

**AN EVALUATION OF THE EXTENT TO WHICH THE LAW PROTECTS WOMEN IN
EMPLOYMENT AGAINST GENDER DISCRIMINATION IN ZAMBIA**

BY

NG'ANDWE SERENA KAMBAFWILE

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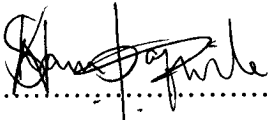
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A Dissertation submitted to the University of Zambia in partial fulfillment of the requirements of
the Award of the Bachelor of Laws (LLB) Degree.

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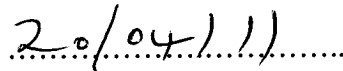
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ABSTRACT

Women in Zambia, like the rest of the world face a number of gender based challenges even in the sphere of employment. The law, being an important instrument to society if used well can help to protect them from such challenges. This research paper presents an evaluation of the extent to which the law protects women in employment against gender discrimination in Zambia.

The research methodology uses four main approaches to arrive at the study objectives. These include the presentation of a comprehensive review of various legislation in Zambia meant to protect women in employment from gender discrimination. This is followed by a qualitative analysis to show the extent to which the law protects women in employment as well as a review of the extent to which ratified international conventions on gender discrimination protect women in employment in Zambia. The study then carries out a comparative analysis of the Zambian and South African legislation on gender discrimination.

Results show that the extent to which the law protects women in employment is limited. This is proven by available literature which clearly indicates that women may still face gender discrimination because of factors like the glass ceiling. This finding is also supported by the feminist jurisprudence which seeks to indicate that the law is unfair because it is made by males. Results further show that the ratified international conventions on gender discrimination are not fully effective as they are not directly applicable and enforceable in the Zambian courts. In the comparative analysis of the Zambian and South African employment legislation, results show that the South African legislation is more progressive as it seems to give women better protection in a number of ways including a longer maternity leave. It also comes out more clearly in stating that dismissal based on family responsibility, gender, sex, or marital status is unfair and shifts the burden of proof to the employer in this regard.

In conclusion the paper recommends consistent law review and reform as a way to better protect Zambian women from gender discrimination in employment. The study has also noted that Zambia's legislators of the law that protects women in employment against gender discrimination have a lot to learn from their South African counterparts.

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DEDICATION

To my late sister, Sandra Kalaba Kambafwile (25th July 1982- 11th March, 1998), I love you and I will always remember, cherish and hold dear the time we spent together for the rest of my life.

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The Penal Code, Cap 87 of the Laws of Zambia

South African legislation

The Constitution of the Republic of South Africa No. 108 of 1996

Basic Conditions of Employment Act No. 75 of 1997

Employment Equity Act No. 55 of 1998

Labour Relations Act No. 66 of 1995

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Vishaka and others v. State of Rajasthan and others 3 L.R.C. 361 Supreme Court.

ABBREVIATIONS

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CSO Central Statistics Office

ILO International Labour Organisation

ITUC International Trade Union Conference

GDP Gross Domestic Product

CHAPTER ONE

GENERAL INTRODUCTION

1.0.0 Introduction

Women in Zambia like the rest of the world face a number of gender based challenges in employment. This chapter gives a detailed introduction to the research topic of an evaluation of the extent to which the law protects women in employment against gender discrimination in Zambia. To shed more light on the various discriminatory challenges that women in employment face, the general Zambian scene of women in employment will be shown using available literature. In addition, the chapter includes a section which seeks to establish possible factors why women may still face discrimination in the workplace despite the existence of the law.

Zambian women are found in both formal and informal employment. However, the scope of this research will only extend to women in formal employment. Munalula has observed that, like all other issues of discrimination, gender discrimination is approached from the perspective of the victims of such discrimination, in this case, women.¹ Women's rights in Zambia are protected through the concepts of equality and non- discrimination.² This is not an easy feat and a number of questions arise. First, how is equality to be defined and applied? Secondly, what standard of equality should Zambian society aspire to?

Both the Zambian Constitution³ and the Industrial and Labour Relations Act,⁴ prohibit discrimination on the basis of sex or marital status, yet according to the 2009 International Trade Union Confederation (ITUC) report on Zambia, women remain severely disadvantaged in employment and education. The report finds that in some sectors men are paid twice as much as women for work of equal value, while labour market segregation is high with women being concentrated in low-skilled, low wage sectors.⁵ Munalula has further observed that the Zambian women that work in the formal sector are fewer compared to men except in sectors traditionally

¹ M Munalula. *Women, Gender Discrimination and the Law: Cases and Materials*. (Lusaka: UNZA Press, 2005) Page 2.

² M Munalula, *Gender Discrimination and the Law*. Page 2.

³ Article 23 of the Zambian Constitution; Cap 1 of the Laws of Zambia.

⁴ Section 108 of the Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia.

⁵ M Van Klaveren et. al. "An Overview of Women's Work and Employment in Zambia", Working Paper 09- 80 (December, 2009) p 17. Available at www.uva-aiaas.net/uploaded_files/pub. Accessed on 23rd August, 2010.

viewed as women's work such as nursing and secretarial.⁶ As a matter of fact, the Central Statistics Office (CSO) approximates that of the 700, 000 workers who are in actuality 'employees', or workers who receive remuneration in wages or salaries, roughly 520,000 are men and 180, 000 are women.⁷ This gives a general picture that more men are hired compared to women.

The International Labour Organisation (ILO)⁸ commenting on women and labour has observed that, in the developing world, women continue to form a large majority of the world's poor who despite being employed, earn less income, and are more often affected by long-term unemployment than men. This is due to women's socio-economic disadvantages caused by gender-based discrimination and their double roles of being a worker and a care taker for the society. Women often have less access to education, skills development and labour market opportunities than men because of persistent social norms ascribing gender roles, which are often slow to change.

Manorah⁹ has observed several ways in which gender discrimination takes place in a work environment. These include:-

“Direct discrimination: When one is treated differently at their workplace through such acts like difference in salary based on gender, although doing the same job, or promoting someone because they are single instead of an equally qualified person that is married.

Indirect discrimination: When people are indirectly discriminated against for example where a certain set of rules or laws are made which indirectly imply that people of a certain gender cannot qualify those laws or rules.

Harassment at work: This is considered the worst since it not only discriminates but causes emotional as well as psychological trauma for the employee who is discriminated against. Sexual, verbal harassment or inferior treatment owing to gender are examples under this category.

Victimization: Unfair or biased treatment based on the employee's gender translates into victimization at work. This is also a form of employee discrimination based on gender.”¹

⁶ M Munalula. Women, Gender Discrimination and the Law: Cases and Materials. (Lusaka: Unza Press, 2004) Page 159.

⁷ C Petrauskis, “Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good” (2005) JCTR Available at www.jctr.org.zm/labour.html. Accessed on 15th September, 2010.

⁸ ILO on Gender and Employment – Available at <http://www.ilo.org>. Accessed on 11th September, 2011.

⁹ U Manorah. Gender Discrimination at the workplace available at www.buzzle.com. Accessed on 2nd February, 2011.

*In work environments, victims of sexual harassment tend to be women in most cases.*¹⁰ This view is supported by a study conducted at the University of Zambia after which Menon observed that more female academic staff reported having been sexually harassed compared to their male counterparts. However, only a few of these female academic staff made formal complaints and no action was taken based on their complaint.¹¹ Menon further acknowledged that many women have to give in to sexual advances in order to secure work. Most of these cases go undocumented because little research has been done on these cases.¹²

Moreover, Munalula has observed that although there are no visible official barriers to women's formal employment, their access is still hindered by lower education levels attributable to the preference to educate male children. Furthermore, family responsibilities prevent women from committing the same amount of time to formal employment as their male counterparts making them less attractive to employers.¹³

The preceding literature indicates that Zambian women may face discrimination in the area of employment.

1.1.0 Suggested Factors on Why women in Employment May Face Discrimination Despite the Existence of the Law

There are several factors that explain why women in employment may face discrimination despite the existence of the law. Past researches in the area of women and gender discrimination in the work environment have identified two factors which are the concept of feminist jurisprudence and the concept of the glass ceiling.

Munalula¹⁴ defines the concept of feminist jurisprudence as a term which seeks to capture an understanding of the law as a creature which is not necessarily free of bias as per popular perceptions. It brings to light the ways in which the law is structured on patriarchal premises. It

¹⁰ E L Dey & J.S Sax L. J. Betrayed by the Academy: The Sexual Harassment of Women in a College faculty. (UK: J. High. Education, 1996) p149-173. Available at <http://www.interestjournals.org/JPGDS>. Accessed on 2nd February, 2011.

¹¹ J Menon et al, "Sexual Harassment in Academia - Perception, Understanding and Reporting of Sexual Harassment in a Southern African University" Journal of Peace, Gender and Development Studies Vol. 1(1). Pages 8-14, February 2011. Available at <http://www.interestjournals.org/JPGDS>. Accessed on 2nd February, 2011.

¹² J Menon et al, "Sexual Harassment in Academia."

¹³ M Munalula. Women, Gender Discrimination and the Law: Cases and Materials. (Lusaka: Unza Press, 2004) Page 159.

¹⁴ M Munalula, Women, Gender Discrimination and the Law. Page 11.

questions the neutrality of such laws and warns against an oversimplification of the value of legal rights for women. It points out that women's oppression cannot be resolved by a simple declaration of equality under the law. Anyangwe,¹⁵ has observed that feminist jurisprudence denies that law is unbiased, neutral or rational whilst feminists like Smart,¹⁶ suggest that it is crucial in any campaign for change, to de- centre the law. According to her, the law promises a solution but more often delivers nothing more than increased legislative provisions and further entrenchment of its power.

The second factor is the concept of the glass- ceiling. Raymond Gregory has observed that even though women can now secure powerful professional, academic and corporate positions once reserved for men, the ever present 'glass- ceiling' still deters the advancement of large segments of the female workforce.¹⁷ The glass ceiling is a concept that most frequently refers to barriers faced by women who attempt, or aspire to, attain senior positions (as well as higher salary levels) in corporations, government, education and nonprofit organizations.¹⁸ This concept caught the attention of American Congressional leaders in 1991 who ultimately created a Glass- ceiling Commission to study and recommend measures to eliminate artificial barriers to the advancement of women and minorities. In 1995, after issuing a fact finding report, the Commission affirmed the continuing presence of such barriers.¹⁹

1.2.0 Statement of the Problem

Zambia has ratified many Conventions like the ILO Equal Remuneration Convention of 1951 and has repealed laws that banned women from certain types of work.²⁰ However, women continued to encounter difficulties in gaining access to training and employment²¹

¹⁵ C Anyangwe. *An Outline of the Study of Jurisprudence*. (Lusaka: UNZA Press, 2005) Page 345.

¹⁶ C Smart, *The Woman of Legal discourse* in N. Naffine(ED), *Gender and Justice*, (Dartmouth: Ashgate, 2002).Page 30.

¹⁷ R Gregory. *Women and Workplace Discrimination: Overcoming Barriers to Gender Equality*. (New Jersey: Rutgers University Press, 2003), Page 1.

¹⁸ C Hymowitz & T. Schellhardt, "Corporate Women" *Wall Street Journal* 24th (March 1986) available at www.advancingwomen.com/awl/summer. Accessed on 5th January, 2011.

¹⁹ R Gregory. *Women and Workplace Discrimination: Overcoming Barriers to Gender Equality*. (New Jersey: Rutgers University Press, 2003), Page 10.

²⁰ The Employment of Women, Young Persons and Children Act, Cap 274 was amended in 1991 because it limited the areas of employment for women by excluding them from mining work, underground work, heavy work in construction and night work. Sections 12- 17 were repealed and it is now called the the Employment of Young Persons and Children Act, Cap 274.

²¹ CEDAW /C/2002/II/CRP. 3 Advance unedited Version, 7th June 2002, 02- 41761(E) *0241761* Committee on the Elimination of all forms of Discrimination Against Women Twenty- seventh session, 3-21 June 2002.

Moreover, according to the ILO, the number of women participating in labour markets is at its highest point, and in 2006, 1.2 billion of the 2.9 billion workers in the world were women.²² Whilst in Zambia, the recent Labour Force Survey of 2005 has also shown a general increase in the number of women who are paid employees.²³ This generally indicates that the number of women in formal employment has presently increased.

However, more women than ever before are still unemployed, stuck in low productivity jobs in agriculture and services or receiving less money for doing the same jobs as men.²⁴ The problem seems to be alleviated by the fact that certain centuries old discriminatory customary laws and practices are still prevalent in Zambia, and the arbitrary administration of customary law has been identified as a major hindrance to the elimination of discrimination against women. The disparity between women and men is a consequence of historical and cultural factors that contributed to a division of labour where men were encouraged to participate in production, and women to work in the traditional sector.²⁵

Consequently, women tend to do what are viewed as relatively less important jobs if recognized as jobs at all and to earn less than their male counterparts. Because of the value placed on work in sectors occupied by women there is gender disparity, which is more insidious than where women are paid less for doing the same work as men.²⁶ The Research topic proposed will attempt to analyse the problem in this context and to propose various recommendations that can be made to resolve the stated problem.

1.3.0 Objectives of the study

1.3.1 General Objective

The main objective of this paper is to evaluate the extent to which the law protects women in employment against gender discrimination in Zambia.

²² ILO on "More Women Working but Gender Inequality Persists" – Available at <http://www.ilo.org>. Accessed on 11th September, 2010.

²³ Central Statistics Office & the Ministry of Labour and Social Security. Labour Force Survey Report. 2005 Page 2.

²⁴ ILO on "More Women Working but Gender Inequality Persists" – Available at <http://www.ilo.org>. Accessed on 11th September, 2010.

²⁵ CEDAW /C/2002/II/CRP. 3 Advance unedited Version, 7th June 2002, 02- 41761(E) *0241761* Committee on the Elimination of all forms of Discrimination Against Women Twenty- seventh session, 3-21 June 2002. Accessed on 15th August, 2010.

²⁶ M. Munalula. Women, Gender Discrimination and the Law: Cases and Materials. (Lusaka: Unza Press, 2004) Page 160.

suggested factors on why women in employment may face discrimination despite the existence of the law. It further stated the research problem, the objectives of the study and the methodology.

CHAPTER TWO

THE INTERNATIONAL CONVENTIONS ON GENDER DISCRIMINATION IN EMPLOYMENT

2.0.0 Introduction

The main objective of this chapter is to review the international conventions that deal with women, gender and employment that Zambia has ratified. These are important because they set out the international law standards on women in employment. The provision in the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW) that deals with employment and the International Labour Organisation (ILO) Conventions on gender and employment will be considered. Thereafter, a general analysis of their application will be brought out.

2.1.0 The United Nations Convention on the Elimination of all forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly on 18 December 1979. Zambia ratified it on 21st June, 1985¹ and it entered into force on 21st July, 1985.² The spirit of the convention is rooted in the goals of the United Nations which are to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women.³ It is considered not only to have established the international bill of rights for women but also an agenda for action by countries to guarantee the enjoyment of human rights.⁴ CEDAW in its preamble recognizes that extensive discrimination against women continues to exist and that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. The Convention covers three dimensions of the situation of women which include civil rights and the

¹ M Kevane. "Ratification of CEDAW" Santa Clara University. Available at www.elsa.berkeley.edu/.../mcevane.pdf. Accessed on 13th February, 2011.

² M Kevane. Ratification of CEDAW.

³ www.un.org/womenwatch/cedaw accessed on 28th January, 2011.

⁴ www.un.org/womenwatch/cedaw.

legal status of women, human reproduction as well as the impact of cultural factors on gender relations.

Article 11 of the CEDAW convention in particular deals with employment. It states that:-

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings.
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of formal employment, seniority or social allowances.
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.”

2.2.0 The International Labour Organisation Conventions

The ILO is the international organization responsible for drawing up and overseeing international labour standards. It is the only tripartite United Nations agency that brings together representatives of governments, employers and workers to jointly shape policies and programmes promoting decent work for all.⁵ The ILO seeks to ensure that labour standards are

⁵ <http://www.ilo.org>.

respected in practice as well as principle in all its member states. It is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.⁶ Zambia became a member of the ILO in 1964.⁷ Since then, she has ratified many ILO Conventions. Zambia has ratified the Equal Remuneration Convention of 1951,⁸ and the Discrimination (Employment and Occupation) Convention of 1958.⁹ These are designated as key instruments for achieving gender equality in the world of work.

2.2.1 The Equal Remuneration Convention of 1951

The Equal Remuneration Convention of 1951¹⁰ was ratified by Zambia on 20th June, 1972.¹¹ It encourages equal pay for men and women for work of equal value.¹² Article 2(1) of the Equal Remuneration Convention of 1951 states that:-

“Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to remuneration of all workers on the principle of equal remuneration for men and women workers for work of equal value.”

2.2.2 The Discrimination (Employment and Occupation) Convention of 1958

The Discrimination (Employment and Occupation) Convention of 1958¹³ was ratified by Zambia on 23rd October 1979.¹⁴ It provides that states parties should undertake to pursue national policies that eliminate discrimination in access to employment, training and working conditions.¹⁵ Article 2(1) of the Discrimination (Employment and Occupation) convention of 1958 states that :-

“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

⁶ <http://www.ilo.org/gender>.

⁷ <http://www.ilo.org>.

⁸ ILO Convention No.100.

⁹ ILO Convention No.111

¹⁰ ILO Convention No. 100

¹¹ <http://www.ilo.org>.

¹² <http://www.ilo.org/core/conventions>.

¹³ ILO Convention No. 111.

¹⁴ <http://www.ilo.org>.

¹⁵ <http://www.ilo.org/core/conventions>.

Article 3 of the Discrimination (Employment and Occupation) Convention of 1958 states that:-

“Each member for which this Convention is in force undertakes by methods appropriate to national conditions and practice;

(a) To seek the co- operation of employers’ and workers’ organizations and other appropriate bodies in promoting the acceptance and observance of the policy;

(b) To enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) To repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) To pursue the policy in respect of employment under the direct control of a national authority;

(e) To ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.”

2.3.0 Application of Ratified International Instruments

Where the government has ratified an international instrument such as the CEDAW or the ILO Conventions, the instrument has to be domesticated before it can be enforced by the courts as international instruments are not self- executing.¹⁶

Moreover, as Magagula has observed, Zambia belongs to the dualist tradition, and thus views international law and domestic law as two separate legal systems. Hence domestication of international law by an Act of Parliament is necessary before international law can be applied. This of course excludes customary international law which is binding on all states.¹⁷ Further, according to Mwenechanya, Zambia has ratified International Labour Organisation Conventions, however, the lack of their domestication has rendered some of them unenforceable in Zambian courts.¹⁸ For example in *Zambia Sugar Plc V Nanzaluka*,¹⁹ the Supreme Court of Zambia held that it is trite law that international instruments on any law, although assented to or ratified by a state cannot be applied in the country unless they are domesticated.

¹⁶ M Munalula. Legal Process: Legislation and Commentaries. (Lusaka: Unza Press, 2004) Pages 10 – 30.

¹⁷ A Magagula, “The Law and Legal Research in Zambia” (2009) Page 5 Available at www.nyulawglobal.org/globalex/Zambia.htm. Accessed on 12th September, 2010.

¹⁸ S Mwenechanya, “Legal Empowerment of the Poor- Labour Rights in Zambia” (2007). Page 14. Available at www.undp/legalempowerment. Accessed on 15th August, 2010.

¹⁹ Supreme Court Judgment No. 82 of 2001.

However, the fact that a particular dualist country like Zambia may have ratified an international convention but not incorporated it into domestic law, does not mean that the convention is thereby rendered ineffectual in that country.²⁰ States are legally bound to implement ratified international conventions. In a similar way to international treaties,²¹ the ILO conventions are made effective by requirement that the country take such actions “as may be necessary” to make the provisions effective.²²

An example of a case where an international convention was relied upon is an Indian case of *Vishaka and others v. State of Rajasthan and others*²³. Article 32 of the Constitution of India empowered the Supreme Court of India to issue guidelines for the enforcement of constitutionally guaranteed rights. Since domestic law did not address the issue and did not formulate effective measures to prevent sexual harassment of working women at the workplace, the Supreme Court of India decided to formulate general principles in order to define the concept of sexual harassment and to ensure its eradication. The Supreme Court of India referred to the Convention on the Elimination of All Forms of Discrimination against Women and on the statements of the United Nations Committee on the Elimination of Discrimination against Women (the international body responsible for supervising the application of this Convention). The Supreme Court of India stated:-

“Gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.”

In a Zimbabwean case of *Frederick Mwenye v. Textile Investment Company*,²⁴ the Labour Relations Tribunal had to assess if the appellants conduct could be qualified as “sexual harassment.” Since no national provision addressed the issue, the Tribunal relied on international law. In particular the Tribunal relied on the CEDAW General Recommendation Number 19 of 1992 for a definition of sexual harassment. The Tribunal ruled that the evidence clearly

²⁰ R Layton. “When and how can Domestic Judges and Lawyers use International Law in Dual Legal systems?” (2005) p 7 available at www.ilo.org/ils_Judges_Int_Law_web/Additional/Library/Doctrine/Dualist. Accessed on 23rd September, 2010.

²¹ The Vienna Convention on the Law of Treaties, United Nations Treaty Series, vol.1155, page 331. Article 26 effectively provides that every treaty in force is binding upon the parties to it and it must be performed by them in good faith.

²² Article 19(5) (d) of the ILO Constitution.

²³ 3 L.R.C. 361 Supreme Court.

²⁴ LRT/MT/11/01.

established that the appellant made repeated unwanted sexual advances to Miss *Gwelo*. Therefore since the conduct of the appellant constituted sexual harassment, his appeal was dismissed.

Whilst an example of a Zambian case where reference was made to international conventions is *Standard Chartered Bank Zambia Limited v. Peter Zulu and 118 others*.²⁵ In this case, the Supreme Court of Zambia had to decide on the legality of this reference to international conventions. Having concluded that international law could be a source of law for interpreting the constitution, the Supreme Court of Zambia dismissed the applicant's argument concerning reference to international law. It was stated that:-

"Zambia has ratified some of these conventions but for them to become part of our laws they must satisfy the conditions laid down in the constitution. The conventions which have been ratified may have a bearing on interpretation of Article 14(2) of the Constitution. It talks about forced labour. The article has attempted to define "forced labour" but an occasion may arise when the definition may not cover new situations and it may be necessary to look at conventions to which Zambia is a member for guidance."

From an African perspective Manuh has observed that, while many countries have ratified UN agreements such as CEDAW, which guarantees women equal rights and protection from discrimination, these have not informed policy-making or translated into better living and working conditions for women.²⁶ However since Zambia ratified CEDAW,²⁷ and the ILO Conventions²⁸ it has taken considerable measures in favour of its female employees that are reflected in its legislation.²⁹ For example the Employment of Women, Young Persons and Children Act³⁰ was amended by Act No. 4 of 1991 after Zambia ratified CEDAW because it limited the areas of employment for women by excluding them from mining work, underground work, heavy work in construction and night work. Sections 12- 17 were repealed and it is now

²⁵ SCZ Judgment No. 59 of 1996.

²⁶T Manuh. "Women in Africa's Development: Overcoming Obstacles, Pushing for Progress" Recovery Briefing Paper (1998) Available at [www.un.org/ /maineng.htm](http://www.un.org/maineng.htm). Accessed on 10th September, 2010.

²⁷ Zambia ratified CEDAW on 21st June 1985 data available from M. Kevane. "Ratification of Cedaw" Santa Clara University. Available at www.elsa.berkeley.edu/.../mcvane.pdf. accessed on 13th February, 2011.

²⁸ Zambia ratified the ILO Equal remuneration Convention on 20th June 1972 and the Discrimination (Employment and Occupation) Convention, 1958 on 23rd October, 1979. Information available at www.ilo.org.

²⁹ The Employment Act, Cap 268 of the Laws of Zambia in section15 grants women twelve weeks maternity leave every two years.

³⁰ Cap 505 of 1933.

called the Employment of Young Persons and Children Act.³¹ The effect of this amendment is that women are now free to work in the mines, underground, in construction and at night.

A persuasive authority on the application of international law in Zambia is the Bangalore Principles of Judicial Conduct which are applicable in Zambia.³² They were noted in 2003 by the UN Commission on Human Rights to the attention of member states like Zambia.³³ These, though not binding articulate that it is within the proper nature of the judicial process and well established judicial functions of domestic courts to have regard to international obligations which a country undertakes whether or not they have been incorporated into domestic law, for the purpose of removing ambiguity or uncertainty from constitutions, legislation or common law as well as if the law is incomplete or there is a gap.³⁴

2.4.0 Conclusion

This chapter looked at the international conventions that deal with women in employment. Reference was made to Article 11 of CEDAW which encourages states parties to take all appropriate measures to eliminate discrimination in the area of employment, the Equal Remuneration Convention, 1951 which deals with equal remuneration for men and women doing work of equal value and the Discrimination (Employment and Occupation) Convention, 1958 which encourages states to pursue national policies in order to promote equality of opportunity and treatment in respect of employment and occupation. Finally, a general analysis of the application of international law in a domestic set up was made.

³¹ Cap 274 of the Laws of Zambia.

³² Bangalore Principles of Judicial conduct. Available at www.unodc.org/pdf accessed on 1st February, 2011.

³³ Bangalore Principles of Judicial Conduct.

³⁴ R Layton. "When and how can Domestic Judges and Lawyers use International Law in Dual Legal systems?" (2005) Page 8. Available at www.ilo.org/ils_Judges_Int_Law_web/Additional/Library/Doctrine/Dualist. Accessed on 23rd September, 2010.

CHAPTER THREE

AN EVALUATION OF THE ZAMBIAN LAW ON GENDER DISCRIMINATION IN EMPLOYMENT

3.0.0 Introduction

This chapter evaluates the Zambian law on gender discrimination in employment. This evaluation will include a review of the legislation on employment with a particular focus on the provisions that specifically relate to women and a situational analysis in the form of case law. The cases will be preceded by the law in order to weigh its efficacy in terms of what it provides against how the courts have interpreted it.

3.1.0 The Zambian Law on Gender Discrimination in Employment

3.1.1 The Constitution

The Zambian Constitution¹ is the supreme law of the land². In article 23 it provides for protection from discrimination. It states that:-

“23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description...

...”

¹ Cap 1 of the Laws of Zambia.

² Article 1(3) of the Constitution of Zambia Act, Cap 1 of the Laws of Zambia.

Moreover, article 112 (j) of the Constitution is a directive principle of state policy which sets the ground for fair labour laws. It provides that:-

“The State shall recognize the right of every person to fair labour practices and safe and healthy working conditions.”

3.1.2 The Employment Act

The Employment Act,³ provides legislation relating to the employment of men and women in Zambia, it also makes provision for the engagement of persons on contracts of service and provides for the form of and enforcement of contracts of service. It further makes provision for the appointment of officers of the Labour Department and for the conferring of powers on such officers and upon medical officers. It also makes provision for the protection of wages of employees as well as provides for the control of employment agencies and all matters incidental to the foregoing.⁴

Although it applies to both men and women, it has a few provisions that directly relate to women. Section 15A (1) Provides that:-

“ Subject to any agreement between the parties, or any other written law, providing for maternity leave on conditions not less favourable than are provided for in this section, every female employee who has completed at least two years of continuous service with her employer from the date of first engagement or since the last maternity leave taken, as the case may be, shall, on production of a medical certificate as to her pregnancy signed by a registered medical practitioner, be entitled to maternity leave of twelve weeks with full pay.”

Section 15B goes on to provide that:-

“(1) An employer shall not terminate the services of a female employee or impose any other penalty or disadvantage upon such employee for reasons connected with such employee's pregnancy.

(2) In the absence of proof to the contrary, an employer shall be deemed to have acted in contravention of subsection (1) if he terminates the contract of service or imposes any other penalty or disadvantage upon a female employee within six months after delivery.”

The above section is interesting because it gives female employees that have completed atleast two years of continuous service with their employers the right to twelve weeks maternity leave and protects them from discrimination on pregnancy related grounds. The provision further

³ Cap 268 of the laws of Zambia.

⁴ Preamble to the Employment Act, Cap 268 of the laws of Zambia.

deems any termination of a female employees' contract of service or disadvantage done to her as connected to her state of pregnancy if it is done within six months after the delivery of her child.

3.1.3 The Minimum Wages and Conditions of Employment Act

Under the Minimum Wages and Conditions of Employment Act,⁵ the Minister of Labour is empowered to make regulations and orders with respect to minimum conditions of employment for any group of workers. The latest set of regulations are the Minimum Wages and Conditions of Employment (General) Order, 2011.⁶ The regulations apply to all employees except civil servants, district council employees and those whose conditions of employment are regulated through the process of collective bargaining or where the employee- employer relationships are governed by specific employment contracts, those in management and finally employees in a sector where the Minister by statutory instrument has prescribed a minimum wage.⁷ The Minimum Wages and Conditions of Employment (General) Order, 2011 has specific provisions that provide for women. Paragraph 7 on maternity leave provides that:-

“(1) A female employee shall be granted one hundred and twenty calendar days paid maternity leave on production of a medical certificate...if the employee has completed two years of continuous service from the date of first engagement or since the last maternity leave.

....

(4) An employer shall not impose any other penalty or disadvantage upon an employee for reasons connected with the employees pregnancy.”

The above provision gives a female employee one hundred and twenty days maternity leave after completing two years of continuous service. In addition, it protects the female employee from discrimination on pregnancy related grounds. It can also be observed that this section grants no better rights than S15A(1) of the Employment Act which entitles a female employee to twelve weeks or more as maternity leave.

⁵ Cap 276 of the laws of Zambia.

⁶ SI No. 2 of 2011.

⁷ Paragraph 3 of SI No. 2 of 2011.

3.1.4 The Industrial and Labour Relations Act

The Industrial and Labour Relations Act,⁸ has revised the law relating to the formation of trade unions and employers' representative organizations, including the formation of federations of trade unions and federations of employers' organizations, recognition and collective agreements, settlement of disputes, strikes, lockouts, essential services and the Tripartite Labour Consultative Council and the Industrial Relations Court and provides for matters connected with or incidental to the foregoing.⁹

Section 108 of the Industrial and Labour Relations Act forbids discrimination in employment. It states that:-

“(1) No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of sex, marital status...

(2) Any employee who has reasonable cause to believe that the employees' services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the Court...”

This section proscribes the termination of the services of a female employee on the basis of sex, marital status and other grounds. In addition, it allows any employee that has reasonable cause to believe that her services have been terminated or that she has suffered any disadvantage due to her sex, marital status or any other ground to lay a complaint before the Industrial and Labour Relations Court.

3.1.5 The Penal Code

The Penal Code¹⁰ is the prime source of Zambian criminal law and was enacted to establish a Code of Criminal Law.¹¹ It was adopted by Zambia before it gained its independence and was called Northern Rhodesia in 1931.¹² The Penal Code has undergone a number of amendments since then and one of these is the Amendment Act No. 15 of 2005 which included a provision for

⁸ Cap 269 of the Laws of Zambia.

⁹ Preamble to the Industrial and Labour Relations Act, Cap 269 of the laws of Zambia.

¹⁰ Cap 87 of the Laws of Zambia.

¹¹ Preamble to the Penal Code, Cap 87 of the laws of Zambia.

¹² S Kulusika Text, Cases and Materials on Criminal Law in Zambia (Lusaka: UNZA Press, 2006) Page 8.

sexual harassment. Section 137A of the Penal Code provides for sexual harassment and defines it. It provides that:-

“(1) Any person who practices sexual harassment in a workplace...commits a felony and is liable, upon conviction to imprisonment for a term of not less than three years and not exceeding fifteen years.

...
(3) in this section, sexual harassment means;

...
(d) sexual imposition using forceful behavior or assault in an attempt to gain physical sexual contact.”

This provision is there to protect female employees from any sexual harassment that may arise from the workplace.

3.2.0 An Evaluation of the Zambian Law on Gender Discrimination in Employment

Firstly, the Constitution of Zambia, in article 23 prohibits discrimination on the basis of sex or marital status. However, this is subject to exceptions and a typical example would be in laws that provide for the appropriation of revenues in the republic as well as with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.¹³ This permission of discrimination in laws that provide for appropriation of revenues in the republic effectively allows the government to levy different taxes against men and women in the employment sector if it so wishes.

Secondly, regarding the maternity leave provision in the Employment Act, Mwenda is of the view that section 15A and B were intended not only to provide for maternity leave but also for the protection of female employees from victimization by employers on grounds related to their pregnancies. According to her, this protection enables female employees to perform their biological functions without fear of losing their jobs as long as they conform to the requirements of the law.¹⁴

Thirdly, the Minimum Wages and Conditions of Employment Act (General) Order, 2011,¹⁵ grants female employees a longer period of 120 days maternity leave unlike the Employment Act

¹³M Munalula. *Women, Gender Discrimination and the Law: Cases and Materials*. (Lusaka: Unza Press, 2005) Page 61.

¹⁴ W. Mwenda. *Employment Law in Zambia: Cases and Materials* (Lusaka: Unza Press, 2004) Page 8.

¹⁵ Paragraph 7 of SI No 2 of 2011.

which grants female employees twelve weeks.¹⁶ This variance disadvantages the female employees covered by the Employment Act since they have less maternity leave days than those covered by the Minimum Wages and Conditions of Employment Act (General) Order, 2011. However, notwithstanding this apparent disadvantage, any employer may give his or her female employees maternity leave of twelve weeks or more with full support of the law since it allows the employer to give twelve weeks subject to any other agreement between the employer and employee.¹⁷

Fourthly, Munalula has observed that section 108 of the Industrial and Labour Relations Act, represents an attempt to ensure that gender discrimination does not occur in the area of employment.¹⁸ In addition, Mwenda after analyzing discrimination cases before the Industrial Relations Court believes that the Courts have difficulties in determining whether a complainant was dismissed on the basis of her sex or not.¹⁹

Lastly, in section 137A of the Penal Code, the current definition of sexual harassment applies only to sexual imposition using forceful behavior or assault in an attempt to gain physical sexual contact.²⁰ However there have been other wider definitions of sexual harassment which include any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature that can also include offensive remarks about a person's sex.²¹ It is submitted that Zambian law should also take such wide definitions into consideration.

3.3.0 How have the courts dealt with cases on gender discrimination in employment?

Despite the three case law examples given below and the fourth test case which did not go to trial, Zambian women continue to be discriminated against in the area of their employment and very few cases reach the courts because as Gregory²² has observed, women who recognize the effect of discrimination are reluctant to become involved in complex legal proceedings. Others may lack the financial resources to retain a lawyer. Others believe family responsibilities would

¹⁶ S 15A of the Employment Act, Cap 268 of the Laws of Zambia.

¹⁷ Section 15A (1) of Cap 268 of the laws of Zambia.

¹⁸ M. Munalula. *Women, Gender Discrimination and the Law: Cases and Materials*. (Lusaka: Unza Press, 2005) Page 166.

¹⁹ W. Mwenda, *Employment Law in Zambia: Cases and Materials*. (Lusaka: Unza Press, 2004) Pages 13- 15.

²⁰ Cap 87 of the Laws of Zambia.

²¹ United States Equal Employment Opportunity Commission available at www.eeoc.gov/./sexual_harassment.cfm.

²² R Gregory. *Women and Workplace Discrimination*. (USA: Routledge Press). Page 10.

make it impossible for them to become involved in extended litigation. Some women fear losing their jobs while others believe that all workplaces are infested with gender discrimination so why bother to contest it?²³ Moreover, the Assistant Labour Commissioner under the Ministry of Labour and Social Security acknowledged that cases on gender discrimination in employment in Zambia are rarely reported to the Labour Office.²⁴ This indicates that it is possible that there are many cases on gender discrimination that despite having occurred have never reached the courts of law because they are never reported.

The Zambian courts have on several occasions decided cases on gender discrimination in employment. In the case of *Solomon v Duncan Gilbey and Matheson*,²⁵ the respondent company engaged the complainant as a Receptionist and Typist. However, the complainant was dismissed due to poor performance and absenteeism which she attributed to the fact that she was a mother and often had to take her children to hospital due to their ill- health. The Industrial and Labour Relations Court in its judgment stated as follows:-

“The question for the consideration of the court is whether there was evidence on record to show that the complainant was dismissed because of her status as a woman or any other discriminatory grounds. It is not in dispute that the complainant is a woman with children. The court is therefore in some difficulties in determining whether the complainant was dismissed on account of her status as a woman. There is very little evidence on record to this effect. In cases like this the burden is on the complainant to prove her case on the balance of probability. In the view of this court the complainant has not done so. On the contrary, the court is impressed that the respondents have demonstrated the shortcomings of the complainant in the performance of her work. Thus the court holds that the complaint is without merit and we accordingly dismiss the same.”

However, in an analysis of this case, Mwenda²⁶ noted how interesting it was that in its judgment the court expressed some difficulties in determining whether the complainant was dismissed on account of her status as a woman or not, but at the same time observed that there was very little evidence on record to that effect. According to Mwenda, this was a contradiction because if the court found that there was very little evidence that the complainant had been dismissed on account of her status as a woman, it should not have had any difficulties at all in determining that the complainant was not dismissed on account of her being a woman.²⁷

²³ R Gregory. *Women and Workplace Discrimination*. Page 11.

²⁴ Mr Kapilima, Assistant Labour Commissioner, Ministry of Labour & Social Security, in an interview conducted on 17th January, 2011.

²⁵ IRC Complaint No. 17 of 1985(unreported).

²⁶ W Mwenda. *Employment Law in Zambia: Cases and Materials* (Lusaka: Unza Press, 2004) Page 15.

²⁷ W Mwenda. *Employment Law in Zambia*. Page 15.

Similarly in the case of *Simposya V Hoechst (Zambia) Limited*,²⁸ the respondent company employed the complainant as a personal secretary. After completing her probation she was duly confirmed but her employment was terminated 6 months later without reasons being provided to her. She argued that her termination was due to her state of being pregnant at the time and she had heard two senior employees discussing her condition shortly before her termination. Delivering the judgment, the Industrial and Labour Relations Court stated:-

“The respondent terminated her contract with one month’s salary in lieu of notice even without good reasons. In our view, this termination can amount to unfair treatment of the complainant. But there is no evidence before us on which to draw the inference on the balance of probability or in the interest of substantial justice that this termination was unfair because of the complainant’s sex or marital status. So we dismiss the complaint.”

Regarding offences of sexual harassment arising from the workplace, reference can be made to *The People v Godden Bola*.²⁹ Dr. Bola was accused of having forced sexual relations with his secretary on three occasions in November 2002. He was tried for the offence of indecent assault and acquitted in July, 2004 after a long trial that captured headlines. The magistrate in acquitting Dr. Bola stated:-

“It was highly questionable for an old woman to be forced into having sex on several occasions without revealing to anyone...Silence raised concern and showed that she consented to the alleged offence... The complaint was baseless and the complainant had hallucinated showing that she was traumatized...Moreover, the complainant continued to work in the same office after the events occurred without feeling demoralized. Accordingly, her complaint should be dismissed because there was no evidence of any external bruising in the medical report. In fact her conduct was highly questionable.”

A case that shows gender and the accrual benefits in formal employment is *Rachael Sakala v Attorney General*.³⁰ Even though this case did not go to trial it is still a classical example that should be noted. A brief background to this case according to Munalula³¹ is that although the Employment Act was couched in gender neutral terms, most married women still found themselves not being entitled to housing. This is because the housing regulations provided that an employer was obliged to provide adequate housing to an employee and in the event that such housing was unavailable, an adequate rent allowance. Married women were excluded because the husband had already been catered for. Thus, upon dissolution of the marriage, these women

²⁸IRC Complaint No. 62 of 1985(unreported).

²⁹Lusaka Subordinate Court Case of 2002. Full citation not available. Reported in an online newspaper version of Times of Zambia of Thursday 15 July 2004.

³⁰ 1991/ HP/ 2082. For more detailed analysis see M. M. Munalula, “Gender Bureaucracy and Law: the Search for Change”, ZLJ, vol 21- 24, p. 48.

³¹ M Munalula. Women, Gender Discrimination and the Law: Cases and Materials. (Lusaka: Unza Press, 2004) p 170.

were thrown out of the home because the employer could only provide housing upon production of a divorce decree or a letter from the estranged husband. However the law was later amended to consider women but when the effect of this was a huge increase in the wage bill of government, the law was amended yet again.

Furthermore, because most housing was already in the hands of the male- headed households, it became imperative to take the government to court under the constitutional guarantee of non-discrimination as was the case in *Sakala v the Attorney General*.³² However, before the matter could go to trial, the Government conceded defeat and agreed that an individual's employment contract was indeed separate from their social status. Consequently, the failure to provide a female employee with housing or housing allowance in her own right constituted discrimination on the basis of sex or marital status. However, the government then preempted the women's victory and renegotiated its collective agreement with the unions to exclude the provision of housing as an obligatory employment benefit.

3.4.0 Conclusion

This chapter looked at the Zambian law on gender discrimination in employment. In doing so, it considered article 23 on discrimination in the Constitution which does not absolutely protect women from discrimination because of the derogations it permits in laws that provide for the appropriation of revenues in the republic and personal law. It also brought out section 15A and B of the Employment Act which give female employees the right to maternity leave and protects them from discrimination on grounds related to pregnancy. Furthermore, the Minimum Wages and Conditions of Employment Act (General) Order, 2011 was shown to grant no better rights than the Employment Act to female employees. In addition, section 108 of the Industrial and Labour Relations Act showed that employers are prohibited by the law from terminating the services of a female employee on the basis of her sex or marital status, amongst other grounds.

Finally, section 137A of the Penal Code was given to show the law that protects women against sexual harassment in the workplace. The chapter also looked at how the Zambian courts have dealt with gender discrimination cases. From this chapter it is clear that the Constitutional provision that prohibits discrimination can be improved by reducing the number of derogations

³² 1991/ HP/ 2082.

in order to provide better protection from discrimination whilst section 137A of the Penal Code can still include a wider definition of sexual harassment to include any unwelcome sexual advances, requests for sexual favors, and other verbal harassment of a sexual nature.³³ Moreover, the analysis of the gender discrimination case law indicates that the courts have had difficulties in determining whether a female complainant was dismissed on account of her status of being a female or not.³⁴

³³ The United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/./sexual_harassment.cfm. Accessed on 15th March, 2011.

³⁴ W Mwenda. *Employment Law in Zambia: Cases and Materials* (Lusaka: Unza Press, 2004) Page 15.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF THE ZAMBIAN AND SOUTH AFRICAN LAW ON GENDER DISCRIMINATION IN EMPLOYMENT

4.0.0 Introduction

This chapter is a comparative analysis of Zambia and South Africa in terms of the nature of their employment laws and their effectiveness in protecting women from discrimination. Firstly the specific provisions that protect women against gender discrimination in the employment laws of South Africa will be discussed. These will then be compared to the Zambian law that protects women in the same area as discussed in chapter three. This comparative analysis will then reveal the similarities and differences between them.

4.1.0 South Africa

South Africa is a constitutional democracy comprising nine provinces and is located at the southernmost region of Africa, with a 2,798 kilometres coastline on the Atlantic and Indian Oceans. To its north lie Namibia, Botswana and Zimbabwe, to the east are Mozambique and Swaziland.¹ Although classified as a middle income country by the United Nations South Africa has a mixed economy with a high rate of poverty and low GDP per capita.² It should be noted from the beginning that South Africa has been selected for comparison to Zambia not under the pretext that it has the best labour laws, but because it is also a member of the International Labour Organisation just like Zambia.³ This entails that the international labour standards of both countries provide a similar foundation for their national labour laws.⁴ In addition, it is a southern African country just like Zambia but has an interesting approach that identifies key fundamental principles relating to gender equality and reflects them in its constitution.⁵ Interestingly, its constitution's language is not biased towards either sex but its provisions recognize women's

¹ Information available at www.en.wikipedia.org/./southafrica.

² Information available at www.en.wikipedia.org/./southafrica.

³ South Africa was re-admitted as a member of the ILO on 26 May 1994. Available at www.ilo.org.

⁴ www.ilo.org.

⁵ Section 9 of the Constitution of South Africa, Act No 108 of 1996.

biological exigencies.⁶ All this presents one with a case to consider in so far as a comparison to Zambia is concerned.

4.2.0 Employment laws of South Africa that Protect Women against Gender Discrimination

4.2.1 The South African Constitution

The South African Constitution⁷ is the supreme law of South Africa.⁸ Section 9 of the South African Constitution which falls under the Bill of Rights provides for equality. It states that:-

“(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”

Section 187 of the South African Constitution creates the Commission for Gender Equality and states its functions. It provides that:-

“(1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

(2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.

(3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.”

In Section 9 the South African Constitution provides for equality and allows affirmative action for disadvantaged persons in order to achieve equality. In addition it sets the grounds upon which one should not be directly or indirectly discriminated against. The grounds relating to females

⁶ M Munalula, Women, Gender Discrimination and the Law: Cases and Materials.(Lusaka: UNZA Press, 2005) Page 75.

⁷ Constitution of the Republic of South Africa Act, No. 108 of 1996.

⁸ Section 2 of Act No. 108 of 1996.

include gender, sex, pregnancy or marital status. It further sets a basis for the enactment of national legislation to prohibit any unfair discrimination.

Section 187 on the other hand creates a Commission for Gender Equality and states its functions which include the power to monitor, investigate, research, educate, lobby, advise and report on any issues concerning gender equality. This entails that it can also deal with gender equality issues regarding employment.

4.2.2 The Labour Relations Act of 1995

The purpose of the South African Labour Relations Act No. 66 of 1995⁹ is to advance economic development, social justice, labour peace and the democratization of the workplace. It seeks to do this by giving effect to and regulating the fundamental rights conferred by section 23 of the Constitution¹⁰ on the right to fair labour practices, fulfilling the obligations incurred by the Republic as a member state of the International Labour Organisation, providing a framework within which employees and their trade unions, employers and employers' organizations can collectively bargain to determine wages, conditions of employment, formulate industrial policy and all matters incidental to the foregoing.¹¹ Although it applies to both males and females, it has a few provisions that specifically relate to female employees.

Section 185 of the Labour Relations Act of 1995 provides for the right not to be unfairly dismissed or subjected to unfair labour practice. It states that:-

“Every employee has the right not to be unfairly dismissed and subjected to unfair labour practice”

On the other hand, section 186 of the Labour Relations Act provides for an extended definition of dismissal. It provides that dismissal can occur if:-

“...

(c) an employer refused to allow an employee to resume work after she:

(i) took maternity leave in terms of any law, collective agreement or her contract of employment; or

⁹ Act No. 66 of 1995 as amended by the Labour Relations Amendment Act No. 42 of 1996, Proclamation, No 66 of 1996, the Labour Relations Amendment Act, No 127 of 1998 and the Labour Relations Amendment Act No 12 of 2002.

¹⁰ Act No. 108 of 1996.

¹¹ Preamble to the South African Labour Relations Act of 1995.

(ii) Was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child.”

Another important provision to take note of is Section 187 of the Labour Relations Act of 1995 which provides for automatically unfair dismissals. It states that:-

“(1) A dismissal is automatically unfair if the reason for the dismissal is:-

...

(e) the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy;
(f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.”

From the provisions in the South African Labour Relations Act of 1995, it is submitted that section 185 of the Labour Relations Act of 1995 provides for the right not to be unfairly dismissed or subjected to unfair labour practice. Section 186 on the other hand includes a definition of dismissal specifically related to female employees that if an employer refuses to allow an employee to resume work after she took maternity leave or was absent from work for four weeks before her expected date of delivery or eight weeks after the birth of her child, this amounts to dismissal. In addition, section 187 of the Labour Relations Act of 1995 also renders the dismissal of a female employee as automatically unfair if it is related to her pregnancy, gender, sex marital status or family responsibility.

4.2.3 The Basic Conditions of Employment Act of 1997

The South African Basic Conditions of Employment Act of 1997,¹² was enacted to give effect to the right to fair labour practices referred to in section 23(1) of the Constitution of South Africa by establishing and making provision for the regulation of basic conditions of employment and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation and to provide for matters connected therewith.¹³

Section 25 the Basic Conditions of Employment Act of 1997 provides for maternity leave. It states that:-

“(1) An employee is entitled to at least four consecutive months’ maternity leave.

(2) An employee may commence maternity leave:

¹² Act No. 75 of 1997.

¹³ Preamble of the Basic Conditions of Employment Act of 1997.

- (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- 4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.”

The above provision is liberating for female employees because it gives them the right to maternity leave of at least four consecutive months. It further allows them to commence this maternity leave at any time from four weeks before the expected date of birth or on a date that is certified by a medical practitioner or midwife. In addition it also grants female employees who have had a miscarriage during the third trimester of pregnancy, or bear a still born child, six weeks maternity leave.

4.2.4 The Employment Equity Act of 1998

The South African Employment Equity Act of 1998¹⁴ was enacted to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.¹⁵

Section 5 of the Employment Equity Act of 1998 provides for the elimination of unfair discrimination. It states that:-

“Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.”

Section 11 of the South African Employment Equity Act of 1998 is interesting because it places the burden of proof on the employer that whenever unfair discrimination is alleged, the employer must establish that it is fair. It provides that:-

“Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.”

¹⁴ Act No. 55 of 1998.

¹⁵ Preamble to the South African Employment Equity Act of 1998.

In section 5 of the South African Employment Equity Act of 1998 provision is made for the elimination of unfair discrimination by stating that every employer must take steps that promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. In addition section 11 places the burden of proof to establish that the allegation of unfair discrimination is fair onto the employer.

4.2.5 The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000

The South African Promotion of Equality and Prevention of Unfair Discrimination Act of 2000,¹⁶ was enacted to give effect to section 9 of the Constitution of South Africa which provides for equality so as to prevent and prohibit unfair discrimination and harassment, to promote equality and eliminate unfair discrimination, to prevent and prohibit hate speech, and to provide for matters connected therewith.¹⁷

Section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 provides for the prohibition of unfair discrimination on the ground of gender. It states that:-

“Subject to section 6 on the prevention and general prohibition of unfair discrimination no person may unfairly discriminate against any person on the ground of gender, including:-

(a) gender-based violence;

...
...
...
...

(f) discrimination on the ground of pregnancy;

...

(h) (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.”

The above provision prohibits unfair discrimination based on gender including gender based violence, pregnancy, and limiting women’s access to social services.

¹⁶ Act No. 4 of 2000.

¹⁷ Preamble to the Promotion of Equality and Prevention of Unfair discrimination Act of 2000.

4.3.0 Similarities between the Zambian Employment Law and the South African Employment Law regarding Women

There are many similarities in the laws regarding the employment of women between Zambia and South Africa. These include, first that both South Africa¹⁸ and Zambia have ratified CEDAW and the ILO Conventions on gender equality.

Secondly, both Zambia and South Africa have labour law statutes that also include provisions that specifically relate to female employees. South Africa has the Labour Relations Act of 1995, the Employment Equity Act of 1998, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 and the Basic Conditions of Employment Act of 1997. Zambia on the other hand has the Employment Act, the Industrial and Labour Relations Act, and the Minimum Wages and Conditions of Employment Act.¹⁹

Thirdly, in both countries, the Constitutions prohibit discrimination. In the South African Constitution, section 9 on equality provides for this prohibition whilst in Zambia it is article 23. It can be submitted from the foregoing that the South African constitutional provision that prohibits discrimination is more protective than the Zambian provision.

4.4.0 Differences between the Zambian Employment Law and the South African Employment Law regarding Women

In spite of the similarities in the legislation of both South Africa and Zambia, the differences are also quite obvious. Firstly the South African Constitution has specifically provided for equality in section 9 which is widely couched and includes the prohibition of unfair discrimination, further it specifically creates a Commission for Gender Equality in section 187 which has power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. In Zambia, Article 23 prohibits discrimination on the basis of sex, however, it has derogations in the appropriation of state revenue, marriage and customary law.

Secondly, the South African Labour Relations Act of 1995 defines unfair dismissal in wide terms for all employees and specifically for females, it prevents an employer from dismissing an employee for starting their maternity leave four weeks before their expected date of delivery. It

¹⁸ South Africa ratified CEDAW on 15th Dec 1995 and rejoined ILO on 26th May, 1994. Information available at M. Kevane, "Ratification of Cedaw" Santa Clara University. Available at www.elsa.berkeley.edu/~mekvane.pdf, accessed on 13th February, 2011 and www.ilo.org.

¹⁹ (General) Order, 2011, Or SI No. 2 of 2011.

further renders dismissal on the basis of family responsibility, gender, sex and marital status as automatically unfair. The Industrial and Labour Relations Act in Zambia on the other hand has section 108 which prohibits the termination of the services of employees on the basis of sex, marital status and other grounds. It also allows any employee that has reasonable cause to believe that his or her services have been terminated or that he or she has suffered any disadvantage due to one of the grounds it provides to lay a complaint before the Industrial and Labour Relations Court of Zambia.

Thirdly, in South Africa, the Basic Conditions of Employment Act of 1997 gives a female employee four months maternity leave whilst the Zambian Employment Act under S15A(1) gives twelve weeks maternity leave to eligible female employees that have been in continuous service of at least two years with their employers.

Fourthly, the South African Employment Equity Act of 1998 in section 11 shifts the burden of proof from the employee to the employer. It states that whenever unfair discrimination is alleged, the employer against whom the allegation is made must establish that it is fair. This is different from Zambia where an employee alleging unfair discrimination based on section 108 of the Industrial and Labour Relations Act has the burden of proof as shown by case law.²⁰

Fifthly, South Africa has a specific statute, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 which is widely couched in terms of protection against gender discrimination whilst Zambia has no specific statute which protects against gender discrimination.

4.5.0 Conclusion

This chapter has critically compared Zambia to South Africa in terms of the nature of its employment laws and their effectiveness in protecting women from gender discrimination. Thus, the Employment laws of South Africa, particularly the provisions that specifically apply to female employees in the Basic Conditions of Employment Act of 1997, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000, the Employment Equity Act of 1998 and the Labour Relations Act of 1995, were discussed. These were then compared to the Zambian law that protects women in the same area as discussed in chapter three. This

²⁰ Solomon v Duncan Gilbey and Matheson IRC Complaint No. 17 of 1985(unreported).

comparative analysis also revealed the similarities and differences between them. Finally, from what has been demonstrated in this chapter it can be concluded that compared to Zambia the South African law on employment is more progressive and to a considerable extent indicates that Zambia can learn from it.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0.0 Introduction

This chapter draws conclusions from the findings of the research and also makes relevant recommendations. This is done in order to propose changes to the situation currently prevailing in Zambia. Firstly, a summary of each of the preceding chapters from the research will be given. Thereafter the recommendations will be shown. Finally, the answers to the research questions in chapter one will be presented in a general conclusion.

5.1.0 Summary of the Research

This research has strived to evaluate the extent to which the law protects women in employment against gender discrimination in Zambia. By reviewing available literature chapter one gave a general Zambian scene of women in employment. This was useful in shedding more light on the various discriminatory challenges that employed women may face. In addition, a section which sought to establish possible factors why women may still face discrimination in the workplace despite the existence of the law was also presented. The findings showed that women may face gender discrimination in employment because of factors like the glass ceiling which may inhibit women from being promoted and feminist jurisprudence which asserts that the law is unfair because it is made by males.¹

Chapter two looked at the international conventions on gender discrimination in employment. Reference was made to Article 11 of CEDAW which provides that states parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure that men and women have the same rights based on equality. Reference was also made to the ILO Equal Remuneration Convention, No. 100 of 1951 which provides that member states using means appropriate should determine rates of remuneration, promote and ensure that the principle of equal remuneration for men and women workers for work of equal value is upheld. The ILO Discrimination (Employment and Occupation) Convention, No. 111 of 1958 was also considered. It provides that each state party undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to

¹ M. Munalula, Gender Discrimination and the Law, Page 11.

eliminating any discrimination. Finally, a general analysis of the application of international law in a domestic set up was made. The findings indicated that although Zambia has ratified these three conventions, they are not domesticated. This in effect means that they are not enforceable in the courts of law and are not applicable to a full extent.

Chapter three analysed the Zambian law on gender discrimination in employment in order to show the extent to which it protects women. In doing so, it considered article 23 of the Constitution on protection from discrimination, section 15A and B of the Employment Act on maternity leave and protection from discrimination on pregnancy related grounds respectively, section 108 of the Industrial and Labour Relations Act which prohibits unfair discrimination, paragraph 7 of the Minimum Wages and Conditions of Employment Act (General) Order, 2011 also on maternity leave and section 137A of the Penal Code on sexual harassment. It also looked at how the Zambian courts have dealt with gender discrimination cases.

The findings from chapter three indicated that article 23 of the Constitution has many derogations and this presents a challenge because it can allow the government to levy male and female employees with different taxes if it so wishes. Further, paragraph 7 of the Minimum Wages and Conditions of Employment Act (General) Order, 2011 at first glance seems to grant female employees a longer maternity leave but in actual fact grants no better rights than sections 15A and B of the employment act which can grant more than twelve weeks maternity leave. In addition the findings indicate that the definition of sexual harassment in the section 137A of the penal code is restrictive because it does not extend to cases of sexual harassment that presents itself in form of unwelcome sexual advances, requests for sexual favors, and other verbal harassment of a sexual nature.² Furthermore the findings from the situational analysis of gender discrimination cases indicate that it is not easy for female complainants alleging unfair dismissal to discharge this burden.³

In chapter four, a comparative study of Zambia and South Africa in terms of the nature of their employment laws and their effectiveness in protecting women from gender discrimination was conducted. Reference was made to section 9 of the South African Constitution on equality, section 25 of the Basic Conditions of Employment Act of 1997 on maternity leave, section 8 of

² The United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/sexual_harassment.cfm. Accessed on 15th March, 2011.

³ W Mwenda. *Employment Law in Zambia: Cases and Materials* (Lusaka: Unza Press, 2004) Page 15.

the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 on the prohibition of unfair discrimination on the grounds of gender, section 5 of the Employment Equity Act of 1998 on the elimination of unfair discrimination and sections 185, 186 and 187 of the Labour Relations Act of 1995 on the right not to be unfairly dismissed, dismissal, and automatically unfair dismissal respectively. The findings from this comparative study showed similarities and differences in their legislation.

The similarities discovered were firstly that the two countries have both ratified CEDAW and the ILO Conventions on gender equality.⁴ Secondly, Zambia and South Africa equally have labour law statutes that incorporate provisions that protect female employees from gender discrimination. Thirdly the Constitutions of both countries have provisions that prohibit discrimination.

The differences on the other hand include the following. Firstly, whereas the South African Constitution specifically provides for equality and prohibits unfair discrimination in section 9, the Zambian Constitution in article 23 prohibits discrimination but has numerous derogations, typical examples being in the appropriation of state revenue marriage and customary law. Secondly, the South African Labour Relations Act of 1995 includes a definition of unfair dismissal which prevents an employer from dismissing an employee for starting their maternity leave four weeks before their expected date of delivery. It further renders dismissal on the basis of family responsibility, gender, sex and marital status as automatically unfair. On the other hand the Industrial and Labour Relations Act in Zambia has section 108 which prohibits the termination of the services of employees on grounds including sex and marital status without expressly defining unfair dismissal or showing what can amount to automatically unfair dismissal.

Thirdly the Basic Conditions of Employment Act of 1997 in South Africa gives a female employee four months maternity leave whilst the Zambian Employment Act gives twelve weeks. Fourthly, the South African Employment Equity Act in section 11 shifts the burden of proof from the employee to the employer. It states that whenever unfair discrimination is alleged, the

⁴ South Africa ratified CEDAW on 15th Dec 1995 and ratified ILO Convention No. 100 on 30th March, 2000 and ILO Convention No.111 on 5th March 1997, whilst Zambia ratified CEDAW on 21st June 1985 and ratified ILO Convention No. 100 on 20th June 1972 and ILO Convention No. 111 on 23rd October 1979. M. Kevane. "Ratification of Cedaw" Santa Clara University. Available at www.elsa.berkeley.edu/.../mkevane.pdf and www.ilo.org. Accessed on 13th February, 2011.

employer must establish that it is fair. This is different from Zambia where an employee alleging unfair discrimination based on section 108 of the Industrial and Labour Relations Act has the burden of proof as shown by case law.⁵ Fourthly, South Africa has a specific statute, the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 which provides for protection against gender discrimination whilst Zambia has no specific statute to a similar effect.

5.2.0 Recommendations

After an evaluation of the Zambian law regarding women on gender discrimination in employment it can be argued that gender discrimination in employment still persists. Thus the following recommendations should be taken into consideration in order to address gender discrimination.

5.2.1 Law Reform and Consistent Review of Already Existing laws

Firstly, the rate at which law reform takes place in Zambia should be improved. For example the leading statute on employment being the Employment Act, Cap 268 of the Laws of Zambia was last amended in 1997.⁶ Another example is from the Minimum Wages and Conditions of Employment Act (General) Order of 2011, which was last issued in 2006. This indicates that law reform in Zambia is quite slow and the rate at which this happens that may not always be responsive to the needs of people in Zambia. Thus it is recommended that there should be consistent law reform to improve the law regarding gender discrimination. Further, law review should be conducted from time to time in order to test its practical efficacy especially regarding the protection of women in employment against gender discrimination.

Secondly, the constitutional provision on discrimination is generally couched and allows many derogations which in effect remove the intention of the drafters in the first place which was to eliminate discrimination. It can also be recommended that there should be a brief express provision relating to the elimination of gender discrimination in employment because employment is a major part of every Zambian woman's life and well being. Zambia should learn from South Africa which has not only provided constitutional provisions against gender discrimination on grounds such as pregnancy, gender, sex and marital status but has created a Commission for Gender Equality and states its functions in Section 187 of its Constitution.

⁵ Solomon v. Duncan Gilbey and Matheson IRC Complaint No. 17 of 1985(unreported).

⁶ Employment (Amendment) Act No 15 of 1997.

A further recommendation is on section 108 of the Industrial and Labour Relations Act⁷ which prohibits discrimination in employment and sets the grounds upon which this should not happen. Firstly, it does not define unfair dismissal like section 186 of the South African Labour Relations Act of 1995, which defines it in wide terms including an employer's refusal to allow an employee to resume work after taking maternity leave. The Industrial and Labour Relations Act should also include a wide definition of unfair dismissal which should take into account unfair dismissal on gender and sex related grounds as this will lead to substantial or real prohibition of discrimination in employment because employers will know what actions can amount to unfair dismissal and avoid them. Doing so will also add more information on the various ways through which gender discrimination may exist in a working environment.

Additionally, the way section 108 of the Industrial and Labour Relations Act has been couched presents difficulties for a woman alleging discrimination on the basis of sex. Thus women according to the Industrial and Labour Relations Court have not been able to satisfy the burden of proof through cases like *Solomon v Matheson*⁸ where the employers' burden to prove misconduct on a complainants part is much easier to discharge. In South Africa for example the burden of proof lies with the employer to prove that the allegations for dismissal based on gender are not true.⁹ This shifting of the burden of proof will help the courts to interpret the law better.

Moreover since the law is an instrument of social balance¹⁰ it should be used to balance the conflicting interests of an employer and a female employee. For example the common law allows an employer to end or terminate the employee's contract of employment with no reasons as long as payment in lieu of notice has been made.¹¹ This presents problems for female employees alleging discrimination on the basis of sex or marital status because the employer can still dismiss the employee without a chance to prove their case. This conflict should be adequately dealt with by the law by for example if it expressly states that in cases of gender discrimination female employees should be given reasons for termination.

Furthermore, the law should provide that policies on sexual harassment in every workplace should be made. A better way to deal with it would be to enshrine into the employment laws that

⁷ Cap 269 of the laws of Zambia.

⁸ IRC Complaint No. 17 of 1985(unreported).

⁹ Section 11 of the Employment Equity Act, Act No 55 of 1998.

¹⁰ J. Davis. *Law and Society*. (USA: Free Press of Glencoe, 1962) page 65.

¹¹ *Contract Haulage Ltd v Mumbuwa Kamayoyo* (1982) ZR 13; *Development Bank of Zambia v Mambo* (1995-1997) ZR 89 (SC).

every employer should put employment policies into place which will address sexual harassment in the workplace in order to protect women from this form of sexual violence. Moreover section 137A Penal Code, which gives a definition for sexual harassment is restrictive because it only covers situations of sexual imposition using forceful behavior or assault in an attempt to gain physical sexual contact. However it should be widened to include any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature that can also include offensive remarks about a person's sex.¹²

Finally the international law on women in employment as embraced by the CEDAW and the ILO Conventions on gender in employment should be domesticated. This should be done in order to give them a better application and to make them enforceable in the Zambian courts as this will allow female employees to take an action to court if they are violated.

5.3.0 General Conclusion

This research has evaluated the extent to which the law protects women in employment against gender discrimination in Zambia. In conducting this evaluation, it firstly identified possible factors why women continue to face discrimination despite the existence of the law as being the glass ceiling and feminist jurisprudence which is a term that seeks to capture an understanding that the law is not necessarily free of bias as per popular perceptions because it is made by males.¹³ The research further showed that the extent of protection against gender discrimination that the ratified international conventions offer to Zambian women in employment is not complete because the international conventions are not as directly applicable as the Zambian legislation since they are not domesticated.

Moreover the research attempted to evaluate the Zambian laws on gender discrimination in employment by highlighting the specific provisions in statutes dealing with them and by giving a situational analysis on how the courts have interpreted them. The findings from the review of the Zambian laws indicated that there is still room for improvement so that the laws can offer better protection against gender discrimination in employment. Moreover consistent review and reform

¹² The United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/.../sexual_harassment.cfm. Accessed on 15th March, 2011.

¹³ M Munalula. *Women, Gender Discrimination and the Law: Cases and Materials*. (Lusaka: Unza Press, 2004) page 11.

should be a priority if Zambia is to achieve this. In addition the similarities and differences between South African and Zambian laws on gender discrimination in employment were shown from a comparative study of the two countries. The findings of this comparative study show that South African legislation on gender discrimination is more progressive and Zambia can learn from it in several ways since South Africa not only grants longer maternity leave to its female employees but also comes out more clearly in stating that dismissal based on family responsibility, gender, sex, or marital status is automatically unfair and shifts the burden of proof to the employer in this regard.

Finally, although the research has shown that gender discrimination in employment may still exist, the Zambian law can still protect women from such challenges. Therefore, it is submitted that for it to effectively protect female employees it should be consistently reviewed and reformed as shown by the recommendations given above.

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