
Law reform: Whose responsibility? Analysis of efforts made towards reforming marriage laws in Zimbabwe in light of human rights instruments, as experienced by the Zimbabwe Women Lawyers Association (ZWLA)

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Abstract

This article looks at the law reform process and critically examines the efforts made so far towards marriage law reform (substance and process) in Zimbabwe with special focus on the efforts made by the Zimbabwe Women Lawyers Association (ZWLA), a non-governmental organization whose aim is to improve the status of women in Zimbabwe. Insight into the problems necessitating law reform is gained and obstacles that are responsible for the reluctance to reform the marriage laws unearthed. An effort has been made to understand the critical stages in effecting law reform in the Zimbabwean situation and to identify the actors involved, especially in reforming laws that are deemed to be discriminatory against women. Different researchers and writers from as early as 1980 have recommended that family laws, particularly marriage laws, be reformed in order for the status of women to be improved and for gender equality to be achieved. Interest in this topic has arisen from witnessing daily the problems that women face as a result of the current marriage laws. Furthermore, because the marriage law reform process has not yet been documented by ZWLA, important experiences might be lost if they are not recorded. ZWLA's experiences form the basis of the paper and it is hoped that the lessons learned from these experiences will assist in future endeavours to reform other problematic laws. The article shows that law reform is a long process which should involve all concerned actors, given that the net effect is to change people's way of life.

Introduction

The case for marriage law reform

The need for marriage law reform in Zimbabwe has arisen as a result of the existence of three different marriage laws that exist side by side, namely the Marriage Act, the Customary Law Marriages Act and the Unregistered Customary Law Union Act. The first two types are fully recognized whilst the third is only partially recognized. In the two fully recognized types of marriage, women's property rights are to a large extent protected so that at divorce, property is distributed 'equitably' according to the Matrimonial Causes Act which, in principle, takes into account women's non-monetary contributions to the acquired property. There is still concern, however, about the implementation of this law as property distribution is left to the discretion of the judge. It is felt that a more prescriptive law would protect women against any possible bias arising from the judges' own prejudice and possible patriarchal mindset — particularly in the case of male judges. Also, on inheritance, widows, as surviving spouses, are afforded automatic protection on production of the required marriage certificate. Of greater concern is that the limited protection offered in the two registered marriages is totally absent in the unregistered customary law union. Upon divorce women in these unions have to go to great lengths to prove their contributions to the acquired property and are therefore more likely to be dispossessed of what is rightfully theirs. Non-monetary contributions receive absolutely no consideration and thus, given the fact that few women are employed in the formal sector, the reality is that most women walk away from these unions empty handed.

The existence of different marriage systems in Zimbabwe has proved to be problematic especially for women who are disadvantaged. Different researchers (Armstrong *et al* 1993, Stewart *et al* 1990, Molokomme, 1986) have found that the status of women and men in marriage is not equal.

The man is the 'natural guardian' ¹ of the children, and this tends to be disadvantageous to women, who are not able to make important decisions as far as their children are concerned without the consent of the husband. For example, there have been incidents where a husband has deserted his family and left the country and the wife wants to obtain passports for the children but these are withheld because the husband's consent is required. If the woman had the same guardianship powers as the man it would be possible to obtain a child's passport in his absence. This also highlights the fact that children tend to suffer discrimination as a result of the discrimination against women. This also holds true for registered marriages.

Under the Customary Marriages Act and the Unregistered Customary Law Union, women and men do not enter marriage on an equal footing in that *lobola* (bride wealth) is a legal requirement and is essentially a transaction between men. The spirit of the transaction tends to expose women to abuse as they are often viewed as male property. Also, regardless of the woman's age, the guardian's consent is required before she may marry. This is in contradiction with the Legal Age of Majority Act which grants majority status at eighteen years of age. Furthermore, the minimum age for marriage is not specified in the above marriage types, essentially exposing girls to early marriages. Under the Marriage Act, the minimum marriage age is different for boys (18) and girls (16). It would be appropriate to have the minimum age set for both sexes at eighteen, in tandem with the legal age of majority.

Duality

The existence of a dual legal system which recognizes both customary and general law and allows them to operate side by side on an equal footing, also presents problems. The dual legal system is a consequence of colonization and arose because the colonizing powers came with their own laws (general law) which governed their lives while at the same time they acknowledged and recognized the indigenous laws (customary law). The duality of the laws allows men to manipulate the law in that they are able to contract multiple marriages under the different systems. For example, after living with a woman in an unregistered customary marriage for ten or more years, a man may decide to marry another woman according to civil rites but continue to associate with the first woman. The woman in the civil marriage might be unaware of the previous marriage and will believe that she is governed by general law only to discover upon the husband's death that she is actually a second wife governed by customary law and therefore has to share the husband's estate, including her own contribution to it, with another woman. This is because the Administration of Estates Amendment Act determines that a civil marriage subsequent to an unregistered customary law union is treated as an unregistered customary law union for purposes of inheritance. This law can be invoked to remedy a problem that could, however, have been solved by doing away with the dual marriage laws.

The law tends to collude with men and in some instances facilitates the oppression of women by men. By not fully recognizing Unregistered Customary Law Unions, the system denies rights to women who would otherwise be regarded as married.

The constitution

The Constitution of Zimbabwe in Section 23 (1) outlaws discrimination on the basis of gender and yet in Section 23 (3) allows it at customary law in matters of family law to do with marriage, divorce and inheritance. Section 23 (3) has been a bone of contention for many women who have called for its removal from the constitution. International instruments like the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (Article 5) call on states parties to do away with customary practices and culture that discriminate against women. This call, however, has not been seriously considered because it is not to the advantage of the patriarchy in power to do away with customary practices that discriminate against women. Article 18(3) of the African Charter also calls upon the state to ensure that discrimination against women is eliminated. Section 111B of the Constitution of Zimbabwe determines that international instruments do not have the force of law in Zimbabwe until they have been domesticated by an Act of Parliament. As such they do not have authoritative force in judicial decisions, only persuasive force.

Human rights instruments

The Government of Zimbabwe is a signatory to a number of human rights instruments some of which specifically call for the treatment of women's rights as human rights, such as CEDAW, which essentially constitutes the international bill of rights for women. Women are human beings and they are entitled to human rights just as men are. English and Stapleton (1997:1) observe that:

A human right is an entitlement or legal claim (which a person has) – by virtue of being human...Human rights are protected by the many treaties or agreements that governments have signed which oblige them to ensure these rights and freedoms.

The World Conference in Mexico (1975) recommended that governments should reform laws that discriminate against women in order to bring them in line with international principles which are universal. CEDAW (Article 16) addresses discrimination against women in marriage and calls for equality between women and men in marriage and family relations. In instances where there is no equality, states are required to reform the laws to ensure that a state of equality is achieved. Article 2 of CEDAW calls on governments to reform the law as it is recognized that law reform is imperative if the status of women is to improve. However, whilst reforming the law is a starting point, it is important to acknowledge that it would be futile if there are no mechanisms to ensure its implementation. Although the government has agreed to be bound by the principles espoused in these human rights instruments, it has not taken the next step forward, which is the enactment of laws and policies which ensure that men and women are equal in all spheres of life.

The African Charter (Article 1) also urges states parties to reform laws that discriminate against women. Closer to home, the SADC Gender and Development Declaration calls on states to:

...repeal and reform all laws, amend constitutions and change social practices which will subject women to discrimination and enact empowering gender sensitive laws.

Law reform in Zimbabwe

Under Zimbabwean law, legal reform is a process that can be started either by those endowed with the power to make laws such as the legislature or by individuals or groups that, for one reason or another, have an interest in law and policy reform. Those who are outside the legislature usually speak or advocate for themselves or on behalf of 'voiceless' groups of people 'who do not have the advantage of the microphone' or access to parliament. The Minister of Justice has played a critical role in bringing bills to parliament for debate, for example the Administration of Estates Amendment Act No. 6 of 1997. By and large it is those in positions of power who have most influence in bringing bills to parliament. Private members' bills are very rare in Zimbabwe.

As set out in the constitution, law reform is primarily the responsibility of the legislature and any member of parliament can raise the issue. Members of parliament are, however, obliged to take into account requests made by their constituencies or by civil society. The Minister of Justice, who is also a member of parliament, can raise issues for reform, as happened with the Administration of Estates Amendment Act No. 6 of 1997. The issue would have to be presented first to the cabinet committee on legislation whose endorsement is required. Once it has been endorsed, a bill is then drafted by the policy and drafting department in the Ministry of Justice and it is thereafter presented to parliament for debate.

Other bodies such as the Law Development Commission, which is composed of judicial representatives, lawyers and academics, among others, also assist in law reform. The Law Development Commission identifies and conducts research into problematic areas of the law and publishes issue papers on its findings. It then invites and considers submissions on possible solutions from interested institutions in civil society and suggests possible reforms to the Ministry of Justice. Its task is not to reform the law, but to make recommendations for law reform.

In April 1993, the government published a White Paper on Marriage and Inheritance (referred to as the White Paper) putting forward suggestions for reforming the laws relating to marriage and inheritance. The substance of the proposed reform was summarized as:

...firstly to remove the influence of race on the law of married persons' property and succession: secondly towards extending the rights of surviving spouses (usually widows) and children to inherit property under customary law: and thirdly towards giving increased recognition to unsolemnized customary law marriages.²

The White Paper suggested that a new marriage Act be passed to replace the existing Marriage Act (then Chapter 37 now Chapter 5:11) and the African Marriages Act (Chapter 238) now known as the Customary Marriages Act (Chapter 5:07). The proposed changes would have given people the option of contracting a monogamous or a polygamous marriage and allow them to change from one form to the other. The White Paper also called for comments from all quarters regarding the proposals contained therein. The suggestions for harmonization, especially that people be allowed to change from a civil marriage to a customary one and vice versa, were shot down by women's rights organizations like WLSA and the White Paper was shelved. However, although the government left the marriage laws as they were, it went ahead to reform the inheritance laws. After considering the submissions made on the White Paper, the Ministry of Justice moved to amend the inheritance law and in 1995 held consultations with different groups of people including traditional leaders and women's rights groups and thereafter drafted and

presented a bill for discussion in parliament in 1996. The law on inheritance was subsequently amended and became effective from November 1997.

The question is why the inheritance laws were reformed whilst the marriage laws remained unchanged. Factors that were probably critical in pushing inheritance law reform include:

- The suffering caused by the old law was apparent to all and had received a lot of attention in the media.
- All members of the family were affected — women, men and children — not just women. In terms of the law the heir inherited the entire estate in his own right with the power to do with it as he wished and with no legal obligation to support the rest of the family.
- The traditional leaders, often viewed as custodians of culture and tradition, were active supporters of the reform

Experiences of the Zimbabwean Women Lawyers Association¹

The marriage law reform process

The need for marriage law reform was born out of a realization that most of the problems presented by women seeking assistance from ZWLA centred around family laws, and in particular marriage laws. This observation was supported by empirical evidence obtained by the legal aid and legal education departments. The organization thus recognized that reform was needed in this area of the law if women's rights in the family were to be adequately protected.

Broad research was carried out and an audit of family laws was conducted to reaffirm the findings of the legal aid and legal education departments. An initial stakeholders' workshop was held in July 2000 to officially launch the research into family laws. The research was commissioned in August 2000 and was conducted by a consultant in collaboration with professional assistants. The research team then presented its report to the stakeholders who agreed that reform of marriage laws was strategic as it would also address inadequacies in other aspects of family law, such as women's property rights, and their rights in relation to their children. A second consultant was engaged to summarize and focus the initial findings into a revised document that would:

- provide a critical analysis of the laws pertaining to the family, including the constitution in so far as it is relevant to the issue of marriages;
- assess whether administrative and legislative policy changes would be required to address the shortcomings;

¹ Zimbabwe Women Lawyers Association (ZWLA) is a non-profit, non-governmental legal organization established in 1992 and formally registered in 1996. It was established in response to the dearth of organizations and service providers addressing the legal needs of poor women and children. Its aim is to assist women and children to obtain equal and fair access to the legal system. The core components of ZWLA's activities are legal assistance, legal education, lobbying and advocacy. The former lobbies for the reform of discriminatory laws and the enactment of legislation that advances women's human rights. This is the department that spearheaded the marriage law reform process.

- highlight the socio-economic and cultural context of the problematic issues and provide possible solutions and management strategies; and
- discuss optional positions and a desired result in respect of each issue.

The above summary was then used to come up with what was called the ‘lobbying document’. The lobbying document singled out marriage laws as the area requiring immediate attention. The document was then used as a tool at consultative workshops and for lobbying the Ministry of Justice. Discussions with the Ministry of Justice were at officer level. Advocacy research is key to the success of any lobbying efforts. The advocate must be in a position to articulate the lobbying issue with sufficient clarity. To inform the articulating effort it is necessary to carry out thorough research. According to Muchena, in a paper entitled ‘Guidelines for advocacy strategies towards parliament’, presented at the ZADF /PACT advocacy workshop, 18–20 July 2000, Holiday Inn Harare:

If a group is to influence policy outcomes, then it is extremely important that it has a sound and clear understanding of the issue in concern. The group should not only be familiar with its own particular interest but should understand and be able to comment on and provide information about alternative and conflicting positions as well.

Following the meeting with the ministry, it was apparent that the government was resource-constrained and a strategic partnership needed to be entered into. Ultimately it was agreed that ZWLA would carry out the consultative work as they had funding and the results of this process would inform the drafting of the bill. An official from the Ministry of Justice was also involved in the consultative workshops and facilitated some of the sessions. The lobbying document is a ‘living’ document subject to change, incorporating new findings and accommodating new realities encountered in engaging the different stakeholders.

The research results were then shared with regional partners from other jurisdictions who had successfully lobbied for law reform in their countries, as well as local stakeholders, at a regional conference held in Harare in February 2001. This workshop was informed by a stakeholder analysis which ‘is necessary in any successful advocacy’ (Kachingwe, Advocacy Planning, ZADF / PACT, 2000). The stakeholder analysis considered:

- who else cares about the problem,
- the interests, goals and aims of the various actors, and
- how their goals measure up against those of the advocate.

The identified stakeholders were women, men, churches, traditional leaders, the Ministry of Justice, the Registrar Generals’ office and ZWLA members and interesting insights were gained from all the different encounters. For example, consultations with ordinary men and women showed that people were still not happy with the age of eighteen years as the legal age of majority and suggested that twenty-one years was more reasonable since at eighteen, most people were still at college and dependent on their parents or guardians.

ZWLA then embarked on a consultative process that was ongoing as at November 2003. Seventeen consultative workshops were held with various stakeholders. One of the workshops was with other women’s organizations, in order to garner their support. However, since reform of

the marriage laws was not central to their purpose, the interest of these women's organizations in the subject faded and ZWLA failed to ensure that their support was sustained. The issue therefore remained primarily a ZWLA concern.

There was general consensus on some issues and divergent views on others. The most contentious issues were those that are attributed to 'our culture' such as polygyny and the payment of lobola (bride wealth). However, as noted earlier, the excuse of culture is used to ensure that women remain in a subservient position and is often manipulated as a political tool (Rwezaura, 1992) by powerful individuals and groups to assert their domination (An Na'im, 1992). There was consensus on the need to stipulate the minimum age of marriage, create a central computerized registry and also agreement on registration of marriages and joint guardianship. Holding consultative workshops and producing and distributing pamphlets were the only efforts made to publicize the marriage law reform issue. However, the distribution of pamphlets was not done systematically and there was no clearly defined way of getting feedback from the public. Other forms of publicity, for example using electronic and print media, were not used and so insufficient public support was garnered. A comprehensive media strategy should have been devised to publicize the issue.

A meeting was arranged with the Minister of Justice at which the recommendations were presented. He agreed that there was need to reform the marriage laws but he rejected some of the recommendations, such as outlawing polygyny. The minister stated that inadequate consultations had been undertaken to come up with the recommendations for law reform and the outcome of the process was therefore not as representative as it should have been. He advised that wider consultations needed to be carried out before a bill could be drafted. ZWLA had earlier been informed by officials in the Ministry of Justice that a draft bill would make it to parliament in the August/September 2003 sitting but it did not. However, in September the minister called for an urgent meeting with ZWLA at which he presented them with a Memorandum of Principles prepared by his ministry to be presented to the cabinet committee on legislation. This was surprising since the minister had advised us in August that further consultations needed to be done, yet the memorandum he produced claimed that the principles incorporated the views of and comments received from all interested parties and various stakeholders. It now appears that there is an urgent desire to reform the marriage laws — perhaps, with the 2005 parliamentary elections drawing nigh, in a bid to gain the popular support of the female constituency.

The guiding principles have incorporated some of ZWLA's recommendations, such as standardizing the minimum age of marriage, prohibiting individuals from contracting different marriage forms, relegating lobola to personal negotiations between the individual families rather than a legal requirement, recognizing unregistered customary law unions. Polygyny, however, has been extended to even allow any person 'regardless of race, tribe, tradition, custom or religion' to contract it, whereas currently only Africans can enter into such marriages. The power of chiefs has been extended to enable them to solemnize marriages and to preside over divorces under customary law. The empowerment of chiefs should be viewed with suspicion in that they are probably being given a power base in the light of the 2005 elections. Chiefs control the rural electorate (70 per cent of the total population) whom they are able to coerce to vote for the ruling party, therefore, if they are given some measure of power and privileges in the form of increased allowances, they will gladly serve the interests of the government. However, it should be

acknowledged that the Ministry of Justice has incorporated some of the recommendations in the Memorandum of Principles that highlight the need to compromise when lobbying for change.

ZWLA did attempt constituency building, an essential element of advocacy, by holding workshops with people representing different interest groups like the churches, men's forum, traditional leaders and parliamentarians. To carry more weight the advocate or lobbyist must consult widely on the issue. The workshops held with members of parliament, for instance, reinforced the need to engage parliament in any advocacy process as the law-making body. It is important to engage parliament for the following reasons:

- To link parliament to the views of the constituency;
- To mitigate conflict by generating debate towards consensus on contentious issues;
- To enhance balanced decision-making by informing, analyzing and provision of expert opinion to parliament.

It made more sense to engage in consultations than to adopt a confrontational stance in order to give legitimacy to the final outcome of the advocacy process and to avoid the pitfall of being dismissed as elitist women trying to cause confusion. However, consultations were not wide enough as they did not cover rural constituencies. Marriage laws are often viewed as private matters and the law must not be seen to be unreasonably imposing changes on people's personal lives.

ZWLA agreed that the recommendations that came out of the consultative workshops ought to be measured against an objective yardstick and CEDAW became the guiding principle. Each recommendation was analyzed to see whether it was in conformance with the requirements outlined in CEDAW, especially those which specifically relate to equality in marriage in article 16. ZWLA adopted the recommendations that did not ensure the continued discrimination against women and tried to reach a compromise on contentious issues like polygamy.

Whose responsibility?: The challenge

Marriage law reform is necessary to close the gap that has been created by the dual legal system. Although different people identified the need for reform years ago, the law still has not been reformed and I would like to suggest why it has not been reformed. Firstly, the patriarchal structure of the Zimbabwean society entails women remaining in subordinate positions. Patriarchy has been defined as:

A system of power relations in societies where senior men have authority over both women and younger men and where men act in collusion in order to keep their dominant position unassailed.²

Therefore, it would be to the disadvantage of the patriarchy in power to reform the laws as it would mean equality between men and women and men would lose their privileged position of power.

Sigot, AJ (1995) 'Discourse on Gender and Natural Resource Management', in Green, Sigot and Thrupp (eds) *Towards common ground: Gender and natural resource management in Africa*. ACTS Press. Nairobi, 1995: page 7.

The research that was carried out by ZWLA problematized marriage laws but did not involve a thorough analysis of the policy system. A policy system analysis that leads to successful advocacy looks at the institutions that play a dominant role in agenda setting for the issue, the competing interests at play, whether the issue attacks policy makers' core ideological beliefs, as well as the key individuals in agenda setting for the issue. For instance, the Minister of Justice is a man who may also subscribe to the patriarchal status quo since the law is personal and will affect him personally. It has been observed that most people in power have multiple relationships and changing the system would work to their disadvantage. They may want to keep women in their place. There are only sixteen (16) women in parliament (out of 150 members) who are all members of the women's parliamentary caucus. Out of these, it does not follow that they are gender sensitive as gender sensitivity entails an awareness of the needs and roles of women in their various spheres of life. ZWLA should have considered this in setting its target of achieving reform in the year 2003. More work should have been done with the women's parliamentary caucus in order for them to lobby from within since having allies in influential positions in government and other structures of power is an important law reform strategy (Handler, 1978).

In the past the initiative for law reform has been left in the hands of the government which has not taken its role of protector of women's rights seriously. Although the government had initiated the process by publishing the White Paper, they did not carry it through to completion. Tomasevski (1993) argues that law reform is a manifestation of political will. The fact that problematic laws, which affect more than half of the population, take such a long time to be reformed clearly demonstrates lack of political will on the part of government, especially in matters to do with women's rights. Even though the government is a signatory to human rights conventions that protect women's rights, there has been lack of commitment on their part. They have signed the conventions just so that they can be seen to be in line with the global community but they have no intention of implementing the principles. Another example that shows the lack of political will is that of the gender policy that was adopted by the government but has been shelved and is not being implemented. Currently, the Ministry of Justice has drafted a domestic violence bill in consultation with civil society organizations and the bill will be read in parliament soon. Although this is a positive move, the government's motives may not be noble. It may have agreed to debate this issue hoping to gain political mileage because the ruling party has been accused of perpetrating acts of violence on innocent citizens and has thus been described as a violent party. Therefore the government seeks to shift this viewpoint by showing people that it does not condone violence and is committed to its elimination through passing laws that deal with violence. Through this strategy, people might overlook some of the government's inadequacies and support it on this issue. Also, it could be a move to garner support for the 2005 parliamentary elections.

The government has also taken advantage of the passiveness of the Zimbabwean population in general which does not hold the government accountable, and it has spent a lot of effort and resources in passing repressive legislation like the Public Order and Security Act and the Access to information and Protection of Privacy Act in a bid to clip the wings of a restive populace by stifling media freedom and the people's rights to freedom of expression and assembly. These Acts were passed within a short period of time and were rushed through parliament at the initiation of the Minister of Information supported by the Minister of Justice. The current political climate obtaining in Zimbabwe since 1999 has also slowed down the process. The government is

concentrating on ensuring that they remain in power so reform of the marriage laws is not a priority at the moment although it has political value for them in so far as it would please their women constituencies. The opportunity this creates cannot be overlooked since reform process planning must be considered within the context of the existing socio-economic and political environment.

The constituencies who are affected by certain laws are left with the responsibility of calling for law reform and holding their representatives in parliament accountable. Therefore in this case, there is need for the women's movement to be united and work together to form a formidable force which will put issues that affect women on the government's agenda and ensure that they stay there and are taken seriously. It is clear that people in power are reluctant to give up that power by acceding rights to those who have been deprived of their rights; it is up to those who are negatively affected by the law to demand that it be reformed. May (1980) believes that women should be the ones to put pressure on the government to reform the law because they are the ones who are affected by the discriminatory laws since they are viewed as inferior to men. She suggested that women need to use their individual right to vote as a sanction to ensure that laws are reformed.

May raises an interesting point that can be adopted by women's organizations which is that they can withhold their votes. This is an effective strategy to implement when demanding one's rights. This requires constituency mobilization and a united front on the part of the women's organizations. This was proven to be correct in 2000 during the constitutional reform process when women voted 'no' in the referendum for a new constitution because their issues were not dealt with to their satisfaction. Up to this time the government had not paid much attention to women's organizations but the result made them realize just how powerful they can be. Chanock (1989) also supports the view that relying on the state for reform of family laws is not an adequate strategy for law reform and that the state cannot be the 'initiator, developer and protector', hence the need for affected parties to act.

In ZWLA's advocacy process there was inadequate coalition building. ZWLA should have been more involved in coalition building by aligning themselves with other organizations that have a direct involvement with 'grassroots' people. These organizations include Jekesa Pfungwa, Women's Action Group, post-test clubs for people infected and affected by HIV/ AIDS, Young Women's Christian Association and so on. These organizations should have been used as launch pads for collating information on recommendations for the law reform, hence enhancing the legitimacy of proposals. ZWLA did not ensure that other key allies like the Ministry of Gender were on their side and bought into the idea of reform of the marriage laws. Thus ZWLA was not supported in their call for reform by other similar organizations and by the civic society in general which probably did not understand the issues and the need to reform the marriage laws. Thus marriage law reform is seen as a ZWLA project rather than a national issue and can, therefore, be easily brushed aside. Popular participation is important in law reform and the government often responds to pressure exerted on them by popular dissent. There has been little use of the media apart from radio programmes that are often aired when people are preoccupied with other things.

Learning points and conclusions

Clearly law reform involves many actors and therefore assumes joint responsibility and brings together government, interested parties, civic bodies, parliament and those who are negatively affected by the law in its present form. The ZWLA experience demonstrates that family law reform is indeed a process consisting of three critical stages of equal importance. Broadly these stages can be defined as:

- 1 Analysis** of the current law with a view to identifying the shortcomings inherent therein and proposing corrective measures. This is an academic exercise driven by legal technocrats from which the ideal situation and the minimum acceptable standards are defined.
- 2 Consensus building or lobbying** involves proactive engagement of stakeholders encompassing such groups as civic society, religious bodies, traditionalists and the Law Development Commission, with the intention of winning support. This is critical in setting the groundwork for the next phase, which is publicizing the issue.
- 3 Publicizing the issue** involves educating the public at large on the issue. This would take a multi-pronged media campaign. This is essentially to gain mass support which is critical in having the issue prioritized by those in power. (ministry, parliament, and so on).

While it is often tempting to concentrate the effort around legal technicalities, the ZWLA experience suggests that both the process and the actual content of the law should receive equal consideration.

Relating the above to ZWLA's situation clearly shows that the analysis stage was done thoroughly. However, the lobbying or consensus building stage did not receive adequate attention. More effort is required, for example, focusing more energy on parliament — especially the women's parliamentary caucus — given that they can exert pressure on the parliamentary process from within. Consulting on a wider scale continues in order to achieve wider awareness of the issue. Thus the need for commitment as well as human and financial resources cannot be understated. As far as the last stage is concerned, ZWLA has not achieved its aim yet because the issue has not been widely publicized due to inadequate planning and finances.

Recommendations for future reform efforts

- 1** A specific committee needs to be formed to focus on law reform or the Law Development Commission could be expanded to incorporate representatives from all stakeholders.
- 2** The women's movement needs to be strengthened through building networking coalitions thereby synchronizing effort and addressing resource mobilization.
- 3** The government should be held accountable by people with a keen interest in policy making who hold their elected representatives accountable. The Parliamentary Reform Committee has come up with progressive suggestions for greater involvement of the public and civic society in parliamentary business.
- 4** The advocates for change must realize that advocacy is not a zero-sum game where the winner takes all and the loser loses all, but must gather as much influence to make sure that whatever comes out of the process is a result of their efforts.

- 5 A multi-media publicity campaign should be embarked on to publicize the issue to ensure that all those affected are reached, including those in the remote areas.
- 6 The constitution of Zimbabwe needs to be amended to ensure that it outlaws gender discrimination totally and is consistent with arguments presented earlier.

References

- Armstrong, Beyani et al, 'Uncovering reality: Excavating women's rights in African family law', WLSA Working Paper No. 7, 1993.
- Barends E.A. , Changing kinship, family and gender relationships in sub-Saharan Africa, Women and Autonomy Centre (VENA), Leiden University, 1994.
- Brook H., 'Rethinking the politics of marriage', in Griffin, Jackson and Roseneli (eds) Feminist theory Vol 3, 2002.
- Chanock M., 'Neither customary nor legal: African customary law in an era of family law reform', in International Journal of Law and the Family 456–494, 1989.
- Cheater A., 'Investigating women's legal rights and social entitlements: Some suggestions from social anthropology', WLSA Working Paper No. 2, 1990, Perspectives on research methodology, 1990.
- English K. and Stapleton A., The human rights handbook: A practical guide to monitoring human rights, Juta and Co. Ltd, Kenwyn, 1997.
- May J., (1980) 'Social aspects of the legal position of women in Zimbabwe-Rhodesia', unpublished masters thesis, University of Zimbabwe, 1980.
- May J., (1987) Changing people: Changing laws, Mambo Press. Gweru, 1987.
- Molokomme A., 'Marriage: What every woman wants or civil death? The status of women in Botswana' in Armstrong and Ncube (eds) Women and law in Southern Africa, ZPH, Harare, 1986.
- Nhlapho R.T., 'International protection of human rights and the family: African variations on a common theme', in International Journal of Law and the Family 3: 1-20, 1989.
- Nhlapho R.T., 'Cultural diversity, human rights and the family in contemporary Africa: Lessons from the South African constitutional debate', in International Journal of Law and the Family 9: 208 – 225, 1995.
- Sigot, A.J., 'Discourse on gender and natural resource management', in Green, Sigot and Thrupp (eds) *Towards common ground: Gender and natural resource management in Africa*, ACTS Press. Nairobi, 1995.
- Stewart J., Ncube W., Maboreke M. and Armstrong A., 'The legal situation of women in Zimbabwe', in Stewart and Armstrong (eds) The legal situation of women in Southern Africa, UZ Publications, Harare, 1990.
- Tomasveski K. (1993) Women and human rights, Zed Books Ltd. London and New Jersey, 1993.