district, as well as the supervision of health services in each province.⁷⁹ Municipal health clinics, hospitals affiliated with church organizations, and services provided by the rural and district councils are supervised and coordinated by district medical officers and provincial medical directors under national health policy guidelines set by the MHCW.⁸⁰ Private health care providers, concentrated in the urban areas, are subsidized through the provision of government facilities and the extension of tax abatements for private medical costs.⁸¹

Major health initiatives to expand the health services infrastructure have included the Family Health Project, which focused on the integration of MCH and family planning services, the development of rural health facilities, and the training and development of MCH personnel. Currently, the Family Health Project is targeting 16 underserved districts to provide services to an additional 40% of the rural population, many of whom cannot afford health care costs under the economic and structural adjustment reform program.⁸²

The MHCW has developed guidelines to aid regional managers in the allocation of personnel resources and to set personnel standards to improve the training, recruitment, and retention of health personnel, especially in rural areas.⁸³ In addition, the MHCW has established multidisciplinary health training schools in four cities, with the goal of establishing one training school in each province.⁸⁴ Since 1984, the MHCW has conducted training sessions for traditional birth attendants, who attend 69% of births.⁸⁵ The MHCW developed a national training model in 1993 that focused on basic antenatal maternal nutrition, referral services for major complications, referrals to institutions for postpartum care and vaccinations, education on hygiene in labor, antenatal care, and improved data collection.⁸⁶

Cost of Health Services

In budget estimates for the 1996 fiscal year, the MHCW was allocated approximately Z\$1.35 billion (U.S.\$129 mil-

lion).⁸⁷ The government has proposed that reductions of public subsidies for health services would be offset by improved financial management of health services, increased provision of care by non-governmental organizations (“NGOs”) and local and municipal authorities, and the establishment of health insurance programs or the expansion of existing schemes of coverage.⁸⁸ In addition, the government has implemented a cost-recovery program through the imposition of fees for health services.⁸⁹

Currently, the MHCW provides free health care to individuals earning less than Z\$400 per month (U.S.\$38.10), including family planning and MCH services.⁹⁰ All immunization services for children and pregnant women are provided free of charge.⁹¹ However, the Z\$400-per-month income limit for the general health subsidy is below the poverty line in Zimbabwe.⁹² Moreover, it is often difficult for individuals to prove that they qualify for the health subsidy.⁹³ The MHCW has implemented measures addressing fee evasion, and MHCW clinics require subsidy applicants to provide proof of their income level or their unemployed status.⁹⁴

Regulation of Health Care Providers

Who is legally permitted to provide what types of care? Are there meaningful guarantees of quality control? Because the Zimbabwean government regulates these issues, reviewing such laws is important. All health institutions and medical practitioners, including midwives, are regulated pursuant to the Medical, Dental and Allied Professions Act (the “MDAP Act”).⁹⁵ The MDAP Act establishes a Health Professions Council (the “Council”), which acts as a regulatory body, imposing a code of conduct and providing a mechanism for investigation of improper conduct and sanctions. Furthermore, professional associations and health institutions have internal regulatory bodies, which are not mandated by statute.⁹⁶ Medical practitioners may also be subject to criminal prosecution or to a civil suit for negligence.⁹⁷ In addition, hospitals and other health institutions may be liable for the negligent act of an employee performed in the course of his or her employment.⁹⁸

All health personnel in Zimbabwe must be registered and have a current practicing certificate.⁹⁹ Certificates to practice must be renewed annually, and renewal is subject to any restrictions on employment the Council may impose that it considers “desirable in the public interest.”¹⁰⁰ The MDAP Act provides that health practitioners not registered with the Council cannot recover fees and are subject to prosecution under the MDAP Act.¹⁰¹ The Council is an autonomous body, but may receive direction from the Minister of Health and Child Welfare.¹⁰² The Council sets standards for training and examination requirements.¹⁰³

Statutory regulations issued pursuant to the MDAP Act provide some guidelines for medical conduct. For example, by statute, medical practitioners in non-emergency situations may not perform any procedure for which they have not received adequate training or in which they are insufficiently experienced,¹⁰⁴ nor may they use any apparatus or pursue a course of treatment that is inadequate for the procedure required.¹⁰⁵ In addition, medical practitioners are prohibited from divulging confidential information without the consent of the patient, or of the patient’s guardian or next of kin, unless required by law to do so.¹⁰⁶

The Council has also promulgated a code of ethics setting forth “the fundamental duties and requirements to be fulfilled by all registered health personnel” and to be supplemented by Council regulations.¹⁰⁷ The code of ethics provides that the welfare and safety of both the patient and the public should be the primary concern of all health personnel.¹⁰⁸ The code of ethics also includes a duty to protect patient confidentiality, to stay abreast of developments in medical technology and any legal developments, and to maintain medical facilities and equipment.¹⁰⁹ The disciplinary committee of the Council has full powers to investigate any allegation of misconduct or gross incompetence, and may examine any records or documents or compel disclosure of pertinent materials.¹¹⁰ The disciplinary committee also has the authority to suspend health professionals, censure them, or order them to pay penalties.¹¹¹ In addition, the Council may direct the Registrar to publicize the results of any disciplinary hearings resulting in disbarment or suspension.¹¹²

Traditional practitioners and natural therapists are regulated separately in Zimbabwe, pursuant to the Traditional Medical Practitioners Act¹¹³ and the Natural Therapists Act.¹¹⁴ All traditional medical practitioners and natural therapists must be registered with the appropriate supervisory body.¹¹⁵ The Natural Therapists Council and the Traditional Medical Practitioners Council have the power to regulate the practice of registered practitioners, to define and investigate improper conduct and incompetence, and to suspend registration.¹¹⁶ However, there are no formal training or examination requirements for traditional medical practitioners.¹¹⁷

Patients’ Rights

Laws also seek to ensure quality health services by protecting the rights of patients. All Zimbabweans have the right of access to health care, regardless of their ability to pay.¹¹⁸ The right to treatment encompasses rights to confidentiality, privacy, and nondiscrimination, including on the ground of sex.¹¹⁹ Furthermore, all persons over the age of 18 and “of sound mind” have a constitutional right to “security of their person,”¹²⁰ which includes the right to determine their own

medical treatment.¹²¹ For example, medical treatment cannot be performed legally without the free and informed consent of the patient, or of another empowered by law to grant consent.¹²² This requirement seeks to protect the right to bodily integrity and “upholds the vitally important values of self-determination and personal autonomy.”¹²³ Also, all major risks of a medical procedure must be disclosed. An individual does not need spousal approval in consenting to medical treatment.¹²⁴ However, married persons may experience difficulty in obtaining a medical procedure that impacts on the reproductive functions without spousal consent.¹²⁵ Under customary law, a woman is required to obtain her husband’s consent for all medical treatment, including the use of contraceptives.¹²⁶ Medical treatment for minors requires the consent of a parent or guardian by law; however, if the parent or guardian unreasonably withholds consent, a medical practitioner may appeal to a magistrate or perform the treatment if it is a medical emergency.¹²⁷ If the parents are in conflict over the medical treatment, the father’s wishes are usually followed.¹²⁸

Statutory regulations also prohibit the divulgence of confidential patient information by a medical practitioner, unless he or she is required by law to do so.¹²⁹ Breach of statutory conduct regulations, or any improper conduct, may result in sanctions by the appropriate professional regulating body. In addition, failure to meet the requirements of informed consent may result in a criminal prosecution for assault or medical negligence.¹³⁰ Aggrieved clients may also file a civil action against their health care provider for not providing full information about a treatment or procedure, but there is no reported case in Zimbabwe where damages were recovered.¹³¹

B. POPULATION AND FAMILY PLANNING

Zimbabwe does not have an explicit population policy. However, the government has associated population issues with development concerns and has given national priority to family planning activities since 1985. The country’s First (1986–1990) Five-Year National Development Plan (“NDP”) sought “to further reduce population growth to levels consistent with economic growth and the objective of raising the living standards of society.”¹³² The Second (1991–1996) NDP also recognized population as a development concern, targeting both the reduction of the total fertility rate from an average of 5.5 children per woman to 4.5 children per woman, and the increased use of modern methods of contraception to 50% of women of reproductive age.¹³³

Since 1985, the government has focused national family planning activities on the goals of limiting family size and conforming population growth to the pace of infrastructure development.¹³⁴ In 1985, the government established a national

family planning program through the Zimbabwe National Family Planning Council Act (the “Family Planning Act”).¹³⁵ The Family Planning Act nationalized family planning activities through the creation of the Zimbabwe National Family Planning Council (the “ZNFPC”), a parastatal organization under the MHCW.¹³⁶ The ZNFPC is responsible for the provision of child-spacing and fertility services, and treatment and research in infertility, reproductive health, and related family health areas.¹³⁷ Its powers include authorization to establish and administer research into the areas of contraception, sterilization, reproductive health, and sexually transmitted disease.¹³⁸ The Family Planning Act also created the Zimbabwe National Board of Family Planning, composed of representatives from governmental and non-governmental agencies, to oversee general policy and to ensure the integration of family planning activity into the national development program.¹³⁹ The ZNFPC acts as an advisory body to government agencies on population and development issues.

The ZNFPC is funded through an annual direct grant from the national Parliament, as well as through fees, loans, and donations from NGOs.¹⁴⁰ In 1991, when the government began to pursue a policy of economic reform, the national program for structural adjustment contained pledges to continue support for population initiatives and the expansion of family planning services.¹⁴¹ For the fiscal year 1995, the ZNFPC received Z\$23 million (approximately U.S.\$2.19 million) in appropriations.¹⁴²

Both NDPs identified the equitable distribution of services as a primary objective of family planning programming.¹⁴³ In 1986, the Central Statistical Office (“CSO”) established a Population Planning Unit to refine family planning programming and service distribution with improved demographic data.¹⁴⁴ The Population Planning Unit acts to advise officials on population issues and to promote studies on the impact of population growth on development. The CSO has also introduced a simplified registration system to improve population projections and development planning.¹⁴⁵

From its inception, the ZNFPC has made broad access to services a primary goal. The ZNFPC maintains that “all individuals in the community have a right to information on the benefits of family planning for themselves and their families. They also have the right to know where and how to obtain more information and services for planning their families.”¹⁴⁶ The ZNFPC’s Kubatsirana Project was initiated to strengthen women’s role in fertility decisions.¹⁴⁷ The ZNFPC established its Kubatsirana Project as a part of a general governmental initiative to support the participation of women in development. The Kubatsirana Project employs a broad focus that includes addressing disparities in literacy and income levels and the promotion of collective bargaining.¹⁴⁸

Government Delivery of Family Planning Services

The ZNFPC's mandate encompasses the provision of contraceptives to public sector facilities. The ZNFPC is a major provider of contraceptives in Zimbabwe, supplying over 1,000 public hospitals and clinics that are the main source of family planning services for most modern contraceptive users.¹⁴⁹ The ZNFPC utilizes a community-based system for delivery. The community-based distribution system employs over 800 salaried field personnel to provide counseling and to distribute pills and condoms in rural villages.¹⁵⁰ The ZNFPC provides training and transportation for its field workers, who reach an estimated 29% of the rural population.¹⁵¹ The Second NDP provides for the expansion of the rural delivery system by integrating family planning into the program of rural health center construction and the Family Health Project.¹⁵²

Public health facilities distribute pills, condoms, chemical barriers, and injectable contraceptives.¹⁵³ In addition, some facilities are equipped to perform intrauterine device ("IUD") insertion and sterilizations.¹⁵⁴ However, a 1991 study of family planning facilities found that although over 90% of clinics offered both combined and progestin-only pills and condoms, fewer than one quarter made available spermicides, IUDs, and injectable contraceptives, and only two percent of facilities were equipped to perform female sterilization.¹⁵⁵

In 1993, the ZNFPC announced its intention to increase the range of methods available, focusing on long-term and permanent methods of contraception.¹⁵⁶ The ZNFPC directly operates 34 clinics, including two facilities where female and male sterilizations are available (in Harare and Bulawayo) and facilities within the three central hospitals, where NORPLANT® has been available since 1992.¹⁵⁷ In 1992, the government reintroduced injectables, which had been restricted in Zimbabwe since 1980,¹⁵⁸ and the ZNFPC has introduced sterilization training at district and provincial hospitals.¹⁵⁹ In addition, the ZNFPC has proposed a new training protocol that provides for staff instruction on IUDs and for integration of STD prevention education into family planning programming.¹⁶⁰

ZNFPC delivery services are supplemented by the activities of its Information, Education and Communication ("IEC") Unit. The IEC unit consists of MHCW and ZNFPC provincial core groups that identify regional needs and conduct campaigns to promote family planning services.¹⁶¹ Recent campaigns have specifically targeted men and youth.¹⁶² A main objective of these campaigns has been to promote cooperative decision-making between couples regarding contraception and family size. IEC activities have included motivational talks conducted by ZNFPC and

MHCW staff, a radio drama series, and two pamphlets about contraceptive methods.¹⁶³

The ZNFPC has monitored its health and family planning programming through an Evaluation and Research Unit (the "ERU"). In 1984, the ERU conducted a national survey of reproductive health.¹⁶⁴ In 1991, the ZNFPC conducted an intensive evaluation of national family planning facilities through its Family Planning Service Expansion and Technical Support Project.¹⁶⁵ The study identified deficiencies in family planning programming, particularly in the areas of staff training and management. Study results indicated that over half of the family planning facilities in Zimbabwe did not keep accurate, long-term records on individual clients, and that 30% of staff had not been formally trained in family planning methods.¹⁶⁶ The ZNFPC has since initiated the development of a new service-delivery policy, with additional protocols to ensure accurate record keeping. The ZNFPC has also revised training procedures for medical personnel, nurses, and midwives.¹⁶⁷

C. CONTRACEPTION

Although contraceptive prevalence rates in Zimbabwe are among the highest in sub-Saharan Africa, these rates vary by region.¹⁶⁸ In 1995, contraceptive prevalence was estimated to be 43%.¹⁶⁹ The most common method of contraception in 1996 among women was the pill, which has a prevalence rate of 23.6%.¹⁷⁰ The ZNFPC reports a high demand for the pill, condoms, and injectables in rural areas, while in urban areas, spermicides, the diaphragm, and other forms of contraception are more commonly requested.¹⁷¹ Twenty percent of the population in rural areas does not have access to ZNFPC or other MHCW services.¹⁷²

The national government supports more than half the cost of national family planning programming.¹⁷³ The government subsidizes up to 90% of the cost of contraceptives, and contraceptives are free of charge to low income families.¹⁷⁴ However, following introduction of the government cost-recovery program in 1991, fees for all health services were increased and condom distribution declined by 43%.¹⁷⁵

Legal Status of Contraceptives

Modern contraceptives in Zimbabwe are regulated by the Drugs Control Council (the "DCC"), established by the 1988 Drugs Control Act.¹⁷⁶ The DCC advises the Minister of Health and Child Welfare on the imposition of restrictions regarding the preparation, distribution, and use of certain drugs.¹⁷⁷ The DCC may also prohibit the sale of "undesirable drugs."¹⁷⁸ There are no specific regulations governing the sale or use of traditional contraceptives.¹⁷⁹

All new drugs must receive the approval of the DCC.¹⁸⁰ The Drugs Control Act establishes a register describing which drugs are permitted for sale in Zimbabwe.¹⁸¹ Any clinical trials of new drugs require written authorization from the DCC and the approval of the Secretary for Health and Child Welfare.¹⁸² In addition, the Drugs Control Act imposes informed consent requirements on all clinical trials, and empowers the DCC to specify the conditions under which a clinical trial must be conducted.¹⁸³ All trials are monitored by the DCC, which makes an independent assessment of the results.¹⁸⁴ The DCC may, in the public interest, suspend any trial.¹⁸⁵ Failure to comply with regulations governing the conduct of clinical trials is an offense punishable by a fine of up to Z\$10,000 (approximately U.S.\$952) or imprisonment for up to five years, or both.¹⁸⁶

Clinical trials of the contraceptive NORPLANT®, conducted in 1992, were successful. The ZNFPC has since trained local practitioners on procedures for the administration of NORPLANT®, and is developing a system of distribution appropriate to the delivery of long-term services.¹⁸⁷ The Department of Obstetrics and Gynecology at the University of Zimbabwe is currently testing the “morning after” pill.¹⁸⁸

Regulation of Information on Contraception

There is no legislation specifically addressing the advertisement of contraceptives.¹⁸⁹ The Drugs Control Act prohibits the false or misleading advertisement of any drug,¹⁹⁰ and the 1967 Censorship and Entertainments Control Act (the “1967 Act”) governs general restrictions on advertisements.¹⁹¹ The 1967 Act establishes a Board of Censors that is empowered to examine any publication or record and declare it to be “undesirable.”¹⁹²

D. ABORTION

Legal Status of Abortion

Abortion is legally permissible in limited circumstances in Zimbabwe. Pursuant to the 1977 Termination of Pregnancy Act¹⁹³ (the “1977 Act”), abortion is defined to be “the termination of a pregnancy otherwise than with the intention of delivering a live child.”¹⁹⁴ Pregnancy is defined to be “an intra-uterine pregnancy where the foetus is alive,”¹⁹⁵ and the term “foetus” is defined to include the embryo.¹⁹⁶ Any abortion, irrespective of the duration of pregnancy, must be performed in accordance with the provisions of the 1977 Act.¹⁹⁷

The 1977 Act sets forth the circumstances and conditions under which a medical practitioner may lawfully perform an abortion. An abortion may be legally performed under four circumstances: (1) when the pregnancy endangers the life of the woman; (2) when the pregnancy represents “a serious

threat of permanent impairment of her physical health”; (3) when there is a severe risk that the child to be born would suffer from a permanent, serious physical or mental handicap; or (4) when the pregnancy was the probable result of “unlawful intercourse.”¹⁹⁸ The 1977 Act defines “unlawful intercourse” to be rape,¹⁹⁹ incest, or intercourse with a mentally handicapped woman or girl.²⁰⁰ Other sexual offenses, such as statutory rape, are not permissible grounds for an abortion under the 1977 Act.²⁰¹

Requirements for Obtaining Legal Abortion

The 1977 Act establishes the procedure which must be followed before an abortion may be performed.²⁰² In general, an abortion may only be performed by a “registered medical practitioner”²⁰³ in an institution designated by the MHCW.²⁰⁴ The medical practitioner must obtain written permission from the institution’s superintendent or designated administrator;²⁰⁵ any refusal to grant permission may be appealed to the Secretary for Health and Child Welfare.²⁰⁶ Spousal consent is not a legal requirement.²⁰⁷ Abortion services are provided by the MHCW, and are free to low-income or unemployed women, as part of the fee exemption program.²⁰⁸ Fees for all services involved in the provision of abortions are set by the state.²⁰⁹ The 1977 Act excludes practitioners, nurses, and institutional employees from legal liability or any other obligations for refusing to participate or assist in an abortion.²¹⁰

Additional conditions for compliance with the 1977 Act’s requirements vary for each of the permitted grounds for abortion. When the ground for abortion is concern for the life or physical health of the mother, the 1977 Act requires the institution’s superintendent to obtain certification of the mother’s health status by two independent, registered medical practitioners before she or he may grant permission for the abortion to be performed.²¹¹ However, when a woman’s life or health is in danger and the proper facility or institutional permission cannot be obtained, a medical practitioner may perform an abortion provided she or he submits a report to the Secretary for Health and Child Welfare within 48 hours of the intervention.²¹² When the ground for abortion is severe fetal impairment, certification to this effect by two independent, registered practitioners is similarly required. In addition, the practitioners must certify that the risk of defect in the fetus was properly investigated.²¹³ Abortion on the ground that the pregnancy resulted from “unlawful intercourse” requires precertification by a local magistrate.²¹⁴ A magistrate may issue certification only if a criminal complaint has been filed and after an investigation has established that the crime most likely occurred and that the pregnancy could have resulted

from the crime.²¹⁵ A woman asserting that her pregnancy resulted from rape or incest must submit a supporting affidavit or statement under oath.²¹⁶

Penalties

Contravention of any of the 1977 Act's provisions carries a penalty of imprisonment up to five years and/or a Z\$5,000 fine (approximately U.S.\$476).²¹⁷ The terms of the statute may be violated on a number of grounds, including: performance of an abortion on grounds other than those permitted under the 1977 Act; noncompliance with any specified procedure, including charging a fee in excess of state-prescribed levels; issuing false or improper certification or permission for an abortion; attempting to self-induce the termination of a pregnancy; and making false statements in connection with any supporting affidavit or during an investigation.²¹⁸

The 1977 Act empowers the Secretary of Health and Child Welfare to gather information on any abortion performed in a public or private facility, legal or illegal.²¹⁹ The Secretary may give this information to the office of the Attorney General for use in a criminal prosecution, or to the Registrar of the Health Professions Council for review of any incompetent or improper conduct.²²⁰ Failure to cooperate with an investigation is also a criminal offense in violation of the provisions of the 1977 Act.²²¹

E. STERILIZATION

Availability

No legislation in Zimbabwe directly addresses sterilization.²²² However, a sterilization for health purposes is legally permissible, provided that the operation is performed by a registered medical practitioner who has obtained the consent of his or her patient.²²³

Nontherapeutic sterilization, commonly for contraceptive purposes, has not been criminalized through legislation. The legality of nontherapeutic sterilization is implicit in Zimbabwe's family planning legislation. The Family Planning Act establishes that a primary function of the ZNFPC is "to provide and manage facilities for performing surgical operations for infertility and sterilization."²²⁴ In addition, the Family Planning Act grants the ZNFPC the power to develop "research personnel or the training of persons engaged or to be engaged in the investigation and treatment of infertility and sterilization."²²⁵ Nontherapeutic sterilizations must be performed with the free and informed consent of the patient, and ZNFPC practices include the counseling of all clients considering sterilization.²²⁶

Sterilization is available at private clinics and MHCW institutions. The ZNFPC operates a referral system with

MHCW facilities equipped for sterilization procedures.²²⁷ Government facilities perform female and male sterilizations for a fee of Z\$32.50 (approximately U.S.\$3).²²⁸

Requirements

Spousal consent is not a legal requirement to undergo sterilization.²²⁹ However, medical practitioners may be reluctant to perform a sterilization operation without spousal consent because of its nature and seriousness.²³⁰ Because infertility may be a ground for annulment of a marriage,²³¹ it is possible that a doctor performing a sterilization operation without spousal consent may incur third party liability for any injury resulting from the loss of reproductive ability.²³²

Minors must obtain parental consent to undergo sterilization.²³³ If the sterilization is necessary for health purposes, a medical practitioner may appeal to the local magistrate if the parents of the child are unreasonably withholding consent.²³⁴

F. FEMALE GENITAL MUTILATION/ FEMALE CIRCUMCISION

There have been no reported incidents of female genital mutilation ("FGM") — also referred to as female circumcision — in Zimbabwe.²³⁵ FGM could be prosecuted under the common law as assault with the intent to inflict grievous bodily harm.²³⁶

G. HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES

Examining HIV/AIDS issues within a reproductive health framework is essential insofar as the two areas are interrelated from both a medical and public health standpoint. Hence, a full evaluation of laws and policies affecting reproductive health and rights in Zimbabwe must examine HIV/AIDS and sexually transmitted diseases ("STDs"). By September 1995, 48,882 cases of AIDS were reported in Zimbabwe.²³⁷ However, it is estimated that two thirds of all AIDS cases remain unreported.²³⁸ Government estimates place HIV infection at 10% of the general population and at up to 25% of sexually active adults between the ages of 15–49.²³⁹ HIV is mainly transmitted through heterosexual contact in Zimbabwe. While male cases of AIDS slightly outnumber female cases, the MHCW has reported that incidence of HIV infection among women is rising.²⁴⁰ The highest incidence rates of AIDS and AIDS-related deaths among women occurs in the 20–to–29 age group, and women between the ages of 15 and 29 have a higher incidence of HIV infection than their male counterparts.²⁴¹ Teenage girls comprise 80% of AIDS cases in their age group.²⁴²

The rapid increase in infection rates is linked to the prevalence of STDs. Over one million cases of STDs were reported in 1991.²⁴³ Since then, the number of reported incidents

has declined.²⁴⁴ A 1993 survey within rural and urban clinics found that 50% to 60% of patients receiving STD treatment had been infected with HIV.²⁴⁵

Laws Affecting HIV/AIDS and STDs

Pursuant to the Public Health Act, the Minister of Health and Child Welfare may declare that an infectious disease shall be “notifiable,” requiring infected persons to be immediately reported to the local authorities and imposing a fine or period of imprisonment for noncompliance.²⁴⁶ HIV/AIDS has not been made a notifiable disease.²⁴⁷ The Public Health Act also criminalizes the transmission of certain STDs, including syphilis, gonorrhea, and venereal warts, and empowers health authorities to investigate and detain infected persons. Pursuant to the Public Health Act, it is a criminal offense for any person infected with a specified STD, and knowing of the infection, to willfully or negligently expose another to the risk of infection.²⁴⁸ The Public Health Act also requires doctors and other medical officers to report untreated cases of the identified STDs, and provides for the detention of infected persons for treatment.²⁴⁹ In addition, the Minister of Health and Child Welfare may order compulsory examinations of all persons in an area where a disease is believed to be prevalent.²⁵⁰ The Public Health Act provides that all inquiries arising from these situations must be held *in camera*, and that any determinations, as well as the identity of infected persons, be kept secret and that records of the proceedings remain unpublished.²⁵¹ The MHCW may add to the list of STDs that are regulated pursuant to the Public Health Act.²⁵² HIV/AIDS has not been identified for such treatment.²⁵³

Policies Affecting Prevention and Treatment of HIV/AIDS

Although the first AIDS cases were reported in Zimbabwe in 1985,²⁵⁴ the government of Zimbabwe did not begin to address AIDS as a critical public health problem until the early 1990s.²⁵⁵ The MHCW established a National AIDS Coordination Unit and a National AIDS Advisory Committee to establish programming providing for the care of AIDS patients as well as for the prevention and control of HIV transmission. The MHCW also instituted surveillance programs monitoring infection levels and the screening of blood products in an attempt to control or reduce infection levels of HIV/AIDS.²⁵⁶ In addition, education and awareness campaigns target patterns of sexuality and contraceptive use to encourage self-protective behavior. A major component of these campaigns has been the promotion of condom use. In 1993, the government of Zimbabwe received funding of U.S.\$64.5 million for the prevention and control of AIDS and other STDs, U.S.\$12 million of which was allocated to the purchase of condoms.²⁵⁷ Condoms are distributed free at government and municipal health centers.²⁵⁸ Zimbabwean

traditional healers and leaders have joined in the campaign to promote safer sex practices. The Zimbabwe Traditional Healers Association has advocated modification of certain cultural practices: the encouragement of safe sex in polygamous marriages, for example, and in widow inheritance.²⁵⁹

MHCW programs have also focused on the provision of pre- and post-diagnosis counseling services and the training of health workers in the public and private sector.²⁶⁰ However, the increase in health service fees introduced by the 1991 economic reform program has caused a decline in the use of hospital-based care.²⁶¹ The MHCW has implemented a national training program on the management of disease control programs, a program that targets care-givers at the provincial level, in the private sector, and in NGOs.²⁶²

III. Understanding the Exercise of Reproductive Rights: Women’s Legal Status

Women’s reproductive health and rights cannot be fully evaluated without investigating women’s status within the society in which they live. Not only do laws relating to women’s legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women’s ability to exercise reproductive rights. The legal context of family life, a woman’s access to education, and laws and policies affecting her economic status can contribute to the promotion or the prohibition of a woman’s access to reproductive health care and her ability to make voluntary, informed decisions about such care. Laws regarding age of first marriage can have a significant impact on a young woman’s reproductive health. Furthermore, rape legislation and other laws prohibiting sexual assault or domestic violence present significant rights issues and can also have direct consequences for women’s health.

Women’s legal status in Zimbabwe depends largely upon the rights accorded to women under customary law and the enactment of remedial legislation.²⁶³ Protection from discrimination, including discrimination on the ground of gender, is guaranteed in Section 23 of the Declaration of Rights.²⁶⁴ However, Section 23 specifically exempts from its coverage laws which give effect to customary law or constitutional provisions, or which take “due account of physiological differences between persons of different gender,”²⁶⁵ or which are “in the interests of defence [sic] public safety or public morality.”²⁶⁶

In 1982, Parliament enacted the Legal Age of Majority Act,²⁶⁷ which grants full legal capacity and majority status to

all Zimbabweans over the age of 18.²⁶⁸ Zimbabwean women also obtain legal majority when they marry.²⁶⁹ Upon attainment of majority status, women may: enter into contractual relations; acquire, own, and dispose of interests in property independently; and have legal standing to sue and be sued.²⁷⁰ The Legal Age of Majority Act provides that the attainment of legal majority “shall apply for the purpose of any law including customary law.”²⁷¹ The Local Courts Act reaffirms that questions of legal capacity are to be governed by the general law of Zimbabwe.²⁷²

A. RIGHTS WITHIN MARRIAGE

Marriage Law

There are two types of marriage — customary and civil — in Zimbabwe. Customary marriage is exclusively available to Africans.²⁷³ If registered under the Customary Marriages Act,²⁷⁴ a customary marriage is legally valid for all purposes. However, an unregistered customary union, the most common form of marriage in Zimbabwe, is legally recognizable with respect to spousal claims of maintenance and the status, guardianship, custody, and rights of succession of children from the union.²⁷⁵

Customary marriages may be polygamous. A man may enter into more than one registered customary marriage provided that he discloses the existence of prior marriages.²⁷⁶ Under customary law, families contract marriages between their daughters and sons, giving consent to the union and making arrangements for marriage consideration or bridewealth²⁷⁷ to be paid to the woman’s family.²⁷⁸ However, pursuant to the Customary Marriages Act, an African woman cannot be forced to enter into any form of marriage against her will.²⁷⁹ The bridewealth agreement for a registered marriage is legally enforceable.²⁸⁰ If the marriage has not been registered, the bridewealth arrangement is unenforceable and no action may be legally taken for payment.²⁸¹

Civil marriages must be registered in accordance with the provisions of the Marriage Act.²⁸² Civil marriages in Zimbabwe are monogamous and require the consent of both the man and the woman.²⁸³ The civil law governs spousal rights and obligations, including the obligations of fidelity and cohabitation.²⁸⁴ Zimbabweans wishing to enter into a civil marriage must satisfy the conditions set forth in the Marriage Act, as well as common law requirements of “competency.”²⁸⁵ An individual may be “incompetent,” thus allowing for an annulment of the marriage if he or she is permanently impotent or willfully refuses to consummate the marriage.²⁸⁶ In addition, a woman who at the time of her marriage was pregnant with another man’s child fails the “competency” requirement.²⁸⁷ Any of these circumstances may be grounds for annulment of the marriage.²⁸⁸

In any civil or customary marriage, the spouses have a reciprocal duty of maintenance and the obligation to maintain their children.²⁸⁹ The determination of responsibility for maintenance depends upon the financial situation of the parties, as well as their ability to work.²⁹⁰ Upon failure of the responsible party to pay adequate sums for maintenance, an aggrieved spouse may apply to a magistrates court for an order directing payment or providing for direct payment from the responsible spouse’s employer.²⁹¹ Adultery by the applicant may result in the court’s refusal to grant a maintenance order or the revocation of a previously granted order.²⁹² An order for maintenance of a child is valid throughout the period of his dependency; an order for maintenance of a wife is valid until she remarries, or until the couple is divorced.²⁹³

For a discussion on marriage and adolescents, see section on adolescents below.

Divorce and Custody Law

The dissolution of a valid registered marriage, either civil or customary, is governed by the Matrimonial Causes Act.²⁹⁴ There is no legal action available for the dissolution of an unregistered customary marriage.²⁹⁵ The Matrimonial Causes Act grants judges of the High Court and magistrates courts jurisdiction to adjudicate matters pertaining to divorce, separation, and annulment, and sets forth the grounds for the determination of such orders. The magistrates courts have jurisdiction over marriages registered under the Customary Marriages Act, while the High Court has jurisdiction in cases involving the dissolution of a civil marriage.

Pursuant to the Matrimonial Causes Act, there are two possible grounds for divorce in Zimbabwe: incurable mental illness or unconsciousness of a spouse and the “irretrievable break-down of the marriage.”²⁹⁶ Irretrievable breakdown is defined to be a state where “there is no reasonable prospect of the restoration of a normal marriage relationship.”²⁹⁷ Courts may regard as relevant evidence of cruelty, including mental abuse, and the presence of alcohol or drug addiction.²⁹⁸ Proof of adultery may establish an irretrievable breakdown if the adultery is regarded by the spouse petitioning for divorce as “incompatible with the continuation of a normal marriage relationship.”²⁹⁹ Annulment of a marriage may be obtained on the grounds of any failure of competency under common law or customary law provisions.³⁰⁰

The Matrimonial Causes Act empowers courts to determine an equitable division of assets for civil and registered customary marriages, as well as to provide for the maintenance of spouses and children.³⁰¹ However, property that has been inherited or acquired according to custom, including personally held property and property belonging to a familial line, may only be distributed for the provision of

maintenance.³⁰² In the allocation of marital property, courts must consider: the present and future financial situation of the parties; the duration of the marriage; and domestic and indirect financial contributions made by each party throughout the marriage.³⁰³ Depending upon the attribution of blame for the breakdown of the marriage, the dissolution of a marriage may entitle the man and his family to a return of part of the paid bridewealth.³⁰⁴ However, in dividing assets, courts generally seek to ensure that the financial position of either spouse does not substantially change with the dissolution of the marriage.³⁰⁵ Child maintenance orders are valid throughout the period of the child's dependency, and an order for spousal maintenance is valid until the spouse remarries.³⁰⁶

In addition, the Matrimonial Causes Act gives courts discretion to award custody of any children to "such of the parties or such other person as the court may think best fitted to have such custody."³⁰⁷ In custody determinations, the interests and protection of the child are paramount.³⁰⁸ Pursuant to the Guardianship of Minors Act, courts will award custody to the mother of a child upon separation.³⁰⁹ However, the father remains the natural guardian of his legitimate children.³¹⁰ Under the Children's Protection and Adoption Act, courts may remove children from an unsafe situation to protect a child from mistreatment or neglect.³¹¹ Resisting a custody order, or failing to cooperate with the court, is a punishable offense.³¹²

B. ECONOMIC AND SOCIAL RIGHTS

Property Rights

The Legal Age of Majority Act grants to all Zimbabweans over the age of 18 the legal capacity to own, transfer, and dispose of property.³¹³ However, women married in customary marriages may only hold "movable" property, such as livestock or cash, as permitted under customary law.³¹⁴ Although customary law recognizes married women's property rights in some acquired assets, most movable property acquired during the course of a customary marriage belongs to the husband. Under Shona and Ndebele law, the most important forms of property women may own are the *mombe yohumai* or *inkomo yohlanga* ("motherhood animal"), property given to a mother upon the marriage of her daughter, and the *mavoko* or *impahla zezandla* ("hands property"), the property a woman acquires through her work, including her wages or salary.³¹⁵

In 1982, Parliament enacted the Immovable Property (Prevention of Discrimination) Act³¹⁶ (the "Immovable Property Act") prohibiting discrimination with respect to the acquisition and financing of "immovable property" such as land, buildings, or construction projects.³¹⁷ The Immovable Property Act prohibits gender discrimination in the sale,

lease, or disposal of immovable property.³¹⁸ The penalty for contravention of these provisions may include a fine of up to Z\$2,000 (approximately U.S.\$190) and imprisonment for up to one year.³¹⁹ However, the Immovable Property Act provides exemptions for property specially reserved or subject to discriminatory conditions that are "justified in the interests of decency or morality," and does not limit the effect of any other legislative enactment.³²⁰

Access to communal land, vested in the president of Zimbabwe and held for communal use, is governed by customary laws.³²¹ Under customary law, women have limited rights to occupy and use communal land.³²² Mirroring this traditional discrimination against women, the government has also restricted women's rights to use "resettlement land" — land acquired by the government for the purposes of resettling individuals or families in rural areas.³²³ Permits for the resettlement of married couples are always issued in the name of the husband, and only two percent of married women currently occupying resettlement land have permits to plow.³²⁴ Grazing permits are also restrictively granted to women.³²⁵

Inheritance

Legislative enactments set forth the choice of law and the procedure for testate and intestate succession in Zimbabwe. Every individual in Zimbabwe over the age of 16 has the legal capacity to make a will providing for the disposition of his or her estate and the custody or guardianship of his or her children.³²⁶ Intestate succession, when the deceased has not left a will, may be in accordance with either general or customary law. The Administration of Estates Act³²⁷ provides that the determination of which law will govern intestate succession depends upon the type of property involved as well as the heritage and marital status of the deceased. Pursuant to the Administration of Estates Act, customary law governs the intestate succession of movable property belonging to Africans married under customary law and Africans who are "the offspring of parents married according to African law and custom."³²⁸ In all other cases, the wishes of the deceased or the justice of the circumstances will determine the applicable system of law.³²⁹

Customary laws, which govern the succession of movable property, vary throughout Zimbabwe. Generally, when a woman dies, her personal belongings are distributed among her sisters, daughters, and close relatives.³³⁰ Under Ndebele law, the property a woman has received through the marriage of her daughters (*inkomo yohlanga* property) passes to the woman's eldest daughter, and any property she has earned (*mavoko* property) passes to her eldest son.³³¹ According to Shona law, a woman's *umai* property is inherited by her brothers.³³² The property that a Shona woman has earned through

her own work devolves to her sons.³³³ Among both the Shona and the Ndebele, the husband does not inherit property from the estate of his wife.

Under Ndebele and Shona laws, when a man dies, his movable property devolves to his eldest child.³³⁴ Widows do not inherit from their husbands' estates.³³⁵ However, following passage of the Legal Age of Majority Act, female heirs suffer no legal disability with respect to inheritance rights under customary law, and a daughter may inherit from her father's estate.³³⁶ In Shona custom, the heir receives property in a representative capacity; all family obligations of the deceased remain intact and pass also to the heir, who must maintain all of the deceased's dependents.³³⁷ In contrast, according to Ndebele custom, the heir inherits in his own personal capacity and owns absolutely any property inherited. However, the heir to a man's estate, under both Shona and Ndebele tradition, carries some obligation to maintain the dependents of the deceased.³³⁸

Intestate succession to all other estates is in accordance with the provisions of the Deceased Estates Succession Act³³⁹ (the "Succession Act"). In Zimbabwe, all children, regardless of sex, may inherit under the Roman-Dutch common law.³⁴⁰ Pursuant to the Succession Act, surviving spouses and children inherit in equal shares, and a spouse must receive at least a minimum share of the estate, as well as any household goods and effects.³⁴¹ Upon the application of a dependent, a court may vary the distribution of an estate to satisfy any maintenance obligations of the deceased.³⁴² In addition, surviving spouses and children retain the right to remain on land possessed by or allocated to the deceased and to remain in the house they had been occupying, as well as rights to the use of household goods, tools, animals, and crops reasonable for their own support, "[n]otwithstanding any law, including customary law, to the contrary."³⁴³

Labor Rights

The 1985 Labour Relations Act³⁴⁴ (the "Labour Act") prohibits discriminatory employment practices, including those relating to women. The Labour Act sets forth the fundamental rights of employees, defining unfair labor practices and providing regulations governing conditions for employment.³⁴⁵ The Labour Act also establishes a labor relations board and tribunal to handle worker grievances. By amendment, women and men are subject to the same criteria for public or civil offices.³⁴⁶ In addition, the government has pursued a policy of affirmative action in hiring for civil posts, giving preference to women candidates for public service positions.³⁴⁷

The Labour Act prohibits gender discrimination in several circumstances. These include: advertisement of employ-

ment; recruitment; the creation, classification or abolition of jobs; the provision of wages, salaries, pensions, leave, or other benefits; training; advancement, transfer and promotions; and the provision of employee facilities.³⁴⁸ Certain acts of discrimination are exempt, including discrimination on the ground of gender that is "in accordance with the provisions of this Act or any other law, or in the interests of decency or propriety."³⁴⁹ Violation of the Labour Act's antidiscrimination provisions is an offense punishable with a fine up to Z\$2,000 (approximately U.S.\$190) or imprisonment for up to one year, or both.³⁵⁰ The court may also choose to award the complainant with damages for his or her loss, or issue an order requiring compliance with the provisions of the Labour Act.³⁵¹

Pursuant to the Labour Act, employers must provide their female employees with partially paid maternity leave for a minimum of three months without prejudice to their accrual of any entitlements or benefits, including those affecting seniority and advancement.³⁵² A woman on maternity leave is entitled to a minimum of 60% of her salary; if she chooses to forego any accumulated vacation leave, she must receive at least 75% of her salary.³⁵³ Maternity leave as provided for in the Labour Act may only be taken once in a 24-month period and a maximum of three times with each employer.³⁵⁴ Women taking maternity leave are entitled to return to their employment on the same or better terms.³⁵⁵ In addition, the Labour Act requires employers to furnish nursing women, at their request, at least one hour or two half-hour periods during normal working hours to nurse their children.³⁵⁶ There is no legislation that provides for leave to attend antenatal care clinics.³⁵⁷ Moreover, except for a prohibition against exposure to pesticides, working conditions for pregnant women are not regulated by law.³⁵⁸

Access to Credit

The Immovable Property Act requires banks, other finance organizations, and insurance companies to grant loans and other assistance in a nondiscriminatory manner for the acquisition or maintenance of land, buildings, or construction projects.³⁵⁹ Moreover, the government of Zimbabwe has initiated an informal policy of affirmative action to enhance women's access to credit.³⁶⁰ However, development funds are often disbursed through commercial lenders, who require credit applicants to provide security for their loans, a condition that is difficult for many Zimbabwean women to meet.³⁶¹

Access to Education

Pursuant to the Education Act, education is established as a fundamental right in Zimbabwe.³⁶² The Education Act also establishes a right of access to public and secondary schools in Zimbabwe.³⁶³ Tertiary educational institutions, such as

universities and training colleges, have instituted affirmative action programs to benefit women.³⁶⁴ In addition, the national university is prohibited from imposing tests for admission that discriminate on the basis of gender in the selection of employees, students, or officers of the university, including academic or administrative staff.³⁶⁵ For further discussion regarding education, see section on adolescents below.

C. RIGHT TO PHYSICAL INTEGRITY

Rape

Rape in Zimbabwe is a common law crime.³⁶⁶ Rape is defined to be “[i]ntentional, unlawful sexual intercourse by a male over 14 years of age with a woman without her consent.”³⁶⁷ Girls under the age of 12 are presumed incapable of consenting to sexual intercourse.³⁶⁸ Evidence of violent threats or fraud, or the use of drugs or alcohol, also vitiates the element of consent.³⁶⁹ Zimbabwean criminal law does not recognize marital rape as a crime.³⁷⁰

Sexual intercourse for the purposes of a rape prosecution is defined to be an act of penetration, or partial penetration.³⁷¹ Other sexual offenses may be prosecuted under the laws prohibiting assault, indecent assault, or attempted rape.³⁷² The crime of assault is defined to be the unlawful, intentional application of force to the person of another, or the commission of acts which inspire the belief that the application of force is imminent.³⁷³ Indecent assault is defined as an “unlawful and intentional assault of an indecent character.”³⁷⁴

Corroboration of a rape charge is not required.³⁷⁵ However, evidence of the complainant’s prior sexual behavior may be admitted as relevant to the issue of consent.³⁷⁶ In any prosecution for an indecent act, the identity of the complainant is concealed, and the court may direct that the proceedings be held *in camera*.³⁷⁷ There are no sentencing guidelines for rape convictions; typically, a rape conviction is punishable with a fine or imprisonment.³⁷⁸

For a discussion on sexual offenses against minors, see section on adolescents below.

Domestic Violence

While criminal law assigns penalties for verbal and physical assault, no law specifically addresses domestic violence in Zimbabwe.³⁷⁹ There are no statistics available on the incidence of domestic violence in Zimbabwe because police records do not differentiate between incidences of domestic violence and other assaults.³⁸⁰ A victim of domestic violence may apply to a court for a “binding-over” order against any person who “(a) is conducting himself violently towards or is threatening injury to the person or property of another; or (b) has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault.”³⁸¹

A binding-over order may require the batterer to pay a fine or post a bond not exceeding Z\$200 (approximately U.S.\$20).³⁸² If the order is violated, the perpetrator forfeits his bond and may be arrested.³⁸³ Victims of domestic violence may also apply to a court for civil damages as compensation for any injury suffered directly or as a result of an assault.³⁸⁴

Victims of domestic violence also have recourse under customary law. In a registered customary marriage, incidents of domestic violence are grounds for separation or divorce.³⁸⁵ Under customary law, the families of the married couple may mediate domestic disputes or provide refuge for the victim, and may require the perpetrator to post a “peace bond” to ensure his compliance with the families’ resolution of the dispute.³⁸⁶

Sexual Harassment

Although no statistics on sexual harassment are available,³⁸⁷ informal reports from the Zimbabwe Congress of Trade Unions indicate that harassment is a common complaint of women workers.³⁸⁸ Public service regulations prohibit sexual harassment in the workplace of government employees.³⁸⁹ No laws in Zimbabwe address sexual harassment in the private sector.³⁹⁰ Criminal sanctions, however, are available under the common law prohibition against indecent assault.³⁹¹ A woman’s consent is a defense to a charge of indecent assault or attempted indecent assault unless it has been obtained through the use of force.³⁹² However, the use of nonviolent threats against a woman, such as threats of eviction, confinement, or the loss of employment, is not illegal under the current law.³⁹³

Sexual harassment may also be prosecuted as *crimen injuria*, defined as the infliction of an unlawful, intentional, and serious injury to the dignity of another.³⁹⁴ Acts constituting *crimen injuria* may include “[i]mproper sexual suggestions, or abusive, insulting or degrading communications.”³⁹⁵ However, a charge of *crimen injuria* is generally not pursued if a more specific charge is available.³⁹⁶

IV. Focusing on the Rights of a Special Group: Adolescents

The needs of adolescents are often unrecognized or neglected. Given that approximately 45% of the Zimbabwean population is under the age of 15,³⁹⁷ it is particularly important to meet the reproductive health needs of this group. The effort to address issues of adolescent rights including those related to reproductive health is important for women’s right to self-determination, as well as for their health.

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

The Youth Advisory Services (“YAS”) of the ZNFPC is responsible for focusing ZNFPC programming on the sexuality and reproductive health issues of adolescents.³⁹⁸ YAS has defined reproductive health to be “the health implications surrounding reproductive choices and behaviour,” encompassing maternal and child health, contraception, and protection from sexually transmitted disease.³⁹⁹ The ZNFPC has attempted to modify its facilities to service youth populations and to work cooperatively with community youth organizations.⁴⁰⁰ However, in practice, adolescents’ access to contraceptives may be limited through informal policies of private family planning providers and government clinics.⁴⁰¹ Although minors require parental consent to obtain medical treatment, many health and family planning services to adolescents are not restricted under the law. For example, a minor may receive treatment for a sexually transmitted disease without parental consent or knowledge.⁴⁰² In addition, minors’ access to contraceptives is not legally restricted.⁴⁰³ However, parental consent for contraceptive use is often practically imposed, and in ZNFPC and government clinics, contraceptives are not dispensed to youth under the age of 16.⁴⁰⁴

B. MARRIAGE AND ADOLESCENTS

Under customary law, there is no minimum age for marriage.⁴⁰⁵ Girls under the age of 16 and boys under the age of 18 may not enter into a civil marriage without the consent of their legal guardians, a judge, or written permission from the Minister of Justice, Legal and Parliamentary Affairs.⁴⁰⁶ The Customary Marriages Act criminalizes forced marriages and the pledging of girls or women in marriage.⁴⁰⁷ However, the laws governing marriage in Zimbabwe entrench the institution of bridewealth in all marriages of African girls under the age of 18. Pursuant to the Customary Marriages Act, the customary marriage of an African girl under the age of 18 is not legally valid without parental or guardian consent and agreement on payment of bridewealth.⁴⁰⁸ Similarly, an African girl under the age of 18 entering into a civil marriage must obtain a certificate from the local magistrate verifying the consent of her parents or guardian and stating the amount, form, and terms of payment of the marriage consideration.⁴⁰⁹

C. EDUCATION AND ADOLESCENTS

Between 1979 and 1989, the number of primary schools increased by 88%,⁴¹⁰ and attendance by female pupils increased 195%.⁴¹¹ However, the reintroduction of school fees in 1991 has had a negative impact on enrollment rates, especially of female students.⁴¹² The Ministry of Education provides some

donor-funded scholarships that are reserved for the disadvantaged children of commercial farm workers and are disbursed in favor of girls.⁴¹³ Although the government provides additional funds to aid low-income families with health and education fees, difficulties in access and in the application procedure have contributed to the low numbers of families benefiting from these funds.⁴¹⁴

Although the initial enrollment of girls and boys at the primary level remains equal, the attrition rate for girls is much higher, and this disparity increases in the higher levels of education.⁴¹⁵ Pregnancy is a common factor disrupting the education of female students, due to the fact that pregnant students are required to leave school.⁴¹⁶ The student may be readmitted after she gives birth, but is usually transferred to a different school.⁴¹⁷ The government has actively pursued educational programming to neutralize gender biases in curricula.⁴¹⁸ In addition, the Ministry of Education has instituted a counseling program within each school that targets female students, providing career and educational guidance and information on sexual health, including AIDS.⁴¹⁹

D. SEX EDUCATION FOR ADOLESCENTS

In cooperation with the MHCW, the Ministry of Education and Culture, and United Nations Children’s Fund (“UNICEF”), the ZNFPC has introduced a compulsory Family Life Education (“FLE”) program to incorporate family planning into the formal educational system.⁴²⁰ The FLE program will replace life skills curricula with materials that directly address gender and reproductive issues. Educational programs have been supplemented by youth counseling and parent education programs to address adolescent sexuality.⁴²¹

E. SEXUAL OFFENSES AGAINST MINORS

The 1901 Criminal Law Amendment Act (the “1901 Act”) criminalizes the unlawful carnal knowledge of or the commission of any immoral or indecent act with a girl under the age of 16.⁴²² The 1901 Act provides that a “reasonable” mistake about age is a sufficient defense to a statutory rape charge; in addition, men who solicit child prostitutes cannot be prosecuted under the 1901 Act.⁴²³ Statutory rape, attempted statutory rape, and the solicitation or enticement of a girl under the age of 16 to commit any indecent act are offenses punishable by a fine up to Z\$1,000 (approximately U.S.\$100) or imprisonment for up to five years.⁴²⁴ A charge of indecent assault on a person under the age of 16 may be prosecuted regardless of whether the act was consensual.⁴²⁵

Sexual intercourse with a girl under the age of 12 constitutes both rape and statutory rape.⁴²⁶ Although the majority of

reported rape cases involve victims under the age of 14,⁴²⁷ court records indicate that police and prosecutors in Zimbabwe often treat sexual offenses against minors, including non-consensual intercourse and intercourse with girls under the age of 12, as cases of statutory rape.⁴²⁸ Statutory rape carries a lower penalty than a rape conviction.⁴²⁹

ENDNOTES

1. *ZimWeb, Zimbabwe History* (visited Jan. 17, 1997) <http://www.mother.com/~zimweb/zim/int_hist.htm>.
2. *Id.*
3. *Id.*
4. MINISTRY OF HEALTH & CHILD WELFARE, HEALTH HUMAN RESOURCES MASTER PLAN: PART I, 1993-1997, at 2 (unpublished paper on file at The Center for Reproductive Law and Policy) [hereinafter HEALTH HUMAN RESOURCES MASTER PLAN].
5. *Zimbabwe*, WALDEN REPORTS, available in LEXIS, World Library, Courep file [hereinafter WALDEN REPORT].
6. U.S. Cent. Intelligence Agency, *Zimbabwe*, WORLD FACTBOOK, Sept. 7, 1995, available in LEXIS, World Library Profiles. There is an official separation of church and state, and Islamic law and institutions are generally not a part of the legal or political landscape. WOMEN IN LAW & DEV. IN AFRICA (WILDAF), REPRODUCTIVE HEALTH RIGHTS IN ZIMBABWE 1 (1996) (unpublished paper on file at The Center for Reproductive Law and Policy) [hereinafter WILDAF].
7. U.S. Dep't. of State, *Zimbabwe Human Rights Practices, 1994*, 1994 HUMAN RIGHTS REPORT (1995), available in LEXIS, World Library.
8. WALDEN REPORT, *supra* note 5.
9. ZIMB. CONST. §§ 27-63, 79-92.
10. *Id.* § 111A; see also *Zimbabwe*, KCWD/KALEIDOSCOPE REPORT, Feb. 20, 1995, available in LEXIS, World Library, KCWD file.
11. ZIMB. CONST. § 111(1), (2).
12. *Id.* § 31H(1).
13. *Id.* § 27(1).
14. *Id.* §§ 31C(1), 31D(1). The power of appointment includes the power to fix and vary the conditions of service, including remuneration and terms of appointment. *Id.* § 113(5)(d).
15. The attorney-general is a non-voting member of the cabinet. *Id.* § 76(3b)(a).
16. *Id.* § 31G(1); see also *id.* § 31H(5) (stating the extent to which the president must rely on the advice of the cabinet).
17. The 1980 government retained the state of emergency instituted by the former government of Rhodesia. See *id.* §§ 25, 31J, schedule 2; see also John Hatchard, *The Constitution of Zimbabwe: Towards A Model for Africa?*, 35 J. OF AFRICAN L. 79, 89 (1991).
18. ZIMB. CONST. § 50.
19. *Id.* § 38(1). Members of Parliament hold their seats on condition of their retaining party membership, as in other Westminster-style systems. *Id.* § 4(c).
20. Appointed members have in the past represented minority groups.
21. The traditional chiefs appoint their own representatives. Telephone interview with Luta Shaba, Attorney and Member, WILDAF (Feb. 20, 1997).
22. ZIMB. CONST. § 38(1).
23. *Id.* §§ 46, 51.
24. *Id.* § 40B(1).
25. *Id.* § 79B.
26. *Id.* § 80(1). Constitutional amendments 11-13 were passed by the legislature either in the wake of, or in anticipation of court decisions affecting areas in which the government wished to set policy. In addition, President Mugabe has invoked the Presidential Powers Act to overturn an order of the High Court. U.S. Dep't. of State, *Zimbabwe Human Rights Practices, 1993*, 1993 HUMAN RIGHTS REPORT (1994), available in LEXIS, World Library.
27. ZIMB. CONST. § 84(1).
28. *Id.* § 87(1).
29. Customary Law & Local Courts Act, ch. 7:05.
30. The colonial judicial system had two court hierarchies, one for Africans and the other for non-Africans. DEVELOPMENT, INNOVATIONS AND NETWORKS (IRED), WOMEN, LAW DEVELOPMENT (1996) (unpublished paper on file at The Center for Reproductive Law and Policy) [hereinafter IRED].
31. Customary Law & Local Courts Act, ch. 7:05, §§ 24, 25; see also WELSHMAN NCUBE, FAMILY LAW IN ZIMBABWE 12 (1989).
32. Customary Law & Local Courts Act, ch. 7:05, §§ 10, 15.
33. *Id.* § 11, 16(1)(a). In addition, primary courts may not hear claims in excess of Z\$1,500 (U.S.\$143) and community courts may not hear claims in excess of Z\$3,000 (U.S.\$286). *Id.* § 16(1)(b). Such cases may be removed from a local court and transferred to a court of competent jurisdiction. *Id.* § 22.
34. Customary Law & Local Courts Act, ch. 7:05, § 16(1)(c)-(g). "Immovable" property commonly denotes land, buildings or construction projects. For further discussion, see *infra* section on property.
35. Customary Law & Local Courts Act, ch. 7:05, § 18(1), (2) (discussing the Customary Law and Primary Courts Act, No. 6 of 1981, which preceded the Customary Law and Customs Law Act).
36. See CHARLES R. CUTSHALL, JUSTICE FOR THE PEOPLE: COMMUNITY COURTS AND LEGAL TRANSFORMATION IN ZIMBABWE 1-2 (1991) (discussing the recognition of customary law to make courts more accessible).
37. Customary Law & Local Courts Act, ch. 7:05, § 20(1); see also *id.* § 20(2).
38. *Id.* § 3(1). This agreement may be explicit or implicit. see NCUBE, *supra* note 31, at 22, 26.
39. Customary Law & Local Courts Act, ch. 7:05, § 3(2).
40. WILDAF, *supra* note 6, at 1; but see NCUBE, *supra* note 31, at 12, 20 (noting the recent use of customary law for non-African parties and citing Lopez v Nxumalo, SC 115/85). The term "African" is used throughout this chapter to refer to a Zimbabwean of African descent.
41. Customary Law & Local Courts Act, ch. 7:05, § 8.
42. In the area of family law, most systems of customary law in Zimbabwe have similar provisions. NCUBE, *supra* note 31, at 26.
43. See Customary Law & Local Courts Act, ch. 7:05, § 9 (stating what legal materials regarding the content of customary law courts may consider).
44. ZIMB. CONST. § 3.
45. *Id.* § 11; see generally *id.* § 11-26 (Declaration of Rights).
46. *Id.* § 24.
47. *Id.* § 89; see also *id.* § 113(1) (defining "law" for the purposes of constitutional interpretation); Customary Law & Local Courts Act, ch. 7:05, § 2 (defining "the general law of Zimbabwe").
48. ZIMB. CONST. § 89.
49. See *id.* § 111B(1)(B).
50. International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entry into force Mar. 23, 1976) (ratified by Zimbabwe on May 13, 1991); International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3 (entry into force Sept. 3, 1976) (ratified by Zimbabwe on May 13, 1991).
51. African Charter on Human and Peoples' Rights, adopted June 26, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5 (1981), reprinted in 21 I.L.M. 59 (1982) (entry into force Oct. 21, 1986) (ratified by Zimbabwe on Sept. 11, 1990).
52. Convention on the Elimination of All Forms of Discrimination against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 14 (entry into force Sept. 3, 1981) (ratified by Zimbabwe on May 13, 1991).
53. International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (entry into force Jan. 4, 1969) (ratified by Zimbabwe on May 13, 1991).
54. Convention on the Rights of the Child, opened for signature Nov. 20, 1989, G.A. Res. 44/25, U.N. G.A.O.R., 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, reprinted in 28 I.L.M. 1448 (entry into force Sept. 2, 1990) (ratified by Zimbabwe on Sept. 11, 1990).
55. GROWTH WITH EQUITY: AN ECONOMIC POLICY STATEMENT ¶ 85, at 12 (Republic of Zimbabwe 1981).
56. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT, 1994, at 149 (1994).
57. HEALTH HUMAN RESOURCES MASTER PLAN, *supra* note 4, at 1.
58. U.N. DEP'T OF INT'L ECONOMIC AND SOCIAL AFFAIRS, III WORLD POPULATION POLICIES 232, U.N. Doc. ST/ESA/SER.A/102/Add.2 (1990); FIRST FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1986-1990 art. 3.8, at 36 (Republic of Zimbabwe 1986).
59. DEP'T OF HEALTH SERVICES PLANNING & MANAGEMENT, MINISTRY OF HEALTH [ZIMB.], PLANNING FOR EQUITY IN HEALTH: 1992 REVISION art. 2.1, at 3 (1992).
60. *Id.*

61. CENTRAL STATISTICAL OFFICE [ZIMB.] & MACRO INTERNATIONAL, INC., ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, at 4 (1995) [hereinafter ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994].
62. WILDAF, *supra* note 6, at 2-3. MHCW initially introduced fees as part of a cost recovery program.
63. MINISTRY OF HEALTH & CHILD WELFARE, WOMEN'S HEALTH IN ZIMBABWE: A PATH TO DEVELOPMENT 2 (1994); *see also* WILDAF, *supra* note 6, at 2.
64. DEP'T OF HEALTH SERVICES PLANNING & MANAGEMENT, *supra* note 59, art. 9.11, at 17-18.
65. *Id.*
66. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY, 1994, *supra* note 61, at 4.
67. FIRST FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1986-1990, *supra* note 58, art. 2.10, at 21.
68. Telephone interview with Luta Shaba, *supra* note 21.
69. The practice of a traditional medical practitioner is defined to be "every act, the object of which is to treat, identify, analyse or diagnose, without the application of operative surgery, any illness of body or mind by traditional methods." Traditional Medical Practitioner Act, ch. 27:14, § 2(2).
70. Natural therapists include homeopaths, naturopaths and osteopaths. Natural Therapists Act, No. 31, § 2(1) (1981). Natural therapists are usually white Zimbabweans or foreigners. WILDAF, *supra* note 6, at 3.
71. Dep't of Health Services Planning & Management, *supra* note 59, art. 4, at 7.
72. *Id.*
73. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994 *supra* note 61, at 4.
74. *See* Godfrey B. Woelk, *Primary Health Care in Zimbabwe: Can It Survive?*, 39 SOC. SCI. MED. 1027, 1030 (1994) (noting current trend to centralize village community workers).
75. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994 *supra* note 61, at 4.
76. DEP'T OF HEALTH SERVICES PLANNING & MANAGEMENT, *supra* note 59, art. 4, at 7.
77. *Id.*
78. *Id.* art. 4.2, at 7.
79. *Id.* art. 4.3, at 8.
80. Local authorities provide services ranging from primary and preventative care to maternity homes. Although in the past these services had received financial support from the MHCW, this funding will not be continued. *Id.* arts. 4.5.4, 4.9.2, at 9-10.
81. *Id.* art. 4.9.3, at 11; *see also* WOELK, *supra* note 74, at 1029. Private midwifery services are also available and are regulated by the MHCW'S Nursing Directorate and the Health Professions Council. WILDAF, *supra* note 6, at 2.
82. *Technical Note: Assessing and Addressing the Social Dimensions of Adjustment, in ZIMBABWE: A FRAMEWORK FOR ECONOMIC REFORM (1991-1995) Annex III, at 21 (Republic of Zimbabwe 1991) [hereinafter Technical Note].* The Family Health Project is in its second phase, encompassing the years 1991-95. *Id.*
83. HEALTH HUMAN RESOURCES MASTER PLAN, *supra* note 4, at 1.
84. SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, at 74 (1991).
85. POPULATION ACTION INT'L, REPRODUCTIVE RISK: A WORLDWIDE ASSESSMENT OF WOMEN'S SEXUAL AND MATERNAL HEALTH: 1995 REPORT ON PROGRESS TOWARDS WORLD POPULATION STABILIZATION (1995).
86. MATERNAL & CHILD HEALTH DEP'T, MINISTRY OF HEALTH, AN EVALUATION OF THE TRADITIONAL BIRTH ATTENDANT TRAINING PROGRAMME IN ZIMBABWE 10 (1994).
87. REPUBLIC OF ZIMBABWE, BUDGET ESTIMATES FOR THE YEAR ENDING JUNE 30, 1996, at 118 (1995).
88. SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, at 69.
89. For the fiscal year 1989-90, fees provided MHCW revenue of Z\$15 million (U.S.\$1.5 million). *Technical Note, supra* note 82, at 14.
90. WILDAF, *supra* note 6, at 3.
91. PATIENT'S CHARTER: ZIMBABWE 1996 § 4 (Ministry of Health & Child Welfare 1996) [hereinafter PATIENT'S CHARTER]. In addition, there is no charge for treatment for tuberculosis or leprosy. *Id.*
92. RENE LOWENSON ET AL., REPRODUCTIVE HEALTH RIGHTS IN ZIMBABWE 40 (1996).
93. WILDAF, *supra* note 6, at 3.
94. *Technical Note, supra* note 82, at 20. The Department of Social Welfare has instituted training to aid staff in identifying low-income individuals who qualify for fee exemption and has deployed personnel to major urban health facilities to issue fee exemption papers. *Id.*
95. Medical, Dental and Allied Professions Act, ch. 27:08, §§ 25, 47. A "health institution" is defined to be "any hospital, clinic, medical laboratory, consulting room or other premises used by a health practitioner for...the diagnosis, treatment, mitigation or prevention of any illness, injury or disability." *Id.* § 2(1). However, regulations providing minimum standards for all health institutions (part IIIB of the Medical, Dental and Allied Professions Act) are not yet operative. HEALTH PROFESSIONS COUNCIL, FUNCTIONS AND A GUIDE TO ETHICS 21 (1993).
96. WILDAF, *supra* note 6, at 3.
97. GEOFF FELTOE & TIMOTHY JOSEPH NYAPADI, LAW & MEDICINE IN ZIMBABWE 3 (1989). Negligence is defined as the "failure to exercise reasonable care." *Id.*
98. *Id.* at 21.
99. Medical, Dental and Allied Professions Act, ch. 27:08, §§ 25, second schedule.
100. *Id.* § 43(2), (5); *see also* HEALTH PROFESSIONS COUNCIL, *supra* note 95, at 8, 12.
101. Medical, Dental and Allied Professions Act, ch. 27:08, §§ 65(1), 68(1).
102. HEALTH PROFESSIONS COUNCIL, *supra* note 95, at 4. The Council's members include: the Secretary for Health and Child Welfare, 16 elected members and 10 MHCW appointees. Medical, Dental and Allied Professions Act, ch. 27:08, § 6(1).
103. Medical, Dental and Allied Professions Act, ch. 27:08, § 32; HEALTH PROFESSIONS COUNCIL, *supra* note 95, at 5, 7, 11.
104. Medical Practitioners (Professional Conduct) Regulations, S.I. 252, § 30 (1987).
105. *Id.* § 27.
106. *Id.* § 22.
107. HEALTH PROFESSIONS COUNCIL, *supra* note 95, at 19.
108. *Id.*
109. *Id.* at 19-20.
110. Medical, Dental and Allied Professions Act, ch. 27:08, §§ 55, 56. Members of the public, other health professionals or health institutions may make complaints of incompetence or improper conduct. *See* Medical, Dental and Allied Professions (Information) Regulations, S.I. 93, § 3 (1993) (providing for a penalty of fine and/or imprisonment for failure to comply with a request for information from the Health Professions Council registrar).
111. Medical, Dental and Allied Professions Act, ch. 27:08, § 59(2).
112. *Id.* § 61(1).
113. Traditional Medical Practitioner Act, ch. 27:14.
114. Natural Therapists Act, No. 31 (1981).
115. *Id.* § 34; Traditional Medical Practitioner Act, ch. 27:14, § 31.
116. Traditional Medical Practitioner Act, ch. 27:14, §§ 26-28, 30, 34; Natural Therapists Act, No. 31, §§ 27-29, 33, 36 (1981). The Traditional Medical Practitioners Council also promotes the practice of and sponsors research into traditional medicine. Traditional Medical Practitioner Act, ch. 27:14, § 3(2).
117. WILDAF, *supra* note 6, at 3.
118. PATIENT'S CHARTER, *supra* note 91, at § 1.
119. *Id.* §§ 1.2-1.4.
120. ZIMB. CONST. § 11(a).
121. WILDAF, *supra* note 6, at 9.
122. FELTOE & NYAPADI, *supra* note 97, at 35. Consent must be given without the use of deception, coercion or undue influence, and with knowledge of the procedure and an appreciation of the possible consequences. *Id.* at 36.
123. *Id.* at 35.
124. *Id.* at 42.
125. Doctors are reluctant to perform surgical operations without a husband's consent. *Id.* at 74-75. Lawful abortions (those performed to protect the mother's life or health) do not require consent. *Id.* at 81.
126. Julie Stewart et al., *The Legal Situation of Women in Zimbabwe, in II WOMEN AND LAW IN SOUTHERN AFRICA: THE LEGAL SITUATION OF WOMEN IN SOUTHERN AFRICA* 165, 199 (Julie Stewart & Alice Armstrong eds., 1990).
127. Children's Protection And Adoption Act, ch. 5:06, § 76.
128. FELTOE & NYAPADI, *supra* note 97, at 42; *but see* Stewart et al., *supra* note 126, at 198-99 ("Under Roman-Dutch law, minors are capable of consent once they have...the intellectual maturity to understand the nature and consequences of that treatment").
129. Medical Practitioners (Professional Conduct) Regulations, S.I. 252, § 22, (1987). For example, any investigation or procedure initiated under the provisions of the Public Health Act dealing with infectious diseases may require disclosure of patient information. In addition, communications between medical practitioners and their patients are not privileged under Zimbabwean law and may be disclosed in legal proceedings. FELTOE & NYAPADI, *supra* note 97, at 67. The appropriate civil action for breach of patient confidentiality is a suit to recover damages from an *actio injuriana*, an act resulting in defamation, insult, degradation, humiliation or an invasion of privacy without public benefit. There have been no reported cases of suit for an *actio injuriana* in Zimbabwe. *Id.* at 63-64.
130. FELTOE & NYAPADI, *supra* note 97, at 53-54.

131. *Id.* at 36, 54.
132. FIRST FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1986-1990, *supra* note 58, at 18.
133. SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, at 68. The ZNFPC is ultimately targeting a "replacement rate" growth of approximately 2 children per couple. Liz Sly, *Father of 57: "It's Too Many,"* CHICAGO TRIBUNE, Jan. 30, 1996, at 1.
134. MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 59.
135. Zimbabwe National Family Planning Council Act, ch. 15:11.
136. *Id.* § 3; *see also* MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 59.
137. Zimbabwe National Family Planning Council Act, ch. 15:11, §22 (1).
138. *Id.* schedule (§22(2)), ¶ 21.
139. *Id.* § 4(1), (2).
140. *Id.* § 27(1).
141. ZIMBABWE: A FRAMEWORK FOR ECONOMIC REFORM (1991-1995), *supra* note 82 ¶ 59, at 16.
142. REPUBLIC OF ZIMBABWE, *supra* note 87, at 122.
143. FIRST FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1986-1990, *supra* note 58, at 37 (citing DEP'T OF HEALTH SERVICES PLANNING & MANAGEMENT, *supra* note 59); SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, at 68 (citing WORLD HEALTH ORG., HEALTH CARE FOR ALL BY THE YEAR 2000).
144. U.N. DEP'T OF INT'L ECONOMIC & SOCIAL AFFAIRS, *supra* note 58, at 231.
145. *Id.*; *see also* Births and Deaths Registration Act, ch. 5:03, *reproduced in part in* 13 ANN. REV. OF POPULATION L., 1984, at 574-579 (Reed Boland & Jan Stepan eds., 1989).
146. ZIMB. NAT'L FAMILY PLANNING COUNCIL, STATEMENT OF CLIENT RIGHTS (1994), *quoted in* LOWENSON ET AL., *supra* note 92, at 13.
147. LOWENSON, ET AL., *supra* note 92, at 22.
148. *Id.*
149. CENTRAL STATISTICAL OFFICE [ZIMB.] & MACRO INTERNATIONAL, INC., ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, SUMMARY REPORT 11 (1995).
150. *Id.* Family planning services in Zimbabwe have utilized both community-based and clinic-based delivery systems since 1967. Thomas Dow et al., *Characteristics of New Contraceptive Acceptors In Zimbabwe*, 17 STUD. IN FAM. PLANNING 107, 108 (1986).
151. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 3.
152. SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, at 67.
153. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 3.
154. *Id.*
155. Barbara Mensch et al., *Using Situation Analysis Data to Assess the Functioning of Family Planning Clinics in Nigeria, Tanzania and Zimbabwe*, 25 STUD. IN FAM. PLANNING 18, 22 (1994).
156. *Id.* at 20.
157. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 3. NOR-PLANT® can also be obtained from private practitioners in both Harare and Bulawayo. *See also* WILDALF, *supra* note 6, at 6. *See infra* section on contraception for further discussion of contraceptive methods.
158. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 3.
159. MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 59.
160. *Id.* at 60.
161. *Id.* at 61.
162. Phyllis T. Piotrow et al., *Changing Men's Attitudes and Behavior: The Zimbabwe Male Motivation Project*, 23 STUD. IN FAM. PLANNING 365, 366 (1992).
163. *Id.* at 365-66.
164. ZIMB. NAT'L FAMILY PLANNING COUNCIL & WESTINGHOUSE PUB. APPLIED SYS., ZIMBABWE REPRODUCTIVE HEALTH SURVEY, 1984 (1985).
165. ZIMB. NAT'L FAMILY PLANNING COUNCIL, ZIMBABWE: A SITUATION ANALYSIS OF THE FAMILY PLANNING PROGRAM (1992), *cited in* Mensch et al., *supra* note 155, at 21.
166. Mensch et al., *supra* note 155, at 22-23.
167. *Id.* at 20.
168. WILDALF *supra* note 6, at 5.
169. POPULATION ACTION INT'L, *supra* note 85.
170. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 43.
171. WILDALF, *supra* note 6, at 5. ZNFPC workers distribute condoms and pills in rural areas and utilize a clinic referral system to facilitate access to other types of contraceptives.
172. *Id.*
173. Bill Keller, *Zimbabwe Taking a Lead in Promoting Birth Control*, N.Y. TIMES, Sept. 4, 1994, at 16.
174. *Id.*; WILDALF, *supra* note 6, at 6.
175. LOWENSON ET AL., *supra* note 92, at 29.
176. Drugs and Allied Substances Control Act, ch. 320, § 3.
177. *Id.* §§ 28-29; *see also* Drugs and Allied Substances Control (Condom) Regulations, S.I. 147 (1991), *reproduced in* 43 INT'L DIG. OF HEALTH LEGIS. 335 (1992) (requiring condom vendors to obtain approval from the Drugs Council of the type of condom to be offered and specifying that all condoms sold in Zimbabwe must meet the standards of the World Health Organization as well as requirements regarding packaging and storage).
178. Drugs and Allied Substances Control Act, ch. 320, § 31.
179. WILDALF, *supra* note 6, at 6.
180. Drugs and Allied Substances Control Act, ch. 320, § 23.
181. *Id.* § 19. Depo-Provera® was banned in Zimbabwe until it was registered in its country of origin. WILDALF, *supra* note 6, at 6.
182. Drugs and Allied Substances Control Act, ch. 320, § 15A.
183. *Id.* §§ 15D-15F. The Drugs Control Act requires that any conditions imposed by the DCC be strictly followed to ensure "the safety of all persons or animals taking part in such trial." *Id.* § 15D.
184. *Id.* §§ 15H-15I.
185. *Id.* § 15G.
186. *Id.* § 15J.
187. WILDALF, *supra* note 6, at 6. In government health centers, a NORPLANT® implant may be obtained for Z\$100 (approximately U.S.\$9.50). In private clinics, the cost of NORPLANT® is Z\$300 (or U.S.\$29). ZIMB. NAT'L FAMILY PLANNING COUNCIL, REVISED PRICES FOR DRUGS: NOVEMBER, 1993 (1993) (document on file at The Center For Reproductive Law and Policy).
188. WILDALF, *supra* note 6, at 6.
189. *Id.*
190. Drugs Control and Allied Substances Act, ch. 320, § 30(1).
191. Censorship and Entertainments Control Act, ch. 8:04, § 11 (prohibiting the printing, distribution, display or sale of any undesirable publication or record).
192. *Id.* § 3, 11. In addition, a publication "likely to be outrageous or disgusting [sic] to persons who are likely to read, hear or see it" or which "deals in an improper or offensive manner with criminal or immoral behaviour" may be deemed offensive or harmful to public morals. *Id.* § 27(b), (c). However, this Act does not appear to restrict the advertisement of contraceptives. Condom advertisements are common in the press.
193. Termination of Pregnancy Act, ch. 15:10. There have been no changes in the law since passage of the 1977 Act. WILDALF, *supra* note 6, at 6-7.
194. Termination of Pregnancy Act, ch. 15:10, § 2(2); *see also* Concealment of Birth Act, ch. 9:04; Infanticide Act, ch. 9:12 (creating the charge of infanticide); Criminal Procedure and Evidence Act, ch. 7:04, § 280(1) (defining live birth for the purpose of an infanticide prosecution to be a child that is "proved to have breathed, whether or not it has had an independent circulation, and it shall not be necessary to prove that such child was at the time of its death entirely separated from the body of its mother").
195. Termination of Pregnancy Act, ch. 15:10, § 2(1). The 1977 Act's definition of pregnancy excludes ectopic pregnancies.
196. *Id.* § 2(1); *See* FELTOE & NYAPADI, *supra* note 97, at 79 (suggesting that the definition of "foetus" in the Termination of Pregnancy Act embraces all stages of development after implantation in the uterine wall); S.A. STRAUSS, DOCTOR, PATIENT AND THE LAW: A SELECTION OF PRACTICAL ISSUES 204 (1980) (noting that the "morning after pill" and insertion of an IUD may amount to an unlawful abortion).
197. Termination of Pregnancy Act, ch. 15:10, § 3. However, a court may exercise discretion in sentencing. *See* State v. Makufa, HC-H-107-85, MT-58/95 (Mar. 27, 1985) (reducing sentence based on circumstances of case).
198. Termination of Pregnancy Act, ch. 15:10, § 4.
199. Rape is defined to be "[i]ntentional, unlawful sexual intercourse by a male over 14 years of age with a woman, without her consent." GEOFF FELTOE, GUIDE TO THE CRIMINAL LAW OF ZIMBABWE 36 (1989), at 120.
200. Termination of Pregnancy Act, ch. 15:10, § 2(1). Intercourse with a mentally handicapped woman or girl is a criminal offense. Criminal Law Amendment Act, ch. 9:05 § 3(d).
201. *See* Ian Chikanza & Webster Chinamora, *Abortion in Zimbabwe: A Medico-legal Problem, in* WOMEN AND LAW IN SOUTHERN AFRICA 237, 242 (Alice Armstrong & Welshman Ncube eds., 1987).
202. Termination of Pregnancy Act, ch. 15:10, § 5. The 1977 Act empowers the Minister of Health to issue further regulations giving effect to enacted provisions. *Id.* § 13.
203. *Id.* § 5(1). "Medical practitioner" is defined to be a medical practitioner registered pursuant to the Medical, Dental and Allied Professions Act, ch. 27:08. *Id.* § 2(1).
204. *Id.* § 5(1).

205. *Id.* "Superintendent" is defined to be the medical superintendent of a State hospital or, in other institutions, any person designated by the Minister of Health. *Id.* § 2(1).
206. *Id.* § 6.
207. FELTOE & NYAPADI, *supra* note 97, at 42, 81; STRAUSS, *supra* note 197, at 199-200 (stating that a doctor may be liable under the Roman-Dutch common law for an infringement of the husband's right to procreate).
208. Telephone interview with Luta Shaba & Everjoice Win, WILDAF (Aug. 6, 1996).
209. Termination of Pregnancy Act, ch. 15:10, § 11.
210. *Id.* § 10.
211. *Id.* § 5(2). The Ministry of Health has not issued an official statement regarding the legality of abortions performed on HIV-infected women. Telephone interview with Luta Shaba & Everjoice Win, *supra* note 208; Susan Njanji, *Zimbabweans Call for Review of Abortion Laws*, AGENCE FRANCE PRESSE, Feb. 15, 1994, available in LEXIS, World Library (reporting that at a Zimbabwe Medical Association conference, local gynecologists stated that they had been performing abortions on HIV-infected women with government approval).
212. Termination of Pregnancy Act, ch. 15:10, § 7.
213. *Id.* § 5(2).
214. *Id.* § 5(3), (4).
215. *Id.* § 5(4)(a)(i), (ii). An investigation may include a review of documentation and direct questioning of the woman seeking to have the abortion performed. *Id.* § 5(4)(a)(ii). In the case of incest, the magistrate must also establish that the woman was within the prohibited degree of relation with the perpetrator. *Id.* § 5(4)(a)(iii).
216. *Id.* § 5(4)(b).
217. *Id.* § 12.
218. *Id.* § 12(a)-(d).
219. *Id.* § 8(2).
220. *Id.* § 9.
221. *Id.* § 12(a).
222. FELTOE & NYAPADI, *supra* note 97, at 73.
223. *See id.*; WILDAF, *supra* note 6, at 8.
224. Zimbabwe National Family Planning Council Act, ch. 15:11, § 22(1)(g).
225. *Id.* schedule (§22(2)) ¶ 21(a).
226. WILDAF, *supra* note 6, at 8.
227. *Id.*
228. ZIMB. NAT'L FAMILY PLANNING COUNCIL, *supra* note 187. Government health services are heavily subsidized. In addition, families with incomes less than Z\$400 (U.S.\$38.10) per month receive all health services for free. *See supra* note 90-91 and accompanying text.
229. WILDAF, *supra* note 6, at 8.
230. FELTOE & NYAPADI, *supra* note 97, at 73.
231. Permanent impotence may render an individual incompetent for marriage. NCUBE, *supra* note 31, at 147.
232. The mutual right of married couples to procreation is well-established under the Roman-Dutch common law. STRAUSS, *supra* note 196, at 142. The right to procreation may implicate the distribution of contraceptives or any therapeutic treatment affecting the reproductive functions. However, as of 1989, there had been no case in Zimbabwe on the failure to obtain spousal consent before performance of a sterilization operation on a married woman. FELTOE & NYAPADI, *supra* note 97, at 75.
233. FELTOE & NYAPADI, *supra* note 97, at 72, 74. Sterilization of a minor imbecile may only be performed upon parental request to protect the child from the consequences of possible sexual abuse. WILDAF, *supra* note 6, at 8.
234. Children's Protection and Adoption Act, ch. 5:06, § 76(1) (1974).
235. WILDAF, *supra* note 6, at 13. *But see* U.S. Dep't. of State, *supra* note 26 (reporting that the Remba, a small ethnic group in Zimbabwe, engage in initiation rites that include infibulation).
236. WILDAF, *supra* note 6, at 13.
237. HEALTH INFO. UNIT & NAT'L AIDS COORDINATION PROGRAMME, MINISTRY OF HEALTH & CHILD WELFARE, HIV, STI AND AIDS SURVEILLANCE ZIMBABWE: QUARTERLY REPORT JULY TO SEPTEMBER 1995, at 1 (1995).
238. *Zimbabwe High HIV Infection Reported*, AFRICA NEWS, Dec. 23, 1995, available in LEXIS, World Library.
239. *Id.*
240. HEALTH INFO. UNIT & NAT'L AIDS COORDINATION PROGRAMME, *supra* note 237, at 1.
241. *Id.* at 5-6, 11; MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 42. AIDS and AIDS related deaths among men are the highest in the 30-39 age group. HEALTH INFO. UNIT & NAT'L AIDS COORDINATION PROGRAMME, *supra* note 237, at 5-6, 11.
242. IMPLEMENTING ICPD AND BEIJING: WOMEN'S HEALTH IN ZIMBABWE 12 (Commonwealth Medical Association & Zimbabwe Medical Association 1996).
243. HEALTH INFO. UNIT & NAT'L AIDS COORDINATION PROGRAMME, *supra* note 237, at 4.
244. *Id.*
245. Sunanda Ray et al., *Acceptability of the Female Condom in Zimbabwe: Positive but Male Centred Responses*, 5 REPRODUCTIVE HEALTH MATTERS 68, 69 (1995).
246. Public Health Act, ch. 15:09, §§ 17-21.
247. WILDAF, *supra* note 6, at 7.
248. Public Health Act, ch. 15:09, § 50. There is no record of a person tried under the offenses stipulated in the Public Health Act. WILDAF, *supra* note 6, at 7.
249. *Id.* § 49(1), (3)(d). There is no record of a person detained in accordance with the provisions of the Public Health Act. WILDAF, *supra* note 6, at 7.
250. Public Health Act, ch. 15:09, § 52.
251. *Id.* § 55.
252. *Id.* § 47.
253. WILDAF, *supra* note 6, at 7. The government has proposed legislation specifically criminalizing infection of another person with HIV. *Id.*
254. SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, at 67.
255. ZIMBABWE DEMOGRAPHIC AND HEALTH SURVEY 1994, *supra* note 61, at 141. In 1991, the President of Zimbabwe declared a "war on AIDS." SECOND FIVE-YEAR NATIONAL DEVELOPMENT PLAN, 1991-1995, *supra* note 84, foreword.
256. LOWENSON ET AL., *supra* note 92, at 30.
257. *Zimbabwe AIDS Fight Gets \$64 Million Loan*, CHI. TRIB., June 22, 1993, at 10. This was the largest amount the World Bank had given to any African country for the prevention of sexually transmitted disease. *Id.*
258. Ray et al., *supra* note 245, at 77-78.
259. *Healers Call to Modify Zimbabwean Traditional Practices*, AFRICA NEWS, July 1995, available in LEXIS, World Library.
260. LOWENSON ET AL., *supra* note 92, at 30.
261. In addition, home-based care has been the "prescribed treatment protocol" for AIDS in Zimbabwe. Paul Taylor, *AIDS Overwhelming Zimbabwe's Advanced Defenses*, WASH. POST, April 12, 1995, at A1.
262. *Zimbabwe Lacking Political Will to Curb AIDS*, AFRICA NEWS, June 1995, available in LEXIS, World Library.
263. *See* Stewart et al., *supra* note 126, at 169.
264. Amendment No. 14 to the Constitution established gender as an impermissible ground for discrimination. However, Amendment No. 14 also reversed recent gains concerning the citizenship rights of married women, and removed substantive rights guarantees that had been implicit in the constitutional text. ZIMB. CONST. AMENDMENT, No. 14 (1996) (unpublished departmental draft, on file with The Center for Reproductive Law and Policy); telephone interview with Luta Shaba, *supra* note 21.
265. ZIMB. CONST. § 23(5)(b), as amended by ZIMB. CONST. AMENDMENT, No. 14, § 9(1)(d) (1996).
266. *Id.* § 23(5)(c), as amended by ZIMB. CONST. AMENDMENT, No. 14 § 9(1)(d) (1996).
267. Legal Age of Majority Act, ch. 8:07.
268. *Id.* § 3. In *Katekwe v. Muchabaiwa*, 1984 ZLR 112, 128 (1984), the court stated that the purpose of the Legal Age of Majority act was "the liberation of African women from the legal disadvantages of perpetual minority."
269. NCUBE, *supra* note 31, at 156; Stewart et al., *supra* note 126, at 170.
270. KNOW YOUR RIGHTS: THE LEGAL AGE OF MAJORITY 4 (undated pamphlet produced by Legal Resources Foundation, on file with The Center for Reproductive Law and Policy).
271. Legal Age of Majority Act, ch. 8:07, § 3(3).
272. Customary Law & Local Courts Act, ch. 7:05, § 4.
273. *See* Customary Marriages Act, ch. 5:07, § 2 (defining customary marriage to be "a marriage between Africans").
274. *Id.* § 1(b).
275. *Id.* § 3(5).
276. *See* NCUBE, *supra* note 31, at 138.
277. Traditionally, payment of a bridewealth (*roora* or *lobolo*) signified a transfer of rights in the woman and her children, including the man's sexual right to the "labour value" of the woman. Fareda Banda, *The Provision of Maintenance for Women and Children in Zimbabwe*, 2 CARDOZO WOMEN'S L.J. 71, 72 (1995); JOAN MAY, ZIMBABWEAN WOMEN IN CUSTOMARY AND COLONIAL LAW 48 (1983).
278. Banda, *supra* note 277, at 72.

279. Customary Law & Local Courts Act, ch. 5:07, §§ 7(1)(b), 15.
280. JOAN MAY, *CHANGING PEOPLE, CHANGING LAWS* 56 (1987).
281. NCUBE, *supra* note 31, at 135; cf. CUTSHALL, *supra* note 36, at 57.
282. Marriage Act, ch. 5:11.
283. NCUBE, *supra* note 31, at 138, 145-46. Parties who are mentally incompetent or under duress are incapable of consenting. *Id.* at 145.
284. *Id.* at 153.
285. See NCUBE, *supra* note 31, at 137. Although the Customary Marriages Act requires that customary law govern the formation of civil marriages between Africans, section 12 (1) (mandating guardian consent and payment of a bridewealth) of the Customary Marriages Act was repealed by implication for women over the age of eighteen by the Legal Age of Majority Act. *Id.* at 143; see also KNOW YOUR RIGHTS: THE LEGAL AGE OF MAJORITY, *supra* note 270, at 13.
286. NCUBE, *supra* note 31, at 147.
287. *Id.*
288. *Id.*
289. Maintenance Act, ch. 5:09, § 6(3)(a)-(b); See NCUBE, *supra* note 31, at 156. An order for maintenance has the same effect as a civil judgment. WOMEN AND LAW IN SOUTHERN AFRICA RESEARCH PROJECT, MAINTENANCE IN ZIMBABWE 33 (1991).
290. Maintenance Act, ch. 5:09, § 6(2)(b), (4). However, courts will not consider any unwillingness to work, unemployment because of repeated misconduct, or the presence of unreasonable debts in the assessment of maintenance responsibility. *Id.* § 23(4).
291. *Id.* §§ 4, 6; see also Children's Protection and Adoption Act, ch. 5:06, § 50 (authorizing contribution orders for maintenance of a child who is part of a juvenile court proceeding); Guardianship of Minors Act, ch. 5:08, § 5(5); Maintenance Orders (Facilities for Enforcement) Act, ch. 5:10. Failure to comply with a maintenance order is a punishable offense for omitted payments does not preclude later prosecution. Maintenance Act, ch. 5:09, §§ 23-24.
292. Maintenance Act, ch. 5:09, § 10.
293. *Id.* § 11(1), (3).
294. Matrimonial Causes Act, ch. 5:13, § 2(1).
295. See NCUBE, *supra* note 31, at 135 (citing *Tinga v. Shekeda*, 1970 AAC30). However, pursuant to the Maintenance Act, courts may make orders for spousal and child maintenance at the dissolution of an unregistered marriage. See Maintenance Act, ch. 5:09, § 6(3)(a), (b).
296. Matrimonial Causes Act, ch. 5:13, § 4. The statute provides several examples of "irretrievable break-down." *Id.* § 5(2)(d). However, it is unclear if these examples are merely guidelines or if the statute requires courts to grant a divorce in such situations. NCUBE, *supra* note 31, at 214.
297. Matrimonial Causes Act, ch. 5:13, § 5(1). "Irretrievable break-down" also refers to the marital rights and duties under the common law, including the duties of companionship, fidelity, and love. For example, a long-term separation, including the long-term imprisonment or "habitual" criminality and imprisonment of a spouse, may be relevant to show that the marriage has broken down. *Id.* § 5(2)(a), (c); NCUBE, *supra* note 31, at 212 n.59.
298. Matrimonial Causes Act, ch. 5:13, § 5(2)(d). The common law concept of cruelty encompasses "grave conduct which has caused or is likely to cause danger to the life, limb or health, physical or mental, of the other party." NCUBE, *supra* note 31, at 220.
299. Matrimonial Causes Act, ch. 5:03, § 5(2)(b); See NCUBE, *supra* note 31, at 218.
300. Matrimonial Causes Act, ch. 5:03, § 13(1).
301. *Id.* § 7. This provision also grants the court power over the property of a spouse that is held by a third party. *Id.* § 7(2)(a).
302. *Id.* § 7(3). Communal lands would presumably belong to the male kin group.
303. Matrimonial Causes Act, ch. 5:03, § 7(4)(a)-(b), (e)-(g). Other considerations include the particular history of marital relations. See NCUBE, *supra* note 31, at 176-180 (discussing direct contributions to the family).
304. NCUBE, *supra* note 31, at 210.
305. Matrimonial Causes Act, ch. 5:03, § 7(4).
306. *Id.* § 8.
307. *Id.* § 10(2).
308. Guardianship of Minors Act, Ch. 5:08, § 4; Customary Law & Local Courts Act, ch. 7:05, § 5.
309. The high court of Zimbabwe may make a custody decision upon the petition of either of the parents; the act affirms the legal capacity of women to make such an application without assistance. *Id.* § 4(7). After awarding custody, a juvenile court may make any additional orders regarding maintenance and access to the child as required under the settlement agreement. *Id.* § 5(3)(d).
310. See MAY, *supra* note 280, at 75 (noting that women cannot be guardians).
311. Children's Protection and Adoption Act, ch. 5:06, §§ 14, 16.
312. Guardianship of Minors Act, ch. 5:08, §§ 6(7), (8), 7(3), 8(1). Orders transferring custody may be enforced by the police; furthermore, the Guardianship Act authorizes the use of reasonable force to effect any court provisions. *Id.* § 7(2).
313. Legal Age of Majority Act, ch. 8:07; see also Stewart et al., *supra* note 126, at 170.
314. However, in unregistered customary marriages, a husband's claims in his wife's property are not legally enforceable. NCUBE, *supra* note 31, at 167.
315. See NCUBE, *supra* note 31, at 171. Rural women rarely acquire *mavoko* property. Furthermore, it is often difficult for a woman to prove that property is part of her *mavoko*. *Id.* at 171-72.
316. Immovable Property (Prevention of Discrimination) Act, ch. 8:12.
317. Customary law does not govern disputes over rights to own immovable property. See NCUBE, *supra* note 31, at 166; WHITE PAPER ON MARRIAGE AND INHERITANCE IN ZIMBABWE 3 (Republic of Zimbabwe 1993).
318. Immovable Property (Prevention of Discrimination) Act, ch. 8:12, § 3(1)(a), (b). In addition, a 1991 amendment to the Deeds Registries Act repealed a provision requiring married women to disclose their marital status and to provide their husband's name on all registered deeds and documents. Deeds Registries Act, No. 2 (1991), summarized in 18 ANN. REV. OF POPULATION L., 1991, at 112 (Reed Boland & Jan Stepan eds., 1993).
319. Immovable Property (Prevention of Discrimination) Act, ch. 8:12, § 6(1).
320. *Id.* § 5(1)(a), (d).
321. COMMUNAL LAND ACT, No. 20, § 8(2) (1982).
322. See Janet M. Sawaya, *Rights Education as a Means of Economic Empowerment for Women in Sub-Saharan Africa*, 2 GEO. J. ON FIGHTING POVERTY 329, 342 (1995), available in WEST-LAW. Communal land is allocated by the government for individual use through the issuance of permits. Over 50% of the population in Zimbabwe live on communal land; 82% of inhabitants are women and children under the age of 14. *Id.*
323. Resettlement permits may be issued to male or female heads of households. See Rural Land and District Councils Act, ch. 29:13. However, only a small percentage of permits are issued to women. WOMEN & LAND RIGHTS IN RESETTLEMENT AREAS IN ZIMBABWE 3, 10 (undated pamphlet produced by Women and Law in Southern Africa Research Trust-Zimbabwe (WLSA), on file at The Center for Reproductive Law and Policy); Sawaya, *supra* note 322, at 343. Government policy on disposition of resettlement land is determined by the Minister of Local Government, Rural and Urban Development. WOMEN & LAND RIGHTS IN RESETTLEMENT AREAS IN ZIMBABWE, *supra* note 323, at 10.
324. WOMEN & LAND RIGHTS IN RESETTLEMENT AREAS IN ZIMBABWE, *supra* note 323, at 3. Women also experience discrimination in the allocation of credit assistance in connection with resettlement expenses. LOWENSON et al., *supra* note 92, at 36.
325. WOMEN & LAND RIGHTS IN RESETTLEMENT AREAS IN ZIMBABWE, *supra* note 323, at 5. Under most customary law regimes, women may own livestock and have the right to use grazing land for their animals. In addition, a husband traditionally allocated a field to his wife for her own use and control. *Id.* at 4-5.
326. Wills Act, ch. 6:06, § 4(1).
327. Administration of Estates Act, ch. 6:01.
328. *Id.* § 69(1), quoted in NCUBE, *supra* note 31, at 191. The general law governs intestate rights in immovable property. See NCUBE, *supra* note 31, at 193-94.
329. Customary Law & Local Courts Act, ch. 7:05, § 3; see also Julie Stewart & Welshman Ncube, *Legal and Cultural Framework of Succession in Zimbabwe*, in WORKING PAPERS ON INHERITANCE LAW IN SOUTHERN AFRICA 100, 117 (1992). Consent for the choice of law may be express or implied from the individual's manner of living, including entry into a civil marriage. See *Mujawo v. Chogugudza*, 1992 (2) ZLR 321, 328.
330. Stewart & Ncube, *supra* note 329, at 119. The personal belongings of a woman generally consist of her clothes and blankets. *Id.*
331. *Id.* at 119.
332. *Id.*; WHITE PAPER ON MARRIAGE AND INHERITANCE IN ZIMBABWE, *supra* note 317, at 2.
333. Stewart & Ncube, *supra* note 329, at 119.
334. *Id.*
335. LOWENSON ET AL., *supra* note 92, at 35.
336. Chihova v. Mangwende, S.C. 84/1987, summarized in 15 ANN. REV. OF POPULATION L., 1988, at 174 (Reed Boland & Jan Stepan eds., 1991); see also NCUBE, *supra* note 31, at 195-96; Stewart & Ncube, *supra* note 329, at 118. Traditionally, the eldest son was the preferred heir. *Vareta v. Vareta*, S.C. 126/90, Civ. App. No. 452/89, at 8 (unpublished case July 31 & Sept. 13, 1990) (dicta citing *Muhango v. France* 1940 SRN 100).
337. Stewart & Ncube, *supra* note 329, at 120-21.
338. *Id.* at 121; Telephone interview with Luta Shaba, *supra* note 21.
339. Deceased Estates Succession Act, ch. 6:02.
340. NCUBE, *supra* note 31, at 190.
341. Deceased Estates Succession Act, ch. 6:02, § 3. For marriages in community of prop-

- erty, intestate succession follows the dissolution of the joint estate; as in other forms of civil marriage, the surviving spouse is the primary beneficiary. WHITE PAPER ON MARRIAGE AND INHERITANCE IN ZIMBABWE, *supra* note 317, at 1.
342. Deceased Persons Family Maintenance Act, ch. 6:03, § 3. Dependents entitled to receive maintenance from an estate include the surviving spouse, a divorced spouse receiving maintenance by court order, dependent parents and children. See also Stewart & Ncube, *supra* note 329, at 122 (noting that it would be consistent with case law to allow maintenance claims by the surviving spouses of unregistered customary unions).
343. Deceased Persons Family Maintenance Act, ch. 6:03, § 10(1). The penalty for interference with the exercise of these rights is a fine up to Z\$2,000 (approximately U.S.\$190) or imprisonment for up to two years, or both. *Id.* § 10(2). In addition, a surviving spouse may apply for a spoliation order to regain possession of property or to assert an occupancy right. Julie Stewart, *The Widows Lot — A Remedy?: The Application of Spoliation Orders in Customary Succession*, 1 & 2 ZIMB. L. REV. 72, 73 (1983-84).
344. Labour Relations Act, ch. 28:01 § 5.
345. *Id.*, preamble. Most Zimbabwean women are employed in unskilled, non-union positions; consequently, statutory regulations are the primary determinants of working conditions for the majority of women in Zimbabwe. WiLDAF, *supra* note 6, at 11. Customary law does not affect workers rights. *Id.* at 12.
346. General Law Amendment Act, ch. 8:07, § 12.
347. WiLDAF, *supra* note 6, at 11.
348. Labour Relations Act, ch. 28:01, § 5(1).
349. *Id.* § 5(7)(a)(ii).
350. *Id.* § 5(3).
351. *Id.* § 5(4).
352. *Id.* § 18(3). A woman requesting maternity leave must furnish to her employer a certificate signed by a registered medical practitioner or state registered nurse certifying that she is likely to give birth within 45 days. *Id.* § 18(1). With proper certification, a woman may extend her leave indefinitely without pay. *Id.* § 18(2)(ii). Regulations providing maternity leave for female public servants are slightly different. See Public Services (Conditions of Services for Employees) (Amendment) Regulations, No. 26, §§ 7, 52A(2),(3),(4),(6), 52B (1989), reproduced in 16 ANN. REV. OF POPULATION L., 1989, at 483 (Reed Boland & Jan Stepan eds., 1992); District Councils (Conditions of Service) (Amendment) Regulations, S.I. 246 (1984), cited in 12 ANN. REV. OF POPULATION L., 1985, at 106 (Reed Boland & Jan Stepan eds., 1988) (providing maternity leave for women employed by the district councils).
353. Labour Relations Act, ch. 28:01, § 18(1)(a), (b).
354. *Id.* § 18(1)(b)(ii).
355. *Id.* § 18(3).
356. *Id.* § 18(4). A woman may combine this period with any of her other breaks; however, an employer may also require that these periods do not disrupt normal business. In addition, most employers do not provide child care facilities, making it difficult for women to exercise this right. See Stewart et al., *supra* note 126, at 204.
357. LOWENSON ET AL., *supra* note 92, at 29.
358. *Id.*; see also Hazardous Substances Act, ch. 15:05 § 47(2)(a)(vii). Although the MHCW is empowered to regulate working conditions for pregnant women pursuant to the Factories and Works Act, no regulations have been issued.
359. Immovable Property (Prevention of Discrimination) Act, ch. 8:12, § 4; see also *id.* § 2 (defining “financial organizations” to be any organization registered under the Banking Act, ch. 188, the Building Societies Act, ch. 189, and the Insurance Act, No. 27 (1987)).
360. WiLDAF, *supra* note 6, at 14.
361. *Id.* at 14-15.
362. Education Act, No. 5 § 4 (1987). This section also regulates school admissions policies, but does not include gender as an impermissible ground for discrimination. *Id.* § 4(2). The provisions of the education act do not apply to the University of Zimbabwe or such other schools as may be exempted by the Minister of Education. *Id.* § 3.
363. *Id.* § 10; see also Stewart et al., *supra* note 126, at 200.
364. WiLDAF, *supra* note 6, at 13.
365. University of Zimbabwe Act, ch. 25:16, § 5(1).
366. Customary law does not govern criminal offenses. Stewart et al., *supra* note 126, at 209.
367. FELTOE, *supra* note 199, at 120. Males under the age of 14 are presumed incapable of sexual intercourse, but may be prosecuted for the crimes of assault or indecent assault. *Id.* at 121.
368. *Id.* at 122.
369. *Id.*; see Stewart et al., *supra* note 126, at 210.
370. Intercourse between a married couple, lacking a judicial order for separation or divorce, is presumed to be consensual. FELTOE, *supra* note 199, at 120; see also NCUBE, *supra* note 31, at 147 (stating that refusal to consummate a marriage may be a ground for annulment).
371. FELTOE, *supra* note 199, at 121.
372. See Criminal Procedure and Evidence Act, ch. 7:04, § 199 (providing for a conviction of assault with the intent to inflict grievous bodily harm following a charge of rape or assault with the intent to commit rape if facts are proven).
373. FELTOE, *supra* note 199, at 55, 59.
374. *Id.* at 59.
375. *Id.* at 124. A woman may introduce any “immediate complaint” she may have made as evidence of her lack of consent. However, the Zimbabwean courts have often interpreted this rule to require that an immediate complaint support a rape charge. Stewart et al., *supra* note 126, at 213.
376. FELTOE, *supra* note 199, at 124. Evidence as to the character of the accused is also sometimes admissible. Criminal Procedure and Evidence Act, ch. 7:04, § 245 (stating that such evidence is permitted only if it is considered admissible “in any similar case depending in the Supreme Court of Judicature in England”).
377. Criminal Procedure and Evidence Act, ch. 7:04, §§ 186A(1), 360(1), (2).
378. LOWENSON ET AL., *supra* note 92, at 14-15; see also Stewart et al., *supra* note 126, at 213-14.
379. See LOWENSON ET AL., *supra* note 92, at 19 (discussing how general law is usually not enforced in domestic violence cases).
380. Ministry of Health & Child Welfare, *supra* note 63, at 26; telephone interview with Luta Shaba, *supra* note 21.
381. Criminal Procedure and Evidence Act, ch. 7:04, § 361(1).
382. *Id.* § 361(3)(a).
383. *Id.* § 361(5), (7), (9).
384. Mary Maboreke, *Violence against Wives: A Crime sui generis*, 4 ZIMB. L. REV. 88, 95 (1986). Women may receive compensation for medical expenses. KNOW YOUR RIGHTS: DOMESTIC VIOLENCE 17 (undated pamphlet produced by Legal Resources Foundation, on file at The Center for Reproductive Law and Policy); see also ALICE ARMSTRONG, VIOLENCE AGAINST WOMEN IS AGAINST THE LAW 14 (1989) (noting that it is often difficult to obtain such awards without visible injuries or evidence of medical expenditures).
385. Matrimonial Causes Act, ch. 5:12, § 5(2)(d) (providing for judicial separation or divorce on the ground of mental or physical cruelty); see also NCUBE, *supra* note 31, at 220.
386. Maboreke, *supra* note 384, at 90. However, this method of social dispute resolution has not been effective within the modern social organization of Zimbabwean families. ARMSTRONG, *supra* note 384, at 7.
387. MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 26.
388. *Id.* at 28.
389. LOWENSON ET AL., *supra* note 92, at 16 (citing Zimbabwe Public Service Regulations of 1988). Although sexual harassment constitutes an act of misconduct for public service employees, these regulations are not well-enforced. *Id.*
390. IRED, *supra* note 30.
391. FELTOE, *supra* note 199, at 59. For further discussion of the crime of indecent assault, see *infra* section on rape.
392. FELTOE, *supra* note 199, at 59.
393. Stewart et al., *supra* note 126, at 210.
394. FELTOE, *supra* note 199, at 71. The crime encompasses any insulting, degrading, offensive or humiliating treatment that infringes upon the right to “self-respect, mental tranquility and privacy.” *Id.*
395. *Id.* at 72. If the charge of *criminal injuria* involves an accusation of sexual impropriety, the act committed must be corroborated.
396. *Id.*
397. ZIMBABWE DEMOGRAPHIC & HEALTH SURVEY 1994, *supra* note 61, at 2 (citing 1992 census).
398. LAZARUS ZANAMWE, YOUTH SEXUALITY AND REPRODUCTIVE HEALTH: A REVIEW OF LITERATURE AND YOUTH PROGRAMMES IN ZIMBABWE vi (1995).
399. *Id.* at vii.
400. MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 60.
401. ZANAMWE, *supra* note 398, at 94.
402. FELTOE & NYAPADI, *supra* note 97, 43-45, 68-69.
403. *Id.* at 70-72. There has been no case in Zimbabwe for a prosecution for the dispensation of contraceptives to minors without parental consent.
404. ZANAMWE, *supra* note 398, at 107; Stewart et al., *supra* note 126, at 198. However, the ZNFPC dispenses contraceptives to teenage girls under the age of 16 who have already had a child. IMPLEMENTING ICPD AND BEIJING: WOMEN’S HEALTH IN ZIMBABWE, *supra* note 242 at 4.
405. NCUBE, *supra* note 31, at 137 n.12.

406. Marriage Act, ch. 5:11, §§ 20(2), 22(1); see NCUBE, *supra* note 31, at 149. This provision does not apply to girls under the age of 18 who have previously contracted a valid marriage. Marriage Act, ch. 5:11, § 20(4).
407. Customary Marriages Act, ch. 5:07, § 11(1). An earlier version of this act (the African Marriages Act, ch. 238 (1951)) expressly prohibited the pledging of girls under the age of 12.
408. Customary Marriages Act, ch. 5:07, §§ 4(2), (3), 7(1). The Customary Marriages Act does not specify who must pay or who is to receive the marriage consideration. This provision does not apply to women over the age of 18 and women who have previously married. NCUBE, *supra* note 31, at 136, 145 (citing *Katekwe v. Muchabaiwa* SC 87/84).
409. Customary Marriages Act, ch. 5:07, § 12.
410. WILDALF, *supra* note 6, at 14; LOWENSON ET AL., *supra* note 92, at 39.
411. LOWENSON ET AL., *supra* note 92, at 39. Since 1991, the Ministry of Education has received advice on policy and programming from a National Education Advisory Board and regional advisory boards, composed of representatives from local authorities, church organizations and business and industry. Education Amendment Act, No. 26, § 8 (1991) (to be inserted in Education Amendment Act, No. 5, at § 28B, 28H) (1989).
412. WILDALF, *supra* note 6, at 14.
413. *Id.* at 13. For every ten scholarships disbursed per province, the Ministry of Education awards seven to female candidates. *Id.*
414. LOWENSON ET AL., *supra* note 92, at 39-40; see also HOW TO USE THE SOCIAL DEVELOPMENT FUND FOR EDUCATION (undated pamphlet produced by the Zimbabwe Women's Resource Centre and Network on file at The Center for Reproductive Law and Policy).
415. Stewart et al., *supra* note 126, at 201.
416. The Education Act empowers the Minister of Education to make regulations providing for, *inter alia*, "the temporary exclusion from any school or college of any teacher, pupil or student, and any other measures necessary or desirable to preserve the well-being of teachers, pupils or students." Education Act, No. 5, § 62(2)(l) (1987).
417. WILDALF, *supra* note 6, at 13. Returning students are transferred to different schools in order to facilitate their return to student life.
418. *Id.*
419. *Id.*
420. LOWENSON ET AL., *supra* note 92, at 14; ZANAMWE, *supra* note 398, at 2; MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 61. The new curricula has been used with children as young as eight years old. LOWENSON ET AL., *supra* note 92, at 14.
421. ZANAMWE, *supra* note 398, at 2; MINISTRY OF HEALTH & CHILD WELFARE, *supra* note 63, at 61.
422. Criminal Law Amendment Act, ch. 9:50, § 3(a)-(b) (1986). To be convicted under the Criminal Law Amendment Act, the accused must be over the age of 16. See *Id.* § 3(i)(b).
423. *Id.* § 3(i)(a).
424. *Id.* § 3. In assessing a sentence for the crime of statutory rape, a court may consider, *inter alia*, the victim's loss of educational prospects. *S v. Chuma*, 1983 ZLR 372, 375 (1983).
425. Criminal Law Amendment Act, ch. 9:50, § 12.
426. FELTOE, *supra* note 199, at 122. Girls under the age of 12 are presumed incapable of consenting to sexual intercourse. *Id.*
427. U.S. Dep't. of State, *supra* note 26.
428. Stewart et al., *supra* note 126, at 214; see *State v. Mwale*, HC-H-11-87, CRB 12371/85 (unreported case Jan. 14, 1987).
429. Stewart et al., *supra* note 126, at 214.