ZIMBABWE LAW REVIEW

Volume 6 1988

WOMEN UNDER ZIMBABWEAN LAW

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INTRODUCTION

This article seeks to establish and appraise the position of women under the law of Zimbabwe. Such a task must start from a consideration of the position of women under the constitution. This is because the constitution embodies the fundamental principles upon which the state is governed, especially in relation to the rights of the subjects of that state. Constitutional rights are often credited with a sacrosanctity and significance which does not *accord* with the practical realities of life. Consequently, it is often necessary to pierce this veil of mysticism and glorification and temper it with realism. To do this it is necessary to understand what constitutions are, how they come about and what their strengths and limitations are.

It is trite that the Constitution of a country is its supreme law. The Zimbabwean Constitution expressly states that:

> "This Constitution is the supreme law of Zimbabwe and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void".[1]

Thus the Constitution is the ultimate standard against which the legality of any act—legislative, administrative, judicial or executive—must be tested, and any law or act falling outside the parameters allowed by the Constitution is of no force or effect. In this way the Constitution is supposed to function as a check against the abuse of power by those who have it. The point must be made, however, that while the Zimbabwean Constitution is a check on the exercise of government power, it is itself the product of the government's legislative functions, in the sense that it is made by the government through Parliament and can be amended to any extent in the same manner.

Constitutions, like all other laws, do not arise out of thin air. Rather, they reflect the realities of daily life, they are an expression of society's values and aspirations and they embody social choices. Broadly speaking, a Constitution sets out what can or can not be done and determines the rights and obligations of individuals, and according to David G. Gill:

> "Rights are social constructs rather than natural phenomenon, as is sometimes erroneously and wistfully claimed. Legitimate rights of individuals and groups in a society are products of societal

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1 S 3 of the Zimbabwe Constitution Order, S.I. 1979/1600

> processes involving conflicts, choices and decisions before they become formalized in social policies. The roots of rights are human needs. However, which and whose needs will be satisfied out of society's natural resources and human-created wealth, on what terms, when and to what extent, depends on social choices. In short, rights are explicit or implicit societal sanctions for satisfaction of specific human needs of certain individuals and groups out of society's concrete and symbolic resources."[2]

If the above formulation be accepted, as indeed it should, (even the minutest knowledge of the bargaining that preceded the Lancaster House agreement is ample proof of this fact), it must follow that the Constitution is a man-made creation and that, just as men can make it, so they can unmake it. In fact, the Zimbabwe constitution expressly provides that:

> "Parliament may amend, add to or repeal any provision of this constitution."[3]

Therefore, the Constitution can have no more force or authority than that enjoyed by its authors, not in their individual capacities but in their capacity as representatives of the electorate.

The question arises as to whether by "man" in the statements above is meant the male of the human species or the broader sense of *homo sapiens* in general. Due to the homogeneity of most societies there rarely ever is consensus on any issue, let alone in relation to contentious issues such as the area of women's rights. Whose voices are heard and crystalized into the formal position with minor qualifications, always depends on who has the means to assert their will. Coming to the area of the Constitutional position of women in Zimbabwe the question becomes not only whether women's voices have been heard but also to what extent they can be heard. The answer to this is perhaps best sought in the gender configuration of those institutions charged with deciding on these matters. Where are the issues crucial in determining women's rights decided? The Legislature is one such place because this is where the laws are made. The Legislature is made up of the Senate and the House of Assembly. At present there are only 3 women out of the 40 members of the Senate and 11 women out of the 100 members of the House of Assembly, making a total of 14 females out of a total of 140. For a law to be passed there must be a majority vote in its favour in both the House of Assembly and the Senate. Quite clearly, even if all the female members of the Legislative Assembly voted against a law because it discriminated against women *qua* women, unless they had the backing of some of the male members, they would have no hope of success. It is arguable that if all female members of the Legislature are not for the law then perhaps this is an indication that the female component of society is not yet ready for such a law

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2 "Societal Violence and Violence in Families" in J Eekelaar and E. Katz (eds), *Family Violence: An International and Interdisciplinary Study*, Toronto, Butterworths, 19783.

3 S 52 of S.I.1979/1600.

and that, therefore, the law should not be passed. It is tempting to argue that since women make up more than 51% of Zimbabwe's population, and assuming that those female members of the Legislative Assembly are truly representative of the female population and its sentiment, then their vote should be taken to be the majority vote even though they are only 14 in number. The catch here, of course, is that these women are not in parliament on the "women" ticket but as representatives of their respective constituencies. Therefore, perhaps the only argument that could be effectively made in this respect is that laws should not be simply reflective of current social mores regardless of whether or not they advance the desired goal but, rather, should in addition or instead, beacon the direction society should follow.

Members of Parliament are supposed to be elected by members of their constituents. In practice, however, people get into Parliament on party patronage, and the party usually puts forward staunch party supporters, or people who have connections with high ranking party officials. Accordingly, the probabilities of the members of Parliament holding the same views as those of the party are very high. Perhaps, therefore, what one should look to is the official party policy in relation to women, rather than individual convictions on this issue. The government is on record as having chosen for itself a socialist path, a fundamental tenet of which is the equality of the sexes. The official government policy in relation to women as enunciated by the District Administrator for Chiredzi, Mr. J.L. Pfumojena, is that the equality policy is subject to another overriding consideration, *viz*, the retention of our culture, traditions and all those other things that identify us as ourselves — as symbolized by both the creation and the retention of the Ministry of Youth, Sports and Culture at a time when perhaps some people might have thought it a superfluity. If by this is meant that all customs and traditions obtaining in yesteryears be adhered to without regard to changes that have occurred and are occurring and especially considering the inherently sexually discriminatory nature of most of the customs and traditions, this would be a negation of the substantive equality concept. On the other hand, however, if this broad formulation accepts that culture and tradition grow out of people's lives and that, therefore, customs and traditions do not remain static but rather develop with the change in lifestyles, and makes provision for this, then there might not be any inconsistency between the socialist line being trodden by the government and a retention of culture and tradition.

CONSTITUTIONAL RIGHTS IN GENERAL

Currently the Constitution provides that notwithstanding his/her race, tribe, place of origin, political opinions, colour, creed or sex, "*every*" person in Zimbabwe is entitled to the fundamental rights and freedoms of the individual, viz,

> "(a) life, liberty, security of the person and the protection of law.
> (b) freedom of conscience, of expression and of assembly and association; and,
> (c) protection for the privacy of his home and other property

> and from compulsory acquisition of property without compensation"[4]

Prima facie, therefore, under this broad bestowal of rights which, incidentally, seems to encompass all civil and political rights which one could legitimately claim, there is no distinction on gender-related grounds. It is, however, of the utmost importance to note that any formal right is substantive only to the extent that it does not impinge on the rights of others or has not otherwise been legitimately derogated from and thus the Constitution provides that:

> "every person in Zimbabwe is entitled to the fundamental rights and freedoms of the individual . . . *but subject to respect for the rights and freedoms of others and for public interest*"

and

> "the provisions of this chapter shall have effect for the purpose of affording protection of those rights and freedoms *subject to such limitations of that protection as are contained herein*, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest"[5] (My emphasis)

Put differently, a person's substantive rights are the residue that remains after all the conditions precedent to the enjoyment of the formal rights have been satisfied. In fact, at times some of the fundamental rights and freedoms of individuals can be suspended, *vide*,

> "Nothing contained in any law shall be held to be in contravention of sections 13, 17, 20, 21, 22 or to the extent that the law provides for the taking, during a period of public emergency, of action for the purpose of dealing with any situation arising during that period, and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in mind".[6]

In order to ascertain the actual position in relation to the position of women under the Constitution it is therefore necessary to examine all the legal principles which have a bearing upon women.

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4 S.11 of S.I.1979/1600. It must be noted that this section does not give any substantive rights but merely summarises the rights conferred by sections 13 to 23. See also *Austin and Harper v Chairman of the Detainees Review Tribunal and Another*, Sc.108/87.

5 Ibid Section 11.

6 As to how and when a period of public emergency may be declared, see sec. 68 and par. 1 of Schedule 2.

THE CONSTITUTION AND DISCRIMINATION

Section 23 (1) provides that:

> "Subject to the provisions of this section —
>
> (a) no law shall make any provision that is discriminatory either of itself or in its effect; and
> (b) no person shall be treated in a discriminatory manner by any person by virtue of any written law or in the performance of any public office or any public authority",

and Section 23 (2) adds that:

> "for the purposes of subsection (1) a law shall be regarded as making a provision that is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of that law or treatment, persons of a particular description by race tribe, place of origin, political opinions, colour or creed, are prejudiced —
>
> (a) by being subjected to a condition, restriction, or disability to which persons of another such description are not made subject; or
> (b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition of that condition, restriction, or disability, or the according of that privilege or advantage is wholly or mainly attributable to that description by race, tribe, place of origin, political opinions, colour or creed of the persons concerned."

This section forbids discrimination on all grounds except sex, thus impliedly *permitting* discrimination on the basis of gender. The constitutional position is thus that, while there is nothing to stop Parliament from legislating in such a way as to enhance women's standing *vis-à-vis* men, should Parliament see it fit to discriminate against women *because* they are women there is nothing unconstitutional about this. The question arises, from a women's rights point of view, whether this omission is good or bad. To the extent that section 23 allows discrimination against women on gender-related grounds it does women a disservice because by so doing it removes the one ground on which all laws that are inherently discriminatory against women could have been weeded out of the Zimbabwean legal system.[7]

However, insofar as section 23 also allows Parliament to legislate in favour of women, it may well be an advantage in that it provides Parliament with a legal

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[7] For an example of such a law, see Section 15 of the Deeds Registries Act, Chapter 139.

basis upon which to discriminate against men in favour of women, either to redress the imbalances resulting from years of differential treatment or to cater for the different life experiences of men and women. However, this is an abstract advantage which can only be actualized if utilized by a progressive Parliament with the right orientation.

Section 23 (3) and (4) of the Constitution provides, *inter alia*, that:

> "23(3) Nothing contained in any law shall be held to be in contravention of subsection (1)(a) to the extent that the law in question relates to any of the following matters —
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> (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
> (b) the application of African 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.
>
> 23(4) The provisions of subsection (1)(b) shall not apply to anything that is expressly or by necessary implication authorized to be done by any provision of a law that is referred to in subsection (3)"

Presumably, these provisions were made in order to preserve the duality of the Zimbabwean legal system.[8] African customary law as a whole, but especially so in the areas enumerated in section 23(3), is inherently discriminatory against women, for instance, in terms of African customary law women never attained majority status. The point being made is not that general law is not discriminatory against women — the existence of the marital power is but one illustration of this fact — but only that in most cases customary law is more so than general law. Therefore, were it not for section 23(3) and (4) it might have been at least arguable that some of the discriminatory substantive customary law rules are unconstitutional because they place African women in a worse position than non-African women and that this differential treatment was based wholly on grounds of their race. Apparently, however, one could still argue that if his/her case falls outside the class of cases enumerated in section 23(3)(a) then the application of discriminatory customary law rules to his/her case without his/her consent is unconstitutional. Whether such argument would substantially benefit women, however, is doubtful. It appears that, except in relation to the issues enumerated in section 23(3) (a), by and large the customary law position is not very different from the general law position. In any case the issues enumerated in section 23(3) (a) just about cover all those issues that are really important to women.

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[8] The co-existence of general law and African customary law.

CITIZENSHIP UNDER THE CONSTITUTION

Apparently, the Constitution not only accepts but actually entrenches the superiority of husband over wife in relation to citizenship issues. It is not just the condition of the legitimate children which is seen as being dependant upon the circumstances of the father but that of the wife is also seen as being tied to that of the husband. Perhaps nowhere is this more apparent than in the determination of citizenship in terms of Chapter 2 of the Constitution. The citizenship of a legitimate child is determined by reference to the conditions of its father, never its mother. In terms of section 5 (1)(c) a legitimate child born at a time when its father is unlawfully residing in Zimbabwe is not entitled to Zimbabwean citizenship although its mother may have every right to reside in Zimbabwe. In like manner, even if the mother of a legitimate child is a Zimbabwean citizen who is ordinarily resident in Zimbabwe the fact that the child's father is not a Zimbabwean and is not ordinarily resident in Zimbabwe will cost the child any claim to Zimbabwean citizenship.

Also in terms of section 5 the legitimate child of, for example, a Zimbabwean New York based female envoy fathered by a Liberian man at a time when he is ordinarily resident outside Zimbabwe would not be entitled to Zimbabwean citizenship. Given the same set of facts and changing only the sexes of the parties, the child would be a Zimbabwean citizen. In the same vein section 6 provides that a legitimate child's citizenship by descent follows that of its father. Section 7(2) provides that any woman married to a Zimbabwean citizen "shall be entitled, upon making application . . . to be registered as a citizen of Zimbabwe". But the same facility is not extended to the non-Zimbabwean husband of a Zimbabwean woman. It is provided in subsection 4 of section 7 that persons adopted jointly by a man and woman take Zimbabwean citizenship only if "the male adopter was a Zimbabwean citizen at the date of adoption." It is conceded that in terms of Section 7(3)

> "Any person, one of whose parents is a citizen of Zimbabwe at the date of his application, shall be entitled upon making the application . . . to be registered as a citizen of Zimbabwe;
>
> Provided that if the person is not of full age and capacity the application shall be made on his behalf by his responsible parent or by his guardian or other lawful representative".

Firstly, the fact that the citizenship is granted upon application is irrelevant, the point is that a person whose father is at the relevant time a Zimbabwean is automatically entitled to Zimbabwean citizenship by birth — whereas one whose mother is a Zimbabwean citizen actually has to apply for it. Secondly, section 7(7) defines responsible parent in relation to a child as being:

> "(a) If the father is dead or the mother has been given custody of the child by order of a court or has custody of the child by virtue of the provisions of law relating to the guardianship of

children or the child is illegitimate, the mother of the child;
(b) in any other case, the father of the child;"

This maintains the legal superiority of man over woman. The whole chapter relating to citizenship shows quite clearly that women feature only when there are no male competing interests. In other words, in all those cases in which men feature women might as well be non-existent. Further, although Parliament is given power in terms of section 9 to add to, amend or appeal the circumstances under which a person may acquire or lose Zimbabwean citizenship, this is not a power which Parliament may use to change the sexist nature of the chapter on citizenship, *vide*,

> "An Act of Parliament may make provision, *not inconsistent with this Chapter*, in respect of citizenship and, without prejudice to "the constitutional provisions relating to citizenship contained in sections 4–8 inclusive". [Emphasis added]

Quite clearly, the Constitution of Zimbabwe is inadequate in granting women substantive rights against discrimination and in citizenship law. Notwithstanding this Constitutional inadequacy however, the independent government of Zimbabwe has enacted laws that have gone further than the Constitution in the protection or granting of women's rights. These laws are discussed briefly below.

THE CUSTOMARY LAW AND PRIMARY COURTS ACT (ACT 6/81)

The Customary Law and Primary Courts Act, (Act 6/81) is perhaps the first major legislative change introduced by the popular black nationalist government. Prior to the enactment of this Act customary law had to be applied to certain issues. It was provided that:

> 3(1) Subject to the provisions of this section and of any other enactment, in the determination by any court of law of any civil case between Africans or between an African and a person who is not an African, the decision may be in accordance with customary law.
>
> (1a) Save as otherwise provided in this section, unless the justice of the case otherwise requires—
>
> (a) customary law shall be deemed to be applicable in any case which is between Africans and which relates to:
> (i) seduction or adultery; or
> (ii) the custody or guardianship of children; or
> (iii) the devolution otherwise than by will of movable property on the death of an African . . .; or
> (iv) rights in land which is not held under individual registered title; or

(v) marriage consideration; or
(vi) a marriage between Africans contracted under African customary law whether or not it has been solemnized under the African Marriages Act; and

(b) the law of Rhodesia shall be deemed to be applicable to any other case." [9,10].

Customary law was defined as being "in relation to a particular African tribe ... the legal principles and judicial practices of such tribe except insofar as such principles or practices are repugnant to

(a) natural justice or morality;
(b) *the provisions of any enactment*:

Provided that nothing in any enactment relating to the age of majority, the status of women, the effect of marriage on the property of the spouses, the guardianship of children or the administration of deceased estates, shall affect the application of customary law except insofar as such enactment has been specifically applied to Africans by that or any other enactment."[11]

These two provisions, combined with the fact that most enactments affecting the issues enumerated in section 2(1) above did not in fact affect Africans, meant that in most vital areas customary law had to be applied. It has already been pointed out above that customary law was, with some exceptions, inherently more discriminatory against women than general law. Consequently, these two provisions, together with section 3(2) of the same Act served to keep women the virtual "possessions" of men. Section 3(2) provided that

> "The capacity of any African to enter into any transaction or to enforce or defend any rights in a court of law shall, subject to any enactment affecting such capacity be determined in accordance with the law of Rhodesia: Provided that if the existence or extent of any right held or alleged to be held by an African or any obligation vesting or alleged to be vesting in an African depends on or is governed by customary law, the capacity of the African concerned in relation to any matter affecting that right or obligation shall be governed by Customary law".

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9 Section 3 of the now repealed African Law and Tribal Courts Act, Chapter 237.

10 See, for example, *Gonese v Mufudza* 1977 (1) RLR 49: *Richard Shumba v Tsakayi Renzi* 1973 CAACC 7; *Fanwell Chamboko v Jonasi Nyamayaro*, 1972 CAACC 1; *Ndewere v Magwede* 1960 SRN 682; *Chitiyo v Hlupeni* 1940 SRN 37; *Pupuri v John* 1947 SRN 181; *Rusiya v Lucy* 1954 SRN 455. However, in view of section 3 of Chapter 237 and now section 3 of Act 6/81, it no longer follows that general law applies in all cases in which customary law is unascertainable, nor is general law necessarily applicable on the basis of the justice of the case — *vide*, section 4 of Act 6/81.

11 Section 2(1) Chapter 237.

By virtue of this section it is difficult to conceive of any case in which an African woman could have successfully challenged her "belonging" to her guardian because, in so far as her "ownership" by her guardian depended upon customary law, the capacity of all the people concerned, as well as all other matters connected with her guardian's right had to be determined by reference to customary law. Customary law said she belonged to her guardian.

With the enactment of Act 6/81 customary law became applicable only where there is no controlling statute; where the parties have expressly or impliedly agreed that it should apply and where, from the surrounding circumstances, it appears just and proper that it should apply. Considerations of justice may also displace the application of customary law. To the extent that Section 3 of Act 6/18 permits a flexible choice of law creating the potential for some women to enjoy rights contained under general law, it is a step forward for women. However, taking into account their real life situation, it is doubtful whether a significant number of them would in fact benefit from this standard and way life test with its clearly dollar based content. Surrounding circumstances are defined as being,

> "without limiting the expression . . .
>
> (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;
> (d) the relative closeness of the case and the parties to customary law or the general law of Zimbabwe, as the case may be."

The other point to note is that, whereas the definition of customary law contained in the African Law and Tribal Courts Act had made some enactments inapplicable to Africans, the new definition of customary law does not contain any such provision. The question that arises is whether all enactments have, without regard to when they were enacted or whether or not they were previously applicable to Africans, have become applicable to Africans. It would seem that since the legal basis on which the enactments were not applicable to Africans has been done away with, they are now applicable without regard to race. If this submission is correct, it would mean that in so far as some enactments provide African women with more rights than they enjoy under customary law the new position is an advancement[12] of women's position. If, however, notwithstanding the removal of overt racial criteria in the applicability of statutes some enactments remain outside the purview of Africans, then it means there has been no consequent enhancement of women's status.

In 1982 the Customary Law and Primary Courts Act was amended to make

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[12] See, for example, the Guardianship of Minors Act.

a husband the person primarily responsible for the maintenance of his wife during, and after marriage until her death or remarriage. This principle extends even to where the parties have contracted a customary law union. The father of a child was also made primarily responsible for the maintenance of that child. This was a definite improvement on the old situation since it gave women rights they had not enjoyed before. There is no doubt that these provisions discriminate against men in favour of women because the primary responsibility is placed on men. The fact is that the provisions are a legal expression of the *de facto* situation in the generality of cases. In those cases in which the mother is in a position to contribute the courts have always taken this into consideration in their awards.

THE LEGAL AGE OF MAJORITY ACT 15/82

This Act is important for two major reasons, *viz*, that:

(i) it reduces the legal age of majority from 21 years of age to 18 years of age; and
(ii) for the very first time in Zimbabwe the concept of majority status is extended to African women. Prior to this enactment African women were perpetual minors except in so far as they could be classified as *feme soles*.[13]

Now, as was said by the Chief Justice in *Katekwe v Mhondoro Muchabaiwa*.[14]

> "It is common cause that the effect of the Legal Age of Majority Act is that the old customary law concept that an African woman was a perpetual minor who needed a guardian to assist her in her contractual obligations has been done away with because every person acquires majority status on the attainment of 18 years."

The Legal Age of Majority Act tempered the yoke of inferiority tied to women by section 3(3) of the Customary Law and Primary Courts Act in all those cases in which determination of their capacity by reference to customary law would mean that they would be treated as minors when in fact in terms of the Legal Age of Majority Act they are majors. Section 3(3) of Act 6/81 now stands repealed by Act 15/82 to the extent that the provisions of the earlier statute are inconsistent with those of the latter. In relation to disputes involving minor African women the proviso is still good law, and women may still be correctly labelled the "possessions" of their guardians.

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[13] *R v Gutayi* 1915 SR 49; *Katsandi v Chuma* 1937 SRN 6 1946 SRN 117. *Nbono v Maloxoweni* 6 EDC 62.

[14] SC 87/84.

THE GENERAL LAWS AMENDMENT ACT, 31/1983

Section 2 of the Sex Disqualification Removal Act, Chapter 339, as amended by the General Law Amendment Act, 31/83 provides that :

(1) Notwithstanding anything to the contrary contained in any law women may hold any public or civil office or appointment, subject to the same conditions on which such office may be held by men.

(2) "Qualifications which when possessed by a man, render him eligible for admission to any civil or public office in Zimbabwe, by virtue of the possession of such qualifications rendering him eligible for admission to a corresponding office elsewhere, shall, when possessed by a woman, render such woman eligible for admission to any such office in Zimbabwe, subject to such terms and conditions as apply to men."

Because of this section, one therefore doubts the legality of the actions of the colonial government in making female employees work under conditions inferior to those of their male counterparts. See, for instance, the table below:

TEACHERS STARTING SALARIES AS OF 1ST JULY 1979
(Zimbabwe Dollars per annum)

Qualification	*Women*	*Men*	*Difference*	
			Own Level	*Level Below*
3 Ta/	3 780	4 608	828	
4 Ta/	4 020	4 884	864	588
5 Ta/	4 260	5 160	900	624
T.C or B Ed Degree	4 764	5 436	672	396

3 Ta/; 4 Ta/; 5 Ta/; and T.C denote teachers holding certificates and 3, 4 or 5 years of training.

Source: Ministry of Education, "Explanatory Notes on the Teachers Salary Scales", Section 1 Appendix A (1).

EMPLOYMENT LAWS

Discrimination

The Labour Relations Act, No 16 of 1985 provides that an employer cannot discriminate against an employee or prospective employee in any matter on gender-related grounds. In so far as the Act only governs labour relations, it follows that as long as one is not dealing with labour issues he/she can continue to legitimately discriminate on the basis of sex. Even in relation to labour issues the Act is not adequate. There is no general right to employment in Zimbabwe. Consequently,the choice of an employee ultimately rests with the prospective employer and such judgments are sometimes reached on the basis of subjective considerations such as a person's outward appearance or even what favours the employer may get from the prospective employee. In any case, even if the decision were based squarely on objective criteria, the same result might be reached because there are few women who are as qualified as, or at least qualified in the same respects, as men and usually it is men's qualifications which are well-suited to almost immediate absorption into the labour market. It is, therefore, possible, notwithstanding the Labour Relations Act, to maintain a job preference for men.

Maternity Leave

Under the old Industrial Conciliation Act, Chapter 267, maternity leave was available but it was unpaid. Now, in terms of section 18 of the Labour Relations Act provision is made for partially-paid maternity leave. If the employee applying for maternity leave has accumulated vacation days in the six months previous to her application and she is willing to forfeit them then she is entitled to at least 75% of her normal salary payable unless she is already working under more favourable conditions. If the employee has no vacation days to forfeit or she is not willing to forfeit her leave days then she is entitled to 60% of her normal salary payable at the usual time. Although this provision is an improvement on the old situation, the fact remains that it sanctions a reduction in the employee's salary at a time when there is an actual increase in her expenses. Quite clearly, the provision is based upon the presumption that a woman will marry and be wholly or partially maintained therefrom; there is no other logic to explain such a situation.

The maternity leave is for a period of 90 days which may be taken as the woman wishes. If the birth is accompanied or followed by complications then the period can be extended but without pay. However, a woman can take maternity leave on these conditions from the same employer only three times and the births of the children have to be at least 24 months apart. Some might argue that this is a good method of forced family planning[15] but to women it may well be a

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[15] See for instance, J Kazembe, "Women's Issue" in I. Mandaza (ed.), *Zimbabwe: The Politics of Transition.*

double-edged sword. Provided her husband is happy with both the number of children and their sexes, all might be well and good. If, however, he is not, and she values her marriage and wants to stay in it — which is most likely since in Zimbabwe marriage is still apparently seen as a woman's natural state and the measurement of her human worth — then she might well have to take unpaid maternity leave in order to have another baby, hopefully of her husband's preferred sex.

The fact that women are entitled to go on maternity leave and be paid for it may in fact be a blessing laced with bitterness. In principle, there is no reason why female employees should not be paid their full salary while they are on maternity leave because having children and caring for them is a national duty (albeit an unconsciously undertaken one); without the children the nation would have no future, and by caring for them without being paid for it women are actually subsidizing the nation. Therefore, that women be paid while on maternity leave is not in anyway a privilege. It is a right. However, these provisions make it more costly to employ women than men and might actually operate to prejudice women's employment chances.

Breastfeeding

In terms of the new Labour Relations Act, a nursing employee is entitled to two half-hour periods or one hour in which to breast-feed her child. She can take this time-off at any time during working hours provided this does not disrupt the employer's work plan. Quite clearly this is not a right that women can exercise unless the social structures for its actualization are established. Many women live far away from their work places. It is therefore not feasible for them to go home, feed their babies and be back all in an hour's time — the time is not enough to allow this and the expense involved is prohibitive. Either kindergartens and creches are established at work places or transport is made easily and freely available to nursing employees or else this right will remain a theoretical one. Not many work places in Zimbabwe boast of creches and/or nurseries and the provision of transport for nursing mothers to their homes is so expensive that perhaps it should not even be attempted. This makes the establishment of reasonably affordable creches and kindergartens at places of work and elsewhere one of the few available options. At present, in an attempt to exercise this right, many women who live away from their places of work have been finishing work an hour earlier than normal, but transport problems, bus breakdowns, spares shortages and lack of foreign currency, *inter alia*, all combine to negate their right to breast feed their children. Also as observed above, taking into account the fact that there is no general right to employment in Zimbabwe, the provisions relating to paid maternity leave, the breast feeding regulations, coupled with the current unemployment rate, the employment of women might in fact be considered an expendable luxury, thus illustrating how difficult it is to implement change when the thing/institution sought to be changed is but one facet of a whole configuration.

Property

In 1982 Parliament also passed the Immovable Property (Prevention of Discrimination) Act[16]. As the title of the Act implies, this statute only relates to immovable property. Therefore, in relation to movable property discrimination against women *qua* women is still legal. In addition, although this Act places the *onus* on the person accused of discrimination to prove that his actions are not in fact discriminatory, it provides that, provided the discrimination was, *inter alia*, necessary to ensure compliance with the provisions of any other enactment, then the discrimination complained of is not actionable discrimination. In other words, provided one is acting under any other law which requires discriminating, he is not guilty of discrimination within the meaning of Act 19/82. Nor does Act 19/82 limit the enactments having such effect to those enactments passed prior to the enactment of Act 19/82. In this way the legislature managed to maintain a facade of frowning upon discrimination while in fact allowing it.

Act 19/82 also allows discrimination on gender-related grounds if the discrimination is justified in the interests of decency or morality or in view of any legal disability to which such person or class of persons are subject, or the immovable property concerned was reserved for the use of persons of one sex, and the person or class of persons against whom the allegedly discriminatory act was committed belonged to the other sex. Firstly, questions of decency and/or morality are highly volatile depending, as they do, on societal perceptions on which there is very little consensus. Moreover, this very indeterminacy may be used to cover discriminatory acts (such as, for instance, arguing that the indiscriminate rounding up of women is necessary in the interests of decency and morality). More unacceptable, however, is the provision that women can be discriminated against on account of any legal disabilities to which they are already subject. Thus, for instance, one can legitimately discriminate against women on the ground that the invariable consequences of marriage are a legal disability justifying discrimination against them; or estate agents could refuse to allow women to rent flats on the ground that their rules require that the lessee personally occupies the flat, and this would not be certain in the case of women because of (prospective) husbands' rights to decide on the matrimonial home. In this way one kind of inequality is used as a justification for legalizing yet another kind of inequality, a position which should be untenable in a free Zimbabwe treading a socialist path with its emphasis on the equality of the sexes.

CONCLUSION

The position of women now has improved greatly from what it was prior to independence, but the task is far from being complete. A lot has yet to be done to the current constitutional position of women, and especially the institutionalization of sexual discrimination which is a real embarrassment in a supposedly socialist Zimbabwe. The sooner the position is rectified, the better for everyone concerned, not just to save the faces of our politicians when they talk socialism but more so because it is owed to women.

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[16] Act 19 of 1982.