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# **Legislative Framework Around Cyber Bullying Of Women in Zimbabwe**

## **Introduction**

Having described how cyberbullying happens and the effects it has on women and society, it is important to analyse the protections that are given to women under Zimbabwe's legal framework. This chapter explores the legislative framework that surrounds the cyberbullying of women. It will analyse and describe the various international treaties that are applicable to Zimbabwe, customary international law and domestic legislation and case law. The chapter will illustrate the domestic and international obligations Zimbabwe has in terms of protecting women from cyber violence as well as protect freedom of expression. The gaps that exist in Zimbabwe's legislative framework will be revealed. The Chapter reveals that the Constitution provides for equality and non-discrimination for women in all areas. Direct and indirect discrimination is prohibited, providing women an equal opportunity in all spheres. The Constitution establishes institutional mechanisms for the advancement of women's rights by way of the Gender Commission and Human Rights Commission. The chapter then notes shortcomings of the legislative framework of Zimbabwe provisions in the rights to education. The scholar will prove that whilst Zimbabwe has made strides in international agreements that prohibit gender based violence, it still has a long way to go when it comes to according adequate protection of women from the scourge of cyberbullying.

## **International Treaties**

### **Status of International Law under Zimbabwe's legal system**

Zimbabwe is a monist state. What this means is that international treaties become part of the domestic laws upon ratification and approval by Parliament, through virtue of section 327(2)(b) of the Zimbabwean Constitution. Enabling legislation is required is thus, required. Zimbabwe also has a constitutional obligation to ensure that all international conventions, treaties, and agreements to which it is party are incorporated into domestic law. This is inclusive of all treaties and agreements related to gender based violence against women.

### **Convention on the Elimination of Discrimination Against Women**

This by far represents the most important and comprehensive international instrument for ending gender violence against women. Zimbabwe ratified this treaty in 1991 but, is yet to domesticate the treaty. It is submitted that domestication of CEDAW would offer more protections for women from the harms of cyberbullying. Article 18 of the Banjul Charter requires states to ensure the elimination of every discrimination against women and ensure the protection of the rights of women. CEDAW defines discrimination as, "discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

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## Customary International Law

According to section 326(1) of the Constitution, customary international law is a part of the law of Zimbabwe in so far as it is consistent with the Constitution or an Act of Parliament. Section 326(2) goes on to state that, 'When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation inconsistent with that law'. According to the United Nations, opinio juris and State practice suggest that the prohibition of gender based violence against women has evolved into a principle of customary international law. This can be evidenced by the adoption of certain instruments such as the 1993 UN Declaration on the Elimination of Violence against Women and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Article 19 of the Universal Declaration of Human Rights, binding on all States as a matter of customary international law, proclaims the right to freedom of expression in the following terms: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek to receive and impart information and ideas through any media regardless of frontiers. It can be argued that, under international and customary international law, Zimbabwe has strong legal obligations to prevent and prohibit cyberbullying of women as it is a form of gender based violence.

## Domestic Framework

### Constitutional Provisions that directly address cyberbullying

#### Preamble and Founding Provisions

The Constitution stipulates that Zimbabwe is founded on the principles and values of fundamental human rights and freedoms, recognition of the inherent dignity and worth of each human being, recognition of the equality of all human beings and gender equality.

#### Gender Equality Provisions

The equality and non-discrimination provision is a mirror reflection of article 1 of CEDAW. Section 56 provides the right to equality and freedom from discrimination. Section 56(1) provides that, 'All persons are equal before the law and have the right to equal protection and benefit of the law'. Section 56(2) provides that, 'Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. The recognition of this right is important as cyberbullying prevents women from accessing equal opportunities in political, economic, cultural and social spheres on the same basis as men.

Section 17(1), reads that, 'the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men'. Chapter 1, illustrated the nexus between cyberbullying and the prevention of women from participating fully in society. Section 17(1) shows, that there exists a constitutional obligation upon the State to ensure that this is prevented.

#### b) Legal Aid

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Most often, female victims are unable to pursue civil remedies against their perpetrators. It is submitted that section 31 implies an obligation upon the State to assist female victims of cyberbullying who are unable to afford legal representation. Legal aid is particularly important in situations where there is unequal power in terms of socio-economic status in favour of the perpetrator.

## **Domestication of international instruments**

Section 34 stipulates the constitutional obligation on the State to domesticate all treaties and international agreements that Zimbabwe is party to. Zimbabwe is still yet to domesticate the most important treaty in relation to the protection of women's rights, which is CEDAW.

## **Right to human dignity**

The right to dignity is provided under section 51 of the Constitution. The full wording reads, 'Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected'. Thus, Zimbabwe's Constitution contains provisions that protect women's right to dignity. Since the violation of human dignity is one of the effects of cyberbullying, the State, once again, has a constitutional mandate to protect women.

## **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

Section 17(1) stipulates that, 'No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment'. It is submitted that cyberbullying of women violates this fundamental right. As discussed in Chapter 2, cyberbullying is tantamount to torture upon victims.

## **Right to privacy**

The Constitution provides the right to privacy for all individuals and explicitly states that no one should have the privacy of their communications infringed. The provision is imperative in the context of cyberbullying through the forms such as revenge porn. It is submitted that nude pictures or videos of women qualify to be protected under this provision. The provision also brings into question the extent through which law enforcement authorities can violate the privacy of the communications of alleged suspects of cyberbullying during investigations. This is important as it is difficult to track down and unmask perpetrators.

## **Rights of women**

This provision is an elaboration of some of the rights found in the Constitution. Section 80(1) stipulates that, 'Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities'.

## **Zimbabwe Gender Commission**

Section 245 provides for the establishment of the Zimbabwe Gender Commission. Section 246

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states that the function of the Commission in relation to gender. These include:

1. The monitoring of gender equality issues
2. Investigating possible violations of rights related to gender
3. Conducting research on gender issues and recommending changes to laws and practices which lead to discrimination based on gender
4. To advise public and private institutions on steps to be taken to ensure gender equality
5. To recommend prosecution for criminal violations of rights related to gender
6. To do everything necessary to promote gender equality.

## **Work of the Commission in relation to Cyber Bullying**

The Commission released its first ever report which indirectly dealt with cyberbullying in its Preliminary Election Report on the 2018 Harmonised Elections. The report indicated that there was prevalent conscious targeting of women as voters, candidates and election officials through cyber bullying. The report recommended that in future elections, political parties, supporters and the public should desist from gender based violence inflicted through cyber bullying.

Although the Commission can be applauded for recognising the effect of cyber bullying of women during the recent elections, it is submitted that it could have done better. The report did not state how cyber bullying affects the full participation of women in politics in general. Also, the Commission has not performed its constitutional mandate of conducting research on gender based violence perpetrated against women through cyber bullying.

## **Legislation Criminal Law (Codification and Reform) Act**

The Criminal Law Code does partially cover some of the forms of cyberbullying. For the perpetration of cyberbullying through happy slapping, one can be prosecuted under the crime of assault under section 89 of the Code. Section 89(1)(b) includes threatening to assault someone as part of the crime of assault. This can be said to cover instances of threats to assault women on social media as the provision does not qualify the medium through which such threats should occur. The crimes listed only relate to computer offences of unauthorised access and use of computer related manipulation. The Code however, fails to deal with the question of how to bring perpetrators of cyberbullying to book or how to bring prosecution for libel. There is no mention of crimes related to cellular phones. This is important because most cyberbullying is conducted through the use of mobile devices such as cellular phones.

## **Postal and Telecommunications Act**

The Telecommunications Act outlaws the publication of defamatory statements in section 88(b). Section 88(c) makes it an offence to make annoying calls and messages. This might cover cyberbullying carried out through texts messages such as sexting. However, the main challenge is identifying the perpetrator. Thus, even if victims report the crime, it is useless if the culprit cannot be identified.

Also, the Telecommunications Act is not up to date with modern advances in communications. It mentions the use of offences committed using telegrams, which are communication channels which are outdated if not redundant. It does not capture the vast number of modern

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communications devices used to commit cyber bullying such as smart devices.

## **Case Law dealing with cyberbullying of women**

### **Elton Makumbe case**

The Elton Makumbe case was the first cyberbullying case in Zimbabwe. The case showed the difficulty with which law enforcement officials and prosecution authorities face when handling cyber bullying offences. Although the case dealt with teenagers, the case had the hallmarks of online gender based violence against females. The victim was a female and the culprit male. The culprit snapped a picture of the victim and captioned it with the words, "This is a typical Chiredzi prostitute", and posted the picture on Facebook. The State struggled to prosecute the culprit and the magistrate eventually convicted him under a different offence under the Criminal Law Code. The facts of the Mushunje case show how false and highly defamatory information published on a social media website can spread like wildfire and do enormous damage to the reputation of a person. The case also demonstrated how difficult it is to identify perpetrators of cyberbullying. The applicant in this case, was a model who was accused of injecting her boyfriend's child with HIV positive blood, making the child drink her urine and physically abusing him. The said allegations were circulated via social media and eventually found their way on the internet and were reported by several international online news sites. Although the case dealt with mostly the publication of false news, the case also involved cyberbullying. The female victim suffered immense damage to her reputation, as well as her career prospects.

### **Conclusion**

This chapter examined constitutional and statutory provisions on the rights of women in health, education, labour. It provided a brief comparative analysis of the Zimbabwean Constitution using the ACHPR protocol and CEDAW as an analytical framework with a view to establishing best practice and strengthening constitutional rights of women in the said areas. The Zimbabwean Constitution provides a platform for fulfilling and protecting women's rights. The Constitution provides for equality and non-discrimination for women in all areas. It also prohibits direct and indirect discrimination, providing women an equal opportunity in all spheres. Zimbabwe is till yet to domesticate CEDAW in its entirety.

There is no specific legislation that deals with cyberbullying at all in Zimbabwe. The Constitution grants the right to privacy, but does not provide adequate rules of discovery regarding the evidence brought forward by victims of revenge pornography. Civil remedies such as defamation lawsuits are ineffective in stopping the circulation of already defamatory material circulating online. It is also difficult, if not impossible to prosecute or track down cyber bullies from different jurisdictions.

The Zimbabwe Gender Commission has not been actively carrying out its constitutional mandate in respect of investigating and formulating proposals to deal with the issue of cyber bullying.