

# THE PROVISION OF MAINTENANCE FOR WOMEN AND CHILDREN IN ZIMBABWE

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Zimbabwe has some of the most comprehensive laws on maintenance in Central and Southern Africa.<sup>1</sup> Yet, like other nations, it suffers in trying to effectively enforce maintenance orders.<sup>2</sup> Indeed the data on which this paper is based indicates that although the legal provisions for maintenance are clearly laid out in various Acts of Parliament, putting the law into practice proves to be especially difficult.<sup>3</sup>

A British colony since 1879, Zimbabwe attained independence in 1980. At independence she inherited and retained a dual legal system of Roman-Dutch general and customary law. The two systems have since co-existed; where a choice of law issue arises, there is a provision for determining which of the two systems should operate.<sup>4</sup> Within this plural legal system three types of marriages exist.<sup>5</sup> First, marriage under the Marriage Act<sup>6</sup> is a marriage which is monogamous, and the consequences of which are governed by the general law and for which a divorce can only be obtained in the High Court.<sup>7</sup> The second type of marriage is a registered custom-

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<sup>1</sup> Alice Armstrong, *Maintenance Statutes in Six Countries in Southern Africa*, 34 J.A.L. 132 (1990).

<sup>2</sup> Cf. Sandra Burman, *Marriage Break-Up in South Africa: Holding Want At Bay?*, 1 INT'L. J. L. & FAM. 206, 221 (1987) (discussing the unreliability of maintenance awards).

<sup>3</sup> Section 4 of the Maintenance Act as read with §§ 2,7 of the Matrimonial Causes Act (Ch. 33). Section 4(a-b) of the Customary Law and Primary Courts Act 21 of 1982 (to be repealed and replaced by § 6(3) of the Customary and Local Courts Act (1990) and Schedule Part 111 § 4(3)).

<sup>4</sup> Section 3 of the Primary Courts Act (1981).

<sup>5</sup> Cf. Fareda Banda, *Women and Law in Zimbabwe: Access to Justice on Divorce* (1992) (unpublished doctoral dissertation, University of Oxford).

That these are the types of relationships which receive legal recognition is not to say that these are the only types of union which exist.

<sup>6</sup> Marriage Act, Ch. 37.

<sup>7</sup> Different proprietary consequences apply depending on whether or not both the parties are African. For non-Africans, the general law governs all areas of their marriage. For Africans, different rules apply depending on whether the marriage is dissolved by death or divorce. This is because § 13 of the African Marriages Act, Ch. 238, provides, "The solemnization of a marriage between Africans in terms of the Marriage Act shall not affect the property of the spouses which shall be held, may be disposed of and unless disposed of by will shall devolve according to African law and custom."

This means that during the subsistence of the marriage, customary law applies so that if the marriage is dissolved by death, customary law will apply. However, if the parties divorce then the provisions of the Matrimonial Causes Act apply, so that the distribution of property is at the judge's discretion.

ary marriage contracted in terms of the African Marriages Act.<sup>8</sup> This type of marriage is potentially polygamous.<sup>9</sup> However, if the husband does not exercise his customary right to take a second or subsequent wife, then it remains possible for that marriage to be converted into a civil monogamous union governed by the Marriage Act. The consequences of a registered customary marriage are governed by a mixture of general and customary law so that the Matrimonial Causes Act<sup>10</sup> applies to the distribution of property on divorce of this type of marriage which can be dissolved in either the High Court or the Community Court.<sup>11</sup> The last type of marriage is a customary law union. Although legally invalid, a customary law union is treated as a valid marriage for the purposes of status, guardianship and rights of succession of children.<sup>12</sup>

Although not necessary to marriage under the Marriage Act, bridewealth is generally paid for black women in all three marriage groups. This is because under customary law, the payment of bridewealth is seen as a necessary concomitant to the conclusion of a valid marriage. The concept of *lobolo* has always been understood to mean the transfer of cattle or money by a prospective bridegroom, or his family, to the family of the woman whom he intends to wed. The payment of *lobolo* is said to have two functions: first, it transfers uxorial rights, the man's exclusive sexual rights to the woman whose labour value also vests in him, from the woman's family to the man; second, it imparts genetical rights upon the man's family. Genetical rights highlight the group nature of Shona marriage according to which, rights in the children born of a couple "belong" to the entire kin group of the man rather than to the couple.<sup>13</sup> The *lobolo* institution therefore constructs women in their two roles as wives and mothers.

This paper is based on interviews conducted with 97 women in Zimbabwe in 1990 and 1991. Seventy-six women with customary marriages (14 registered under the African Marriages Act) were interviewed in 1990 at Community Courts in Harare (the capital city) and Murewa and Mutoko.<sup>14</sup> All but one of the interviews in this first sample were conducted in Shona which is the researcher's

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<sup>8</sup> African Marriages Act, Ch. 238.

<sup>9</sup> Cf. S. POULTER, FAMILY LAW AND LITIGATION IN BASOTHO SOCIETY 69-71 (1976).

<sup>10</sup> Matrimonial Causes Act, § 33(2) (1985).

<sup>11</sup> When the provisions of the 1990 Customary and Local Courts Act come into force, then the Magistrate's Court will have jurisdiction.

<sup>12</sup> African Marriages Act, § 3(3).

<sup>13</sup> Cf. M. Aquina, *The Group Aspect of Karanga Marriage*, NADA 28, 31 (1967); JOAN MAY, CHANGING PEOPLE, CHANGING LAWS 36 (1987).

<sup>14</sup> Murewa is located 87 kilometers east of Harare, Mutoko is 56 kilometers northeast of Harare. All of the women were from the rural areas.

mother tongue. One interview was, at the interviewee's request, conducted in English. Twenty-one women with civil marriages were interviewed in Harare in 1991. Initial contact with this group of women was by telephone. Interviews with the women in the civil group were conducted in their homes or at their places of employment. The focus was primarily on the *women's* experience of the divorce process and how it affected their lives.

Speaking to men would, no doubt, have shed light on some interesting insights, but that was not the main focus of the research. The difficulties of obtaining access to women undergoing divorce meant that there was no way that the researcher could take a random sample. Sarat and Felstiner acknowledge the problems inherent in doing this type of research; "neither the lawyers nor the clients that we studied were randomly selected, nor could they have been, given the acknowledged difficulties in securing access."<sup>15</sup>

Nevertheless, there is no reason to believe that women in the two groups were biased or unrepresentative in any way. This contention is supported when comparisons are made with demographic information of the population at large.

TABLE 1 — BREAKDOWN OF SAMPLES ACCORDING TO  
TYPE OF MARRIAGE<sup>16</sup>

<u>Time</u>	<u>%</u>	<u>National % (1982)</u>
Unregistered	44	41%
Registered Customary	18	34%
Civil	21	25%
Irregular Unions	<u>14</u>	<u>0%</u>
TOTALS	97	100%

"Because girls are likely to be married off early, parents prefer to educate their sons rather than their daughters, a process which doubly handicaps women in the matter of education."<sup>17</sup>

It is a well documented fact that women are not given as many educational opportunities as men.<sup>18</sup> Regarding the women in the

<sup>15</sup> Austin Sarat & William Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 L. & Soc. 93, 95 n.1 (1986).

<sup>16</sup> Fareda Banda, *Women and Law in Zimbabwe: Access to Justice on Divorce* (1992) (unpublished doctoral dissertation, University of Oxford).

<sup>17</sup> A. Armstrong & J. Stewart eds., *THE LEGAL SITUATION OF WOMEN IN SOUTHERN AFRICA* 201 (1990).

<sup>18</sup> *Id.*

survey, the figures below indicate that women in both samples had received some formal education.

TABLE 2 — EDUCATIONAL BACKGROUND OF THE TWO GROUPS OF WOMEN<sup>19</sup>

<u>Level</u>	<u>Customary</u>		<u>Civil</u>	
Primary	36	47.36%	4	19.04%
Secondary	35	46.05%	12	57.14%
Tertiary	0	0	4	19.04%
Other <sup>20</sup>	0	0	1	4.76%
No schooling	4	5.26%	0	0
Unknown	<u>1</u>	<u>1.31%</u>	<u>0</u>	<u>0</u>
TOTALS	76	99.98%	21	99.98%

In the survey there was a link between educational achievements and type of marriage such that those with registered marriages had higher educational attainments than those in unregistered unions.

Maclean has pointed out that in trying to work out an income package after divorce, women have four options open to them;<sup>21</sup> payments from a former partner, welfare payments from the state, earned income, and finally, a share in a new partner's income.<sup>22</sup> Maclean points out that women may draw from some or all of these sources at the same time in an attempt to make ends meet. Whilst adopting Maclean's model, the state welfare payments have been discarded because Zimbabwe does not have a welfare scheme from which women can draw money. However, a brief examination will be undertaken of the feasibility of having such a scheme. The paper therefore concentrates on the remaining three options starting with employment, then maintenance, and finally, remarriage. However, I will begin by looking at property re-distribution upon divorce.

#### *Property Re-Distribution*

As divorce indicates at the end of a partnership it is interesting to see how matrimonial assets are divided. The reallocation of the property of people with registered marriages is left to the discretion of the presiding judge. However, § 7(3) of the Matrimonial

<sup>19</sup> Banda, *supra* note 16.

<sup>20</sup> Denotes a professional qualification, in this case, a nursing qualification.

<sup>21</sup> MAVIS MACLEAN, SURVIVING DIVORCE: WOMEN'S RESOURCES AFTER SEPARATION 63 (1991).

<sup>22</sup> *Id.*

Causes Act requires the court to consider the following factors in the reallocation of property:

- a) the income, earning capacity, assets and other financial resources which each spouse has or is likely to have in the foreseeable future;
- b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future;
- c) the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;
- d) the age, physical and mental condition of each spouse and child;
- e) the direct or indirect contribution made by each spouse of the family, including contributions made by looking after the home, caring for the family and other domestic duties;
- f) the value to either of the spouses or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;
- g) the duration of the marriage;

and in so doing, the court shall endeavor as far as is reasonable and practicable and having regard to their conduct, is just and equitable to do so, to place the parties and their children in the position they would have been in had a normal marriage relationship continued between the spouses.<sup>23</sup>

Of particular note is the inclusion of homemaking as a factor to be taken into account. Although an important innovation, it is difficult to resist the temptation to conclude that domestic work will not be as highly valued as are other forms of employment. If a fair evaluation of domestic labour is to be made, then it must be considered different from, but equal in value to, other work which is accorded a financial value.<sup>24</sup> For Weitzman, domestic contribution is linked to the acquisition of income, "if one partner builds his or her earning capacity during the marriage, while the other

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<sup>23</sup> Matrimonial Causes Act § 33 (7)(3) (1985). A similar provision in the English statute was repealed by the Matrimonial and Family Proceedings Act of 1984, so that the minimal loss principle is no longer a part of English law.

<sup>24</sup> Cf. KEVIN GRAY, REALLOCATION OF PROPERTY ON DIVORCE 71 (1977) (suggesting the impossibility of monetarily quantifying the domestic achievements of the housewife); JOHN EEKELAAR, REGULATING DIVORCE 79 (1991).

stays out of the labour force to be a homemaker and parent, the earning party has acquired the major asset of the marriage."<sup>25</sup>

Therefore, the wife should be compensated for her domestic contribution. Thus, in dividing the assets of the marriage the husband's income should be taken into consideration. This highlights one of the problems with the Zimbabwean statute's construction; for although it lists the factors to be taken into consideration by the court, the statute is silent on the weight which the court should assign to the various considerations and factors listed in the statute. Linked to this is the fact that the division of matrimonial assets is left entirely at the judge's discretion which leads to uncertainty in the law. This was acknowledged in an interview with a Judge of the High Court. When asked for his interpretation of this section, he responded:

This means that the Judge must divide the property in accordance with his sense of Justice. All factors are brought to bear. This means that the division depends on your sense of values which are brought to bear on the facts. . . . The whole system is a lottery depending on which Judge you draw. We have people from a broad spectrum, Blacks, Asians, Coloured, Whites, Shona and Ndebele. It is a multi ethnic and cross cultural judiciary and everybody has their [sic] own inherent prejudices. I have been horrified by some of the decisions which have been handed down. I mean recently there was this case of a woman in a 14 year marriage which had broken down because the husband had a lover. She had borne six children. She walked out of that marriage with nothing. Not the children. Not the house. No nothing. The judge saw that there was irretrievable breakdown. He said that the children of the marriage could be adequately cared for by the new woman. He said that the husband had bought the house without any contribution from the woman. Yet he forgets - I mean how could he expect her to contribute financially when she was busy having all those babies? So basically all he did was to get rid of the old wife and replace her with a new wife. And he saw nothing wrong with that. I mean absolutely nothing.<sup>26</sup>

An interview with a lawyer specializing in divorce confirmed the view that property settlement depended very largely on the use made by the judge of his discretion:

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<sup>25</sup> Lenore J. Weitzman, *Marital Property: Its Transformation and Division in the United States*, in *ECONOMIC CONSEQUENCES OF DIVORCE: THE INTERNATIONAL PERSPECTIVE* 85, 97 (Lenore J. Weitzman & Mavis Maclean, eds. 1992).

<sup>26</sup> Interview with a Zimbabwean Justice who requested anonymity (1991); .Cf. W. NCUBE, *FAMILY LAW IN ZIMBABWE* 185-88 (1989).

There is a conservative trend in the judiciary. Zimbabwean society is more sexist than most. As you know in New Zealand the legislature had to intervene because the judiciary was using its discretion any which way it wanted.<sup>27</sup> They weren't considering domestic work although the statute states that it has to be taken into account in the distribution of assets. It was just nonsensical. There is the same tendency here. Judges are reluctant to award a reasonable division. Like take one of my cases where a wife of a 21 year marriage with six children and a house worth \$150,000 was awarded \$15,000. It was a very unjust decision especially as the husband was so grossly at fault - he was an unmitigated liar. She was awarded \$100 maintenance per month for herself. We put in an appeal but with financial constraints. . . . It was a shocking decision. Every judge has his own interpretation.<sup>28</sup>

At this point it must be noted that all but one of Zimbabwe's High Court judges are male, so that the judgments reflect a male ideology about what is an equitable distribution of property at divorce. The cases that have come before the High Court since the passing of the Act show a marked lack of consistency, and so, in some cases judicial discretion has produced an equitable distribution of property. In this category are cases like *Khoza v. Khoza*<sup>29</sup> in which a woman who had taken care of the children and built a home in the rural areas during the course of their 23 year marriage was awarded half of the spouses' total property, including a matrimonial home in Bulawayo (the second biggest city). The wife was awarded the parties' house in town together with all the furniture therein.<sup>30</sup>

In a similar case where the woman had taken care of the children and extended the matrimonial home whilst the husband was away studying in Britain, it was held that she was entitled to half the proceeds from the sale of the house. In this case the husband had sent money to assist with the extension. Justice Gibson reasoned:

In my mind this is a proper case in which the defendant should get a 50 per cent share of the sale price of the house, because it is largely her contribution and industry that transformed the property into the state it was in at the time of the sale. The inconvenience she must have suffered during the building

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<sup>27</sup> The Matrimonial Property Act (N.Z. 1976), as amended by the Matrimonial Property Amendment Act (N.Z. 1980).

<sup>28</sup> Interview with a Zimbabwean attorney who requested anonymity (1991).

<sup>29</sup> HC-B-106-87.

<sup>30</sup> *Id.*

works as well as the fact that she was the sole custodian of the children of the marriage entitles her to that share at least.<sup>31</sup>

A similar decision was reached in *Nyathi v. Nyathi*<sup>32</sup> where the husband filed for divorce and whilst conceding that his wife could have custody of the minor child of the marriage, he contended that he wanted the house, the car and the furniture because he had contributed more than she had. Challenging the basis of the husband's claim, Justice Muchechetera said:

In this connection I detect, as in this case, that there is a general tendency for husbands to minimize contributions made by their wives to the family expenses and the matrimonial homes in particular, just because the husbands usually elect to pay mortgage installments for the matrimonial homes while their wives are assigned to pay for constables such as groceries where there are difficulties in keeping accurate accounts. That can lead to unfairness and the courts should therefore be careful not to be swayed by such tendency. In this case the plaintiff was at pains to show that he had divided their joint property even obligations (dishonored checks), equally. Why should it not be the same with the matrimonial home?<sup>33</sup>

In other cases, the judges were shown to be less generous in their interpretation of the statute, so that in *Mujati v. Mujati*<sup>34</sup> the parties had been married for 17 years during which time the wife had lived in the rural areas in Wedza whilst the husband worked in town. They had five children. She ploughed maize on a subsistence level, any excess was sold and the money kept by the husband. In 1976, the parties acquired a shop in the communal areas which the wife ran single-handedly, never drawing a salary for her labors. Again all the proceeds were always handed over to the husband. The total value put on the property was \$23,250.00. On these facts the Judge divided the property thus:

I have decided to award the plaintiff the lump sum of \$7750 which is one third of the total value of the joint estate excluding the house in Wedza and the business premises. I have excluded these because the defendant maintains the business premises are being leased and I cannot place a value on the lease. The house appears to have been built with the defendant's salary. I have also decided on the above figure because it would approximate what I would consider to be a reasonable salary or remuneration.

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<sup>31</sup> *Muchada v. Muchada*, HC-H-66-87 at 5-6.

<sup>32</sup> HC-B-77-89 at 17.

<sup>33</sup> *Id.*

<sup>34</sup> HC-H-505-87.

neration for the plaintiff for the years she worked in the defendant's shop.<sup>35</sup>

Having awarded the wife a lump sum payment, he then went on to scale down her maintenance from \$100 to \$65 per month.

In *Masocha v. Masocha*<sup>36</sup> the wife, who was the respondent, claimed for a half share in the house valued at \$50,000 on the grounds that although she had not made any direct contribution to the purchase of the house, she had contributed indirectly by paying for the groceries and other household necessities. The husband earned a monthly salary of \$2,300 while she earned \$526 per month. The wife's claim was rejected on the basis that the disparity in their salaries was so great as to suggest that whatever the nature of the wife's contribution, it must have been minimal and did not entitle her to a half share.

On the basis of research done into the work of registrars in England, Eekelaar constructed a model showing that the practice of registrars when effecting a divorce settlement divided into two issues, namely settlement and compensation issues.<sup>37</sup> The aim of settlement is that on dissolution of the marriage each partner should take out what they put in, whilst compensation seeks to mitigate any prejudice a spouse may suffer as a result of the dissolution of the marriage usually caused by having to look after the children.

Within the Zimbabwean context it seemed that the first of these issues was given precedence so that women who had helped to acquire property by direct financial contribution were more likely to be awarded property than those who had not. This comprised the few women with civil marriages. The former wife of a self made business man said, "I told the court that before ending my marriage, I wanted my property back. I said that I wanted my house and furniture back. I said that I wanted a share of all the businesses which I had helped to build."<sup>38</sup>

Although one talks of dividing property, the reality was that very few couples owned property of any substantial value, the household furnishings comprising the bulk of the property.<sup>39</sup> Seventy-one percent of the women with civil marriages said that there had been disagreement over the sharing of the moveable property

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<sup>35</sup> *Id.* at 5.

<sup>36</sup> HC-H-H 183-87.

<sup>37</sup> EEKELAAR, *supra* note 24, at 77.

<sup>38</sup> Interview with Ms. Chuma.

<sup>39</sup> LENORE WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 62 (1985).

of the marriage. This contrasted with forty-two percent who spoke of disputes over the matrimonial home.

Burman contends that in the urban areas of South Africa, the house, whether or not the parties own it outright or rent it, forms the most valuable asset.<sup>40</sup> Zimbabwe mirrors this position, for with growing urbanization, housing is difficult to find thus the marital home is worth a fight. In the civil marriage group the house was the main issue in contention.

It was difficult to ascertain from the survey which sections of the Matrimonial Causes Act the courts were applying. However, it seemed that allocating the matrimonial home, the interests of the children were accorded priority, so that, generally, occupation of the house followed the party with custody.<sup>41</sup> There was, however, a conflict of interests between the provision of housing for the children and the custodial parent, usually the mother, and the husband's claim to a share in the house. One way of circumventing this problem was for the wife to forego claiming maintenance in return for the husband's share of the house.<sup>42</sup>

He then filed for divorce. He asked for half of the house and some of the moveable property. I refused and said that if that was his attitude then I wanted a part of the car which he bought after I had left. Eventually he agreed to give me the house and custody of the child. I decided to forego asking for maintenance and I said that he could have all the property that was in the house.<sup>43</sup>

Another way was by using what is known in England as the Meshner order, whereby the wife was allowed to live in the house until the youngest child reached majority. This was the strategy adopted in Mrs. Thebe's case: "I didn't want anything. All I fought for was the house. I managed to get the house. The agreement was that I would stay in the house until my last born is eighteen."<sup>44</sup>

The position was somewhat different for women with customary marriages. Under customary law a woman is, on divorce, enti-

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<sup>40</sup> Sandra Burman, *Marriage Break-up in South Africa: Holding Want at Bay?*, 1 INT'L J. OF LAW AND FAMILY 206, 231-33 (1987).

<sup>41</sup> Sandra Burman, *Backyard Notes on Divorce in South Africa* (1989) (unpublished manuscript); Cf. Weitzman, *supra* note 39, at 66.

<sup>42</sup> Weitzman, *supra* note 39 at 66 (noting that the option of trading off the house for other assets is only open to those families who have other assets and to women who do not need support for themselves).

<sup>43</sup> Interview with Mrs. Mandopera.

<sup>44</sup> Interview with Mrs. Thebe.

bled to her *mavoko*<sup>45</sup> property which usually consists of kitchen utensils and the motherhood beast (*mombe ye uma*<sup>46</sup>) if she had a married daughter. Most of the rural women did not question this entitlement. They saw it as their natural lot and were grateful if they were given anything at all and unquestioning if they were not. Those who did express dissatisfaction generally complained about their unharvested or unsold crops which they were forced to leave behind.

He made me leave the children. I also left 100 bags of maize. He wanted to take them to the Grain Marketing Board so that he could be the one to get the money. He left it outside and it got rained on and rotted. I left without any property.<sup>47</sup>

Looked at objectively, it is difficult to see what property rural women *could* have requested. The house would be part of the husband's compound. She could not demand it for herself for she could not continue to live in his village after the dissolution of the marriage. This left the livestock. Some families own it in common so it would be difficult to separate his cattle from those belonging to the rest of the family. Even if it were possible, the practicalities of moving the livestock over considerable geographic distance would preclude her from taking the cattle.

Arguably she could try to sell the cattle. Although technically possible, it would be a difficult goal to achieve given the constraints of the rural economy. Needless to say, the woman would need considerable mental and moral stamina to withstand all the obstacles which would no doubt be put in her way.

On the relationship between maintenance and property awards Weitzman has noted that given the low levels of matrimonial property owned by the spouses, "the primary financial issue at divorce, particularly for women and children are those of spousal and child support."<sup>48</sup>

### *Maintenance*

Although the legal provisions for maintenance are clearly laid out in various Acts of Parliament, accessing and enforcing the law

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<sup>45</sup> *Mavoko* is the Shona word for hands, and in this instance is used to denote property which a woman acquires through her own personal labour and the proceeds of which she is allowed to keep.

<sup>46</sup> This is the cow which is given to a woman on the marriage of her daughter as an acknowledgement of her role in bringing up the daughter and forms part of the bridewealth.

<sup>47</sup> Interview with Ms. Chipangura.

<sup>48</sup> WEITZMAN, *supra* note 39, at 69.

has always been difficult. However, figures for women claiming maintenance would indicate that despite these difficulties, women still approach the courts for assistance.<sup>49</sup> The majority of women are not formally employed and, therefore, rely on their husbands or fathers of their children for support. If this support is not forthcoming, they are left with no option but to sue for maintenance. Furthermore, as mothers generally retain custody of their children, on divorce or separation, they need financial assistance. It is for this reason that maintenance formed the most popular claim in the survey. Of the sixty-three women (83%) in the customary group who came in search of maintenance, sixty-two were looking for their children to be maintained. Similarly, eighty percent of women in the civil marriage group were claiming maintenance on behalf of their children.

While the law states that a man is liable to maintain any woman to whom he is married in terms of customary law, the courts refused to enforce this provision.<sup>50</sup> Women who asked for maintenance for themselves were met with the response that maintenance was for the children and not the mothers, so that Mrs. Mundondo was told, "that maintenance was for the children and not the wife. He [the Presiding Officer] said that there was no law which said that a man must pay his wife maintenance."<sup>51</sup>

Discussing the controversy over maintenance, Smart says that there is resistance from men as husbands towards giving the wife maintenance.

### *Employment*

Given the educational disadvantages suffered by women,<sup>52</sup> it was not surprising that their participation in formal working life was limited, as illustrated by the following table:

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<sup>49</sup> E. Gwaunza, *Maintenance In Zimbabwe in, Women and Law in Southern Africa 1990* (unpublished manuscript).

<sup>50</sup> Section 12(a) of the Customary Law and Primary Courts Act 21 (1982); Section 6(3) of the Customary Law and Local Courts Act.

<sup>51</sup> Interview with Mrs. Mundondo.

<sup>52</sup> Cf. *Max*, *supra* note 13, at 80.

TABLE 3 — EMPLOYMENT BY SECTOR OF  
POPULATION OF ZIMBABWE<sup>53</sup>

	<u>Men</u>	<u>Women</u>
Formal Sector	47%	8%
Informal Sector	0.7%	5%
Unemployed	9%	5%
Farming	24%	29%
Economically Inactive	<u>20%</u>	<u>53%</u>
TOTAL	100%	100%

The official definition of work, “any activity which is related to the production of goods and services for market (for pay, profit or barter)”<sup>54</sup> negates the work done by women and renders it invisible. Leading the group defined as “economically inactive” are housewives. Of this phenomenon, Marsha Freeman, has noted:

In every culture women’s paid and unpaid labour is undervalued or not valued at all. The classic explanation for economic measures relate only to cash transactions, so that, for example, African women’s farm labour which feeds entire nations is not included in the gross national product statistics because it is not exchanged for money. A more basic explanation is that women’s work is “invisible” not only because women’s existence as adults is not fully acknowledged. Thus in every culture, women’s contribution to the value of marital property is consistently ignored or undervalued, both during marriage and upon divorce. The value of women’s agricultural labour is also consistently discounted.<sup>55</sup>

The majority of the women interviewed in the customary sample had internalized this official disregard of their value and reported that they were unemployed, meaning that they were not in full-time paid employment. However, further questioning revealed that the women were engaged in a variety of activities which included market gardening, vegetable selling, knitting jerseys and crocheting doilies. Of the seven women in the customary sample in formal employment, none earned a salary in excess of Zim. \$350. [UK. £70 in 1990]. In fact, most of these women were found in jobs considered “women’s work” which by its nature is undervalued and therefore underpaid. Six women said that they were working or had

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<sup>53</sup> 1987 Statistical Yearbook, Central Statistical Office, Harare, Zimbabwe.

<sup>54</sup> ZIMBABWE LABOUR FORCE SURVEY at 87 (1986).

<sup>55</sup> Marsha Freeman, *Measuring Equality: A Comparative Perspective on Women’s Legal Capacity and Constitutional Rights in Five Commonwealth Countries*, 16 COMMONWEALTH L. BULL. 1418, 1420 (1990).

worked as domestics (housemaids). At least two worked as child-minders in creches, whilst others were involved in semi-skilled factory work. The position of the women in the customary sample is in direct contrast to that of the men, most of whom are in formal employment (67 out of 76). Their salaries ranged from Zim. \$116 to \$1200 thus showing that generally the men had more resources than the women. The women's weak economic position led to them being economically dependent on men.

It was only in the civil marriage sample that one found women who had tertiary education and who worked in the professional classes earning salaries in excess of \$24,000 per annum (two women) or \$30,000 per annum (three women). The highest paid woman in this sample earned £39,000 per annum. The husbands of these women all earned higher salaries than their wives. The following table shows the work histories of the women, before, during, and after the dissolution of marriage:

TABLE 4 — THE WORK PATTERN OF THE TWO GROUPS OF WOMEN

Customary Group

	<u>School</u>	<u>Unemployed</u>	<u>Plough</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
BEFORE	31	9	24	3	9	76
DURING	0	16	33	24	7	80
AFTER	3	12	15	44	8	81

Civil Group

	<u>School</u>	<u>Unemployed</u>	<u>Plough</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
BEFORE	4	1	2	0	14	21
DURING	1	2	2	5	14	24
AFTER	0	3	1	4	14	22

The variation in totals reflects the fact that some women reported themselves as being involved in more than one activity and were consequently recorded more than once.

The table shows that in the customary group, by the time the marriage is over, few women have gone back to formal employment, but the vast majority, unable or untrained for jobs in the formal sector, have started work in the informal sector. Those who are unemployed were those who had remained unmarried or those divorced women who had lived in town during the subsistence of the marriage and whose child care commitments prevented them from starting up in business.

The reason for the fall-off in the numbers of women plowing is that some women on leaving their husbands' villages did not re-

turn to their own villages, or only did so for a short time. Instead they went to live with relatives in town in an attempt to get jobs and because the opportunities for making a living through informal trading were better in town than in the rural areas.

My sister who is married and living in Harare told my mother that it would be better for me to come and live in Harare where I could try to get a job which would enable me to look after my children. She invited me to come and live with her and her husband.<sup>56</sup>

Overall the small number of women in formal employment would seem to support my earlier contention that the educational discrimination against women is reflected in their absence from the formal sector. The fall in the numbers of those who plough can be interpreted in two ways: one, due to overcrowding and shortage of land in the communal areas, the families of origin cannot spare any land for the women to grow crops for themselves so they are forced to find other ways of making a living; or two, it is possible that women are resentful of not controlling their own labour and of not reaping the rewards of their work from household plots so they choose to strike out on their own and become self employed.<sup>57</sup>

Child care was a problem for the majority of women who were in low paid jobs. They could not afford to employ a full time child-minder and had therefore to rely on help from relatives and friends. Twenty-five year-old Mrs. Hove was employed to knit jerseys at a monthly salary of \$125, "I have custody of the child. I leave the baby with my sister-in-law who lives nearby."<sup>58</sup>

Not all women were fortunate enough to have relatives living near them with whom they could leave their children because the splintering of the extended family network has resulted in family members living apart from other kin members. Children posed constraints on women's employability in other ways. Illness was one. A woman who had worked as a hairdresser until her last pregnancy (she had three children altogether) said of her situation, "I can't go back to work as yet. The baby was born premature and is very sickly. I can't leave a child who is that ill with the maid. I think

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<sup>56</sup> Interview with Mrs. Dengu.

<sup>57</sup> *Women and Employment and Labour Relations*, Ministry of Community Cooperative Development and Women's Affairs (Harare 1988).

<sup>58</sup> Interview with Mrs. Hove.

I will look after him for awhile. When he is one then I can return to work."<sup>59</sup>

Mrs. Mawadza had been forced to stop even her informal market trading:

I used to sell vegetables at the market last year. I stopped because my child is so sickly. I used to make about \$15 a day which I used to live on. Now I sell candles after dark. I make about \$10 per day, but I don't sell every day. I can't work [in formal employment] because the child is sick. There is no one that I can leave her with and I can't afford to employ a maid and anyway she is too sickly to leave with someone else.<sup>60</sup>

Given the low levels of employment of the women and the difficulties of getting maintenance from the men, re-marriage had to be considered as an option. Indeed Delphy contends that marriage is a woman's best career prospect, for it provides economic security.<sup>61</sup> She further contends that marriage is a self perpetuating state arguing that:

Ten years after the wedding day, marriage is even more necessary than before because of the dual process whereby women lose ground or at best remain at the same place in the labour market, while married men may make progress in their work as they are not hampered by household obligations. . . . Thus it can be said that, from the woman's standpoint, marriage creates conditions for its continuation and encourages entry into a second marriage if a particular union comes to an end.<sup>62</sup>

### *Re Marriage*

"The problem with finding a man who will marry you," Mrs. Gomo explained, was that, "while he might be prepared to take on the donkey, most men aren't prepared to take on the cart as well." The donkey in this case was the woman and the cart, her children from a previous marriage or another man.

In that one sentence she captured the dilemma faced by many women about marrying again. The prospect of a woman with children finding a man willing to marry her was slim. In so far as the presence of children suggests the continuation of the marriage relationship, albeit in a changed form, many men were of the opin-

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<sup>59</sup> Interview with Mrs. Mavhuna.

<sup>60</sup> Interview with Mrs. Mawadza.

<sup>61</sup> C. DELPHY, *CLOSE TO HOME: A MATERIALIST ANALYSIS OF WOMEN'S OPPRESSION* 95 (1990).

<sup>62</sup> *Id.* at 97.

ion that the woman remained married to her husband although cohabitation had ceased.

Women were also fearful of losing their children should they remarry. They were aware of the fact that the former husband would be indignant at the thought of *his* children being looked after by another man.<sup>63</sup> He would claim custody and given the conservative attitudes of most Presiding Officers in this area, the husband would be given custody.<sup>64</sup> This came across very strongly in Mrs. Gomo's case. Separated in 1981, the husband had remarried in 1983. He had three children with his new wife. She met a new man with whom she had a child in 1988. Her husband brought an action for custody of the four children:

The court said that since he wanted his children, I should give them to him. They said that I had another husband so the children should go back to their father. I could not expect another man to look after the children since the father was willing to have them. I agreed and released the children to him.<sup>65</sup>

Even if the new man accepted the responsibility of taking on both "the donkey and the cart" there was still the fear of how the newly reconstituted family would get along.<sup>66</sup>

It is a well documented fact that a woman's chances of remarriage decrease with age. Data collected by the Central Statistics Office shows that:

[M]arriage for both males and females increases with age reaching a threshold in the age group 25-29. Thereafter the percentage married for females drops faster than that of males. . . . There is a higher rate of females than males in the divorced/separated category in all age groups and this could be explained by the fact that more men tend to remarry than females and also that women marry much earlier.<sup>67</sup>

If the median age for the customary group was 28 and that for the civil marriage group 37, then most of the women were over the "marriageable age." However for some women the mere mention of remarriage filled them with horror, viewing it as a case of "out of the pot and into the fire." These are some of their views on the topic:

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<sup>63</sup> MAY, *supra* note 13, at 79.

<sup>64</sup> Banda, *supra* note 16, at 311-12.

<sup>65</sup> Interview with Mrs. Gomo.

<sup>66</sup> DENNIS MARSDEN, *MOTHERS ALONE: POVERTY AND THE FATHERLESS FAMILY* 161 (1973).

<sup>67</sup> Intercensal Demographic Survey, 9-10 (1991). Indeed, over 90% of the women reported that their former spouses were seeing, living with, or married to someone else.

I am no longer interested in getting married. It's difficult to keep having children with different men.<sup>68</sup>

I am living alone. I am not interested in remarrying. I would rather find myself a job and work.<sup>69</sup>

I don't want to marry again because it was a trauma. The whole marriage institution was a trauma to me and at the back of my mind I still fear it . . . .<sup>70</sup>

All but the last quotation are taken from the customary group, thus showing the universality of the women's feelings. There was no difference based on the economic position of the women in the respective groups or the different types of marriage. For the well-off women and for those for whom marriage had not provided any form of financial security, there seemed to be little point in remarrying. Having had a taste of freedom, few were prepared to give it up.

Despite these difficulties there were still those who remarried. They were part of a small minority. In the customary group, three (4%) had remarried, and two were contemplating it whilst only one in the civil marriage group had remarried. Two things were noted about the women who had remarried: the first is that they had been living on their own when they met their partners and the second is that they had met their partners in the urban areas. This meant that the chance of rural women meeting new partners was substantially reduced.

On divorce it is expected that the woman will return to live with her kin. Villages are grouped around kinship ties so one is precluded from marrying someone living in the vicinity. As most women are not mobile and opportunities to leave the homestead do not often arise, it means that the chance of meeting eligible men is greatly reduced.

The picture which emerges is that remarriage is *not* an option which is open to many women to exercise. It seems therefore that the only two realistic sources of income available to women in Zimbabwe today are those low wages derived from employment and that derived from ex-partners in the form of maintenance which was, more often than not, paid inconsistently and at very low levels. All that remains to be seen is whether the Zimbabwean state could do anything to help.

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<sup>68</sup> Interview with Ms. Makumbinde.

<sup>69</sup> Interview with Ms. Makanza.

<sup>70</sup> Interview with Ms. Thebe.

*The Welfare State*

On the issue of women as economic dependents, Glendon has noted that, "in all societies, this group [young children and their principal caretakers] is supported primarily by the family, therefore unlike certain other classes of dependents for which modern welfare states have gradually assumed collective responsibility, this group is the most vulnerable when changes occur in the family structure."<sup>71</sup>

Not having a welfare system, in Zimbabwe this group of persons is even more severely disadvantaged. Given the fact that in countries with welfare systems the state provides a "substantial" portion of income for lone parents, is there anything which the Zimbabwean government could do to alleviate the financial difficulties experienced by lone parents who more often than not are women? It would seem not:

According to the World Bank [in Zimbabwe], total external debt was \$2,659 million [US] at the end of 1988, equivalent to 58% of the GNP. Servicing the public and publicly guaranteed portion of this became an increasingly heavy burden in the early 1980's with interest and principal payments rising from US \$44 million [2.6% of goods and services) in 1980. To ten times that figure in 1983, when it was almost a third of the foreign earnings.<sup>72</sup>

Given these very real constraints, it does not seem feasible or even realistic to suggest that the Zimbabwean economy could sustain the introduction of a government funded assistance program for lone parent families following divorce.

*Conclusion*

This paper has considered issues of financial provision for women and children at the point of dissolution of relationships. It has shown how educational disadvantages and child-care commitments militate against women entering into formal employment. Similarly, age and cultural constraints make it difficult for women, especially those with children, to remarry, thus blocking one of the avenues out of the poverty trap. The inadequacy of these two sources of income, and the absence of a state welfare scheme mean that greater reliance is placed on private maintenance. However,

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<sup>71</sup> M-A Glendon, *Changes in the Relative Importance of Family Support, Market Work and Social Welfare, in PROVIDING ECONOMIC SECURITY 7* (M. Meulder-Klein and J. Eeklaar eds., 1983).

<sup>72</sup> THE ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT ON ZIMBABWE 41 (1991).

not only are maintenance awards low, but the difficulties of enforcement mean that the women and children reliant on maintenance as their main source of income are often exposed to levels of poverty which no other group in society has to face.

Attempts by developed countries such as Australia and England to enforce private maintenance arrangements have met with mixed success. For a country like Zimbabwe, which has few resources for distribution, a welfare system is not an option; finding an effective and cost-efficient way of ensuring that private maintenance obligations are met in a country where wages are low and subsistence level agriculture forms the main source of survival, is difficult.