

# **Discussions of Concepts and Methods 2: Localized Approaches**

# **Teaching Your Grandmother to suck Eggs! - Ostrich Eggs?**

**Developing new approaches based  
on the wisdom of others.  
The WLSA experience<sup>1</sup>**

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## **Introduction**

The title that was suggested to me when I was first invited to attend the Conference and Researcher Training Course on Legal Change in North/South Perspective was "Women and Law in Southern Africa - Inspiration and relevance for the Northern Hemisphere". The Women and Law in Southern Africa Research Trust has over the years, since its inception, developed within their own research arena appropriate ways to conduct research into the law and related areas as they affect the lives of women in the Southern African region. However, whether these methods are especially innovative or appropriate to other settings and societies is for the potential user to judge. Thus evolved the revised title for this paper which purports to indicate that others might choose to use or adapt the WLSA methods as they see fit, based on their own perspective.

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<sup>1</sup> This paper draws heavily on Chapters written by the author in WLSA, Zimbabwe 1994, *Inheritance in Zimbabwe, Law, Customs and Practices* and a forthcoming textbook on research in Women's Law, Weis-Bentzon et al, *Women's Law: Pursuing Grounded Theory*.

This tactic is not one developed out of a false modesty about the value of the Women and Law in Southern Africa Research Trust (WLSA) approach. Rather it is presented in this fashion because of the tendency of some to proselytise, especially to those they choose to label as third world, as to what are the appropriate and acceptable research methodologies to be employed. Useful as the experience of others may be, it has to be internalised and adapted to local needs and local conditions, thus I would hesitate to do any more than to set out for the reader some of the aspects of what has become known as the WLSA method and permit her or him to select what seems useful.

### **The Grandmothers and Grandchildren: Who are They?**

The participating countries in WLSA are Botswana, Lesotho, Mozambique, Swaziland, Zambia and Zimbabwe. There is a regional coordinator, based in Harare who is responsible for the overall academic conduct of the project and coordination of the regional, comparative aspects of the research. In each country there are two fulltime members of staff, namely a country coordinator and a fulltime research associate. There are also from 4-6 part-time research associates. A fundamental policy is that the fulltime staff should be balanced between those with a law qualification and those with a social science or other discipline based bias. This inter-disciplinary approach is carried through into the selection of part time research associates, who reflect a range of disciplines including lawyers, historians, demographers, social scientists, psychologists, statisticians, educationalist, documentalists and others.

Although most of the researchers are women there are, and this is a vital sex and gender balancing element, always two or three male researchers within the regional group. The vast majority of researchers are members of the indigenous population of the respective countries but there are a few minority group representatives, three at the last count, of whom I am one. The insider outsider?

WLSA as a research group has endeavoured to develop methodologies and theories that are particularly suited to its own research situation and the political, social and gender dynamics of its own research milieu and milieus.

WLSA, initially commenced its development under the wings of and feeding on the wisdom and work of those in the North who are, in the intellectual sense its progenitors. However the point has been reached where, perhaps, the process of theoretical and methodological developments, are and can be far more interactive than in the past between North and South and East and West. Within this context the WLSA research and organisational framework might give some new ideas and insights for those in other research climates and settings.

The WLSA approach owes much to the Scandinavian Women's Law approach, in its many diversities, that takes women and their lived realities as a starting point in dealing with law, and ultimately law reform as it affects women. A primary objective being to break out of the legal centrist paradigm of analysis of law, as it affects the lives of women. Thus there is definitely a grandmother but the egg is different and there is a need to find new ways to approach the "sucking" process. WLSA has, since its inception, been almost wholly funded by DANIDA. The DANIDA element helped foster initial interactions between "Northern and Southern" scholars as the funders appointed consultants to monitor the project and who helped guide the project at its inception.<sup>2</sup>

Norwegian contacts in this North South dialogue although at times connected to WLSA came more through the contacts with the University of Zimbabwe and other universities in the region through the running of the Women's Law Diploma courses initially at the University of Oslo and presently at the University of Zimbabwe. Through these contacts and programmes which are NORAD funded we had an indirect input into WLSA via the training that is received by WLSA members on these two programmes.<sup>3</sup>

Hence the first part of the title of my paper: "Teaching your Grandmother to Suck Eggs."

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<sup>2</sup> Through these contacts a broad process of interaction began to develop both within and without the WLSA framework between Southern Africa and Scandinavian scholars in the Women's Law and related fields. Through these WLSA and universities in the region came to deeply appreciate the critical inputs of Professor Agnete Weis Bentzon, Dr Rie Odgaard, Professor Hanne Petersen and Ass.Professor Signe Arnfred.

<sup>3</sup> Participating members of that programme being Anne Hellum, Professor Tove Stang Dahl and many others.

## **The WLSA Approach**

Part of understanding the WLSA approach which translates into the WLSA method is located in its organisation. First and foremost WLSA functions as a set of research teams, linked together at the regional level. This allows parallel research to be conducted in each of the WLSA countries which is then compared at the regional level in a regional report. Within that broad framework each country is an autonomous research unit adapting its research techniques to meet local needs and to address variant but thematically linked issues.

An offshoot of the main WLSA research programme is the convening in relation to various topics, sometimes those that are being researched or aspects of them, sometimes on issues that are pertinent at the time, of expert group meetings which casts the net beyond the members of the WLSA research teams at that time. There are usually around 6-8 participants for each of these sessions. These expert group sessions, which usually result in a joint paper, last five days, they involve intense "brainstorming" on the issues, mapping out of the theoretical framework for the analysis of the topic, and a collective production of a position paper. Some of the work in these sessions has provided invaluable theoretical perspectives for the larger research projects.

The expert groups involve Southern African scholars, southern by birth or adoption but not necessarily by residence at the time of the exercise. This has been a rich part of the interactions that WLSA has cultivated with the wider academic world.

## **WLSA Research Topics and Phases**

The first venture that WLSA undertook, when it was still in the process of formation was the production of a book "The Legal Situation of Women in Southern Africa" this was an "in the books" survey of the legal position of women in each of the countries. In retrospect this was a very narrow legal centralist approach to women's problems. The target was to identify the gendered differentials between the way in which men were treated in the law as compared to women. There was no empirical research carried out at this stage, but very importantly we had produced a map of the legal situation of women in each country.

Teaching Your...

Our assessment of the formal legal situation of women in Zimbabwe, for example, was that by and large women were relatively well catered for, the problem, from what we now regard as a superficial perspective, was that women were not utilising the legal remedies that were available to them. However, not only did this book give us a profile of the law but it did lead to some reform efforts to remove remaining areas of legislative discrimination.

### **The WLSA Objectives?**

WLSA as an organisation commenced in earnest in 1988, at that time it was the professed aim of the project to undertake legal research that would lead to the improvement of the socio economic conditions of women in the Southern African region through the medium of law reform. A concomitant of this was that we wanted implementable research that could produce tangible results. A part of the agenda of change was to undertake legal education campaigns that would assist women to know about and implement the reforms as well as utilise the existing law.

Another major objective was to develop researcher capacity in the region, this was a definite reaction to the feeling that the "North" had appropriated our lives and their explanation through an academic hegemony. We were the ones who had the lived experience yet it was outside researchers who developed the theory to describe the Southern African situation, they were the voice that was heard by the donor agencies, they were the preferred consultants by governments. Yet, often they had sparse understanding of the problems or even of the daily lives they researched. They had different agendas, and in the discourse about many issues their voices, or so we perceived the situation, drowned out the local voices.

As Chanock and others have shown this appropriation of the territory had been going on since colonial penetration of the region. It was the white male missionary and bureaucrats that spoke for the indigenous population, having gained their information and formed their policies often in collusion with a defined and cultivated male indigenous elite. In the post independence era it was a different group of knowers and describers who arrived but in reality what was experienced was a neo colonialism in academia.

Julie E. Stewart

The problem is not that the research is done by outsiders, that has its bonuses, but that Southern African activists and potential researchers perceived themselves as disqualified in the discourse. They felt isolated from the mainstream and had to cast their reality in the words of others or be heard only through the intervention of others. At a more simplistic level there was the impression, possibly erroneous, that the skills needed to engage in the discourse were not yet in our hands, nor did we have the skills to conduct the empirical research that would help to identify and resolve the problems.

The intention was not to reject Northern theory, nor to isolate ourselves from the mainstream. Rather our aim was to create a space in area and time in which we could design and evolve appropriate theories and methods to address the problems of women in the Southern African region and to establish national legal identities.

### **Developing new Approaches (or accidentally re-inventing the wheel?)**

The WLSA project as a regional, and more particularly in terms of my intimate association with the process, a single country project, Zimbabwe, is an example of the development of the theoretical frameworks through the application of empirical research and grounded theory.

The research methodologies were produced through trial and error and were not instantaneous productions. This has involved further adaptations and modifications of research methodologies and methods to meet new needs. Grounded theory was at work, even if at the time we could not name it.

### **The Experience**

Initially the WLSA research project had what might be termed a legal centralist approach and was firmly situated within liberal feminist jurisprudence. Gender neutral legislation and modes of law reform that promoted gender neutrality, subject to necessary compensatory deviations, were seen as the desired end. The operation of the law, the content of the law and how women were affected within the formal legal system were the focus of study.

Equality in the operation of the law and dissemination of legal information were seen as ways in which to rapidly improve the position of women.

The first in depth research undertaken was into maintenance and focused on evaluating the law, its efficacy, assessing legal awareness and legal knowledge among the population, in particular women.

During the maintenance research it became apparent that the answers to the problems that women faced in relation to the resolution of problems did not necessarily lie in the law. If there were legal problems it was also probable there might be other dimensions that needed to be taken into account.

Many of the women who were interviewed or joined in group discussions about maintenance issues indicated that they were aware in specific or general terms about their rights to claim maintenance for themselves or their children but that there were other factors that needed to be considered or which might affect women's decisions to act:

- a) conflicts within the woman's natal family, value systems or culture;
- b) fears that maintenance might be treated as a form of chiredzwa (traditional rearing paid to the mother of a child born out of 'wedlock' when the child was removed at around seven by the father), women feared that maintenance payments would entitle the father to remove the child. Some of these fears were it seems engendered by a woman's parent's view that custom still prevailed;
- c) the woman might have wanted a clean break from the man, felt she could cope alone and did not want to feel answerable to him over anything, some women felt that men would demand sexual relations in return for maintenance;
- d) the man might not be found;
- e) even if he was found he was unemployed or had no resources from which to pay maintenance;
- f) conflicts with the wife or wives of the father, threats and violence from the man or the other women;

Julie E. Stewart



g) problems of claiming maintenance from a man during the marriage, with the inevitable escalation of problems and possible divorce. Equally if the woman hoped that he might ultimately regularise their union if they were not married or living together then she would be reluctant to take any action that might prejudice the relationship

h) insensitive officials who did little to ease the problems that women faced when claiming maintenance.

The list could be continued but it was obvious that the law alone could not solve the problems. (WLSA, Zim, 1994)

Other areas came under attack as well, there were problems with generational gaps, the older generation had problems with the notion of maintenance when they believed that support problems were the obligations of the woman's family. Women were often antagonists, wives resented money spent on out of 'wedlock' children, older women expected support and attention from their son's and these expectations were adversely affected where there were maintenance obligations. Maintenance laws were blamed for the waywardness of young girls, men saw women as having children as some form of business operation from which, by way of maintenance, they could make a living. (Weis-Bentzon et al, 1996)

The simplistic solution of changing the law, informing people about its content was not enough. There were many more dimensions to the problem. The research had not, because of its initial theoretical perspectives, focused to any significant extent on the cultural and social context of women's lives. Yet the research made it very clear that these were very important parts of research into legal issues that affected women's lives. This was a first stage in the iterative process.

It is easy with hindsight to recognise how blissfully naïve this was, however naïve we were. What was about to hit us as the first field research phase came to an end, that is the maintenance phase, was the stark reality of women's lives as they were lived out in a myriad of different circumstances, frequently under harsh and unrelenting economic conditions.

What significance would our carefully constructed reform of the law in the books have on the lives of women where there was no social welfare as a back up, inefficient and unresponsive bureaucratic systems. Even where assistance might be available

there were social and cultural restraints that impacted on women's choices. Many women and, for that matter men were faced with a legal system that did not address their real needs and which for most of them applied an alien system of laws that often caused more conflict than it resolved. It involved an adversarial process, rather than one of conciliation and which was frequently conducted in a doubly foreign language: English and legalese in five of the six countries, Botswana, Lesotho, Swaziland, Zambia and Zimbabwe and Portuguese and legalese in the sixth country, Mozambique. Although WLSA has drawn heavily on the research base and experience developed outside the region it became very clear that these techniques needed to be refined and adapted to meet the particular needs of the Southern African situation.

The research objectives contained the statement that one of the aims was to 'take women as a starting point' and explore their lived experiences. In reality, with the benefit of hindsight the starting point had been women's relationships with the law, which was a relatively narrow perspective on their lives and also on the law.

You might ask why we did not go back, review our progress and fill in the gaps and readdress the maintenance problem with these new insights. The answer was quite simply a donor driven timetable and the need to move on to the next topic that we had adopted that of Inheritance. Thus the adjustments and realignments of our research processes had to be done on a new topic but in an old arena.

## **What was going on**

It is a fair assessment that the project both regionally and country wise (Zimbabwe) had been confronted with grounded theory. The initial assumptions and theoretical perspectives were seriously challenged and there was a need for new approaches to be taken.

In the Inheritance phase, 1991-92, a very different approach was taken in designing this project. This was largely based on the lessons that had been learnt from the first incursion into the field.

The decision was made to place far greater emphasis on case studies around the deceased and his or her family, also to look at the semi autonomous social fields that might affect the way in which deceased estates were ultimately distributed. Estate

records were perused, which had also taken place in the previous phase, surveys were not carried out, as the closed questionnaire had ultimately revealed largely background data and had at best hinted at the real nature of the problems. A further very important step was making gender comparisons, that is investigating whether men were treated differently from women on the death of a spouse or close family member, such as a parent.

Attempts were made to see inheritance from the perspectives of competing interests, mothers against spouses, children competing with a parent or more especially with step parents. The focus was on the death of a spouse but the concern and the research was on the living and how they coped or did not cope, the strategies they used and the consequences of such action.

### **Customs and Practices: Customary Law?**

Running parallel with this was the aim of discovering what were the customs and practices in dealing with inheritance that were applied by the people themselves? What were the experiences that people had with the law in operation or in the operation of social practices, custom. We were looking for both trouble and non trouble cases, cases in which families had come together and made joint decisions which all parties seemingly accepted and abided by, and families where there was conflict and animosity. We found both and this had a significant impact on our analysis.

Another dimension of the Zimbabwe research was to collect data quite independently in the two main ethnic groups, Shona and Ndebele. (It was a national comparative study within a regional comparative study.) Ultimately it was decided to present this data quite separately as two separate studies within the main Zimbabwe study, the link being through the analysis of the law and administrative practices and not by direct comparison of the two systems. This approach had a great deal to do with the theories concerning the development within the superior court system of a court based general, country wide, customary law. The differences between Ndebele custom and Shona custom which were clear in the field had been overridden within the court system in the interests of the generation of a unified system of customary law.

There is little doubt that the iterative process was heavily used in this connection, researchers started by finding the

customary law as applied by the courts, noted there were inconsistencies between the higher and lower courts, then tried to ascertain what was taking place among the people. The next stage or next question was to ask what used to happen, was there a standardized or uniform form of custom that could be uncovered and used as a standard by which to judge the validity of modern versions of customs<sup>4</sup>. If so then the next, next question was how could these customs be applied in a modern urban setting or to property that was owned individually.

What became increasingly clear was there was no such thing as a uniform version of custom, there were many variations in determinations of disputes, also in matters of inheritance there were many ways in which the family of the deceased were cared for and the property, such as there was, distributed.

Thus the research process and what was uncovered lead to a view of the customary law as utilised outside the courts as a set of principles that guided dispute resolution rather than as the rigid set of rules that were being applied by the superior courts. (WLSA, Zim, 1994)

What was developing, although at the time we were not aware of it, was a perspective gained by putting ourselves in the intersections between the 'laws', between the generations, between the sexes, between the semi autonomous social fields and the administration of the law and trying to ascertain how these were impacting on each other. Most importantly the research tried to evaluate how these intersections, collisions, intermeshing, whichever they happened to be, affected the widows, widowers and remnant families of deceased persons.

## **Mapping the Gap**

At the same time we were mapping the gap between state law and the reality of peoples lives, and interrogating a variety of delivery or frequently non delivery systems within the law and bureaucracy as to why women were treated in the way they were.

In the inheritance phase we had gone into the field expecting to find at every turn women who met the descriptions of the African widow as, "the poorest of the poor", "the marginalised and struggling woman".

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<sup>4</sup> Ultimately the search for an ideal custom was abandoned.

If media reports were to be believed the streets of Highfield, Harare, would be filled with widows involuntarily camping out in the streets, having been evicted by avaricious heirs.

In reality there was no commonality of situation for widows, they were as diverse as any other group of women.

Some widows were financially secure by reason of their own efforts, others might, by looking at their income, have seemed relatively poor but they felt that they were quite well off, especially in relation to men in the area who were struggling financially. There were other widows who felt that they were powerless after the death of a husband, this might have been because of the drought and its debilitating effects, however it was not possible to generalize except at a very abstracted level. Each case studied had its own internal dynamics.

Factors that influenced the widows position were her capacity to make independent economic decisions coupled with the long term relationships within the family. This applied equally to the widowers as to widows. Although in general, leading to some gender theorisation, men were economically better placed than women, widowers were not immune from the problems faced by widows.

The social and emotional dimensions were very important to the understanding of the phenomena in the area of intersection in each case. Equally economic independence was a vital factor to the capacity to take control of the future on the part of the widow and dependants. Women who were economically dependant on the heir for continued occupation of the family land holding were very clearly in a different position to those who owned the home they occupied or had the rights in it transferred to them by a municipal housing scheme. Equally where women were in employment or were paid insurance moneys direct by the insurer they were in a relatively secure position and had bargaining power.

Some women declined to assert their rights, why was difficult to ascertain. Some might do what at face value seemed to be "nothing" as a conscious choice having weighed up the options and decided that reliance on their social entitlements and the veiled pressure they could apply to obtain these was the best course of action. Others simply declined to act, despite seeming knowledge of their legal rights and socio-economic options.

Taking women as the focal point and exploring around them revealed legal data, social data, economic data and some data

of a psychological dimension. Very importantly it was obvious that there was no single solution or explanation to the problems faced by widows and widowers.

Monogamous unions might have certain similarities but economic and social differences between the various cases studied produced different needs and thus different solutions. Polygynous unions were realm apart, they threw into stark relief the incompatibilities of customary law and general law when mixed together in situations where there was little social or economic mobility as on the small scale commercial farms, where individual ownership was the order but living patterns were customary and communal.

These farms were one of the studies at the heart of the intersection, tragically the research identified some of the problems but the project is still at a loss as to real practical solutions.

## **Results**

Another feature that marks the WLSA work, probably as the result of the combination of the legal and social perspectives has been the turning of analysis back into attempts to provide new perspectives on the law as well as a search for possible new approaches, interpretations and reform measures in the law.

In deconstructing customs and practices and juxtaposing them with the customary law of the courts it was the views of the people that were the source of that deconstruction and reconstruction, as researchers we were catalysts, analysts and conduits but the people were the source.

WLSA has and continues to have the ear of Law Reform agencies in the region, reforms have been effected by legislative amendment, by administrative changes, by the use of WLSA generated arguments in the courts.

In conjunction with activism directed towards reform there have been educational campaigns, dissemination of information to NGO's, radio, television and video productions directed at informing and reforming views and attitudes on the position of women and men in relation to the research findings.

Each phase involves the production of country reports, a regional report, expert group working papers, (some of which have been published in northern journals), repackaged versions of the findings for more public dissemination, pamphlets and posters.

The information dissemination is carried out by what are styled action wings, although some of these are currently defunct through lack of funding, leaving the academic researchers to carry out some of these tasks.

## Conclusion

Although the WLSA projects are on going and there will be further development of theory, methodology and methods the use of Women's Law as a framework for the exploration of issues such as inheritance has demonstrated how there are multiplicity of different aspects and perspectives of what are regarded as essentially legalistic issues that can be brought to bear on the understanding of an area of law and human interaction.

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