

Lawyers? Women? Women Lawyers in Zimbabwe?

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By way of an Introduction - Setting the Scene

At the University of Zimbabwe (UZ), Faculty of Law, the first year undergraduate law class has 133 students for the 2012-2013 programme. Of these 82 (62%) are female and 51 male. In each of the other years sex parity is roughly in place. It could be argued that it will not be long before we have to think about affirmative action quotas for male students, certainly in law. At the turn of this century the University of Zimbabwe introduced a special concession for female students to enhance women's enrollment it was predicated on the assumption that the girl child may have been hampered in her pursuit of education by social and cultural constraints, but to achieve parity in law the concessions never had to be made. In 2011 115 students graduated with law degrees 61 were women (53%) and 54 were men, in 2010 of 120 graduates 63 were male and 57 ((47.5%) women. Figures roughly around parity had been occurring since 2006 where 55 (49.5%) were women and 56 were men. 2011 was the first time that females predominated over males, and this looks set to continue². In 1982, which was a graduating class that had commenced studies in final years of the Zimbabwe liberation struggle there were only 13 graduates of whom only one was a woman (9.1%). In the years between 1982 and 2006 there had been a slow but steady rise in the number of females graduates for example in 1984 15% of the graduates were women, in 1990 women were 24.5% of the graduating class. In 1998 the figure had risen to 35% of the graduates being women 17 out of a total class of 48; in 2005 39% of the graduates were female. There was another notable transition and that is that in 1982 the graduating class was 85 % white whereas in 2012 it is 100% black³. At UZ in the Faculty of Law the lecturing staff is comprised of 15 males and 10 females of these two are full professors one female and one male and there is one male associate professor. The most senior professor is female and is the only female professor of law in the history of the university.⁴

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² In recent years given the predominance of females it has become necessary to state at every available opportunity that the entry qualification for law for women has been and is identical to those of men, not less than 14 or 15 points at A level. Unfortunately men who miss out on a place are given to complaining and explaining their exclusion as discrimination in favour of less qualified women, which has certainly not been the case.

³ The 1982 class had commenced their studies during the liberation war. The graduating class would have been larger if a significant number of black students had not withdrawn and joined the liberation struggle. Most of them returned after Independence to complete their studies. Precise details from the university or faculty are not available this is my personal recollection of what took place. I still vividly recollect in the early 1980s being in my office in the faculty, when answering a knock on the door, I admitted around six or so broadly grinning black high ranking army officers, there were 'brass' epaulets and medals 'everywhere. These were returning students who then re-joined the law degree programme. I was delighted they had survived and even more delighted they were returning to their studies. I do not recollect any women falling into this category, although there were women who enrolled after Independence and graduated who I came to know had been involved in the liberation struggle and had been in military camps outside the country.

⁴ I am most grateful to the newly appointed Assistant Registrar of the Faculty of law at the University of Zimbabwe, Mr S. Matsika, for his assiduous tracking down and compiling of all these statistics.

Midlands State University, the only other university offering a law degree in Zimbabwe, had not prior to the request for disaggregated figures on graduates considered this as something to be recorded and had to comb their records to compile the disaggregated figures. Since the first graduating class in 2010 the number of women has steadily risen, in 2010 there were five females and 12 males, in 2011 there were 15 females and nine males, in 2012 there were five women and six men. The overall figures being 25 females and 22 males, currently across all four levels of the programme there are 89 females and 94 males. In terms of lecturing staff the figures are very different there are three females and 20 males, this covers both part-time and full time staff⁵.

Thus one can conclude that at the level of those studying law and for recent graduates near parity, or female dominance, between the sexes has been achieved, affirmative action for females is not required. The question then becomes prospective. How will this increasingly obvious transformation of the sex and, one assumes, gender⁶ composition of the legal fraternity⁷ influence the development of the legal and judicial climate in the future. Will the increasing numbers of women entering the profession make it more sex and gender sensitive, more aware of the inequalities for women that prevail in all forms of law in Zimbabwe and in the way that law is applied and interpreted? As will be shown later in this chapter women lawyers are already influencing the development and implementation of human rights and laws that benefit women or at least provide for formal equality between females and males.

This dramatic increase in the numbers of women graduating with law degrees has not as yet permeated to the upper levels of the profession, but there are as with the judiciary some senior women lawyers in private practice and heading up public service departments. There are black women as well as white women who are senior partners in large law firms as well as women heading smaller firms and the numbers are steadily growing. At the bar, that is specialist lawyers who must be briefed by an attorney who confine themselves to court appearances and opinion work, there are six women, which is comparatively low, out of around 24 in total⁸. One proffered explanation is that women are somewhat averse to the very male and aggressive format of adversarial litigation⁹, although in Zimbabwe there is nothing to prevent an attorney who has direct contact with the client from appearing in court, even the Supreme Court.

⁵ I thank my colleague at SEARCWL, Ms Rosalie Katsande for obtaining this information for me, she was at one time the Dean of the Faculty of Law at Midlands State University so had an insider track and the influence to get a quick compilation of the statistics.

⁶ I make this cautious statement as it is important to distinguish between sex which is biological/physiological and gender which is the social construct imposed on sex and which is where the education, religious, legal, social and economic differentiation and discrimination between the sexes stems from, for further discussion of this see Stewart (2011).

⁷ This is the term used to cover the whole gamut of lawyers and their various activities, it is a term I use without critically examining its gendered message, but writing it makes it starkly obvious that it denotes an unconscious use of male nomenclature.

⁸ As this is a small collegiate group it was possible to get the numbers from one of the female members.

⁹ Women are more likely to be attracted to areas of law where mediation, conciliation and discussion of issues predominate, this has emerged as an interesting dimension in the drive to set up a less adversarial process oriented family court.

One of the chosen professional areas for women lawyers is the NGO world, this covers a variety of national, regional and international organizations. Women lawyers are to be found providing legal aid and help to self-acting women litigants at organizations such as Zimbabwe Women Lawyers (ZWLA)¹⁰, Legal Resources Foundation, MUSASA Project¹¹, Justice for Children Trust¹². Zimbabwe Lawyers for Human Rights (ZLHR) has a number of women lawyers among its staff, although their work is not confined to women's human rights issues. In loose association with ZLHR is the Research and Advocacy Unit which is staffed by dedicated legal researchers who undertake mainly commissioned human rights research. The Women and Law in Southern Africa Research and Education Trust (WLSA) was set up as a regional research organization in the early 1990s and produced and continues to produce a prodigious amount of research into women's legal situation in six southern African countries¹³. Much of this research has contributed to law reform that is directed at the enhancement of women's legal and human rights situations, this is another critical topic to which I will return later in this article¹⁴.

So is there any Significance in the Sex and or Gender of a Lawyer or Lawyers?

The main question that I seek to address in this chapter is what has been the influence and significance of women coming into the legal profession in increasingly large numbers in recent years? Have women altered the focus and thrust of legal studies in Zimbabwe? Have they begun to alter the way in which law is practiced? Have they begun to put a more empathetic face on the legal profession? Have women made a more comfortable space for themselves over the years in the legal profession? How are women lawyers perceived in the legal profession, on the bench, in academia and in the wider world?

Unfortunately in the context of Zimbabwe record keeping on women in legal practice and the impact women have had on law and legal practice are more anecdotal and impressionistic than based on clear empirical data. So the reader will be left most of the time with my personal recollections, and a few short studies undertaken by law students for their dissertations in both the undergraduate and masters programmes.

When I joined the first year class at law school, some forty five plus years ago, women were less than 5% of the class. I remember the somewhat startled expressions on people's face when I told them what my career choice was, it was disbelief. These reactions led to a situation where I would whisper what it was, as if there was some dreadful stigma attached to law as a choice of profession for a woman. My initial law

¹⁰ ZWLA is the Zimbabwean affiliate of the international group of women lawyers, FIDA.

¹¹ This is an organization which deals with the needs of women who are victims of domestic violence, the word Musasa is the name of a shady indigenous Zimbabwean tree and it symbolises shelter.

¹² Justice for Children Trust deals with children's legal needs but frequently it assists women, especially grandmothers and aunts caring for AIDS orphans with legal issues around guardianship and inheritance.

¹³ Areas that have been the subject of research under both state laws and local customary laws are maintenance, inheritance, general legal issues around marriage and the family, access to justice both state and customary law, women HIV/AIDS and the law.

¹⁴ For a list of WLSA's prodigious national research output in Zimbabwe go to www.wlsazim.co.zw/index.php/wlsazim-publications.html and to

studies took place in Australia and I vividly remember a criminal law lecturer who went out of his way to be as salacious and provocative on sexual issues as possible with the intention of making the women in the class (we were only 17 years old as embarrassed and uncomfortable as possible and to build up a camaraderie with the male students. As a small group of females we were determined not to react at all and sat unflinching and impassive regardless of the observations and comments made usually based on the facts in cases we were studying. Of course, he cranked up the level of offensiveness trying to get a rise out of us. As was to be expected, the males in the class would laugh uproariously and pointedly look to see our reaction. One female member of the class decided that she would only go to nice topics in criminal law, whatever those were, she did not attend lectures on rape or other sexual offences, suffice it to say her legal career was not long lived. As far as I recollect none of us considered complaining or making allegations of sexual harassment, we thought ourselves lucky to be tolerated in the faculty, and if complaints had been made about the deliberately salacious content of lectures it would have, no doubt, been pointed out to us that we were, therefore, not suited to a career in law.

Now when teaching at masters level on a programme that tackles among other issues women's experiences of law and legal process I deliberately set out to destabilize my students by openly and unashamedly getting them to use sexually explicit terms such as penis, vagina, breasts, clitoris etc., not to be salacious but to make such references non embarrassing and unequivocal in meaning. The class is usually 75% female and 25% male and is drawn from the Southern and Eastern African region and discussion of sexual matters in public between men and women is often regarded as taboo. Mentioning menstruation on the first day of the programme produces titters and awkward silences but within a couple of weeks issues of sexuality and sex based realities of life can be discussed in a mature and balanced manner by the whole class. This becomes important when addressing legal issues as it helps curb the use of confusing euphemisms in legal matters, discussions in class and in the research arena (Stewart, 2011). I like to think that my motives are very different from my former lecturer.

Unpacking the negative implications and connotations that arise from unconscious, almost innate sex and gender stereotyping is important if we are to move forward in producing the climate for achieving gender equality. Just adding women lawyers to the legal professional milieu is inadequate if these women are not aware of the implications of being both a woman and a lawyer – the issue is perspective. Men also need to understand the realities of women's lives and to appreciate what needs to be in place for women and girls to participate fully in all aspects of national life (Stewart, 2007).

One of the much prized qualities of lawyers is the ability to think analytically, dispassionately, logically, unemotionally and to deal with issues clinically and definitively. There is a tendency to see these qualities as predominantly male, women who join the legal profession, who enter university to study law around the age of 18 learn and acquire these very skills, and the highest praise used to be 'you think like a man'. One often starts to behave in a somewhat masculine manner, wanting to become

one of the boys, a sort of ‘anything you can do I can do better’ syndrome¹⁵. I have always been conscious that part of my reason for becoming a lawyer was that I resented that, as a girl, I could at best aspire to being the best girl pirate not the best pirate in my neighbourhood and I was looking for a way to assert my intellectual abilities in an un-circumscribed way. I resented the way in which girls’ personal freedom to roam and play at will was circumscribed. It was not my sex that bothered me so much, but its social and cultural implications. Over the years in teaching law I have found many female students who felt the same, comfortable being female by sex but angry about its implications for life choices and for careers.

Yet, as grownup tomboys some form of internal mental compromise becomes possible and, I would suggest, very useful in terms of tackling women’s legal issues when you suddenly realize that your sex and your gender do not match up. Once you are reconciled to this reality, you realize you are nicely placed intellectually in the middle of the gender spectrum to have empathy with other women while engaging with men in professional legal interchanges. This dichotomy and gender centralism are part of the mediating and engagement tools that women lawyers can exploit when deconstructing and effectively penetrating the previously exclusively male dominated arenas of the law. One becomes that phenomenon of the insider outsider protagonist, able to see the argument from both sides and argue women’s side of legal issues, promote legal reform and implementation issues with clinical legal approaches imbued with female empathy, female perspectives and an understanding of women’s lived realities. This I would assert is an important positioning and point of departure for women who are lawyers as they engage the law.

Women on the Rise

Application figures for women to study law globally indicate how much attitudes towards women pursuing law as a career have changed over recent years. Now, in Zimbabwe, I am predominantly involved in administering and teaching on a postgraduate programme but there was a time when I did undergraduate registration in the 1970s-1990s and every first year registration involved a depressing and depressed stream of young women with high A level points begging to be given a place to do law. But because they had not put law on their list of programme preferences they were excluded. I would always ask these young women: ‘Why if you wanted to do law didn’t you put law at the top of the list?’ The answers varied but essentially they boiled down to teachers, careers advisers, parents, acquaintances of parents discouraging them on the basis that ‘law was not a career for girls’ or ‘girls aren’t suited to law’. With hindsight it was probable that the image of the lawyer that these people had was that of the criminal trial lawyer, either prosecutor or defense lawyer, someone defending a vicious criminal, not the kind of person that ‘nice respectable young women’ should associate with. Sounds very like my fellow student from first year law in Australia.

In terms of Zimbabwean law there is no formal legal basis on which women can be excluded or discriminated against in the legal profession. Any discrimination that takes place has no state or legal sanction and no private firm or company would openly cite the sex of an applicant as the basis for appointment or non-appointment to an

¹⁵ The reader might note a little personal analysis coming here.

advertised position as this violates the provisions of the Labour Relations Act and the Legal Practitioners Act. Even the much vilified current Zimbabwean Constitution does not sanction discrimination in relation to women in the professions.

This was not always the case, as in other parts of the world, women were excluded from joining the legal profession, their assumed status of legal minority and their being subjected most of their lives to either their father's guardianship or their subjection to a husband's legal control after marriage constrained their ability, so it was determined, to practice law. They might obtain a law degree from a university and then find that they could not proceed further in the profession. Not least in terms of women's legal disability to practice law was the persistent interpretative approach of courts to declare that a woman was 'not a person' in terms of legislation that prescribed the criteria for registration as a legal practitioner. Since colonial settlement in the now Zimbabwe, the general (state) law has derived from the law applied in South Africa, thus one would have initially looked to South African law to determine women's eligibility for registration as a legal practitioner.

The most celebrated case in South Africa on the right to admission to legal practice for women is the *Incorporated Law Society v Wookey* 1912 AD 623 (Cowan, 2006). The case was an appeal from the Cape Provincial Division which had held that Miss Wookey was in terms of the Cape¹⁶ Charter of Justice not a person and thus not eligible to enter the legal profession. Miss Wookey had obtained articles of clerkship with a legal practitioner in Vryburg in the Cape Province but the secretary of the Cape Law Society refused to register her articles and the Registrar of the Supreme Court of the Cape thus could not register her articles either. The relevant extracts from the legislation were:

Every person ... shall having obtained either of the certificates in law and jurisprudence ..and having served as an apprentice or clerk throughout the term of three consecutive years ... be admitted

The only pertinent issue at the trial was whether Miss Wookey was a 'person'. The finding of the highest court in South Africa at that time, the Appellate Division, was that: 'the word "persons" included only male persons, and that the respondent Miss Wookey was not entitled to be enrolled'. Achieving this result involved a long and protracted exploration of Roman Law, Roman Dutch Law, Scottish Law and English Law – all of which pointed, in the collective opinion of the bench, to the legal fact that women were not 'persons' in terms of the Act nor were they suited to or eligible to practice law. This despite the language used being gender and sex neutral, and despite the interpretive injunction that the male includes the female unless the contrary is indicated. What the bench was seeking was a clear statement from the legislature that women were actively contemplated, there was no such indication. Although relying on an interpretative nicety the court could not resist the gendered gibe that:

¹⁶ This refers to the Cape Province in South Africa which had a mixed Roman Dutch and English law legal system.

inasmuch [sic] as nearly the whole of womankind by reason of an inborn weakness is less suited for knowledge and judgment than men¹⁷, women are excluded from holding any office or dignity relating to the government of people and its affairs.

Further that:

But it [the law] did not place men and women in a position of equality. It went out of its way to protect women, but it protected them as being the weaker vessels, and subject to natural and legal disabilities.¹⁸

Similarly, women were not accepted into the legal profession, in the then Southern Rhodesia. In 1923 this exclusion was reversed by the South African legislature and women were entitled to be enrolled as legal practitioners, although the numbers remained very low. In Zimbabwe as in South Africa after the barriers were removed women did not enter the legal profession in significant numbers until around the late 1980s, law was a male domain and women joined its ranks only on sufferance and with no special concessions to their sex. Also women in substantial numbers did not enter university to study law, so the numbers of women eligible to practice law remained small in number.

There may still, in some quarters, be an aversion to employing women in their reproductive years, or to have a large number of women in private legal firms, because of the assumed financial and other adverse implications of maternity leave and women's child care obligations. Some years ago, here go the anecdotal accounts again, a very senior male partner in a large private law firm phoned me and asked me if I could make some suggestions of names of potential recruits from the about to graduate final year of the undergraduate law programme. As it happened, and still happens, the top graduating students were an equal mix of males and females, so I was preparing a quick mental list of roughly half-half males and females, but before I could speak he said: 'But no females as they will probably all become pregnant at the same time, and there where will we be?'. I put the phone down immediately and there was no further pursuit of the enquiry, at least with me, on his part.

Misguided as he might have been on the women and all being pregnant together issue¹⁹ there is some justification for these concerns, as in Zimbabwe the employer

¹⁷ Of course if women were excluded from the education required to become a lawyer, or were subjected to limited forms of education directed only at imparting social graces, a little reading, painting, embroidery and domestic skills and little else they would inevitably appear to be inappropriately prepared for the cut and thrust of the legal world. Having been given the educational opportunities they have more than adequately proved their capacity to enter and excel within the legal profession. Also universal education has made it possible for able students from deprived backgrounds to reach university and obtain professional qualifications.

¹⁸ One is then not surprised that despite the provisions of the Zimbabwe Interpretation Act, section 9 that states that the male shall include the female unless the contrary is indicated women lawyers in Zimbabwe lobbied for sex and gender explicit legislative drafting where both male and female descriptors and male and female pronouns are both used together in all legislation so that such ingenious and ingenuous interpretation can never be invoked again.

¹⁹ This is a misguided approach as, once again and from personal experience and assessment, women are more likely to remain in employment over a long period and

meets the full costs of maternity leave and there is no state assistance to cover the costs of the leave itself or the costs of obtaining a locum. Only in the public service, in academia and in well-funded NGOs do women lawyers take the full period of maternity leave which is 90 days on full pay²⁰. In a study in 2001 Irene Sithole revealed that many women lawyers in private firms were reluctant or received tacit indications that they should not take full maternity leave. Individual women lawyers indicated that they frequently undertook work on on-going files while on maternity leave and rarely went on maternity leave without some form of ongoing engagement with legal practice (Sithole, 2001). Sithole did find that one firm, interestingly one of the old established once 'crusty male dominated' legal firms, did take its maternity leave obligations very seriously and provided for full maternity leave to all female staff and for partners even extended maternity leave beyond the statutory requirements. This firm is known for its very low staff turnover and female friendly policy, it is able to do this because it has a sound economic base and has a well-established coterie of women, often from academia, who step in and serve as part-time locums during someone's maternity leave. In an interview with one of the senior partners Sithole was told that 'this is possible because we are a large firm, smaller firms struggle to cover the costs of such arrangements'.

Women lawyers in their reproductive years are well aware of their maternity rights, but knowing your rights and enforcing them are two very different things. Sithole noted during her interviews with women lawyers that many of them felt aggrieved that they did not take the full complement of leave. She asked them: 'Why if you know these are your rights, why don't you pursue them, why not litigate?'. One interviewee replied:

It is true that we know our rights but the reason why we do not take any legal action is because we fear victimization. Ours is a small world and if you are deemed notorious for taking your employer to court, you would not find another job. (Sithole, 2001)

Paradoxically, a woman lawyer may take up a maternity leave case for a lay client and succeed when she has herself eschewed her maternity rights. This speaks to a very male paradigm imbued culture within the legal profession that, perhaps, women within the profession seek to stay as close as possible to male work parameters.

Judges and Magistrates: Women on the Bench

What is evident is that by 2012 there has been a significant penetration of women into all ranks of the judiciary. Although the most significant penetration has been into the lower ranks of the judiciary, there are at the time of writing 88 female magistrates out of a total of 207 magistrates that is 42.5%, a figure that is slowly edging towards parity²¹. Magistrates are not well remunerated in Zimbabwe, earning on

although taking maternity leave probably give a longer and more consistent period of service than many male employees as they are less likely to seek altered and improved employment options providing current employment is stable and remunerative.

²⁰ Previously it used to be 75% of salary for 90 days.

²¹ Figures supplied by the Judicial Service Commission of Zimbabwe.

average less than US\$1000 per month, the basic salary which is between US\$400 – US\$500 is enhanced by the provision of various undisclosed allowances. Female magistrates have disclosed confidentially, that those of them who are married take the view that their husbands are helping finance and underpin the justice delivery system²². However low as the salary may be the regularity of hours, fully paid maternity leave and guaranteed leave packages go some way in compensation for poor remuneration. Also a stint as a magistrate before embarking on other forms of legal practice is a good teething ground for newly graduated lawyers. Given the terms and conditions under which they serve, despite some favourable elements, means that most of them are looking to the private or NGO sectors for a possible exit from the lower ranks of the judiciary. Nonetheless, leaving the bench for greener pastures is quite wrench for some women who believe that they are able to make a positive difference when dealing with domestic violence matters, maintenance, family related issues and divorces as well as rape and sexual assault cases²³.

Once one reaches the higher ranks of the judiciary remuneration improves and there are a wider range of perks so this is a more attractive option. There are according to the Judicial Service Commission of Zimbabwe 10 female judges in Zimbabwe, six are in the High Court and four in the Supreme Court, which is the highest and final court. In the Supreme Court women judges are close to parity and as will be discussed later this has been significant in the determination of some women specific cases, but they still lag behind men at the level of the High Court where they constitute 20% of the judges. There is no mandated sex balance in relation to judicial appointments at present although the draft of a possible new constitution provides that in all public offices gender balance needs to be pursued²⁴.

It was not possible to obtain from the Law Society of Zimbabwe the number of women registered with them, or the number of women in the various forms of private or public legal practice. A phone call to the Law Society revealed that though they would have

²² The converse may also be true that wives support their husband's continuance in the judicial system, although men are more likely to have other business activities in addition to their judicial role.

²³ One former magistrate was literally in tears in my office at the prospect of leaving her long cherished career on the bench. She had come seeking advice on obtaining a better remunerated job during Zimbabwe's economic melt-down in the period 2007-2008. Both she and her husband were both judicial officers and such was their economic situation that they could no longer pay their two daughters' school fees and could not make ends meet. She had the better chance of obtaining other employment within the women's law related NGO field than he would have had at that time of severe financial cuts back in all sectors of the economy. Jobs were difficult to obtain in private practice, and he had always been a magistrate before being appointed as a high court judge. She has recently returned to the bench as a judge in one of the specialist courts.

²⁴ In the national objectives in the draft constitution the issue of gender balance is addressed, and this clearly encompasses the judiciary:

- (1) The State must promote full gender balance in Zimbabwean society, and in particular—
 - (b) the State must take reasonable measures, including legislative measures, to ensure that both genders are equally represented in all institutions and agencies of the State and government, in particular in Commissions and other bodies established by or under this Constitution; and
- (2) The State must take positive measures to rectify past gender discrimination.

However, the long term fate of the draft constitution is still hanging in the balance, nonetheless the Judicial Service Commission seems to be determined to steadily increase the numbers of women on the bench. This may be influenced by the head of the commission being female, but there had been even before her appointment a steady rise in the number of women.

been willing to provide such figures they did not categorize their members based on sex and gender or by any other criteria²⁵. Membership is recorded manually and there is no compilation of various statistics from this basic record. I do not necessarily see this as unsatisfactory in administrative terms, it could even be perceived as having a positive interpretation, a lawyer is a lawyer, sex is irrelevant. Although I will later argue that sex and gender are significant but for what we might style jurisprudential reasons rather than administrative ones. It would have been interesting to know what the distribution of women in the various branches and management and seniority levels of the legal profession, both in the public service and in the various forms of private and corporate practice, but the information is not available.

Rights, Knowledge, Power and Frustration

Female judicial officers and lawyers may find themselves in the bizarre situation of determining and pursuing legal actions in cases where, because they are women, they are potentially excluded from the beneficial operation of the law. It is arguable that such situations has driven women lawyers to be especially energetic in generating critical analysis of the law and its treatment of women in a way that a man would not. When women lawyers undertake research on law reform issues, when they argue for legal and constitutional change, when they argue and lobby for the full implementation of human rights instruments that ought to improve women's rights they do so with passion and zeal which is personal and altruistic.

For example in Zimbabwe under both general²⁶ (state) law and customary law men are the officially recognized as the primary guardians of minor children, a High Court judge, who is the arbiter of guardianship disputes between married or divorced parents may determine a matter of the exercise of guardianship rights and decision making between parents and go home to a situation where her husband's decision on the future education of a minor child would prevail unless she challenged it in the very court where she would normally preside. Only if she was a single mother who had never married or was married in an unregistered customary law marriage would she be the guardian of her child.

A woman in the commercial arena, on paper in the banking and financial realm, as well as in the right to acquire immovable property she can act alone²⁷, independently and without reference to any male, but the gendered social constructs frequently bring queries and requests for the agreement of a male, usually a husband. This is easily thwarted by the well informed female lawyer, but points to the regrettable reality that the vast majority of women either do not know or if they know find it difficult to assert their rights. State officials may also be obstructive in honouring women's rights.

²⁵ I did trawl through the Law Society's web listing of law firms, but unless one could remember someone's first name and their sex, it was not helpful. One needs also to appreciate that women take or have been forced to take, by the country's Registrar General of Births, Deaths and Marriages, their husband's surname on marriage, so this makes it difficult to pick up that someone is known to you, when they now go under their married name.

²⁶ Guardianship of Minors Act, s3.

²⁷ Prevention of Discrimination Act

The Registrar General's office, the office that registers births, deaths and marriages and issues passports, has in the past insisted that a woman on marrying must change her surname (family name) to that of her husband, including all her official state documentation including her metal identity card²⁸ and her passport. Obtaining a new passport is a protracted and expensive process. Zimbabwean women, including judicial officers, used to be forced to effect these changes when it came to the registration of the birth of a child or if they wished to travel with a child. In effect a precondition would be imposed that she must change her name to be able to obtain a passport for herself or her child. If the mother of a child needed to obtain a passport for a child she would be compelled by the Registrar General's office to obtain the consent of the father of the child, no such condition was imposed on the father of a child to obtain the mother's consent. There was nothing contained in any law that sanctioned these various impositions and limitations on women's status or capacity to deal with her legal status or that of her child.

Frustrated by these conjured up requirements woman lawyers have over recent years mounted a concerted attack on these administrative practices. Test case litigation, law reform lobbies, trenchant critical research reports have all been used to effect formal law reform and clarification or declarations as to the exact legal position. For example the Registrar General was taken to task over the issue of women obtaining passports for minor children by a prominent female politician, ZWLA facilitated the litigation and a group of women lawyers, including private practitioners, other NGO based women lawyers and women academic lawyers formed a think tank to formulate the strategies for litigating the matter. A team of female lawyers constituted the team that appeared for her in court. The matter, as it was cast as a constitutional issue in terms of the Declaration of Rights in the Constitution, meant that it went directly to the highest court, the Supreme Court. The judges assigned to hear the case were all female, although one had been seconded from the High Court as at that time there were only three female Supreme Court judges. This was undoubtedly a strategic move on the part of the Chief Justice and it put the case firmly in female hands, the Registrar General's legal team was male and pursued a patriarchal line of argument, one that would have sat happily with the judges of the South African Appellate Division in 1912 in *Miss Wookey's case*. The all-female court found that the issuance of a passport did not alter the legal status of a child thus any person with a legitimate interest in obtaining a passport for a minor child could do so, a guardian was not required to act, nor was a father's consent required^{29 30}. ZWLA and other women's legal oriented NGOs have

²⁸ It can take years to obtain a new one, meanwhile the holder must make do with a flimsy piece of paper that rapidly disintegrates. Of course if a woman thereafter divorces is she is saddled with her former husband's name, which she did not want to take in the first place. Even if she remains married her professional qualifications, if obtained in her maiden name, have always to be supported by a marriage certificate to prove the linkage between the disparate names. Conversely, other institutions would continue to use her maiden name, for example women who obtain a first law degree from the University of Zimbabwe usually do so in their maiden name, they married and were forced to change their name, then they attempt to register under their married name for a higher degree, but the registration system reverts them to their maiden name. You cannot win it seems!

²⁹ *Margaret Dongo v The Registrar General* SC 6/10

³⁰ This was an important determination in the context of Zimbabwe where many families have split up as economic migrants, leaving perhaps mothers alone or grandparents to care for children. Obtaining passports

had to vigorously follow up on the implementation of this judgment as the responsible officials are inclined to revert to the former instructions from their superior.

A pending threat of litigation by women lawyers obtained an acknowledgement on 25 August 2011 in the Herald newspaper that the Registrar General conceded that there was no law in Zimbabwe that requires a married woman to change her name to that of her husband. However, despite this women lawyers continue to monitor the practices in the offices of the Registrar General, not least because he refused to publish a note in all registry offices throughout the country that women did not need to change their names on marriage.

Law reform driven by women and especially women lawyers, with deep concerns about women's legal situation has stimulated some creative law reform measures. In the early 1980s immediately after the liberation war in which women fought alongside men, the Legal Age of Majority Act (LAMA, now s15 of the General Law Amendment Act) purported to confer majority status on all Zimbabweans, for all purposes including customary law, at the age of 18. This was ultimately to be thwarted by the Supreme Court in the infamous case of *Magaya v Magaya* 1999 (1) ZLR 100 (S) when the all male court found that customary law was especially protected by s23 (3) of the current Constitution which provides that the equality provisions laid out in s23 do not apply to matters of personal law or customary law, which of course is where women's lives are most likely to be constrained by sexed and gendered legal restrictions³¹.

However, prior to the *Magaya* case the law had been changed in favour of women in customary intestate succession cases that arose after 1 November 1997, the facts in *Magaya* had arisen prior to that date so the new legislation did not apply to it. The change in the intestate inheritance law was directly attributable to the WLSA research in the late 1980s and early 1990s into women's situation under both general and customary law. This provided a soundly researched platform for reforms in inheritance laws that significantly benefited women³². A subsequent nationwide campaign to provide information on the new laws and effect administrative reforms was carried out mainly by women's legally oriented NGOs and the Women's Law Centre at the University of Zimbabwe. Women's involvement as lawyers who had researched and come to appreciate the situation of the ordinary woman in the urban street and in the rural village, meant that the campaign was simple direct and used multiple methods including drama, poetry, film, role plays, cartoons and similar accessible communication approaches. Would male lawyers without the influence of female lawyers have taken such an approach? Probably no!³³.

for children in Zimbabwe to join or visit their parents was often frustrated by the purely administrative requirements imposed by Registrar General's office.

³¹ For a fuller discussion of this see Stewart and Tsanga (2007), Damiso and Stewart (2013)

³² For a further discussion of this research and its impact see Stewart and Tsanga (2007),

³³ During the formulation of the campaign strategies I was teaching inheritance law and asked the class to produce drawings, stories, plays, whatever they thought might help ordinary people to understand the law. Every female in the class produced a communication strategy that used at least one if not more than one of these approaches. All the males with the exception of one who was a media personality doing a law degree late in life, produced a sterile boring description of the content of the law and left it at that. At the time I did not appreciate the gendered implications of this, I now wish I had photocopied some of the assignments for

Similarly WLSA had researched maintenance laws from the perspective of women's experiences of the law and had come to understand how and why women made the choices around maintenance issues that they did. Women might know that they could claim maintenance from the fathers of their out of wedlock children but chose not to do so. From this WLSA research grew a number of initiatives to assist women to take up their legal rights. For example ZWLA in particular runs empowerment sessions in which fully qualified women lawyers explain their legal rights to women and assist them to prosecute maintenance, divorce, domestic violence and inheritance claims without the presence of a lawyer. ZWLA runs mobile legal aid clinics in rural areas and provides in house assistance in Harare and Bulawayo to female litigants mainly in divorce, custody, inheritance, maintenance and domestic violence cases as do other NGOs. WLSA undertakes research then engages key players in seeking law reform where necessary, running parallel with this they provide legal information and assistance to women to pursue their legal rights.

For the past 20 or so years women lawyers, in particular ZWLA, have been engaged in lobbying and advocacy for comprehensive marriage law reform. In the main this is aimed at raising the legal age of marriage to 18 or at the very least for girls to the age of 16. Removing references to the payment of bride price in legislation regulating marriage formalities, improving the share of matrimonial property that a wife obtains on divorce, altering the guardianship laws to provide for equality between spouses, developing less adversarial family law processes and procedures³⁴, simplifying forms and legal applications so that women self-actors can pursue their legal rights with greater ease.

Human Rights, Women's Rights – Getting it on Paper

Women lawyers in Zimbabwe have played a significant part in formulating and articulating women's minimum human rights and legal demands in the constitutional reform processes that took place in 1999/2000³⁵ and from 2009 an exercise which is currently ongoing. Women lawyers have acted as facilitators for women's groups and the broad based Women's Coalition in capturing their aspirations for reform and translating these into appropriate legal terminology³⁶. ZWLA was the backbone of the recent CEDAW Shadow reporting exercise undertaken at the end of 2011 and women lawyers made up the bulk of the NGO delegation that went to present the Shadow Report to the CEDAW Committee in February 2012 (Damiso and Stewart, 2012). The Southern African Development Community Protocol on Gender and Development was

future reference. I should also have interrogated the males as to why they were so conservative and unadventurous in doing the assignment. Did they feel foolish, were they embarrassed to be treating a serious legal topic in a seemingly frivolous manner? Left to themselves to plan an information dissemination campaign might the men of the law just trotted out pamphlets that just recited the law, law from a very complex area of the law but one which touches the lives of most people at some point.

³⁴ There is currently an exercise under way to establish a specialist family court and this was largely initiated by female judges of the high court, women academics and women's legal NGOs.

³⁵ The 1999/2000 contained significant human rights advances for women but the draft was rejected by the nation in a referendum for further discussion see Damiso and Stewart, 2012

³⁶

greatly influenced in its formulation by the input of women lawyers from the member countries, not least from among those who had undertaken the regional Masters in Women's Law at the SEARCWL, UZ. Women lawyers do not feature as a critical mass in Parliament where only 16% of members are women. There is one very active deputy minister who is a female lawyer, she is located in the Ministry of Women's Affairs, Gender and Community Development but would rather have remained in the Ministry of Justice and Legal Affairs where greater law reform impact is possible, but in Zimbabwe's complex political climate you go where you are put and try to make the most of difficult situations. One observation from many non-lawyer female politicians is that the 'heavily legal atmosphere and language is alien to them' and various women's legal NGOs have tried to provide training and advice to such women on how to manage parliament and parliamentary process³⁷. The Deputy Minister, Jessie Majome, has no such difficulties and can assert herself toe to toe with the other (male) lawyers in the house. Which is not to say there are no other women or ministers who cannot do so, but there seems to be an initial edge that women lawyers have. Quite noticeable is their assumption that they will be heard and listened to, that they can argue women's issues with men on an informed and skillfully crafted basis, and they are not easily intimidated by hecklers and snide remarks. You develop a thick skin as a female law student. What will happen now that women are in the ascendance in the law school, will they still need that thick skin?

Educating the Next Generation

My experiences in teaching on the Masters in Women's Law programme show that most students graduate from a law degree with only a superficial awareness of the long term implications and impact for women's rights of the way in which law is taught in an ostensibly gender neutral analytical framework. They may be aware that men and women experience life and law differently but there is little or no internalization of how a gender neutral approach is one that conforms to male paradigms. Both male and female masters students have to be taken through a 1970s style consciousness raising process focusing on the extent to which law is hegemonically male and as such frequently obscures female lived realities. Only a limited number of graduates pursue the Masters in Women's Law. Women's Law is an optional course in the undergraduate law degree and annually around 12-15 students take that course both male and female, so the opportunities for inculcating penetrative sex and gender analytical skills are limited in the UZ undergraduate law degree. At Midlands State University Gender and Law is a compulsory course for all law students, but it is just one course and may be treated by some students as just another 'thing' to pass³⁸. One of the lecturers on the course, Rosalie Katsande, observed that some male students are resentful of the levels of awareness about women's rights and entitlements that such a course raises. One retorted when asked by female classmates how he was going to deal with his girlfriend's pregnancy and maintenance for the child – 'this course is useless, if we didn't do it you wouldn't know about her rights'; a narrow view and certainly misguided as his fellow law students would learn about this in family law, but perhaps not with the accompanying feminist advocacy. Rosalie's analysis of his outburst was

³⁷ For example: ZWLA, WLSA, Women's Parliamentary Support Unit (WIPSU), Musasa project.

³⁸ This insight into the attitudes of some male students was provided by the lecturer during an interview on the possible benefits of making such courses compulsory – Katsande October 2012.

that the course puts an emphasis on sex, gender, sexuality and responsibility, a perspective that he would rather avoid in his legal studies.

Even if there is now a preponderance of female law students one of the struggles remains to make law school curricula more sex and gender relevant. There are some obvious areas in the law where sex and gender are self-evidently critical concerns in how the law is taught, critiqued and analyzed for its appropriateness to the needs of the target market, the public at large of which roughly 52% are women. The Faculty of Law at the University of Zimbabwe has, as stated earlier, one optional undergraduate course that focuses exclusively on women, Women's Law, there are other courses that, depending on the lecturer concerned, should obviously lead to a focus on how women fare in legal disputes, mainly within family and family relationships – Family Law and Succession. In Criminal Law and in Criminal Procedure sex related crimes, defences and rules of evidence are part of the content to be taught, but the problem is that these are frequently taught as matters of pure content or as fixed rules that are not subjected to critical sex and gender analysis. Defences such as provocation and self defence are constructed using male paradigms and the so called 'reasonable man' behavior patterns when under stress and threat. Women are expected to meet these male criteria if they are to succeed with a defence. But, patently the reasonable woman is not the reasonable man, she must of physical and strategic necessity plot her approach differently. But very few such courses start with a sex and gender diverse entry point and probe how women and men respond to different pressures both economic and social, why they do so and how they exploit varied opportunities to commit crime, to defend themselves, to protect their children (Tibatemwa-Ekirikubinza, 2011; Stewart, 2003, Staunton and Musengezi, 2003)

Getting Sex and Gender Analysis into all Areas of Law – Possible, not Possible?

Recently I was discussing an inspired but complicated analytical framework diagram with a female colleague at SEARCWL, she is doing a doctorate under my supervision. Her topic has gone through a series of transitions, she began with what might be styled a strong assumption that if women small scale horticultural farmers could just see the value in using the various forms of legal incorporation available under Zimbabwe's various private enterprise oriented legal frameworks: such as private companies, sole traders, cooperatives and the like, their lives would be transformed. She had taught courses on company law and entrepreneurship at undergraduate level and had used the gender neutral approach of the law as captured in legislation and as determined through case law in constructing her courses. She was, even after doing the Masters in Women's Law including the optional course on Women, Commerce and Law in Africa, still caught within the disciplinary paradigm of formalized law holding onto a ready-made solution, if only she could get women to buy into it. She realized that women faced different challenges to men in relation to entrepreneurship, and that women's participation was more constrained and limited than that of men, but perhaps a liberal feminist approach could be the solution, if she could just insert women then women would benefit from the available range of legal entities and options.

What has emerged through her empirical research since those early days is a realization that women cannot just be included via the medium of standard gender neutral legal frameworks. Women are subsumed within families and family production structures, regardless of their quantified contributions to the family business they remain mere contributors because marriage and customary laws dominate their connections to the business; land vests in men, women's interests are limited and the public or commercial face of the business is male. Yet women, frequently wives, are a prime source of labour, the source of skills, they actively participate in management but not publicly so they struggle for recognition. In a sense what has taken place for her, is a journey from the gender neutral legal paradigms through to the sexed and gendered realities of how laws affect or do not affect an individual either positively or negatively. She is now exploring a different methodological positioning in relation to these women's needs that of interrogating how and why laws that are assumed to be applicable and available to all are so skewed in terms of their actual availability and beneficial impact for women. She is going further by asking what are the business and legal models that need to be created for women to benefit in a way that engages with family controls and overrides the negative impact of the assumption that all things business and agricultural are male.

The question that I ask, perhaps rhetorically, is would such a critique of the law been undertaken if women were not involved as interrogators of the law, that is if they were merely observers and users of law and not drivers of legal researchers, analysis of law and legal argumentation?

A list of courses where there are sex and gender differentials both overtly and insidiously privilege men over women that would benefit from a sex and gender analytical framework is not hard to generate: Law of Contract, Constitutional Law, Interpretation of Statutes, Criminal Law, Law of Delict (Torts), Law of Evidence, Property Law – each of which has sex and gender specific elements where men and women are likely to have experienced events differently and outcomes will have sexed and gendered dimensions. This mini exercise is already showing that every law course that one calls to mind would require such a framework to provide for substantive and real equality in the application of the law as between men and women. I am not going to continue with a tedious listing, the need for law to be imbued with female understanding and perspectives and the development of a cross cutting feminist jurisprudence is clear.

One might ask: If women lawyers were not increasingly questioning the equity and equality issues in the application of law to themselves and to women at large how much longer might it have taken to begin the process of legal, constitutional and human rights reforms that positively address women's situations and sexed and gendered needs? If women lawyers were not personalizing the law, imbuing it with their own experience would we have made the progress over the last thirty or so years that has significantly changed the gendered profile of law and the content of law? As female legal activists we are still not satisfied and have no reason to be satisfied as yet, but the

agendas are being constantly developed, reshaped and redirected so as to achieve real and substantive equality and to have women sensitive laws.

Conclusion

When I first agreed to write this article I thought it would be easy to get the disaggregated data on women in all branches of the legal profession. It turned out to be a significant challenge. It is a task that needs to be undertaken, as without a thorough profile of women in the profession it is difficult to determine how they might or do impact on the profession as a whole. Has it become more caring, is it more alive to women's issues and needs, do women in general benefit as a result? Intuitively, and based on the information and opinions I was able to glean in researching and writing this article, women in the legal profession do make a difference. It is also my impression that those currently entering the legal profession in whatever form their employment might take have an easier time than my generation, although perhaps the older generation always think that. If it is too easy might they lose sight of the importance of being a woman and tackling law as a woman from a sex and gender aware perspective?

Perhaps this is the moment to undertake a baseline survey for future reference.

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