

THE CHANGING LEGAL STATUS OF WOMEN IN ZIMBABWE SINCE INDEPENDENCE

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Credit: UNICEF Technology Support Section

Bien que le Zimbabwe ne soit pas signataire du Congrès de l'Organisation des Nations Unies sur l'élimination de toute forme de discrimination envers les femmes (1979), l'Assemblée législative a mis en oeuvre de nouvelles lois, et réformé certaines lois existantes en vue d'améliorer le statut de la femme; il reste encore beaucoup à faire. Le Zimbabwe, qui acquit son indépendance récemment, à peine libéré du régime répressif de Smith, a fait son entrée sur la scène internationale en 1980, à mi-chemin de la décennie des femmes de l'ONU.

Les auteurs de cet article, qui ont participé au Forum du Tiers-Monde sur la femme, le droit et le développement à Nairobi, examinent le statut légal contemporain des femmes au Zimbabwe, dans le contexte de la lutte historique pour l'indépendance. Elles concentrent particulièrement sur les activités du Centre for Applied Social Sciences (CASS) à l'Université du Zimbabwe – à laquelle elles sont liées – et qui, par son implication au projet des Droits fondamentaux et loi personnelle, a concentré la plupart de ses efforts depuis 1981 sur les questions de loi personnelle.

When one talks, in the presence of men, about the problems that confront African women in Zimbabwe because of their status, and the need for change, one gets the impression that the audience does not take the speaker seriously. The idea here of women having the same rights as men would be going against the grain of African tradition. This is the general attitude of the majority of men in Zimbabwe, and believe it or not, not a small number of women as well. But luckily, in line with the socialist ideological orientation of the ruling party, ZANU (PF), and in recognition of the contribution of women in the liberation struggle, the Legislative body has shown positive signs by enacting new laws and reforming some old ones with the view of changing the status of women. Though a lot still needs to be done, it is an encouraging start.

While most participants at this forum (the Third World Forum on Women, Law and Development) operated in politically independent countries during the period 1976-1985, set up by the UN as the Decade for Women, Zimbabwe joined the international scene in 1980, half way through the Decade, after a protracted war of liberation in which many young women played a vital role, both at the war front and the camps. As such, our efforts as a nation in relation to the objectives of the UN Decade for Women can only be reason-

ably measured within the second half of the Decade. This does not mean, however, that all organisations were unaware of what the Decade for Women entailed. Neither does this discount the mammoth task women's organisations and other institutions had been doing, in a volatile political climate of the Smith regime, to lighten the heavy burden women carry, especially the rural women. To appreciate the changes that have occurred since independence, the paper will give a general run down of the historical situation of women in Zimbabwe and then discuss their current situation.

The Centre for Applied Social Sciences (CASS), at the University of Zimbabwe, though involved in a Fundamental Rights and Personal Law project, since 1981, has concentrated most of its efforts on issues of personal law, which is defined as "the law of persons or status for the most part bound with the questions of marriage and dealing with capacity; marriage, its consummation, consequences and dissolution; children, their minority, tutelage and emancipation; and succession."¹ Consequently, this paper will focus on issues of family law; it does not claim to be the mouthpiece for all non-governmental organisations and institutions concerned with women's issues in Zimbabwe, though we have worked closely with most of them.²

The Zimbabwean Constitution, generally referred to as the Lancaster House Constitution is, like any other constitution, the instrument around which all other laws, rules and regulations governing the State of Zimbabwe are drawn. The right to be treated equally is enshrined in the Bill of Rights included in the Zimbabwean Constitution Order (S.I. 1979/1600, Chapter III. 11(a), (b) and (c)). Unfortunately, either intentionally or by an oversight of the draftsmen, sex is not included in Chapter III, Article 23, Subsections 1 and 2, which protects individuals against discrimination. To make matters worse, the same article (subsection 3, (a) and (b) specifically mentions that:

nothing contained in any law shall be held to be in contravention of subsection (1) (a) to the extent that that law in question relates to any of the following matters – (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; (b) the application of Customary Law in any case involving Africans, or an African and one or more persons who are not Africans, where such persons have

consented to the application of African Customary Law in that case . . .

These are the very areas that are the source of women's suffering and oppression in Zimbabwe.

The Ministry of Community Development and Women's Affairs, which was instituted by the Government in 1981 to look into the areas that especially concerned women, set forth as its main policy objectives to: (a) improve organisations' structures at grassroots; (b) mobilise resources for development, especially through cooperatives and income generating projects; (c) train communities in basic skills and needs assessment; (d) look into legal constraints and into possible solutions; and (e) undertake popular education and training. To achieve the above, the Ministry of Community Development and Women's Affairs has different sections set up in the Ministry for the advancement of women: (1) legal and equal opportunities; (2) pre-schools, to assist women in their efforts to establish pre-school centres; (3) training for the formulation of new materials and for the running of courses; (4) research, planning and projects to support women's activities.

Some background information on the situation of women during the colonial era and the laws, rules and regulations that governed their lives is a necessary prerequisite at this stage. Joan May, in *Zimbabwean Women in Customary and Colonial Law*, gives a short but precise account on the status of women before, during and just after colonialism. This analysis more or less applies to all indigenous groups in Zimbabwe, except the Tonga who are matrilineal.

British policy at the period of occupation of Rhodesia was to leave as intact as possible the laws of the conquered peoples, particularly in the realms of land law and family law. The Charter granted to the British South African Company in 1889 makes provision in Section 14 for the recognition of African custom and law: In the administration of justice to the said people or inhabitants careful regard shall always be had to customs and laws of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding, possession, transfer and disposition of land and goods, testate and intestate succession thereto and marriages, divorce, legitimacy and other rights of property and personal rights, but subject to any British laws which may be in force in any of the territories aforesaid and applicable to the people and inhabitants thereof.³

As an extension to the above, the "repugnancy clause" was added. This stated that African Customary Law would be recognised except where it was "repugnant to natural law, justice or morality" (May, p.42). This led to the dual, if not plural system of law that is prevalent in almost all postcolonial states today. With their conception of the Western types of government and administration, the occupiers set up administrative structures in the form of district commissioners' offices in most parts of the country. One of the major tasks of the District Commissioners was the codification of African Customary Law. We know now how distorted was the whole exercise, especially in those areas that had a bearing on the status of women, possible because the reports were given by men who were trying to gain an area of influence, having lost most of the ground to the colonialists. This codification of a normally flexible system resulted in the complex and confused socio-legal position of women in this country.

Marriage

As in most patrilineal African societies, marriage was a family affair which involved all elders of the two families wishing to join their children in marriage. The major transaction was the payment of *lobola* by the bride receiving family to the bride giving family, thereby transferring the labour services of the bride and securing her genitricial rights as well. This was an agrarian economy where an addition of a female and her progeny afforded the husband and his kin a source of labour, while the woman's natal family acquired cattle, which were a great measure of wealth and could also be used in acquiring a wife for the bride's brother. Those who had no cattle to give spent a period of, say, ten years, working for the prospective father-in-law before getting a wife, who was not always guaranteed.

The introduction of the cash economy at the advent of colonialism and its preponderance today as the dominant mode of production led to the commercialisation of and corrupt practices in *lobola*. Now fathers-in-law usually demand *lobola* to cover the costs of clothing, feeding and school fees expended on the daughters. The result has been that it is not unusual for a daughter to go for \$3,000.00 or more, when one has to consider that the son-in-law must also buy clothing for both the father and the



"Speaking of Nairobi" film location shot

Credit: Tina Horne

mother of the girl. Because of this, it is not uncommon for the husband to demand complete subordination from his wife on the grounds that he bought her and so would not tolerate any form of independence from her, as she is his property. The products of her labours are his because he paid for her.

Protagonists of *lobola* have tried to justify *lobola* by saying that only a few men illtreat their wives and oppress them because they paid for their services. They advocate that restrictive measures must be introduced to stop greedy parents from asking exorbitant amounts, because we should not legalise against *lobola* as this is an essential ingredient of society's culture. These measures have been tried, but they have failed because *lobola* transactions are a family affair. The economic consequences of *lobola* are such that, in the final analysis, the status of women is not elevated. As one man wrote to us, "Lobola makes a woman a slave." Because *lobola* has been paid, the children belong to the husband's family. At divorce, or widowhood, only those children under the age of 7 were given into the custody of the mother. In quite a number of cases, even 3 year-olds are taken by the husband's family, especially in unregistered customary unions where disputes are settled by traditional dispute management mechanisms.

Proprietary Rights of African Women

Under African Customary Law, property is held, disposed of and devolves according to customary law. This is

enshrined in the Constitution. Joshua Mpofu has pointed out two major sources of property for women among the Shona and Ndebele peoples: (a) the property a woman acquires as the mother of a married daughter in the form of a cow and small livestock (2 goats) given when the daughter conceives for the first time; and (b) property acquired as a result of her personal skills (pottery, mat and basket weaving, traditional healing or as a midwife, etc.).⁴

These two types of property are inherited by her natal family, when she dies, and she can take it with her at divorce. Because of strong traditional religious beliefs, usually no one tampers with it. This means that a woman with no daughter or personal skill is virtually propertyless, while all the property the family has accumulated through her contribution in the matrimonial home belongs to her husband simply because, by paying *lobola*, the man has also paid for her labour services. The Ndebele married woman used to have other sources of property besides the ones given below. Her maternal uncle, father-in-law and father could give her a cow each, as bridal gifts. But whether the practice remains today is subject to question.

The first type of property can only come within a woman's reach late in life, and today it is not guaranteed as her daughter(s) may not get married at all, or may get married without *lobola*:

The question arises as to whether it is possible to apply a body of law functional in a traditional society, to a people who, to a greater or lesser extent, have become



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divorced from that society and who are caught up in the forces of urbanisation and industrialisation or in the social change that is taking place in the rural areas at a slower but never the less discernable rate.⁵

There were very few cases of divorce in traditional society, but today, as in all parts of the world, divorce has become common. Decisions, therefore, have to be made *vis-à-vis* matrimonial property. It is interesting to note that it became accepted in African Customary Law that:

Should a woman go out to work with the approval of her husband while under his marital control, any money she earns belongs to him under both Shona and Ndebele law . . . If a Shona or an Ndebele wife were allowed to keep her earnings, property ac-

quired with her own money would be hers and would fall under the mavoko or izandla (hands) category and during her lifetime she would have control over it.⁶

One wonders whether there is any traditional basis to the first argument, as wages or salaries were non-existent in traditional society, in their present form. There are two court cases that show the ambivalence of Childs' statement in recent years. In *Angeline Chiutsu vs Dennis Garisa* (1969, CAACC 70 at 74), J. Pittman ruled that it did not matter whether the two were married by Christian rites, "the law of the land is still that, despite solemnisation of such a marriage, the property of the spouses shall be held according to African Law and custom" (see Section 13,

African Marriages Act). On the other hand, in *Jirira vs Jirira and Another* [1976 (1) RLR7], J. Newman ruled that "a woman's earnings came under *mavoko* property and were therefore her own; when having regard to her modern way of life style, the justice of the case demanded it," basing his judgement on what has been called the "test of life style." This now prevails.

It is also heartening to know that, even if the wife was not in any gainful employment, her services as a housewife are usually taken into consideration by the community courts when matrimonial property claims are brought. How much the woman gets usually depends on the individual court official whose own prejudices may come into it. And the community courts are male dominated. But for those women with unregistered, and therefore legally invalid customary marriages, property division is handled by the two families of the spouses, and usually the women come out the worse.

Legal Reforms

The Customary Law and Primary Courts Act (6, 1981) repealed the African Law and Tribal Courts Act (Chapter 237, 1969) and amended, *inter alia*, the Maintenance Act (Chapter 35). During the colonial era, chiefs, subchiefs and headmen presided over traditional courts in civil cases involving Africans or an African and one or more persons who were not Africans if they consented. Divorce claims in unregistered customary marriages, seduction claims, guardianship of children, *lobola* claims and other civil cases were dealt with at these courts. The chiefs worked hand-in-hand with the DC's who had judicial and administrative powers in the Ministry of Native Affairs and later Home Affairs. Both the DC's and traditional (chiefs') courts became highly unpopular with the rise of African Nationalism. At independence, Government felt these traditional courts should be replaced by popular ones.

The Customary Law and Primary Courts Act established Village and Community Courts to deal with matters of customary law, with a limited jurisdiction in minor criminal cases being placed under the latter courts. Government, in response to both social and ideological demands, made further reforms which greatly affected administration of law in these courts. Village Courts (numbering about 2,200) are presided over by un-

trained officers sitting with two assessors elected by the community in each designated village. There are 62 Community Courts whose presiding officers undergo some training for a period of about six months. No mention is made in the Act of the need for a woman to be represented by her guardian as was normally the practice. She can speak for herself if she so desires.

Maintenance

An amendment to the Act was made in October, 1982, whereby the Community Courts were empowered to grant maintenance to deserted and divorced wives until their remarriage, and to the children of the union, whether the marriage had been an unregistered or registered customary one. Not only was maintenance granted to children of a broken marriage who were in their mother's custody, but an unmarried mother could also claim maintenance for her child or children, from the natural father or fathers, until the child or children attained the age of majority.

This was a major law reform which afforded women added security, especially if the father was in regular employment. As is to be expected, these claims are more numerous in the urban than in the rural areas either because women in the rural areas do not know yet of this right, or possibly because it would be a futile exercise if the fathers of the children are not in any paid employment. But a warrant of execution could be issued attaching some property, which could then be sold and the money given to the mother. But again, very few peasant men have any property of speak of. There is also the problem of administration in the collection of maintenance, a problem common all over the world. Notwithstanding the above, today maintenance claims account for about 24.4 per cent of all cases. The amount awarded by the Community Courts depends on the earnings of both the father and the mother.

Inheritance

The Community Courts are also authorised to administer estates of Africans who die intestate. (There is no legal problem if the deceased leaves a will). This procedure is meant to stop the grabbing of property by avaricious relatives of the deceased husband to the detriment of the widow and the children.

Unfortunately, many women are still unaware of this legal provision as most deaths occurring in the rural areas are not registered. It is necessary to set up vital statistical offices in places easily accessible to people in the rural areas, and also to make it compulsory to report deaths in the family. It should no longer follow that brothers of the deceased and his kin are eligible inheritors of both his widow and the property. The widow should have the right to choose whether she wishes to be inherited or to stay with her grown-up children, or stay in the matrimonial home without fear of appropriation of property that she and her husband worked for. There were, and there are still instances when the widow and her children are left destitute. Women have been clamouring for a new succession bill that is applicable to both blacks and whites. The Bill has been drafted, but it has been shelved for fear of rocking the boat prior to the June/July elections, and hopefully, it will be presented before the next parliament.

Matrimonial Property

Community Courts have powers of dissolving marriages registered under the African Marriages Act (Chapter 238) and usually order how matrimonial property should be divided, except the matri-estate which devolves according to African Customary Law. If the wife has been working and can prove to the courts by

way of receipts or otherwise that she bought such and such a piece of household furniture or appliance using her own earnings, the courts usually order that she take the property with her, or be compensated for it. Even if she has not been in paid employment, the courts allow her some property besides the pots, plates and cooking sticks. The argument is that her housekeeping activities and budget management in the home enabled the couple to acquire what they have then, especially if the man as a bachelor had nothing to show for his labours.

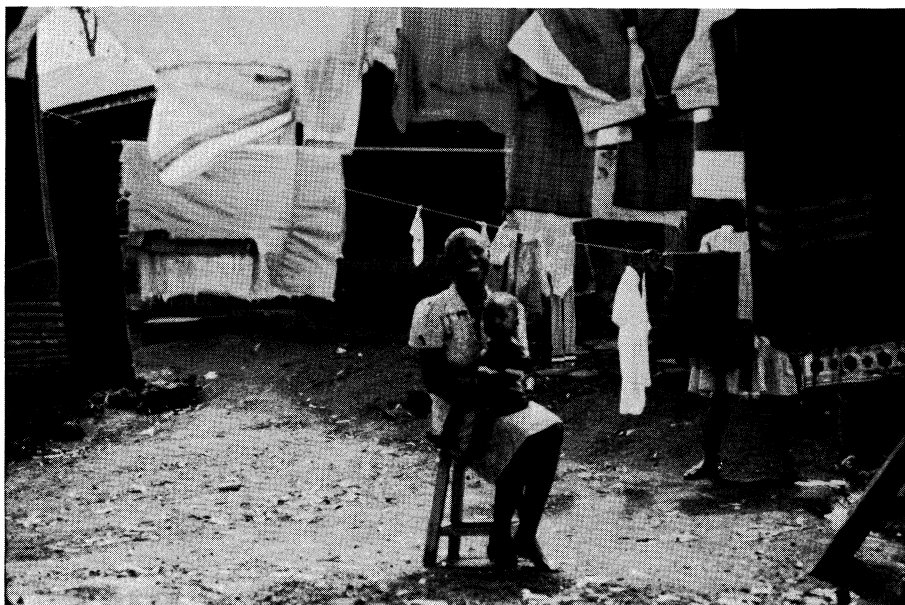
The Legal Age of Majority Act (15, 1983) (The LAMA)

The LAMA was the most important enactment concerned with the ideal of equality. It became effective on 12 December, 1982. The Act says: "On and after the fixed date a person shall attain the legal age of majority on attaining the age of 18 years of age" [Section 3 (1)].

Under Customary Law a woman was a minor from cradle to grave. She fell under the guardianship of her father or other male relative before marriage and then reverted to the guardianship of her husband at marriage. Divorced women could become emancipated if they so wished. But the LAMA applies to all law, including Customary Law. The implications of the Act must be derived from common law as the concept is unknown in customary law. This means that a person 18 years



TRAVELLER, THERE IS NO PATH.
PATHS ARE MADE BY WALKING.



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old or above no longer has a guardian. He/she can sue and be sued in his/her own right as a major. He/she can enter into a legal contract without the need of a guardian. Any person who is a major can own property, sell it, or give it away without interference, as long as it is his or hers to give. By virtue of this Act, it must also follow that two major people wishing to register their marriage can do so without the consent of the woman's father, as was the requirement before the LAMA. Therefore no one can stop two major people from marrying simply because lobola has not been paid.

This has been the sore point to parents. Fathers and brothers feel they have lost a profitable source of income, as daughters can, if they so wish, marry without lobola. Parents also feel that the LAMA will lead to permissiveness on the part of the youth, since they (parents) no longer have control over their children. To date, this has been proved an unfounded fear. As is common all over the world, children will always seek the blessing of their parents before they enter into marriage, and this is so in Zimbabwe as well. As a matter of fact, though the Act has been in force for over two years now, a presiding officer at Harare Community Court reported that out of 906 marriages registered with it since April 1983, only fifty-two couples had registered without lobola payments. It will be years yet, if at all in our lifetime, before all African couples marry without the payment of lobola. Loss of control over children or permissiveness will depend on the personal relationship between

parents and their children in individual families.

Seduction Damages and Maintenance

Before September 1984, 47 per cent of all cases passing through Community Courts were claims for seduction damages, a sum that was paid to the guardian of the "seduced" woman as compensation for her diminished value in lobola. It did not matter whether the girl or woman was a virgin or not, or had had children with another man or men. The sheer act of sleeping with someone's daughter without the consent of her guardian was enough ground for a claim of seduction. After the LAMA quite a number of people had been questioning the legality of the awarding of seduction damages for major daughters. The Law Department at the University of Zimbabwe decided to sponsor a case and take it right up to the Supreme Court as a test case to prove the point. In *Muchabaiwa vs Katekwe*, Muchabaiwa had been granted \$700.00 at Chivhu as seduction damages for his daughter who was then twenty years old. Katekwe appealed to the District Court, only to have the amount raised to \$800.00. An appeal was lodged at the Supreme Court, which is the next court of appeal. This is what ensued:

Does the father still have the right to sue for damages for the seduction of his major daughter? The answer is simple. He has not, because his daughter is a major and cannot vest her own right in her father. He has lost his right under customary law to

sue for damages for seduction . . . The right to sue for seduction – a delict or offence – now falls on the daughter. The daughter can sue for seduction under the general law of Zimbabwe (Ref.: Judgement No. S.C. 87/84. Civil Appeal No. 99/84. John Katekwe vs Mhondoro Muchabaiwa).

The Court went on to explain why the father had no longer any *locus standi* (right to intervene). By the LAMA, the daughter could marry without her guardian's consent, and it was up to her to decide whether the potential husband could enter into lobola transactions with her father. Hence her diminished value in lobola was highly speculative.

This was a leap forward for those who wanted to see change brought about by the LAMA, though the judgement led to a general outcry from those who stood to lose. Blame for the uproar must lie with the legislators who had not, and still have not, made the Act clear to the people. The public now awaits test cases to make the Act clear, as it did in the seduction case, especially in guardianship and property claims. Since then Community Courts and Village Courts have been directed not to award seduction.

The new legal reforms in family law do not guarantee a better deal for women. A male in the Legal Research Unit in the Ministry of Justice, Legal and Parliamentary Affairs, who did some research on the legal status of women in Zimbabwe concluded that women "are so heavily protected and cared for by Customary Law in general, Judicial practice, Statute Law and Banking Practices, Insurance and Pension Schemes one wonders whether there is still a loophole or area not covered, (as) the protection mechanisms are quite comprehensive." But how many women are protected by these Acts? How many know of these legal provisions, and how many are aware of their changed legal status? Social attitudes must change if the status of women is to change.

* * *

Finally, a short account of what we have found out, in general, about what women want. Though women commend the Government for setting up a special ministry to deal with women's affairs, the fact that the Ministry of Community Development and Women's Affairs does not have administrative powers makes it less effective. This can be very frustrating to the Ministry in that what it recommends does not always come to pass, as

this depends on the goodwill of the Ministry of Justice, Legal and Parliamentary Affairs, who may, or may not, introduce a bill in favour of women.

A well-organised network of communication and information dissemination throughout the country is essential. This will require close co-operation of non-governmental organizations among themselves, and also between non-governmental organizations and government itself. Financial, material and human resources should be made available for this undertaking. Legal Advice Bureaux, well spread over the whole country, need to be established with the help of the Law Department at the University of Zimbabwe and the concerned Ministries. The Legal Aid Clinic currently operating at the Law Department is finding it difficult to cope on its own. More training and workshop facilities for women on legal and economic issues would be of tremendous value.

More information on legal and family issues should be directed at high school children through audio-visual aids and personal contact before they leave the school environment, to prepare them for entry into society as majors. This programme should be included in the curriculum. More girls should be encouraged to study the hard sciences to enable them to enter into the male dominated professions.

While some improvements have been made in work places, a lot still needs to be

done to facilitate inservice training for women, who feel that these opportunities and facilities are mostly available to men, because of the employment structure. Most women in employment are the unskilled, who hardly ever get upgraded through training, be it in - service or apprenticeship. Women advocate a quota system to correct the sexual imbalance in managerial positions, and also wish to see an Equality Board set up to deal with cases of discrimination against women in employment, with more sanctions for violators of various legislative provisions prohibiting discrimination on the ground of sex, in job and wage structures. Women in the Public sector should have paid maternity leave, just like their counterparts in the Private sector. A fund to which everybody in employment would contribute, irrespective of sex, would enable employers in setting up child care centres closer to work places.

The Ministry of Community Development and Women's Affairs put forward recommendations to the Tax Commission, whose report we are still awaiting, for separate taxation.

At the Colloquium on Women's Rights in Zimbabwe held in November, 1984, in which we took part, women proposed that there should be one Marriage Act and one Succession Act governing all citizens of Zimbabwe, irrespective of race or sex.

Women should have the same access to loan and credit facilities, trading and

licencing opportunities, and land in their own right, as men.

These, among many others, are the changes that need to be considered.

¹Seymour, Becker and Coertze, 1982, p. 47.

²The full text of CASS's presentation to the Forum, from which this article is excerpted, included a discussion of the fields of land and labour as they relate to family law. Please note that the term 'women' in the rest of this article refers to black women, unless specifically stated otherwise.

³(Mambo Press, 1983), pp. 41-42.

⁴"Some Observable Sources of Women's Subordination in Zimbabwe," Fundamental Rights and Personal Law Project (Harare, April 1983).

⁵May, p. 43..

⁶H. Childs, *The History and Extent of Recognition of Tribal Law in Rhodesia* (Salisbury: Ministry of Internal Affairs, 1975).

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