

A MODEL GENDER EQUALITY BILL AND MEMORANDUM OF PRINCIPLES



This Model Gender Equality Bill and its Memorandum of Principles were developed by Institute for Young Women Development (IYWD), Wqomen and Law in Southern AFRICA (wlsa) and the Zimbabwe Gender Commission (ZGC) in consultation with communities, community based and civil society organisations, government agencies and legal experts.

GENDER EQUALITY BILL, 2021

EXPLANATORY MEMORANDUM

Gender inequality poses a serious threat towards the enjoyment of rights by women, men, boys and girls. This Bill seeks to address the inequalities existing as a result of different gender. It further seeks to protect the rights of all persons regardless of their gender. Gender equality is one of the best strategies for human rights protection. The Bill also seeks to provide for gendered electoral provisions. This is to ensure that men and women enter the electoral space on an equal footing. Gender equality is a key strategy for the development of any nation. Allowing greater number of women to participate will enable women to have increased voice in matters that affect themselves. In turn, this will improve the human rights of women and will open up more democratic space for women. In particular, the Bill provides as follows; —

Clause 1 provides for the short title of the Bill.

Clause 2 provides for the key gender issues including gender analysis, gender impact assessment, gender audit, gender stereotypes and gender equality among others.

Clause 3 provides for the objects of the Act. One of the key objects of the Bill is to promote gender equality which will in turn further improve the status of women. The bill also seeks to identify and eliminate all forms of barriers of gender equality.

Clause 4 provides for gender equality principles. Key among the gender equality principles includes the recognition that—

- every person must live in a safe and equal society; and
- Gender equality benefits everyone; and
- Gender equality is a precondition to social justice.

Clause 5 provides for the gender mainstreaming strategy. In terms of this clause, every public entity is required to have a Gender Unit.

Clause 6 in terms of this clause, every public entity, with the technical guidance from the gender unit, must carry out a gender impact assessment exercise to ascertain the impact of policies, laws and programs upon persons of different genders. A gender impact assessment is a useful tool for identifying gender gaps and gender inequalities.

Clause 7 provides for the development of the Gender Equality Action Plan by every public entity. This Action Plan provides a road map towards gender equality.

Clause 8 provides for workplace gender audit. In terms of this clause, before developing a gender equality action plan, every public entity must prepare a workplace gender audit. This will enable the workplace authorities to identify gender inequalities which may be a threat to gender equality.

Clause 9 provides for the submission of the Gender Equality Action Plan to the Commission at the end of each year. The Action Plan is also required to be published.

Clause 10 provides for the development and keeping of register of all Gender Equality Action Plans by the Commission.

Clause 11 provides for the amendment of the Gender Equality Action Plan by a Public Entity subject to the approval of the Commission.

Clause 12 provides for the application of the Act to public, private and civic sectors.

Clause 13 provides for the prohibition of discrimination based on sex and gender. In terms of this clause, it is also prohibited to order someone to commit a discriminatory act against another person. The clause also provides for affirmative action measures which must not be regarded as discrimination. It also provides for exemptions of the rule and the standard that should be met by the exemption.

Clause 14 provides for the prohibition of discrimination in employment unless where there are special reasons justifying such discrimination.

Clause 15 places an obligation upon the employer to provide an explanation to any aggrieved person who may demand an explanation for the case of suspected discrimination. This provision will go a long way in curbing cases of discrimination based on sex and gender which may arise at the workplace.

Clause 16 provides for the obligation of the supplier of goods and services to furnish with an explanation to any aggrieved person who may demand the explanation for the case of suspected discrimination in the supply of goods and services by the supplier concerned.

Clause 17 provides for the prohibition of offers of employment or training that favours persons of one sex.

Clause 18 provides for the practical steps that Government entities must take to eliminate discrimination including assessing all available gender data with view to achieve gender equality.

Clause 19 provides for the prohibition of discriminatory practices in all educational and vocational institutions. This will go a long way in promoting achievement of educational opportunities between people of different genders.

Clause 20 provides for the employer's duty to promote gender equality in all areas including hiring and promotion. The employer is also supposed to create an environment that will accommodate persons with family responsibilities and to take practical steps for the elimination of gender based harassment at the workplace. For purposes of this clause, every employer is required to keep a sex disaggregated data that may be used by the relevant authorities for assessing the level of compliance with gender equality.

Clause 21 places an obligation upon political parties to observe gender equality. In terms of this clause, every political party must submit, nine months before a general election, to the Zimbabwe Gender Commission and the Zimbabwe Electoral Commission its gender equality action plan.

Clause 22 provides for the obligation of media houses with respect to gender equality. In terms of this clause, every media house must promote a gender equality agenda. Further, media houses are prohibited from using the language that promotes the undermining of same sex persons.

Clause 23 provides for the issuance of the compliance notice by the Zimbabwe Gender Commission to a public entity which has failed to prepare the gender equality action plan in accordance with provisions of this Bill. The compliance notice may also be issued where the public entity has failed to submit the gender equality action plan to the Zimbabwe Gender Commission.

Clause 24 provides for the form and content of the compliance notice. In terms of this clause, the Zimbabwe Gender Commission must specify, among other issues, in its compliance notice, the detail for the public entity's nature of breach of the provisions of this Bill.

Clause 25 provides for the public entity's entitlement to the right of raising objections against the compliance notice. Where the public entity has decided to object to the compliance notice, it must raise such objections within fourteen days. Upon receiving the objections from the public entity concerned, the Zimbabwe Gender Commission may withdraw, amend or confirm the compliance notice.

Clause 26 provides for the actions that may be taken by the Zimbabwe Gender Commission where the public entity has failed to comply with the compliance notice. The Commission, among other steps, may accept a further undertaking by the public entity to comply with the compliance notice. The Commission may also approach the Minister or High Court seeking relief for the enforcement of the compliance notice. Gender equality has got various issues of human rights. Thus, High Court has got the ability to deal with human rights issues that may be brought before it by the Commission or any other person.

Clause 27 provides for the steps that may be taken by the Zimbabwe Gender Commission where the public entity has made an undertaking to the effect that it will comply with the compliance notice. If it is proved that the public entity has failed to comply with the undertaking, the Commission may approach the High Court for relief.

Clause 28 provides for the right to submit a complaint to the Commission where any person is alleging that an act of discrimination on the basis of gender or sex has occurred.

Clause 29 provides for the Commission's power to issue guidelines in order to ensure that the provisions of this Bill are complied with. Gender equality is an evolving concept. Allowing the Commission to issue guidelines will enable the Commission to deal with emerging issues in the area of gender.

Clause 30 provides for the offences that may be committed in terms of this Bill. Committing an act of discrimination on the basis of gender or sex is an offence prosecutable in terms of this clause.

Clause 31 provides for the appeal procedure. Any appeal against the decision of the Commission may be lodged with the High Court.

Clause 32 provides for Minister's power to make regulations for anything that the Minister may consider necessary or convenient to be promulgated by way of regulations.

GENDER EQUALITY BILL, 2021

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BILL

An Act to provide for the establishment of Gender Units by every ministry, agency, institution and other related structures in government; to provide for prohibition of discrimination based on sex and gender; to promote gender equality; and to provide for matters connected with or incidental to the foregoing.

WHEREAS section 17 of the Constitution of Zimbabwe provides as follows—

- (1) The State must promote full gender balance in Zimbabwean society, and in particular—
 - (a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
 - (b) the State must take all measures, including legislative measures, needed to ensure that—
 - (i) both genders are equally represented in all institutions and agencies of government at every level; and
 - (ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament;and
 - (c) the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men.
- (2) The State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies

AND WHEREAS it is desirable that an Act of Parliament make further provision in relation to gender equality:

NOW, THEREFORE, be it enacted as follows—

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Gender Equality Act [*Chapter:*].

2 Interpretation

In this Act—

“Commission” means the Zimbabwe Gender Commission established in terms of section 245 of the Constitution;

“direct discrimination based on sex” means—

- (a) A situation where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation; or
- (b) less favourable treatment of a person in connection with pregnancy and child-birth, parenting, performance of family obligations or other circumstances related to gender, as well as gender-based harassment and sexual harassment and less favourable treatment of a person due to rejection of or submission to harassment;

“equal treatment of men and women” means that there is no discrimination whatsoever based on sex, either directly or indirectly;

“gender” means the social meaning given to being either female or male in given society;

“gender analysis” means the systematic methodology for examining —

- (a) the differences in roles and norms for women and men, and boys and girls;
 - (b) the different levels of power held by women and men, and boys and girls;
 - (c) the differing needs, constraints and opportunities for women and men, and boys and girls;
- and the impact of these differences on their lives;

“gender audit” means gender audit undertaken under section 8;

“gender-based harassment” means a situation where unwanted conduct or activity related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment;

“gender equality” means gender equality as defined in terms of section 2 of the Zimbabwe Gender Commission Act [*Chapter 10:31*];

“Gender Equality Action Plan” means a Gender Equality Action Plan referred to in section 7;

“gender impact assessment” means an assessment undertaken under section 6;

“gender stereotypes” means the beliefs held about characteristics, traits and activity domains that are deemed appropriate for women, men, girls and boys based on their conventional roles both domestically and socially;

“indirect discrimination based on sex” means a situation where an apparently neutral provision, criterion, practice or activity would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion, practice or activity is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

“Minister” means Minister of Women’s Affairs, Community, Small and Medium Enterprises Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“public entity” has the meaning given to it in terms of section 2 of the Public Entities Corporate Governance Act [*Chapter 10:31*];

“sexual harassment” means a situation where any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment.

3 Objects of Act

(1) The objects of this Act are to—

- (a) to promote, encourage and facilitate the achievement of gender equality and improvement in the status of women; and
- (b) to support the identification and elimination of systemic causes of gender inequality in policy, programs and delivery of services in workplaces and communities; and
- (c) to recognise that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of age, disability, ethnicity, gender identity, race, religion and other attributes; and
- (d) to redress disadvantage, address stigma, stereotyping, prejudice and violence, and accommodate persons of different genders by way of structural change; and
- (e) to enhance economic and social participation by persons of different genders.

(2) To achieve these objects, this Act provides for—

- (a) the prohibition of discrimination on the grounds of sex and gender in the private and public sectors;
- (b) the obligation of state and local government authorities, educational and research institutions and employers to promote equality between men and women;
- (c) the right to claim compensation for damage.

4 Gender equality principles

(1) Every person must live in a safe and equal society, have access to equal power, resources and opportunities and be treated with dignity, respect and fairness.

(2) Gender equality benefits every person regardless of gender.

(3) Gender equality is a human right and precondition to social justice.

(4) Gender equality brings significant economic, social and health benefits for Zimbabwe.

(5) Gender equality is a precondition for the prevention of family violence and other forms of violence against women and girls.

(6) Advancing gender equality is a shared responsibility across the nation of Zimbabwe.

(7) All human beings, regardless of gender, should be free to develop their personal abilities, pursue their professional careers and make choices about their lives without being limited by gender stereotypes, gender roles or prejudices.

(8) Gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of age, disability, ethnicity, gender identity, race, religion and other attributes.

(9) Women have historically experienced discrimination and disadvantage on the basis of sex and gender.

(10) Special measures may be necessary to achieve gender equality.

5 Establishment of Gender Units

(1) Every Ministry, Agency, Institution and such other related structures in government shall establish a Gender Unit which shall—

- (a) facilitate the provisions of the enforcement of this Act;
- (b) make regular updates to the Commission on all gender related matters.

(2) Every Gender Unit shall be responsible for developing and implementing a Gender Equality Action Plan which includes—

- (a) results of a workplace gender audit;
- (b) strategies for achieving workplace gender equality;
- (c) publicly reporting on their progress in relation to workplace gender equality;
- (d) promoting gender equality in policies, programs and services that impact the public;
- (e) completing gender impact assessments.

(3) When promoting gender equality, every gender unit shall assess the impact of the following—

- (a) race;
- (b) ethnicity;
- (c) disability;
- (d) age;
- (e) religion;
- (f) gender identity;

and shall take practical steps to eliminate prejudices, discrimination and disadvantages that may be compounded by such factors mentioned in paragraphs (a) to (f).

PART II

GENDER IMPACT ASSESSMENT, GENDER ACTION PLAN AND GENDER AUDIT

6 Gender impact assessment

(1) The Gender Unit shall, on behalf of every public entity, undertake a gender impact assessment when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public.

(2) A gender impact assessment must—

(a) assess the effects that the policy, program or service may have on persons of different genders;

and

(b) state how the policy, program or service will be developed or varied in order to—

(i) meet the needs of persons of different genders; and

(ii) address gender inequality; and

(iii) promote gender equality; and

(c) if practicable, take into account that gender inequality may be compounded by disadvantage or discrimination that a person may experience on the basis of age, disability, ethnicity, gender identity, race or religion.

7 Gender Equality Action Plan

(1) The Gender Unit shall, on behalf of every public entity, prepare a Gender Equality Action Plan that includes the following matters—

(a) the results of the workplace gender audit;

(b) strategies and measures for promoting gender equality in the workplace of the public entity, based on the results of the workplace gender audit;

(c) any other prescribed matters.

(2) In preparing a Gender Equality Action Plan, the Gender Unit shall—

(a) take into account the gender equality principles; and

(b) consult with the management of the public entity, the employees, employee representatives and any other relevant persons.

(3) The public entity must ensure adequate resources are allocated to developing and implementing the Gender Equality Action Plan.

8 Workplace Gender Audit

(1) The Gender Unit shall, on behalf of every public entity, undertake a workplace gender audit before developing a Gender Equality Action Plan.

(2) A workplace gender audit must, at the prescribed intervals, assess the state and nature of gender inequality in the workplace of the public entity having regard to the following—

(a) the disadvantage or discrimination that a person may experience on the basis of one or more of the following in addition to gender inequality—

(i) age;

(ii) disability;

(iii) ethnicity;

- (iv) gender identity;
- (v) race; or
- (vi) religion;

- (b) any prescribed gender equality targets or gender equality quotas; and
- (c) prescribed workplace gender equality indicators including gender budgeting; and
- (d) any other matter that the public entity considers relevant.

(3) A workplace gender audit must be based on the following—

- (a) gender-disaggregated data; and
- (b) if available, data about age, disability, ethnicity, gender identity, race and religion.

9 Submission and Publication of Gender Equality Action Plan

(1) Every public entity shall submit a Gender Equality Action Plan to the Commission on or before 31st December every year.

(2) The Commission, at the request of the public entity, may extend the time by which the entity must submit the Gender Equality Action Plan.

(3) The Commission may—

- (a) approve the Gender Equality Action Plan with or without amendment;
- (b) reject the Gender Equality Action Plan and give further directions to the public entity concerned.

(4) Within a reasonable time after submitting the Gender Equality Action Plan to the Commission, a public entity shall—

- (a) publish the completed Gender Equality Action Plan approved, in terms of subsection (3) (a), on its website; and
- (b) notify the management of the public entity, the employees and employee representatives of the public entity of that publication.

10 Commission to keep register of Gender Equality Action Plans

The Commission must keep a register of Gender Equality Action Plans submitted to and approved by the Commission.

11 Gender Equality Action Plan may be amended

(1) A public entity may amend its Gender Equality Action Plan at any time if the entity considers the amendment is necessary.

(2) If a public entity amends its Gender Equality Action Plan, the public entity shall—

- (a) submit the amended Gender Equality Action Plan to the Commission; and
- (b) within a reasonable time and after approval by the Commission, publish the amended plan on its website, and notify the management of the public entity, the employees and employee representatives of that publication.

PART III

PROHIBITION OF DISCRIMINATION BASED ON SEX AND GENDER

12 Application of Part III

- (1) This Part shall apply to public, private and civic sectors.
- (2) Every employer in private and civic sector shall appoint a gender focal person who shall perform the functions conferred upon the Gender Unit by this Act.

13 Discrimination based on sex and gender

- (1) Direct and indirect discrimination based on sex, including giving orders therefor, is prohibited.
- (2) Adverse treatment of a person, as well as causing negative consequences for the person due to the fact that the person has relied on the rights and obligations provided for in this Act or has supported another person upon the protection of his or her rights provided for in this Act shall also be deemed to be discrimination.
- (3) The following are not deemed to be direct or indirect discrimination based on sex and gender—
 - (a) provisions concerning the special protection of women in connection with pregnancy and child- birth;
 - (b) acceptance of only women or only men into the membership of a non-profit association if this is provided for in the constitutive documents of the association;
 - (c) in the case of employment and vocational training, differences in treatment due to the sex of persons where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, the sex of a person constitutes a material and determining requirement, and such difference in treatment is justified by a legitimate aim and the requirement is proportional to the aim.

14 Discrimination in employment

- (1) In employment, cases in which an employer—
 - (a) selects for employment or a position; or
 - (b) hires or admits to practical training; or
 - (c) promotes, selects for training or performance of a task; or
 - (d) sends for training;a person of one sex and overlooks a person with higher qualifications and of the opposite sex shall be deemed to be discriminatory, unless there are strong reasons for the decision of the employer or such decision arises from circumstances not related to gender.
- (2) The activities of an employer shall also be deemed to be discriminatory if the employer—
 - (a) upon making a decision listed in this section, overlooks a person or treats a person less favourably in any other way due to pregnancy, child-birth, parenting, performance of family obligations or other circumstances related to gender;
 - (b) upon hiring, establishes conditions which put persons of one sex at a particular disadvantage compared with persons of the other sex;

- (c) establishes conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship which are less favourable regarding an employee of one sex compared with an employee of the other sex doing the same work or work of equal value;
- (d) directs work, distributes work assignments or establishes working conditions such that an employee of one sex is put at a particular disadvantage compared with an employee of the other sex;
- (e) harasses a person in relation to the sex of the person or sexually;
- (f) punishes an employee under disciplinary procedure, transfers an employee to another position, terminates an employment relationship or promotes the termination thereof due to reasons connected with gender;
- (g) less favourable treatment of a person on grounds of sex in connection with his or her membership in an organisation of employees or employers, or in any organisation whose members are engaged in a particular profession, including in connection with the person's participation in its work and the benefits provided for by such organisation shall also be deemed to be discrimination.

(3) An employer is responsible for failure to perform the duty of care if the employer was aware or should have been aware that gender-based harassment or sexual harassment occurred and failed to apply the necessary measures to terminate such harassment.

15 Discriminatory offer of employment and training

Offers of employment and training that are directed at persons of one sex only are prohibited unless the reasons specified in section 14 (2) (d) and (e) exist.

16 Duty of employer to provide explanations

(1) When a person suspects discriminatory behaviour specified in section 14 (1) in respect of him or her, the employer is required to provide a written explanation to the person at the person's request within ten working days from the date of submission of such written application.

(2) In the written explanation referred to in subsection (1), the employer shall submit the following information concerning the person who was selected—

- (a) length of employment; and
- (b) education; and
- (c) work experience and other skills required for the work; and
- (d) other skills or reasons that give the person a clear advantage.

(3) Within fifteen working days from the date of submission of an application, the employer is required to provide a written explanation concerning the activities of the employer to the person who believes that he or she has been discriminated against on a basis specified in section 14 (2).

(4) An employee has the right to demand that the employer explain the bases for calculation of salaries and obtain other necessary information on the basis of which it is possible to decide whether discrimination specified in section 14 (2) (c) has occurred.

17 Duty of supplier of goods or services

Every supplier of goods or services shall provide—

- (a) an explanation within seven working days from date of receipt of a written application describing the facts relating to a possible case of discrimination;
- (b) a written explanation concerning the activities of the supplier to a person who believes that he or she has been discriminated against;
in relation to access to or supply of goods or services on the grounds of sex or gender.

PART IV

PROMOTION OF GENDER EQUALITY

18 State and local government authorities as promoters of gender equality

- (1) Every government ministry, agent or institution in promoting gender equality shall—
 - (a) upon planning, implementation and assessment of national, regional and institutional strategies, policies and action plans, take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society;
 - (b) change the conditions and circumstances that hinder the achievement of gender equality;
 - (c) if necessary, consult the relevant interest groups and non-profit organisations that have a legitimate interest in helping to combat discrimination based on sex in order to support compliance with the gender equality principles.

(2) The Commission shall make recommendations concerning performance of the obligations set out in subsection (1).

19 Promotion of gender equality in education and training

(1) Every educational and vocational institution shall ensure equal treatment of men and women in acquisition of education, vocational development and re-training.

(2) Every Institution referred to in subsection (1) shall ensure that the curricula, study materials used and research conducted shall facilitate abolishing of unequal treatment of men and women and promote equality.

20 Employers as promoters of gender equality

- (1) Every employer, in promoting equal treatment of men and women, shall—
 - (a) ensure that both men and women apply for vacant positions and that persons of both sexes are employed to fill vacant positions;
 - (b) ensure that the number of men and women hired to different positions is as equal as possible and ensure equal treatment of them upon promotion;
 - (c) create working conditions which are suitable for both men and women and enhance the reconciliation of work and family life, taking into account the needs of employees;
 - (d) ensure that employees are protected from gender-based harassment and sexual harassment in the working environment;
 - (e) inform employees of the rights ensured by this Act;

(f) regularly provide relevant information to employees or their representatives concerning equal treatment of men and women in the organisation and measures taken to promote equality.

(2) Every employer shall collect sex-disaggregated statistical data concerning employment that may allow, if necessary, the relevant institutions to monitor and assess whether the principle of equal treatment is complied with in employment relationships.

(3) The Commission in consultation with the Minister shall prescribe the procedure for data collection pursuant to the provisions of subsection (2).

PART V

PROMOTION OF GENDER EQUALITY

21 Political Parties

(1) Every political party shall adopt an action plan every five years, or any other period that may be specified in the Electoral Act [*Chapter 2:13*], regarding the equal representation of women and men and, in accordance with the aforementioned plan, shall determine methods for the promotion of a more balanced representation of women and men in the party bodies, on the lists of their candidates for the Zimbabwe Parliament, local authorities, provincial and metropolitan councils.

(2) Every political party shall, nine months before a general election, submit the action plan referred to in subsection (1) to the Commission and the Zimbabwe Electoral Commission for approval.

(3) In addition to any other functions that may be provided for in terms of this Act, any political party that fails, without a just cause, to submit a gender equality action plan in accordance with this section may be disqualified from participating in a general election or any other subsequent by-election.

22 Media

(1) Every media house shall through its programme concepts help raise awareness about equality of women and men.

(2) No media house shall publicly display and present any person in an insulting, belittling or humiliating manner, with regards to his or her gender or sex.

(3) Any media house that contravenes subsection (1) and (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

PART VI

MONITORING AND COMPLIANCE

23 Compliance notices

(1) Subject to subsection (3), the Commission may issue a compliance notice to a public entity if the Commission reasonably believes that the public entity, without reasonable excuse, has failed to comply with this Act by—

- (a) not preparing a Gender Equality Action Plan in accordance with this Act; or
- (b) not submitting a Gender Equality Action Plan within the time required by section 9.

(2) A public entity must comply with a compliance notice.

(3) Before issuing a compliance notice, the Commission must take reasonable steps to resolve the matter informally.

(4) A compliance notice may require the public entity to—

- (a) prepare and submit a Gender Equality Action Plan; or
- (b) take any other action that is reasonably required to comply with this Act.

24 Form and content of compliance notice

(1) A compliance notice issued to a public entity must—

- (a) state the requirement of this Act with which the public entity has failed to comply with; and
- (b) state the basis for the Commission's belief that the public entity has failed to comply with that requirement; and
- (c) state the action that the public entity must take to comply with that requirement; and
- (d) specify the date by which the public entity must take the action; and
- (e) state the further action that the Commission may take if the public entity does not comply with the notice; and
- (f) state that the public entity may raise any objections to the compliance notice within 14 days after receiving the notice.

(2) For purposes of subsection (1) (d), the date specified in the compliance notice must be—

- (a) if the compliance notice requires the entity to submit a Gender Equality Action Plan, not less than 30 days after the notice is issued; or
- (b) in any other case, not less than 14 days after the notice is issued.

25 Public entity may object to a compliance notice

(1) Where a public entity objects to the compliance notice, the entity has 14 days after receiving the compliance notice to give a written response to the Commission outlining the entity's reasons for its objection to the compliance notice.

(2) After considering a response under subsection (1), the Commission may, by notice in writing—

- (a) withdraw the compliance notice; or
- (b) amend the compliance notice; or
- (c) confirm the compliance notice.

(3) If the compliance notice is confirmed or amended—

- (a) the notice must specify a period within which the public entity must comply; and
- (b) the public entity must comply within that period.

26 Actions to be taken if compliance notice not complied with

If a public entity does not comply with a compliance notice within the time period specified in the notice, the Commission may do one or more of the following—

- (a) accept a written undertaking from the public entity under which the entity undertakes to take certain action to comply with this Act;

- (b) recommend the Minister to take any action that the Commission considers appropriate to ensure the public entity's compliance with this Act;
- (c) publish on the Commission's website the name of the public entity and the requirement of this Act that the entity has failed to comply with;
- (d) apply to the High Court for an order directing the public entity to comply with the notice.

27 Enforceable undertakings

(1) This section applies if the Commission has accepted an undertaking given by a public entity under section 26 (a).

(2) The public entity, with the consent of the Commission, may withdraw or vary the undertaking.

(3) The Commission must not take any further action under section 26 or issue any further compliance notice with respect to the matter that is the subject of the undertaking —

- (a) while the undertaking is in force.
- (b) if the public entity complies with the undertaking.

(4) If the Commission considers that the public entity has failed to comply with any terms of the undertaking, the Commission may apply to the High Court for an order to enforce the undertaking.

(5) If the High Court determines that the public entity has failed to comply with a term of the undertaking, the High Court may—

- (a) make an order directing the entity to comply with that term of the undertaking; or
- (b) make an order directing the public entity to take any specified action in order to comply with that term of the undertaking; or
- (c) make any other order that the High Court considers appropriate.

PART VII GENERAL

28 Enforcement

Any person who has been discriminated on the basis of sex or gender may submit a complaint to the Commission in terms of the Zimbabwe Gender Commission Act [*Chapter 10:31*] and the Commission may deal with the complaint in terms of that Act.

29 Commission may issue guidelines relating to obligations of public entities

(1) The Commission may issue guidelines for the purpose of assisting public entities to meet the requirements of this Act in relation to the following—

- (a) preparing and implementing Gender Equality Action Plans;
- (b) preparing progress reports;
- (c) undertaking gender impact assessments;
- (d) complying with the duty to promote gender equality; and
- (e) any other matter that the Commission considers appropriate.

(2) Every public entity must have regard to any guidelines issued under subsection (1).

30 Offences and Penalties

Any person who knowingly commits an act of discrimination on the basis of sex or gender shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding 2 years or to both such a fine and such imprisonment.

31 Appeal

If any person is aggrieved by a decision of the Commission or any officer or employee of the Commission in the exercise of any function conferred on the Commission, the officer or the employee, as the case may be, may, within twenty-eight days after being notified of the decision, appeal in writing to the High Court.

32 Regulations

(1) The Minister after consultation with the Commission may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be provided for in order to give effect to this Act.

(2) Regulations may provide for —

- (a) alternative dispute resolution mechanisms for resolving gender equality disputes; or
- (b) offences and penalties which may be imposed for contraventions of the regulations, which penalties shall not exceed a fine of level six or imprisonment for a period not exceeding one year or both.

GENDER EQUALITY ACT PRINCIPLES

These Principles were developed by the Institute for Young Women Development in consultation with communities, civil society organisations, government agencies and legal experts in order to inform the process towards the enactment of a Gender Equality Act.

Objectives

The promulgation of *Gender Equality Act* must achieve the following—

- a) to promote, encourage and facilitate the achievement of gender equality and improvement in the status of women; and
- b) to support the identification and elimination of systemic causes of gender inequality in policy, programs and delivery of services in workplaces and communities; and
- c) to recognise that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of age, disability, ethnicity, gender identity, race, religion and other attributes; and
- d) to redress disadvantage, address stigma, stereotyping, prejudice and violence, and accommodate persons of different genders by way of structural change; and
- e) to enhance economic and social participation by persons of different genders.

It is proposed that these objectives will be achieved through the following—

- a) the prohibition of discrimination on the grounds of sex and gender in the private and public sectors;
- b) the obligation of state and local government authorities, educational and research institutions and employers to promote equality between men and women;
- c) awareness raising and knowledge creation;
- d) monitoring and enforcement by the Gender Commission, and
- e) the right to claim compensation for damage.

Principle 1: Prohibition of sex, gender based discrimination and gender based violence

The enactment must contain a robust section prohibiting discrimination and gender based violence.

It must contain a provision which defines what constitutes discrimination against women.

The *Gender Equality Act* should prohibit discrimination on the basis of gender, gender identity and expression of gender. Both indirect and direct gender discrimination should be prohibited, as are sexual and gender-based violence. The prohibition of discrimination should be generally applicable to all societal activities, areas of life both public and private. That is the proposed enactment must contains specific provisions on discrimination in working life, educational institutions and interest groups and in the trade of services and goods.

The *Gender Equality Act* should also build upon the list of offenses set-out in Section 4 of the *Domestic Violence Act* [Chapter 5:16] to include economic, emotional, verbal and psychological abuse as criminal offenses.

In addition the Gender Equality Act should criminalize all forms of sexual harassment, as it is currently the most common form of gender based violence in Zimbabwe that is not regulated effectively by the law.

Principle 2: Gender equality in places of employment

The *Gender Equality Act* should ensure equal access for both men and women to employment in both the private sector and especially within the public service. The Act should empower the Gender Commission with the authority to conduct gender audits and assessments of all places of employment to ensure that barriers for the equal participation of men and women in places of employment are removed. Where systemic barriers are noted in the audit the Commission should be afforded authority to develop and monitor the implementation of Gender Equality Action Plans.

Principle 3: Equal representation and participation

The *Gender Equality Act* must give effect to the provisions of Section 17 of the Constitution and ensure that there is equal representation and participation by both men and women at all levels of government. The act should also set out measures to address historical imbalances and remove barriers that may impede the participation by women in politics. This could include the creation of party quotas which will

ensure equal representation of women and men, and the establishment of a fund to support women in politics.

Principle 4: Ensuring that equal access and participation in places of education

The *Gender Equality Act* should mandate training on equality for both boys and girls at all levels of education. Mandatory training on equality should be introduced into the training curriculums of all training institutions at all levels of learning. The Act should also ensure that every institute of learning adopts and implements a gender policy which entrenches the right and principles of equality in the daily lives of students. The policies should include the setting up of complaints mechanisms and provision of peer counselling facilities.

The *Gender Equality Act* should prohibit removal of pregnant teenagers from schools and allow both (teen) parents to complete their education.

The *Gender Equality Act* should put measures in place to remove barriers that restrict access by girls to technical subjects. This may be achieved by introduction of minimum quotas at every school, preferential fee structures and bursaries for girls.

Principle 5: Access to sexual and reproductive health services

The *Gender Equality Act* should mandate access to sexual and reproductive health services at a national level, in order to ensure access without discrimination, to affordable, quality contraception, including emergency contraception and to protect ones decision as to whether to continue a pregnancy or termination.

Principle 6: Awareness Creation and knowledge creation

The *Gender Equality Act* should mandate awareness raising, which must include everyone particularly traditional leaders, community and opinion leaders, on the need to promote equality and not discriminate on the basis of Gender.

The *Gender Equality Act* should mandate either the Gender Commission or the Ministry responsible for women affairs to periodically produce and distribute material on the rights of women, that promotes equality, and speaks against all forms of discrimination.

Principle 7: Monitoring of compliance

The mandate of the Gender Commission must be extended to include compliance monitoring of measures introduced by the *Gender Equality Act* and provide instructions and guidance on questions related to the Act.

Principles 8: Administration and Enforcement of the Gender Equality Act

The *Gender Equality Act* should specifically provide for penalties that will be levied against any person who deliberately or negligently breaches the provisions of the Act.

The *Gender Equality Act* must also create a complaints handling mechanism, either through the Gender Commission or the ordinary courts for aggrieved persons to be

able to seek and obtain redress for rights violations on the grounds of gender or for breaches of the safeguards outlined in the Act.