

**A CRITICAL ANALYSIS OF THE LEGAL AND
INSTITUTIONAL SAFEGUARDS OF WOMEN'S RIGHTS IN
ZAMBIA**

BY

TAFARA CHENDA

UNZA

2011

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By

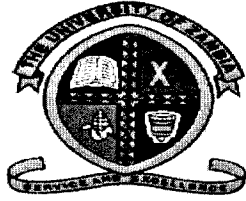
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**A directed research essay submitted to the University of Zambia Law
Faculty in Partial fulfillment of the requirements for the Award of
the Bachelor of Laws (LLB) Degree.**

UNZA

2011



THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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**A CRITICAL ANALYSIS OF THE LEGAL AND
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Chenda

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20/04/11

DATE

DEDICATION

This work is dedicated to my parents Emmanuel and Grace Chenda who have constantly believed in me, prayed for me and blessed my pursuit of the Degree of Bachelor of Laws. I will forever cherish your love and support.

It is also dedicated to the many women who have been victims of gender based violence.

ACKNOWLEDGEMENTS

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ABSTRACT

Every society in the world has vulnerable parties or groups that are prone to abuse and thus require special protection both by the Law and certain prescribed institutions. In as much as human rights are inherent, these rights are rendered meaningless if they are not protected and enforced by the relevant institutions.

In Zambian society women are particularly vulnerable to abuse. This is due to many factors such as, cultural, social and economic factors. Further, some laws such as Customary Law also tend to contribute to the abuse of women's rights. Incidentally, actions which would otherwise be an affront to women's rights are rendered acceptable in light of Customary Law.

Therefore, it is very important that there are certain safeguards in place both at Law and institution wise to ensure that the rights of women are enforced and protected.

In light of the foregoing, this Obligatory Essay is thus a critical analysis of the legal and institutional safeguards of women's rights in Zambia.

In this regard, the Legal safeguards include the Constitution, The Penal Code, The Intestate Succession Act, The Matrimonial Causes Act and various international instruments on women's' rights. The institutional safeguards on the other hand include, The Police (The Victims Support Unit) the Judiciary Young Women's Christian Association and Women and Law in Southern Africa.

List of Authorities

Legislation:

International instruments and Non-Zambian Legislation:

The Beijing Declaration and Platform for Action 1995

United Nations Convention on the Elimination of All Forms Of Discrimination Against Women (CEDAW)

Zambian:

Constitution of Zambia, Cap 1

Employment Act, Cap. 268

Intestate Succession Act, Cap 59

Marriage Act, Cap 50

Matrimonial Causes Act No. 20 2007

Penal Code, Cap 87

Termination of Pregnancy Act, Cap 304

Young Women's Christian Association Constitution. 2007

Zambia Police Act No. 14 of 1999

Cases:

Ackson Zimba v The People (1980) Z.R. 259 S.C.

Chali (executor of the will of the late Mwalla Mwalla) v Liseli SCZ Judgment No. 2 of 1997

Chibwe v Chibwe SCZ Judgment No. 38 of 2000

Chisoni Banda v The People S.C Z. Judgment No. 8 of 1991

Edith Nawakwi v The Attorney General (1990-1991) Z.R. 112

Elizabeth Mwanza v_Holiday Inn Hotel 1997/HP/2054 (unreported)

Emmanuel Phiri v The People (1982) Z.R. 77 S.C.

Janet Mwiba v Dickson Mwiba (1980) Z.R. 175 H.C.

Mwanamwalye and Mwanamwalye 9th December 2005

Mwanza v The People (1976) Z.R. 154 H.C.

Mwiya v Mwiya (1977) Z.R. 113

Rachel Sakala v The Attorney General 1991/HP/2082

R V Chinjamba 5 N.R.L.R 384

Sarah Longwe v Intercontinental Hotels 1992/HP/765

Sibande V The People 1975 Z.R. 101 (S.C.)

Television Chibuye v The People (1978) Z.R. 43 H.C.

The People v Chansa Kabwela (unreported)

Zimba v Zimba 1999/HP/1208

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LIST OF ABBREVIATIONS

Abbreviation.	Explanation
CEDAW-----	Convention on the Elimination of all Forms of Discrimination Against Women
HIV/AIDS-----	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
PAGE-----	Program for the Advancement of Girl child Education
UNIFEM-----	United Nations Development Fund for Women
VSU-----	Victim Support Unit
WLSA-----	Women and Law in Southern Africa
YWCA-----	Young Women's Christian Association

CHAPTER ONE

1.1 INTRODUCTION

“Human Rights are rights and freedoms to which every human being is entitled.”¹ Women’s rights however are “the human rights of women. Mostly they are the same as any other human rights.”² Women’s rights do not necessarily differ from other rights enjoyed by humans generally, however, “by placing women’s concerns and aspirations within a human rights paradigm, an undeniable proposition has been made that women are human and that on that basis, they claim and are entitled to the fundamental rights and freedoms inherent in all humanity.”³

A study on women’s rights and their enjoyment cannot be done independent of the Feminist school of thought. Feminism thus refers to “a collective term for systems of belief and theories that pay close attention to women’s rights and women’s position in culture and society.”⁴

The implication of the definition of feminism is that the position of women in culture and society impacts the enjoyment of their rights, hence it is important to discuss how culture and society affect women vis-à-vis the enjoyment of their rights. For instance the discriminatory practise of ritual purification following the death of a spouse has been endorsed by traditional leaders as an unchallenged tradition of rural life.⁵

“The incorporation of women’s perspectives and lives into human rights standards and practice forces recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve—simply as human beings. The human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality. Finally, and very

¹ E Martin, A Dictionary of Law, Oxford University Press, Oxford, 2001. Page 237.

² M Munalula, Women, Gender Discrimination and The Law, UNZA Press, Lusaka, 2005. Page 15.

³ G Jacobs, Not a Minute More Ending Violence Against Women, United Nations Development Fund for Women, New York, 2003. Page 16.

⁴ W Redmond, Feminism, Microsoft Corporation, 2007.

⁵ J Mulenga, Human Rights Situation in Zambia, Legal Research Foundation, Lusaka, 2008. Page 39.

importantly, the idea of women's human rights provides a common framework for developing a vast array of visions and concrete strategies for change.”⁶

For instance with regard to gender based violence, “the human rights perspective shows that women experience gender specific forms of violence that are different from violence as experienced by men, that is, abusive husbands and partners, sexual harassers, traffickers and rapists all use their power to shame and subordinate women.”⁷

“States thus have concrete and clear obligations to address violence against women, and many governments use national plans of action which include legal measures to address violence against women; in addition strong institutional mechanisms are required at national and international level to ensure action coordination, monitoring and accountability.”⁸

In light of the foregoing assertion, it is evident that there is need for laws and institutions (both governmental and non governmental) to ensure that women are accorded the human dignity and respect they deserve by virtue of being human.

In the Zambian society the violation of women’s rights is exacerbated by certain laws like customary law, this is substantiated by Judith Mulenga’s assertion that customary law “encourages discriminatory practises like payment of a bride price, polygamy, and certain customs like ritual purification following the death of a spouse, also called “sexual cleansing”.⁹ Incidentally, certain actions which would otherwise be an affront to women’s rights are viewed as acceptable in light of Customary Law.

For instance in the case of death of a woman’s spouse “harmful mourning rites are persistent such as that requiring that the surviving spouse be covered with a blanket

⁶ C Bunch, and S Frost, Routledge International Encyclopaedia of Women: Global Women’s Issues and Knowledge, Routledge, 2000. Page 13.

⁷ G Jacobs, Not a Minute More Ending Violence Against Women, United Nations Development Fund for Women, New York, 2003. Page 26.

⁸ C Grown, Ending Violence Against Women from Words to Action, United Nations, New York, 2006. Page 5.

⁹ J Mulenga, Human Rights Situation in Zambia, Legal Research Foundation, Lusaka, 2008. Page 39.

throughout the whole funeral period until after burial, as well as deprivation of food and bathing until after the day of burial.”¹⁰

In light of the foregoing, the purpose of this Obligatory Essay is to critically analyse the legal and institutional safeguards of women’s rights in Zambia. The legal safeguards include international instruments such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹¹ and domestic laws like the Constitution¹², the Penal Code¹³, the Intestate Succession Act¹⁴, and the Matrimonial Causes Act¹⁵.

The institutional safeguards on the other hand include both governmental and non governmental entities. The governmental entities include the Judiciary and The Zambia Police Service (Victims Support Unit); whereas the non-governmental entities include, Young Women’s Christian Association and Women and Law in Southern Africa.

This study will focus particularly on civil and political rights such as the right to equality, the right to life and the right to property. The right to equality is of particular importance to this research because discrimination of women results in the violation of other rights. This is supported by the assertion that, “violence against women is a form of discrimination and a violation of human rights.”¹⁶

With regard to economic social and cultural rights, the study will focus on the right to information and education, the right to health care and the right to work and free choice of employment. These economic, social and cultural rights are of particular importance because “As long as women do not have access to employment, equal wages and education, it is possible for governments to ignore them and their needs,

¹⁰ J Mulenga, Human Rights Situation in Zambia, Legal Research Foundation, Lusaka, 2008. Page 40.

¹¹ Convention on the Elimination of all Forms of Discrimination Against Women.

¹² Constitution of Zambia, Cap. 1.

¹³ The Penal Code Act, Cap. 87.

¹⁴ The Intestate Succession Act, Cap. 59.

¹⁵ The Matrimonial Causes Act No. 20, 2007.

¹⁶ C Grown, Ending Violence Against Women from Words to Action, United Nations, New York, 2006. Page 3.

therefore in order to end violence against women, conscious effort must be put towards the empowerment of women generally.”¹⁷

It must be noted that the term ‘institutional’ as used in the title to this paper refers to both formal governmental institutions like the Judiciary and the Police Service (Victim Support Unit) and Non-governmental organisations like, Women and Law in Southern Africa and Young Women’s Christian Association. This is in accordance with a report carried out by Paralegal Alliance Network¹⁸ which indicated that Women and Law in Southern Africa is a registered Non-Governmental Organisation under the Societies Act. In addition, the Young Women’s Christian Association is a registered Christian membership based organisation.

1.2 PROBLEM STATEMENT

It has been observed that violations of women’s rights are rampant despite protection afforded to them by certain laws. For instance women’s civil and political rights like the right to life continue to be violated, despite being guaranteed by the Constitution. For example, “Available data indicates that the already high levels of maternal deaths are climbing, and studies show that many women have limited access to skilled professionals for maternal care; in addition unsafe abortions account for a high number of maternal deaths, despite the fact that the 1972 Termination of pregnancy Act ¹⁹allows access to safe abortion on medical or social grounds.”²⁰.

Furthermore formal equality between women and men is guaranteed in the Constitution²¹, however, “the United Nations Committee on Economic, Social and Cultural Rights noted that discrimination against women is rooted in (Zambia’s) customary law, and it is so serious that it amounts to a breach of both their human and natural rights.”²²

¹⁷ G Jacobs, Not a Minute More Ending Violence Against Women, United Nations Development Fund for Women, New York, 2003. Page 7.

¹⁸ Paralegal Alliance Network, Mapping of Legal Aid Service Providers in Zambia, Lusaka, 2007. Page 31.

¹⁹ Termination of Pregnancy Act, Cap. 304.

²⁰ P Mulonda, Human Rights Violations in Zambia, Legal Research Foundation, Lusaka, 2007. Page 15.

²¹ Constitution of Zambia, Cap. 1.

²² J Mulenga, Human rights situation in Zambia, Legal Resource Foundation, Lusaka, 2008. Page 35.

It must be noted that it is not only women's civil and political rights but also their social and cultural rights which are violated. That is, according to the Beijing Declaration and Platform for Action, "Many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalise such women. They are inter alia denied their human rights, they lack access or are denied access to education and vocational training, employment, housing and economic self sufficiency and they are excluded from decision making processes."²³

The right to education which is a second generation right is not enjoyed fully by women. It has been observed that, "girls undertake heavy domestic work at a very early age. Girls and young women are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and early drop out from the education system."²⁴

The foregoing sentiments thus show that women's rights are more likely to be violated than men's rights. In addition the rampant violation of women's rights as stated above indicates that there exists a problem regarding the enjoyment of certain rights by women. In light of this problem, there are laws and institutions to secure the protection and enforcement of women's rights.

These include international instruments such as The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)²⁵ and domestic laws such as the Constitution²⁶, which is the supreme law, The Penal Code²⁷, The Intestate Succession Act²⁸ and The Matrimonial Causes Act²⁹.

The institutional safeguards on the other hand include both governmental and non governmental entities. The governmental institutions include The Judiciary and The Zambia Police Service (Victims Support Unit) and non governmental organisations

²³ Fourth World Conference on Women, Beijing, 1995.

²⁴ Fourth World Conference on Women, Beijing, 1995.

²⁵ Convention on the Elimination of all Forms of Discrimination Against Women.

²⁶ Constitution of Zambia, Cap. 1.

²⁷ The Penal Code Act, Cap. 87.

²⁸ The Intestate Succession Act, Cap. 59.

²⁹ The Matrimonial Causes Act, No. 20 2007.

include, Young Women's Christian Association and Women and Law in Southern Africa.

1.3 PURPOSE OF STUDY

The overall objective of the study is to critically analyse the legal and institutional safeguards of women's rights in Zambia. Thus the purpose of this study is to discuss how certain laws and institutions safeguard or help to safeguard women's rights. It is of further importance to this study to analyse whether these laws and institutions actually achieve their intended purpose to safeguard women's rights. With regard to the laws, it is also one of the objectives of this essay to critically analyse certain laws which prima facie impact negatively on women's rights such as customary law. In the event that it is discovered that certain laws and institutions are not able to fully protect women's rights, it will be of additional importance to this study to discuss why this is so.

1.4 SIGNIFICANCE OF THE STUDY

This research is justified, in that it is important to expose loopholes and lacunas in the laws protecting women's rights.

For instance a lacuna exists regarding the law pertaining to domestic violence. That is, "The government of Zambia has not yet introduced specific legislation on domestic violence. No provisions for prohibiting or punishing such practices are contained within the Marriage Act. Perpetrators of domestic violence can only be sued in instances of violence resulting in bodily harm that is, invoking the Zambian Penal Code. This excludes cases where women are victims of psychological violence or marital rape."³⁰

Furthermore, this study is justified because discussing certain institutions and laws will be a way of sensitising women on various forms of recourse available to them in the event of violation of their rights and men will also be sensitised and deterred from violating women's rights. The research also has the potential to precipitate law reform which could lead to a more efficient and effective protection of women's rights.

³⁰ J Mulenga, Human Rights Situation in Zambia, Legal Research Foundation, Lusaka, 2008. Page 46.

1.5 METHODOLOGY OF THE STUDY

This research will be conducted by way of reference to primary and secondary sources of information. Primary sources include interviews conducted with the personnel at the relevant institutions so as to ascertain how exactly they achieve their mandate to protect women's rights and also whether they actually do achieve this mandate.

Secondary sources on the other hand include relevant literature such as books, articles, journals and the internet.

1.6 OUTLINE

This obligatory essay will be divided into five chapters as follows:

Chapter one will discuss the background to the topic, problem statement, purpose of study, significance of study, and methodology inter alia.

Chapter two will be a discussion and analysis of why women are susceptible to abuse and how their rights are violated. This chapter will thus look at the various social, cultural and economic factors that contribute to the violation of women's rights.

Chapter three of the paper will delve into analysing the various laws that have provisions which seek to protect women's rights. These include international instruments such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)³¹ and domestic laws such as the Constitution³², which is the supreme law, The Penal Code³³, The Intestate Succession Act³⁴ and The Matrimonial Causes Act³⁵. Further it will also be discussed whether these Laws actually fulfil their purpose. This chapter will also discuss certain aspects of Customary Law like ritual cleansing and payment of the bride price which impact negatively on women's rights.

³¹Convention on the Elimination of all Forms of Discrimination Against Women.

³²Constitution of Zambia, Cap. 1.

³³The Penal Code, Cap. 87.

³⁴The Intestate Succession Act, Cap. 59.

³⁵The Matrimonial Causes Act No. 20 2007.

In Chapter four the paper will seek to discuss and analyse the relevant institutional safeguards of women's rights in Zambia. This chapter will also critically analyse these institutions in order to assess whether they are true safeguards of women's rights.

Chapter five will be a summation of the findings as to whether the legal and institutional safeguards of women's rights in Zambia are in fact instrumental in the protection of women's rights. In light of this summation, conclusions will be drawn in this chapter and recommendations will be made concerning the protection of women's rights in Zambia.

CHAPTER 2: SUSCEPTIBILITY OF WOMEN TO ABUSE AND VIOLATION OF RIGHTS

“Violence against women manifests itself as physical, sexual, emotional and economic violence. The most universally common forms include domestic and intimate partner violence, sexual violence (including rape), sexual harassment, and emotional/psychological violence.”³⁶ In light of this, it is important to ascertain why women are prone to abuse and also the ways in which their rights are violated.

“The perpetrators of violence may include the State and its agents, family members (including husbands), friends, intimate partners or other familiar individuals, and strangers.”³⁷

2.1 WHY WOMEN ARE PRONE TO ABUSE

To abuse is “to treat somebody badly.”³⁸ It may also mean “to hurt or injure by mal treatment.”³⁹

“Gender violence has always been a part of society and an accepted component of our societies.⁴⁰ Certain cultural norms have largely been responsible for this. Furthermore, women who are totally dependent on their spouses economically are forced by circumstances to continue living in abusive relationships.”⁴¹

From the foregoing assertion it can be inferred that, the abuse of women is inextricably linked to various economic, social and cultural factors.

“Violence against women is therefore a complex social, economic and cultural phenomenon.”⁴² These phenomena will be discussed in detail in the ensuing paragraphs.

³⁶Ending Violence Against Women and Girls Programming Essentials, 2010.
<http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 2.

³⁷Ending Violence Against Women and Girls Programming Essentials, 2010.
<http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 3.

³⁸ A Cowie, Oxford Advanced Learners Dictionary, Oxford University Press, Oxford, 1990. Page 6.

³⁹ W Redmond, Abuse, Microsoft Corporation, 2007.

⁴⁰ M Chuulu, Gender Violence The Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 6.

⁴¹ M Chuulu, Gender Violence The Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka 2001. Page 8.

⁴²Ending Violence Against Women and Girls Programming Essentials, 2010.
<http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 9.

2.1.1 ECONOMIC FACTORS

Economy is defined as “control and management of money and resources of a community, society or household.”⁴³ As regards the discussion at hand, it is important to ascertain how a woman’s economic situation makes her vulnerable to abuse.

“More than one billion people in the world today, the great majority of whom are women, live in unacceptable conditions of poverty, mostly in the developing countries.”⁴⁴ Hence these dire economic circumstances somewhat prevent women from asserting themselves in the face of violation of their rights.

As documented by, *Women and Law in Southern Africa* (hereinafter referred to as WLSA) “women are economically dependent on their husbands and relatives. This situation of poverty and lack of where to go with their children prevents women from leaving precarious relationships and marriages.”⁴⁵

Furthermore, case studies conducted by WLSA have revealed “that battered women find themselves in desperate situations because of poverty and dependency on the abusers for survival. For instance a battered woman begged WLSA researchers for help as she was not in a position to look after her two children because both her parents were dead. In her own words, she stated, ‘All I want is for him to change his behaviour. I do not want a divorce.’ For many women therefore, there is usually no place to run to and hence they have to remain in the violent situations, leading to perpetuation of violence.”⁴⁶

2.1.2 SOCIAL FACTORS

The word social is defined as “concerning the organization of and relations between people and communities”⁴⁷ In this regard, “How men and women are socialized and the

⁴³ A Cowie, *Oxford Advanced Learner’s Dictionary*, Oxford University Press, Oxford, 1990. Page 384.

⁴⁴ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

⁴⁵ J Macmillan, *Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia*, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 78.

⁴⁶ M Chuulu, *Gender Violence the Invisible Struggle Responses of the Justice Delivery System in Zambia*, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 75.

⁴⁷ A Cowie, *Oxford Advanced Learner’s Dictionary*, Oxford University Press, Oxford, 1990. Page 1213.

definitions and understandings of womanhood and manhood establish their positions of relative power and control at home and in society.”⁴⁸

“Girls are often treated as inferior and are socialized to put themselves last”⁴⁹, thus In light of the foregoing, society plays a key role in perpetuating abuse of women because the way a woman is socialised will have a bearing on how she responds to abuse or violation of her rights.

In addition, “Violence against women frequently comprises a form of contempt for women, which is socially accepted to a degree so that men are frequently not even aware of it, whereby, in contrast, women frequently see it as a necessary evil of their being women, or accept it as a form of relationship between man and woman which is based on biology.”⁵⁰

For instance, “men are believed to beat their wives because they feel and their environment encourages them to feel that this is an acceptable exercise of male prerogative, a legitimate and appropriate way to relieve their tension in conditions of stress, or just to enjoy a feeling of supremacy.”⁵¹

“Societal pressure also to a certain extent forces abused women to remain in such relationships. This is mainly because society usually regards divorce with shame and also considers divorced women as failures in life. Additionally, abused women are often made to believe that there was something wrong with them or that they were to blame and once they worked on themselves all would be well.”⁵²

⁴⁸Ending Violence Against Women and Girls Programming Essentials, 2010. <http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 17.

⁴⁹Ending Violence Against Women and Girls Programming Essentials, 2010. <http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 17.

⁵⁰ S Bunch, and C Frost, Routledge International Encyclopaedia of Women: Global Women’s Issues and Knowledge, Routledge, 2000. Page 20.

⁵¹ M Chuulu, Gender Violence the Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 78.

⁵²M Chuulu, Gender Violence the Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 76.

2.1.3 CULTURAL FACTORS

“A people’s culture includes their beliefs, rules of behaviour, language, rituals, art, technology, styles of dress, ways of producing and cooking food, religion, and political and economic systems.”⁵³

It is therefore important to see how culture perpetrates the abuse of women. “Premarital counselling is one of the prominent rites of passage performed in Zambia. During this rite, a young woman who is about to get married is taught how to ‘keep’ the marriage. She is told that she must do everything at all times to make her husband happy and comfortable. Further, women are taught during these sessions that a man’s infidelity is acceptable and should be tolerated. Accepting a man’s infidelity puts women at high risk of HIV infection.”⁵⁴

Moreover, certain Zambian cultural practises like early marriage of girls also contribute to making women vulnerable to abuse. To be precise, “Under Zambian customary law a girl can get married as soon as she reaches puberty which can be as early as nine years old. The law puts no minimum age for marriage and thus child marriages are lawful in Zambia.”⁵⁵

The case of *Sibande v The People*⁵⁶ clearly illustrates the above-mentioned assertion. In this case, the appellant was charged with defilement contrary to section 138 of the Penal Code.⁵⁷ This is because he had carnal knowledge of a girl aged twelve years, which is below the prescribed age. The only reason he was convicted of defilement is because he did not prove that he was validly married to the girl under customary law, that is, he did not prove that he had paid the bride price⁵⁸ and obtained consent from the girl’s parents.

⁵³ J Bodley, Culture, Microsoft Corporation, 2007.

⁵⁴ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 87.

⁵⁵ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 88.

⁵⁶ 1975 Z.R. 101 (S.C.).

⁵⁷ Penal Code Act, Cap. 87, s. 138.

⁵⁸ Bride Price refers to ‘marriage payments’ according to M Chuulu, The Changing Family in Zambia, Women and Law in Southern Africa Trust, Lusaka, 1997. Page 54.

Had he proved these two elements, he would have been deemed to be validly married to her and escaped conviction. As was stated in the earlier case of R v Chinjamba⁵⁹ “In Zambia it is not generally unlawful for a man to have carnal knowledge of a girl under the prescribed age if he is lawfully married to her.”

Having cited these authorities it is proper to state that, this custom or culture which simply requires the payment of bride price and parental consent for there to be a valid marriage somewhat justifies defilement of girls.

Incidentally, “early marriage, especially without the consent of the girl, is another form of human rights violation.”⁶⁰

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) recognises this point by proscribing early marriage. It provides that, “the betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”⁶¹

2.2 VIOLATION OF WOMEN’S RIGHTS

From the foregoing discussion on the various factors that expose women to abuse, it can be discerned that women experience violations of their civil and political rights and their economic, social and cultural rights.

2.2.1 CIVIL AND POLITICAL RIGHTS

2.2.1.1 THE RIGHT TO LIFE

One of the ways in which a woman’s right to life is compromised or violated is through the HIV/AIDS pandemic. “Human Immunodeficiency Virus refers to the infectious agent that causes Acquired Immunodeficiency Syndrome (AIDS), a disease that leaves a person vulnerable to life-threatening infections.”⁶²

“The infection rates among women and girls remain higher than those of men and boys. Women are exploited and abused in intimate relationships and face various

⁵⁹ 5 N.R.L.R 384.

⁶⁰ United Nations Department of Public Information, DPI/1772/HR, 1996. Page 6.

⁶¹ Convention on the Elimination of all forms of Discrimination Against Women. Art. 16(2).

⁶² W Redmond, Human Immunodeficiency Virus, Microsoft Corporation, 2007.

forms of violence and especially sexual violence which violates their human rights and endangers their lives. Wives for instance often have no right to say no to marital sexual intercourse even when it puts them in danger of HIV infection.”⁶³

Physical battery also compromises the enjoyment of the right to life by women. As documented by WLSA “Physical battery manifests itself in various acts which include kicking, slapping, stabbing, being burnt, being tied up and left in dangerous situations, being deprived of food and rest, and threats to use all sorts of weapons ranging from knives to guns. This type of violence affects victims in several ways which include serious physical injury and death as a possible outcome.”⁶⁴

2.2.1.2 RIGHT TO EQUALITY

Gender equality “necessitates that men and women are treated equally. Equality is one of the most fundamental principles of human rights.”⁶⁵

However, despite this assertion by Munalula, “Adultery is permissible under customary law, but only with regard to men, and this is hardly a ground for divorce. Conversely, when it is the woman who commits adultery, the Local Courts or any tribal council hearing the case, would almost surely grant a divorce against the woman.”⁶⁶ This therefore illustrates that, women tend to be discriminated against on the basis of sex.

In addition, as highlighted by United Nations Development Fund for Women (UNIFEM) “Gender inequality and discrimination are root causes of violence against women, influenced by the historical and structural power imbalances between women and men which exist in varying degrees across all communities in the world. Furthermore, violence against women and girls is not only a consequence of gender inequality, but

⁶³ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 7.

⁶⁴ M Chuulu, Gender Violence the Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 70.

⁶⁵ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 15.

⁶⁶ J Mulenga, Human Rights Violations in Zambia, Legal Research Foundation, Lusaka, 2007. Page 10.

reinforces women's low status in society and the multiple disparities between women and men.”⁶⁷

The case of Edith Nawakwi v The Attorney General⁶⁸ further depicts how women are discriminated against. In this case the petitioner alleged that she was being discriminated against on the ground of sex. This was because she had to obtain the consent of the father to her child in order to include the child on her passport. The court held that a mother in Zambia was less likely to be treated as an equal to a father, and that requiring that a mother obtains the father's consent in order to obtain a passport for her child was discriminatory.

Additionally, in Sarah Longwe v Intercontinental Hotels⁶⁹ the court held inter alia that the rule that unaccompanied women were to be prohibited from the hotel premises was discriminatory, because it did not apply equally to unaccompanied men.

This case can be contrasted with the later case of Elizabeth Mwanza v Holiday Inn Hotel⁷⁰. In this case, the plaintiff was also prohibited from the hotel premises because she was unaccompanied. However, upon suit the court held that this did not amount to discrimination on the basis of sex.

2.2.1.3 THE RIGHT TO PROPERTY

As regards a woman's right to property, a study conducted by WLSA revealed that “male control of property was apparent in all rural sites. A men's group discussion pointed out that property must be controlled by men because they are leaders.”⁷¹

“Fundamental as land may be to all humans, and despite being the majority among land users, women in Zambia do not enjoy the same rights to land as men. Women are the major producers of the nation's food, yet they are the majority among the poor.”⁷²

⁶⁷Ending Violence Against Women and Girls Programming Essentials, 2010.
<http://www.endvawnow.org>. Accessed on 16th November, 2010. Page 8.

⁶⁸ (1990-1991) Z.R. 112.

⁶⁹ 1992/HP/765.

⁷⁰ 1997/HP/2054 (unreported).

⁷¹ M Chuulu, *The Changing Family in Zambia*, Women and Law in Southern Africa Trust, Lusaka, 1997. Page 108.

⁷² H Machina, *Women's Land Rights in Zambia: Policy Provisions, Legal Framework and Constraints* Zambia National Land Alliance, Lusaka 2002. Page 2.

This position is further reflected by customary law, that is “In the event of a divorce, most tribes do not recognise a woman's right to a share of marital property, she gets whatever her ex-husband or his family decides she can have.”⁷³

The case of Mwiya v Mwiya⁷⁴ is instructive in this regard. In this case, the parties were married under Lozi customary law. Upon divorce, one of the appellant’s grounds was that the respondent share the property acquired during the marriage with her. The court however held that there is no Lozi custom which compels a husband to share property. The appeal was therefore dismissed.

Another way in which a woman’s right to property is violated is through property grabbing. Property grabbing involves, “the deceased’s natal kin stripping the widow and children of all family property.”⁷⁵ Widows have in a number of instances been victims of property grabbing and the courts have thus had to intervene.

For instance, in the case of Zimba v Zimba⁷⁶ the plaintiff sought an injunction to restrain the defendant from evicting her from the matrimonial home upon the death of her husband. The court ruled in her favour stating that she had an equitable interest in the property of her deceased husband and that her eviction would cause her to suffer irreparable damage.

2.2.2 ECONOMIC SOCIAL AND CULTURAL RIGHTS

2.2.2.1 THE RIGHT TO EDUCATION

“Education is a human right and an essential tool for achieving the goals of equality, development and peace. Non-discriminatory education benefits both girls and boys, and thus ultimately contributes to more equal relationships between women and men.”⁷⁷

However, “Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world. Overall,

⁷³ Landmark judgment for women’s property rights in Zambia, Sister Namibia, 2006.

⁷⁴ (1977) Z.R. 113.

⁷⁵ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka 2005. Page 112.

⁷⁶ 1999/HP/1208.

⁷⁷ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

for young women early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on the quality of their lives and the lives of their children.”⁷⁸

“Extreme poverty reinforces cultural expectations that girls should work in the home and quickly marry, rather than attend school. According to the international agency, Action Aid, 40 million girls go without primary education and almost two thirds of illiterate adults are women. United Nations Children’s Fund reports that over 40 percent of girls in Africa marry before the age of 18.”⁷⁹

It is important to note that certain experiences at school may prevent girls from enjoying the right to education, as documented by UNIFEM “Sexual violence deprives girls of education and school-related violence limits the educational opportunities and achievements of girls.”⁸⁰

A study conducted by WLSA in Kapiri Mposhi, Lusaka, Ndola, Solwezi and Monze revealed that, “sexual violence is prevalent in schools. It includes verbal sexual harassment and intimate sexual relations between teachers and students.”⁸¹

This study therefore shows that the attainment of education by the girl child is seriously compromised.

2.2.2.2 THE RIGHT TO EMPLOYMENT

“Although there are no visible official barriers to women’s formal employment, their access to formal employment is hindered by lower education levels attributable to the preference to educate male children and the patriarchal nature of some bureaucratic structures that retain remnants of Victorian principles advocating that women belong in the home.”⁸²

⁷⁸ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

⁷⁹ Gender Guide <http://uk.oneworld.net/guides/gender>. Accessed on 11th September, 2010.

⁸⁰ Ending Violence Against Women and Girls Programming Essentials, 2010. www.endvawnow.org. Accessed on 16th November, 2010. Page 11.

⁸¹ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 78.

⁸² M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 159.

“Furthermore, in the private sector including transnational and national enterprises, women are largely absent from management and policy levels, denoting discriminatory hiring and promotion policies and practices.”⁸³

The case of Rachel Sakala v The Attorney General⁸⁴ illustrates how women can be discriminated against in employment. In this case the housing regulations under the Employment Act⁸⁵ provided that an employer was obliged to provide adequate housing to an employee, married women were excluded because the husband had already been catered for. Before the matter could go to trial the government conceded defeat and agreed that a failure to provide a female employee with housing in her own right constituted discrimination on the basis of sex or marital status.

In some instances a woman’s right to employment is further compromised by sexual harassment at the workplace. That is, “employers abuse their authority to seek sexual favours from their female co-workers or subordinates, sometimes promising promotions or other forms of career advancement or simply creating an untenable and hostile work environment. Women who refuse to give in to such unwanted sexual advances often run the risk of anything from demotion to dismissal.”⁸⁶

2.2.2.3 THE RIGHT TO HEALTH CARE

“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”⁸⁷

“Global research has shown that women living with violence suffer a wide range of serious physical and mental health problems and visit health services more frequently than non-abused women.”⁸⁸

“Discrimination against girls, often resulting from son preference, in access to nutrition and health-care services endangers their current and future health and well-

⁸³ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

⁸⁴ 1991/HP/2082.

⁸⁵ Cap. 268.

⁸⁶ United Nations Department of Public Information DPI/1772/HR, 1996. Page 7.

⁸⁷ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

⁸⁸ Ending Violence Against Women and Girls Programming Essentials, 2010. www.endvawnow.org. Accessed on 16th November, 2010. Page 50.

being. Adolescent girls need, but too often do not have, access to necessary health and nutrition services as they mature. Counselling and access to sexual and reproductive health information and services for adolescents is still inadequate or lacking completely, and a young woman's right to privacy, confidentiality, respect and informed consent is often not considered.”⁸⁹

Furthermore, “There is a critical shortage of doctors and other health workers in Zambia. The number of nurses and other medical personnel is grossly inadequate. For instance, Nkole Rural Health Centre in Kapiri Mposhi caters for a population of 16, 936. However, it has only two male nurses and one family health nurse.”⁹⁰

The case of The People v Chansa Kabwela⁹¹ is clear evidence that the right to health care has been grossly violated in Zambia. In this case “the accused was charged with circulating obscene materials with intent to corrupt public morals. This was after she sent photos to ministers, of a woman giving birth in the grounds of Lusaka’s main public hospital. The woman had allegedly been turned away from two other clinics before struggling to the hospital, where she was also denied admission because of a major strike by nurses.”⁹²

2.3 CONCLUSION

The susceptibility of women in Zambia to abuse is inextricably linked to various economic, social and cultural phenomena.

Economically, many women in Zambia are to a large extent dependent on their husbands. This highly compromises them because they are forced to endure abusive relationships because they do not have the financial capacity to look after themselves and their children if they were to leave the abuser.

Socially, men tend to be socialised into thinking that physically abusing their wives or women is an appropriate expression of male dominance. Women are also socialised into thinking that their role is to submit to men at all times. Furthermore, society

⁸⁹ Beijing Declaration and Platform for Action Fourth World Conference on Women, Beijing, 1995.

⁹⁰ J, Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 98.

⁹¹ 2009 (unreported).

⁹² J, Clayton, Chansa Kabwela on trial in Zambia for showing plight of pregnant mothers, The Times Newspapers England, 28 August 2009.

condemns divorce thus forcing women to remain in precarious relationships for the sake of conformity.

Culturally, certain customs serve to perpetuate the abuse of women, for instance early marriages which essentially justify defilement.

The vulnerability of women to abuse thus presupposes that their rights are likely to be violated. This includes both civil and political rights like the rights to life, equality and property. And economic, social and cultural rights like the rights to education, employment and health care.

The right to life is violated through the fact that wives are unable to refuse to have unprotected sexual intercourse with their husbands, thus increasing their chances of contracting HIV/AIDS, which is a life threatening disease. Furthermore, physical violence perpetuated by men against women seriously compromises their right to life.

The right to equality is constantly violated because a lot of the abuse that women are subjected to stems from the belief that they are not equal to men. This manifests in discrimination on the basis of sex.

The right to property is violated especially through property settlement during divorce proceedings. Specifically, many customary laws do not compel a husband to share marital property with his wife upon divorce. Furthermore, the practise of property grabbing upon death of a woman's husband compromises her right property.

The right to education is interfered with due to the sexual harassment which is prevalent in many schools in Zambia and also the preference to educate the boy child over the girl child.

Women are also not able to fully enjoy the right to employment due to certain policies which are discriminatory and also the sexual harassment that many women are subjected to in the work place.

The right to health care is mainly compromised by the inadequate staffing levels of many health institutions in Zambia, thus leaving women to fend for themselves in times of poor health. In light of the foregoing it is imperative that there are certain laws in place to safeguard women's rights in Zambia.

CHAPTER 3: THE LEGAL SAFEGUARDS OF WOMEN'S RIGHTS IN ZAMBIA

“Violence against women is widespread. It cuts across all cultures and people of ethnicities worldwide. It thus covers things like rape, assault and battery, spousal homicide, property grabbing and defilement of underage girls.”⁹³ In light of this assertion, it is important that there are certain laws in place to enforce and protect women’s rights from violation. This chapter will thus delve into whether or not these laws actually achieve their purpose.

3.1 INTERNATIONAL INSTRUMENTS OR LAWS

3.1.1 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

“Although the U.N. Charter adopted in 1945 addresses human rights for all people, there was an argument that the various United Nations agreements about sex and gender equality were a piecemeal approach that failed to address discrimination against women overall.”⁹⁴

“In this regard the United Nation’s Commission on the Status of Women produced the Declaration on the Elimination of Discrimination against Women which was adopted by the General Assembly on 7th November 1967.”⁹⁵

“On 18 December 1979, the Convention on the Elimination of all forms of Discrimination against women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3rd September 1981.”⁹⁶

“The Convention on the Elimination of all forms of Discrimination against Women (herein after referred to as CEDAW) provides a broad definition of discrimination against women, it provides for women’s rights in various arenas such as government

⁹³ M Munalula, *Women, Gender Discrimination and the Law Cases and Materials*, UNZA Press, Lusaka, 2005. Page 121.

⁹⁴ A Brief History of CEDAW. Womenshistory.about.com/./cedaw.htm. Accessed on 12th April 2011.

⁹⁵ A Brief History of CEDAW. Womenshistory.about.com/./cedaw.htm. Accessed on 12th April 2011.

⁹⁶ M Munalula, *Women, Gender Discrimination and the Law Cases and Materials*, UNZA Press, Lusaka, 2005. Page 18.

and political life, education, employment, healthcare and other areas of social and economic life.”⁹⁷

It must be noted that “Zambia is a state party to CEDAW”⁹⁸ and is thus obliged to adhere to its provisions.

The content or text of CEDAW has a number of articles which are safeguards of women’s rights, these will be looked at in turn.

Furthermore, as will be shown in the ensuing paragraphs, CEDAW provides for both civil and political rights and economic, social and cultural rights.

3.1.1.1 CIVIL AND POLITICAL RIGHTS

As was pointed out in the previous chapter, equality entails that women are not discriminated against on the basis of sex. It can thus be inferred that the right to equality forms the basis of CEDAW. In this regard, “Article 2 obliges state parties to condemn discrimination against women in all its forms, and to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”⁹⁹

Incidentally, the High Court of Zambia in Longwe v. Intercontinental Hotels¹⁰⁰ had occasion to dispense justice as regards discrimination. In this case the plaintiff Longwe accused the Intercontinental Hotel of discriminating against women because of its policy of refusing entrance to a woman unaccompanied by a male escort. The court agreed with Longwe’s claims that the actions violated the anti-discrimination provisions of the Zambian Constitution, as well as CEDAW Articles 1, 2, and 3.

As regards the right to property, “Few women own land, hence the Ministry of Lands strategic plan of integrating gender perspectives into land issues to redress the gender imbalance and other forms of discrimination in landholding. This is achieved by encouraging women and people with special needs to own land. To that end, the

⁹⁷ L Keller, ‘The Convention on the Elimination of Discrimination Against Women: Evolution and (Non) Implementation Worldwide’ *TJSL Legal Studies Research Paper* No. 1332170, 2004. Page 2.

⁹⁸ Consideration of Reports submitted by states parties under article 18.
www2.ohchr.org/English/bodies/cedaw. Accessed on 12th December, 2011.

⁹⁹ Convention on the Elimination of all forms of Discrimination against women, Art.2.

¹⁰⁰ 1992/HP/765.

government has held seminars and workshops to educate women and rural persons.”¹⁰¹

This action by the government is in conformity with the specifications of CEDAW, that is, “state parties shall take all measures to eliminate discrimination against women and shall ensure that, women and men have the same rights in respect of the ownership, acquisition, management, enjoyment and disposition of property.”¹⁰²

3.1.1.2 ECONOMIC SOCIAL AND CULTURAL RIGHTS

CEDAW makes reference to the right to education that is, “state parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education...”¹⁰³

Pursuant to this provision, “the government of Zambia has in the education sector put in place a 50:50 enrolment rate at grade 1. Furthermore, a Program for the Advancement of Girl child Education (PAGE) has been designed mainly to accelerate the education of the girl child.”¹⁰⁴

The 50:50 enrolment rate is very much needed in Zambia because, “in schools, especially government schools, when there are limited places, the tendency is to give preference to boys.”¹⁰⁵

As regards the right to employment, “Although there are no visible official barriers to women’s formal employment, their access to formal employment is hindered by lower education levels attributable to the preference to educate male children.”¹⁰⁶

CEDAW’s stance on the right to employment is thus beneficial in the Zambian context, that is, it requires “state parties to take all appropriate measures to eliminate discrimination against women in the field of employment...”¹⁰⁷

¹⁰¹ Combined 3rd and 4th CEDAW Report-Zambia, 1999. Page 59.

¹⁰² Convention on the Elimination of all forms of Discrimination against women, Art.16(h).

¹⁰³ Convention on the Elimination of all forms of Discrimination against Women, Art. 10.

¹⁰⁴ Combined 3rd and 4th CEDAW Report-Zambia, 1999. Page 23.

¹⁰⁵ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 84.

¹⁰⁶ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 159.

¹⁰⁷ Convention on the Elimination of all Forms of Discrimination against Women. Art. 11.

“As regards health care, In Zambia, pregnant women complain of bad attitudes by health care workers. Some say the nurses shout at mothers for not buying things like razor blades, baby clothes, and gloves (hospitals no longer provide these items).”¹⁰⁸

CEDAW thus stipulates that, “state parties are to take all appropriate measures to eliminate discrimination against women in the field of health care...”¹⁰⁹

3.1.1.3 LIMITATIONS OF CEDAW

One weakness of CEDAW is that in its formulation it “sought to protect women from those abuses against which men already enjoyed protection. This preoccupation with ‘equal treatment’ failed to capture the totality of the subordination that women face as a result of being female in a patriarchal world. CEDAW also failed to protect women from gender related harms such as rape, forced prostitution, gendered violence and spousal abuse- abuses for which a male parallel is typically non existent.”¹¹⁰

As substantiated by Munalula, “the rules of equality do not always materialise into equal or just results. Rather, for weaker parties it is often necessary to give unequal or preferential treatment in order to achieve equality.”¹¹¹

It must be noted in addition that CEDAW provides for reservations in its implementation. A reservation is defined as “a unilateral statement made by a state when signing, ratifying, accepting, approving, or acceding a treaty, in order to exclude or modify the legal effect of certain provisions of the treaty in their application to that state.”¹¹²

In this regard, Article 28 of CEDAW provides that, “the Secretary General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of the ratification or accession.”¹¹³

¹⁰⁸ J Mulenga, Human Rights Violations in Zambia, Legal Research Foundation, Lusaka, 2007. Page 16.

¹⁰⁹ Convention on the Elimination of all Forms of Discrimination against Women. Art. 12.

¹¹⁰ M Etienne, ‘Addressing Gender-Based Violence in an International Context’ Illinois Public Law and Legal Theory Research Papers Series 05-03, 2005. Page 147.

¹¹¹ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 9.

¹¹² E Martin, Oxford Dictionary of Law, Oxford University Press, Oxford, 2001. Page 429.

¹¹³ Convention on the Elimination of all forms of Discrimination Art 28.

Lastly, CEDAW's weakness with regard to the protection of women's rights in Zambia stems from the fact that Zambia has not domesticated it. As aptly put by Munalula, "Zambia has a legal regime under which international instruments are not self executing but require enabling domestic legislation that is directly enforceable by the courts. It is very important that countries ratify and domesticate international instruments in order to enable their citizens to make use of them and enforce their human rights through the domestic courts."¹¹⁴

The preceding paragraphs thus show that CEDAW has been seriously compromised as a safeguard of women's rights in Zambia.

3.2 ZAMBIAN LEGISLATION

3.2.1 THE CONSTITUTION CHAPTER 1

It must be noted from the outset that the Constitution is the Supreme law of Zambia¹¹⁵ therefore it has a significant role to play in the protection of women's rights.

3.2.1.1 CIVIL AND POLITICAL RIGHTS

In respect of the right to life, the constitution states that, "a person shall not be deprived of his life intentionally."¹¹⁶

In the Zambian context this right is not always respected, according to "an article in the Daily Mail Newspaper, in Kitwe a 27 year old woman who was eight months pregnant was beaten to death after a domestic quarrel by her husband. The husband was arrested by the police and was to appear in court soon."¹¹⁷

The constitution also guarantees equality between men and women. This can be inferred from Article 23 which states that "a person shall not be treated in a discriminatory manner by any person...discriminatory as used here means affording

¹¹⁴ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 23.

¹¹⁵ Constitution of Zambia, Cap. 1, Art 1(3).

¹¹⁶ Constitution of Zambia, Cap. 1, Art 12.

¹¹⁷ M Munalula, Women, Gender Discrimination and the Law Cases and Materials, UNZA Press, Lusaka, 2005. Page 154.

different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex...”¹¹⁸

However, this guarantee of equality is qualified by Article 23 (4) (c). Specifically, “it contains a limitation which reserves the right to create laws on adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law, with no requirement to ensure equal rights for women and men.”¹¹⁹

In this regard, “It is important to note that customary law varies between one tribe and another, but the one common factor is that it legalizes discrimination against women since several injustices against women are committed in the name of culture.”¹²⁰

*As regards the right to property, “a person’s property shall not be compulsorily taken possession of and the interest or right over property of any description shall not be compulsorily acquired...”*¹²¹

In the Zambian context, Widows tend to have their property rights interfered with. That is, “If the deceased had title to land or owned a house, the administrator of his estates, appointed by his relatives, often tries to get ownership transferred to himself, rather than acting as a trustee for the widow and surviving children as the law intends.”¹²²

3.2.1.2 ECONOMIC SOCIAL AND CULTURAL RIGHTS

It must be noted that the Constitution does not expressly enforce and protect economic social and cultural rights like the rights to education, employment and health. It only somewhat refers to these rights by way of the “Directive principles of State Policy.”¹²³

¹¹⁸ Constitution of Zambia, Cap. 1, Art 23(2) and (3).

¹¹⁹ J Mulenga, Human Rights Violations in Zambia, Legal Research Foundation, Lusaka, 2007. Page 5.

¹²⁰ P Matibini, Access To Justice And The Rule Of Law. An Issue Paper Presented for the Commission on Legal Empowerment of The Poor, Messrs PATMAT Legal Consultants and Practitioners, Lusaka. Page 12.

¹²¹ Constitution of Zambia, Cap. 1, Art 16(1).

¹²² H Machina, Women’s Land Rights In Zambia: Policy Provisions, Legal Framework and Constraints, Zambia National Land Alliance, Lusaka, 2002. Page 11.

¹²³ Constitution of Zambia, Cap. 1, Part IX.

Directive Principles of State Policy are mere guide lines and not rights per se therefore “despite being referred to as rights in certain instances, they are not justiciable and cannot be legally enforced in any court, tribunal or administrative institution or entity.”¹²⁴

“The Women in Law and Development in Africa (WILDAF) 2004 draft report on ‘Minimum Standards Relating to Women and Children’s Rights’ observes in a similar fashion that the current Constitution does not recognize social and economic rights. WILDAF sees the exclusion of economic social and cultural rights from the Bill of Rights to be an anomaly because rights are inter-connected and indivisible and their inclusion would enable most women to gain economic independence.”¹²⁵

Having due regard to the preceding paragraph, a conclusion may be drawn that this appears to be an inherent weakness of the Constitution because being the most supreme law of the country it is expected that it should guarantee, protect and enforce economic social and cultural rights as well as civil and political rights.

3.2.2 THE PENAL CODE ACT CHAPTER 87

With regard to the right to life, the Penal Code criminalises the taking of another person’s life otherwise known as murder. That is “any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”¹²⁶

The case of Chisoni Banda v The People¹²⁷ may be cited as a point of reference. In this case the accused injured the deceased’s private parts with a knobkerrie after she refused his sexual advances and murdered her. He was thus convicted of murder and sentenced to capital punishment.

¹²⁴ Constitution of Zambia, Cap. 1, Art 111.

¹²⁵ S Mwale, Zambia’s Economic, Social and Cultural Rights: Why Should They Be In The New Constitution?, Jesuit Centre For Theological Reflection, Lusaka, 2004. Page 6.

¹²⁶ Penal Code Act, Cap. 87, .s. 200.

¹²⁷ (S.C Z. Judgment No. 8 of 1991).

It has been proven by various studies that women tend to be physically assaulted by men hence “the Penal Code criminalises assault.”¹²⁸ Therefore in the case of Television Chibuye v The People¹²⁹ the appellant butted the complainant with his head in the face and caused her to lose her teeth. He was thus convicted of assault occasioning actual bodily harm.

One way in which women are subjected to abuse is through the offence of rape. Rape is defined as “having unlawful carnal knowledge of a woman or girl without her consent, or with her consent if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm or by means of false representations as to the nature of the act, or in the case of a married woman by personating her husband.”¹³⁰

The Penal Code thus criminalises the offence of rape and the “punishment thereto is life imprisonment.”¹³¹ Case law on the same has shown that this provision of the Penal Code has in reality been enforced.

For instance, in the case of Emmanuel Phiri v The People¹³², a woman was beaten and raped by the accused. The court thus convicted the accused of rape and sentenced him to five years imprisonment with hard labour. In approving the enhanced sentence given by the trial judge, The Supreme Court stated that, rape is a very serious crime which calls for appropriate custodial sentences to mark the gravity of the offence, to punish offenders and above all, to protect women.

It must be noted however that, the Supreme Court further held that in a sexual offence there must be corroboration of both commission of the offence and identity of the offender in order to eliminate the dangers of false complaint and false implication.

¹²⁸ Penal Code Act, Cap. 87, s 247.

¹²⁹ (1978) Z.R. 43 (H.C.).

¹³⁰ Penal Code Act, Cap. 87, s. 132.

¹³¹ Penal Code Act, Cap. 87, s. 133.

¹³² (1982) Z.R. 77 (S.C.).

The case of Ackson Zimba v The People¹³³ is instructive in this regard. In this case, the appellant was convicted of rape, the appeal was however allowed due to the lack of corroboration.

It must be noted as well that the “legal definition of rape is narrow, specifically, what victims of marital rape experience actually has no name and is not criminalised.”¹³⁴ Therefore, in light of this observation by Chuulu, women who are raped by their husbands have no recourse.

The Penal code also provides for the offence of defilement, that is “any person who unlawfully and carnally knows a child commits a felony...”¹³⁵ However this provision is highly compromised by customary law marriages, as stated in R v Chinjamba,¹³⁶ “in Zambia it is not generally unlawful for a man to have carnal knowledge of a girl under the prescribed age if he is lawfully married to her...”

Indecent assault is defined as “an assault or battery in circumstances of indecency. Touching or attempting to touch the genitals of another person without their consent would consist of an indecent assault.”¹³⁷ In this regard, “any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for fourteen years.”¹³⁸

The case of Mwanza v The People¹³⁹ may be cited as a point of reference. In this case the complainant was stripped naked by the accused because he suspected she was concealing something she had stolen. The accused was thus convicted of indecent assault because in Zambia it is a common custom that men do not search women and women do not search men, therefore his act of stripping the complainant naked amounted to an indecent assault.

¹³³ (1980) Z.R. 259 (S.C).

¹³⁴ M. Chuulu, Gender Violence The Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 54.

¹³⁵ Penal Code Act, Cap. 87, s. 138.

¹³⁶ 5 N.R.L.R. 384.

¹³⁷ E Martin, A Dictionary of Law, Oxford University Press, Oxford, 2001. Page 247.

¹³⁸ Penal Code Act, Cap. 87, s. 137.

¹³⁹ (1976) Z.R. 154 (H.C.).

3.2.3 INTESTATE SUCCESSION ACT CHAPTER 59

“In the sixties, there emerged a new practise that later came to be known as property grabbing. The practise was gender specific (applied against widows) and cut across all ethnic groups and social classes. It involved the deceased’s natal kin stripping the widow and children of all property.”¹⁴⁰ Due to this atrocious practise the Intestate Succession Act was enacted.

“It is therefore an act to make adequate and other financial provisions for the surviving spouse, children and dependents and other relatives of a person dying without making a will.”¹⁴¹

Section 5 provides that, “twenty percent of the estate shall devolve upon the surviving spouse; fifty percent of the estate shall devolve upon the children; twenty percent of the estate shall devolve upon the parents to the deceased and ten percent of the estate shall devolve upon the dependants.”¹⁴²

However the Act has a number of limitations; specifically,

“Where local courts have jurisdiction, they often do not enforce the Intestate Succession Act. Instead, they use the Local Courts Act to distribute inheritance without reference to the percentages specified by the Intestate Succession Act, and often mandate low fines for property grabbing.”¹⁴³

Furthermore, although this law appears to be revolutionary, particularly for women’s rights, “it fails to deal with mourning rites, which are usually directed at women and have the characteristic of being terribly oppressive. Sexual cleansing falls within this category that is, a situation where the surviving spouse has sexual intercourse with a relation of the deceased in order to appease the spirit of the deceased husband.”¹⁴⁴

¹⁴⁰ M Munalula, *Women, Gender Discrimination and the Law Cases and Materials*, UNZA Press, Lusaka, 2005, Page 112.

¹⁴¹ Intestate Succession Act, Cap. 59.

¹⁴² Intestate Succession Act, Cap. 59 s, 5.

¹⁴³ Human Rights Watch, ‘Hidden in The Mealie meal: Gender-Based and Women’s HIV Treatment in Zambia’, December 2007. Page 58.

¹⁴⁴ J Mulenga, *Human Rights Violations in Zambia*, Legal Research Foundation, Lusaka, 2007. Page 13.

“There is no requirement for HIV testing prior to the cleansing. The widow and or the ‘cleanser’ are thus exposed to HIV infection if either of them is positive.”¹⁴⁵

3.2.4 MATRIMONIAL CAUSES ACT No. 20 2007

“This is an Act to provide for the settlement of property between parties to a marriage on the dissolution or annulment of the marriage.”¹⁴⁶

In this regard, the Matrimonial Causes Act makes reference to property adjustment orders in connection with divorce proceedings, “it provides that the court may upon granting a decree of divorce make an order that settlement of such property as may be specified, being property to which a party to a marriage is entitled...be made for the benefit of the other party to the marriage.”¹⁴⁷

Section 56 further provides for maintenance orders, that is “the court may in any matter or cause in which application is made for the maintenance of a party to a marriage, make such an order on such application as it thinks proper.”¹⁴⁸

However, according to section 3 of the Act, “the provisions of the Act shall apply to marriages solemnized in accordance with the marriage Act...and shall not apply to marriages contracted in accordance with customary law.”¹⁴⁹

“However, most people in Zambia marry according to customary law rather than the civil marriage statute, and thus the protections of the Matrimonial Causes Act do not apply to them.”¹⁵⁰

The case of Janet Mwiba v Dickson Mwiba¹⁵¹ is instructive in this regard. The parties were married under customary law and when the petitioner instituted proceedings

¹⁴⁵ J. Macmillan, *Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia*, Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 81.

¹⁴⁶ Matrimonial Causes Act No. 20 of 2007.

¹⁴⁷ Matrimonial Causes Act No. 20 of 2007, s 55(1) (b).

¹⁴⁸ Matrimonial Causes Act No. 20 of 2007, s 56(1).

¹⁴⁹ Matrimonial Causes Act No 20. of 2007 s. 3.

¹⁵⁰ Human Rights Watch, ‘Hidden in The Mealie meal: Gender-Based and Women’s HIV Treatment in Zambia’, 2007. Page 56.

¹⁵¹ (1980) Z.R. 175 (H.C.).

under the Matrimonial Causes Act, the court held that, it had no jurisdiction over a potentially polygamous marriage.

Consequently, “In the event of divorce or death, women, especially those married under customary law, often lose out when it comes to settlements and inheritance. This happens irrespective of whether they had contributed to the acquisition of property in a home or not.”¹⁵²

It must be noted that, “There is no specific domestic violence legislation, such that despite amendments to the penal code enhancing protections for women and children, many perpetrators of intimate partner violence typically act with impunity.”¹⁵³

However, on a progressive turn of things “the draft bill on Gender Based Violence has been completed and will be presented to the Zambian parliament for enactment.”¹⁵⁴

3.3 CONCLUSION

There are a number of legal safeguards of women’s rights in Zambia. CEDAW provides for both civil and political rights and economic, social and cultural rights. Further, the reports submitted to CEDAW by Zambia show that it has actually had an impact on the safeguarding of women’s rights in Zambia.

Amongst CEDAW’s limitations however is the provision of reservations which has the effect of modifying or excluding the applicability of its provisions in a member state. Moreover, Zambia has not domesticated CEDAW therefore, Zambian women cannot seek recourse in the domestic courts through it.

¹⁵² G. Mwizabi, Zambia: Are Women Losing Out in Customary Marriages? Times of Zambia, 24 September 2010.

¹⁵³ National Action Plan on Gender-Based Violence, Gender in Development Division, Lusaka, 2008. Page 15.

¹⁵⁴ Gender Based Violence Draft Bill to be presented to Parliament. Times of Zambia, 12 November 2010.

The Constitution which is the supreme law of Zambia provides for civil and political rights. The right to equality is however diluted by the provision in the Constitution which reserves the right to create laws on adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law, with no requirement to ensure equal rights for women and men.

Another weakness of the Constitution is that it does not guarantee economic, social and cultural rights, it only provides for them in the Directive Principles of State Policy which are mere guidelines and are not justiciable.

The Penal Code criminalises certain offences which amount to a violation of women's rights. However, the requirement of corroboration in sexual offences weakens the effect of the penal provision, in addition there is no recourse for victims of marital rape as it is not recognised as an offence in Zambia.

Furthermore there appears to be a contradiction between the Penal Code and customary law as regards the offence of defilement. On the one hand the Penal Code proscribes the unlawful carnal knowledge of a child below the prescribed age and on the other hand precedent has shown that it is not generally unlawful for a man to have carnal knowledge of a minor provided he is validly married to her pursuant to customary law.

The Intestate Succession Act mainly enforces a woman's right to property. This is necessary due to the atrocious practise of property grabbing which deprives widows of property which is rightfully theirs. However this Act is limited because the local courts tend to distribute property without reference to it, in addition it does not encompass other harmful mourning rites like sexual cleansing.

The Matrimonial Causes Act provides mainly for women's rights upon dissolution of marriage. The main limitation of this Act is that it only applies to marriages under the marriage Act.

The Gender-Based violence bill is ready for presentation before parliament, thus there is hope that it will bring about a more effective protection of women's rights in Zambia. As has been depicted in this chapter, legal safeguards have their limitations therefore it is important to have institutional safeguards to supplement the protection of women's rights.

CHAPTER 4: THE INSTITUTIONAL SAFEGUARDS OF WOMEN'S RIGHTS IN ZAMBIA

The efficacy of the legal safeguards of women's rights in Zambia is compromised by a number of limitations. For instance, in the area of sexual and domestic violence, "there is weak enforcement of laws because there are no specific laws and policy guidelines on domestic violence and because women are ignorant of the existence of laws criminalizing sexual and domestic violence."¹⁵⁵

In this regard it is important that there are certain institutions in place both governmental and non-governmental to supplement the protection of women's rights. *These include institutions such as the Judiciary, The Police (Victim Support Unit), Women and Law in Southern Africa and Young Women's Christian Association.* This chapter is thus a critical analysis of the efficacy of these institutions as safeguards of women's rights.

4.1 GOVERNMENTAL ENTITIES

4.1.1 JUDICIARY

The Judiciary is a creation of the Constitution¹⁵⁶. "It consists of the Supreme Court, High Court, Industrial Relations Court, Subordinate Courts, Small Claims Court (not yet operationalized), and the Local Courts."¹⁵⁷

4.1.1.2 THE ROLE OF THE JUDICIARY AS REGARDS WOMEN'S RIGHTS

The judiciary has a very important role to play in the protection of women's rights in Zambia, as aptly stated by the international Association of Women Judges;

"If human rights commitments are to be implemented at a national level, judges and magistrates must play leading roles. Judicial officers preside over cases involving inheritance, property rights, custody, employment discrimination, sexual harassment, rape, domestic violence, and many other issues that implicate women's fundamental human rights. They are responsible for delivering equal justice to all individuals, regardless of their gender, race, or financial status."¹⁵⁸

¹⁵⁵ National Action Plan on Gender-Based Violence, Gender in Development Division: Lusaka, 2008. Page 10.

¹⁵⁶ Constitution of Zambia, Cap. 1 Part VI.

¹⁵⁷ P Matibini, Access To Justice And The Rule Of Law. An Issue Paper Presented for the Commission on Legal Empowerment of The Poor. Messrs PATMAT Legal Consultants and Practitioners, Lusaka, Page 13.

¹⁵⁸ The International Association of Women Judges (IAWJ), The Gender and Legal Dimensions of HIV/AIDS: Women's Access To Justice and the Role of the Judiciary, 2005. Page 6.

The case of Rosemary Chibwe v Austin Chibwe¹⁵⁹ illustrates clearly how the Supreme Court upheld a woman's rights to property and equality. This is an appeal which rose in the ranks from the Local Court to Supreme Court. The respondent sued the appellant for divorce alleging unreasonable behaviour and adultery. The Local Court granted the divorce on the said grounds. The appellant alleged that the Local Court Justices and the learned trial Magistrate were prejudiced in favour of the respondent. The Supreme Court stated as obiter that the cardinal principle in our justice system is that all judicial officers are duty bound to be impartial and to be fair to all parties thus invoking the principle of equality before the law.

In upholding the appeal the Supreme Court enforced the appellant's right to property because she was still able to recover property from her husband despite the divorce. Furthermore, the Supreme Court's statement on impartiality and fairness illustrates clearly that the court recognises how important it is for judicial officers to treat women equally with men in resolving disputes.

A more recent ruling has shown that the Local Court has also had a positive impact on women's rights, particularly the right to property. "Previously, a woman married under customary law would not be entitled to a share of property, irrespective of whether she had contributed to its acquisition. However in the divorce case between Martha Kembo Mwanamwalye and Collins Mwanamwalye¹⁶⁰ the court ruled that, notwithstanding that the parties in this matter were married under customary law, justice demands that when a marriage has broken down, the parties should be put in equal positions to avoid any one of them falling into destitution."¹⁶¹

As correctly observed by Matrine Chuulu¹⁶² "This is an interesting and progressive judgment: interesting because this ruling came from a local court, the custodian of

¹⁵⁹ SCZ Judgment No. 38 of 2000.

¹⁶⁰ 9th December 2005. (IRIN).

¹⁶¹ J Mulenga, Human Rights Violations in Zambia. Legal Research Foundation, Lusaka, 2007. Page 28.

¹⁶² Regional Coordinator of the NGO WLSA.

tradition and lore, and it bases its judgment on tribal customs; progressive because for a long time women have suffered destitution when there is a divorce.”¹⁶³

4.1.1.3 LIMITATIONS OF JUDICIARY

One of the limitations the Judiciary experiences as a safeguard of women’s rights is low levels of awareness, “that is awareness levels about the availability of formal justice mechanisms are quite low among the poor and women. Knowledge is power. Therefore, if there is low level of awareness of the mechanisms of justice available then the right to justice is as good as denied.”¹⁶⁴

“The justice system has to be activated by the very people who need it. When people do not have the knowledge of the system nor how it operates then there are difficulties in activating and seeing how the system can work to their benefit.”¹⁶⁵

In addition, “group discussions with women and men at Kwasha Mukwenu revealed that they have no confidence in the Local courts. They accused Local court officials of being corrupt and claimed that those who have money to bribe the court officials invariably win their cases.”¹⁶⁶ This is a serious impediment to women accessing justice because “they tend to be economically dependent on their husbands and relatives.”¹⁶⁷

Another weakness of the Judiciary borders on partiality, specifically “Local Court Justices in Matero, Lusaka revealed that in divorce cases if the wife wants the husband but the husband is not interested in the marriage the court will invariably order a divorce. If on the other hand, it is the husband who wants the wife but the

¹⁶³ J Mulenga, Human Rights Violations in Zambia, Legal Research Foundation, Lusaka, 2007. Page 28.

¹⁶⁴ P Matibini, Access To Justice And The Rule Of Law. An Issue Paper Presented for the Commission on Legal Empowerment of The Poor, Messrs PATMAT Legal Consultants and Practitioners, Lusaka, Page 20.

¹⁶⁵ M Chuulu, Gender Violence the Invisible Struggle Responses of the Justice Delivery System in Zambia, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001. Page 118.

¹⁶⁶ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 66.

¹⁶⁷ J Macmillan, Women’s Sexual And Reproductive Rights And HIV Transmission in Zambia. Women and Law in Southern Africa Research and Educational Trust, Lusaka, 2007. Page 78.

latter is not interested in the marriage, the court adjourns the case and gives the couple a chance to reconcile.”¹⁶⁸

Based on the preceding paragraph a conclusion may be drawn that the Local court justices are biased against women.

The case of ITC Chali (executor of the will of the late Mwalla Mwalla) v Liseli¹⁶⁹ further illustrates the preceding point. In this case the respondent sought an order in the lower court for the deceased’s will to be varied in her favour. She testified to the fact that the deceased who was her father, was also the father of one of her minor children. The High Court accepted her testimony and varied the will in her favour. On appeal the Supreme Court noted from the outset that the decision in the lower court was rendered by a senior female judge in favour of a female litigant.

Additionally, in upholding the appeal the Supreme Court stated that the respondent was now an adult and criticised the lower court for being influenced by evidence of incest.

The fact that the court initially noted the sex of the trial judge and the litigant “illustrates how the Zambian courts have tended to be overtly gender biased in their rulings due to the influence of a gendered society.”¹⁷⁰

4.1.2 THE ZAMBIA POLICE SERVICE- VICTIMS SUPPORT UNIT

The Zambia Police Service is established by the Constitution.¹⁷¹ However, the Zambia Police Act No. 14 of 1999 provides for the creation of the Victim Support Unit. It provides that “there shall be a Victim Support Unit at all police stations and posts to be administered by police officers...”¹⁷²

¹⁶⁸ M Chuulu, *Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia*, Lusaka, 1999. Page 66.

¹⁶⁹ SCZ Judgment No. 2 of 1997.

¹⁷⁰ M Munalula, *Women, Gender Discrimination and the Law Cases and Materials*, UNZA Press, Lusaka, 2005. Page 208.

¹⁷¹ Constitution of Zambia, Cap. 1, Art 103.

¹⁷² Zambia Police Act No. 14 of 1999 s, 53(1).

“The functions of a Victim Support Unit shall be to; provide professional counselling to victims of crime and to offenders and to protect citizens from various forms of abuse.”¹⁷³

4.1.2.1 ROLE OF VICTIM SUPPORT UNIT AS REGARDS WOMEN’S RIGHTS

“The Victim Support Unit (hereinafter referred to as V.S.U.) has had a positive impact on society. It has successfully intervened in cases involving property grabbing, rape, defilement, incest, assault cases, domestic violence (wife battering).”¹⁷⁴

Furthermore, according to the V.S.U. Statistics for 2009¹⁷⁵, “of the 229 rape cases reported to the V.S.U. 31 convictions were secured, of the 140 indecent assault cases 39 convictions were secured and of the 1224 defilement cases 150 convictions were secured.”

Considering the number of reported cases shown above, it may be inferred that members of the public are generally aware of the existence of the V.S.U. and are utilising its services. However, the limited number of secured convictions shows that there are still a lot of measures that need to be put in place if justice is to be achieved.

“All cases that are reported to the V.S.U. are prosecuted by officers from the Unit, who have been specifically trained in matters of property grabbing, spouse battering and sexual abuse issues. Moreover, V.S.U.... (supported by UNICEF) has carried out campaigns to sensitize women on their rights and how they can complain about domestic violence.”¹⁷⁶

Additionally, “V.S.U. officers are trained to deliver Emergency Contraceptives to eligible survivors of sexual violence and refer the same survivors to health facilities for appropriate clinical management and forensic evidence collection.”¹⁷⁷

¹⁷³ Zambia Police Act No. 14 of 1999 s, 53(2) (a) (b).

¹⁷⁴ Zambia: Protection, services and legal recourse available to women who are victims of domestic violence. www.unhcr.org/refworld/country. Accessed on 14th December, 2010.

¹⁷⁵ 2009 Cases Reported And Dealt With by The Zambia Victim Support Nation Wide.

¹⁷⁶ J Mulenga, Human Rights Violations in Zambia. Legal Research Foundation, Lusaka, 2007. Page 8.

¹⁷⁷ R. Mushota, Emergency pill for victims of rape, defilement. Times of Zambia. 2005.

The foregoing paragraphs are evidence that the V.S.U. has helped to enhance the protection of women's right to property and also brought justice to women in terms of the abuse they experience in the form of the crimes of rape, indecent assault, battery and defilement.

4.1.2.2 LIMITATIONS OF VICTIM SUPPORT UNIT

However the commendable performance of the V.S.U. as regards upholding and protecting women's rights has been weakened by certain factors.

“Data collected by the V.S.U. is not comprehensive enough, and resources allocated to the V.S.U. are limited, as is the capacity of the V.S.U.s outside of Lusaka to conduct investigations and outreach in their respective provinces.”¹⁷⁸ In light of the preceding paragraph, a conclusion may be drawn that lack of financial resources is a challenge faced by the V.S.U. in the execution of its duties.

A further constraint experienced by the V.S.U. is that, “it is only found at provincial headquarters in most provinces. An extended case study revealed that when a widow whose property was grabbed by relatives reported the matter to Namushakende Police she was referred to Mongu, which is about 22 kilometres away.”¹⁷⁹

Additionally, data reveals that not all police officers have welcomed the establishment of the V.S.U. A head of the V.S.U. in one of the sites visited said that many police officers are hostile. Such hostile attitudes by top personnel and the general attitude of police towards matrimonial disputes, results in denial of justice for women who are major beneficiaries of the work of the V.S.U.”¹⁸⁰

¹⁷⁸ National Action Plan on Gender-Based Violence, Gender in Development Division, Lusaka, 2008. Page 12.

¹⁷⁹ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 131.

¹⁸⁰ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 131.

4.2 NON-GOVERNMENTAL ENTITIES

4.2.1 YOUNG WOMEN'S CHRISTIAN ASSOCIATION

Young Women's Christian Association (hereinafter referred to as Y.W.C.A.) is "a non-profit Christian organisation dedicated to the promotion of human rights for the development of the community especially women and children."¹⁸¹

"Y.W.C.A. was established in Kitwe, Zambia in 1957. From 1957 to date the Y.W.C.A. has continued to stand at the fore front of social change. Being one of the oldest women's organizations, the Y.W.C.A. has over the many years of its existence gained considerable experience and has the confidence of the women, youth, children in need and the communities in which it operates from."¹⁸²

The objectives of Y.W.C.A. are contained in its Constitution.¹⁸³ These are to "facilitate the empowerment of women and girls through various programmes and to promote, co-ordinate and extend the work of the association by carrying out work based on Christian principles."

4.2.1.1 THE ROLE OF Y.W.C.A. AS REGARDS WOMEN'S RIGHTS

An interview conducted with the Paralegal Officer at Y.W.C.A. revealed that Y.W.C.A. enhances the protection of women's rights in Zambia by "providing counselling to battered women, offering legal advice when needed and also assisting when a complaint of property grabbing is made."¹⁸⁴

This is further evidenced by the provision of "a variety of programmes which include hostels at Kitwe and Lusaka branches, a shelter for battered women, and Drop-In-Centres. In 1998 the Drop-In-Centre handled 1000 recorded cases. Most of the cases handled included property grabbing, domestic violence, marital problems, financial problems, lack of accommodation and maintenance."¹⁸⁵

¹⁸¹ Ann W. Nichols in Zambia. www.widnet.org.zm/partner_ywca.php. Accessed on 22nd January 2011.

¹⁸² Young Women's Christian Association. www.ms.dk/sw159588.asp. Accessed on 22nd January 2011.

¹⁸³ Young Women's Christian Association Constitution. 2007 Art VII (a) and (c).

¹⁸⁴ Interview: E. Sakala, Paralegal Officer, YWCA-Zambia, 19th January 2011. Lusaka.

¹⁸⁵ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 53.

4.2.1.2 WEAKNESSES OF Y.W.C.A.

There are a number of issues however which hinder the otherwise positive impact Y.W.C.A. is having on the protection of women's rights. Amongst these are "financial constraints hence certain cases are referred to Women and Law in Southern Africa. In addition victims of rape and defilement tend to distort evidence out of ignorance hence it is difficult to secure a conviction"¹⁸⁶

"Another major problem that the Y.W.C.A. has experienced with the formal system of justice delivery is corruption at the level of local courts. According to Y.W.C.A, corruption is so rampant that in certain localities, they never refer cases to local courts. Sometimes court clerks interfere with women's access to justice, by making it difficult for them to appeal, and this situation is exacerbated by the women's ignorance of the law."¹⁸⁷

4.2.2 WOMEN AND LAW IN SOUTHERN AFRICA

"Women and Law in Southern Africa (W.L.S.A.) Zambia is part of a regional research and educational trust working in the area of women and law in seven countries of Southern Africa. The Police V.S.U. and Y.W.C.A. refer cases to W.L.S.A, which are mostly property grabbing cases."¹⁸⁸

4.2.2.1 ROLE OF W.L.S.A. AS REGARDS WOMEN'S RIGHTS

An interview conducted with the Acting National Coordinator of W.L.S.A. revealed that W.L.S.A. contributes to the protection of women's rights in a number of ways. That is, "W.L.S.A. conducts research which is intended to inform and influence action being taken to improve women's legal position and which incorporates action into the research by educating women about their legal rights and providing legal advice."¹⁸⁹

¹⁸⁶ Interview: E. Sakala, Paralegal Officer, YWCA-Zambia, 19th January 2011. Lusaka.

¹⁸⁷ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 54.

¹⁸⁸ M Chuulu, Justice In Zambia: Myth Or Reality Women and the Administration of Justice, Women and Law in Southern Africa Trust- Zambia, Lusaka, 1999. Page 48.

¹⁸⁹ Interview: H. K. Khumalo, Acting National Coordinator WLSA Zambia, 18th January, 2011, Lusaka.

An example of such research is the research undertaken entitled *Gender Violence, The Invisible Struggle: Responses of The Justice Delivery System in Zambia*.¹⁹⁰ “The findings of this research indicated that gender violence within the family is invisible and the community and the agents of the justice delivery system tend to collude in keeping it invisible, resulting in untold violence for those who are violated.”¹⁹¹

It is no wonder therefore that, “W.L.S.A. has taken action to strengthen gender sensitive practices within the justice delivery system through increased information and knowledge of women’s rights, justice delivery, poverty and inter linkages between them.”¹⁹²

W.L.S.A. has also conducted research on trafficking of girls which amounts to a violation of women’s rights. Human trafficking means “the recruitment, transportation, transfer, harbouring or receipt of persons by use of force or the giving of payments to achieve the consent of a person having control over another person for the purpose of exploitation.”¹⁹³

W.L.S.A.’s research on human trafficking revealed for instance that, “in border areas there are poor immigration and Police services. Young women and men are seen leaving Zambia for Namibia on canoes and Zambian Police and immigration have not done anything about it due to resource constraints.”¹⁹⁴

4.2.2.2 WEAKNESSES OF W.L.S.A.

W.L.S.A. however experiences a number of challenges in the fulfilment of its objectives. These are, “culture and traditions, that is, mostly people use culture and

¹⁹⁰ M Chuulu, *Gender Violence The Invisible Struggle Responses of the Justice Delivery System in Zambia*, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001.

¹⁹¹ M Chuulu, *Gender Violence The Invisible Struggle Responses of the Justice Delivery System in Zambia*, Women and Law in Southern Africa Trust- Zambia, Lusaka, 2001.

¹⁹² Interview: H. K. Khumalo, Acting National Coordinator WLSA Zambia, 18th January, 2011, Lusaka.

¹⁹³ J Macmillan, and H Kasese, *The Shimmering Mirage: A Rapid Assessment of Trafficking of Zambian Girls and Women*, WLSA-Zambia, Lusaka, 2008. Page 7.

¹⁹⁴ J Macmillan, and H Kasese, *The Shimmering Mirage: A Rapid Assessment of Trafficking of Zambian Girls and Women*, WLSA-Zambia, Lusaka, 2008. Page 21.

tradition to refuse to change saying certain things are in our culture for example abuses such as sexual cleansing which are perpetuated in the name of tradition.”¹⁹⁵

“Furthermore certain laws for the enhancement of women’s rights are not in place. For example, customary laws allow early marriage and this is not outlawed by statutory law. Lastly there is a lack of affirmative action measures, that is, there are no deliberate policies to encourage women’s rights.”¹⁹⁶

4.3 CONCLUSION

In conclusion it has been shown in this Chapter that there are a number of institutional safeguards of women’s rights in Zambia, both Governmental and Non-governmental. The Judiciary as the main custodian of women’s rights is generally doing a commendable job in upholding women’s rights. It is however weakened in its functions mainly by biases which especially the local court justices have against women.

The V.S.U. has also generally had a positive impact on the protection of women’s rights in Zambia. This can be observed from the many convictions secured in defilement and rape cases and also the assistance rendered to women in cases of battery and property grabbing. The V.S.U. is however plagued with financial difficulties which affect its efficiency, further it is only located in provincial headquarters hence it is not easily accessible.

Y.W.C.A. is important as a safeguard of women’s rights because it aims at empowering women. This is important because a lot of the abuse women are exposed to is due to lack of empowerment. Y.W.C.A. thus assists victims of property grabbing and other domestic predicaments. Amongst the challenges faced by Y.W.C.A. is corruption by court officials which is a serious setback. Furthermore victims of sexual offences tend to distort evidence out of ignorance.

¹⁹⁵ Interview: H. K. Khumalo, Acting National Coordinator WLSA Zambia, 18th January, 2011, Lusaka.

¹⁹⁶ Interview: H. K. Khumalo, Acting National Coordinator WLSA Zambia, 18th January, 2011, Lusaka.

W.L.S.A. has had a positive impact on women's rights. The research it has conducted is invaluable as it assists in generating knowledge on aspects of women's rights violations previously not known. The main constraint experienced by W.L.S.A. in the execution of its duties however is culture and tradition. It is thus difficult for W.L.S.A. to fully impact the protection of women's rights because certain violations are deeply entrenched in culture and tradition.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

In finality, it may be stated that the rights of Zambian women are susceptible to violation due to economic, social and cultural factors. There are thus a number of laws and institutions which actually impact positively on the protection of women's rights. These include international instruments like the United Nations Convention on the Elimination of all Forms of Discrimination Against Women which Zambia is a state party to; local legislation like the Constitution, the Penal Code, The Matrimonial Causes Act and the Intestate Succession Act. In addition the said institutions include the Judiciary, the Zambia Police Service – Victim Support Unit, Young Women's Christian Association and Women and Law in Southern Africa.

However these laws and institutions are plagued with a number of inadequacies which negatively impact on them as safeguards of women's rights. Therefore, unless the requisite amendments are made to the laws that have been discussed and unless there is reform in the institutional framework, the violation of women's rights will continue to be unbridled.

5.2 RECOMMENDATIONS

As expressed in the preceding chapters, although the legal and institutional safeguards of women's rights in Zambia somewhat impact positively on the protection of women's rights, there is fundamental need for reform in both the legal framework and the institutional framework.

Particularly as regards the legal framework:

- i) CEDAW should be domesticated so as to supplement the protection of women's rights in Zambia.
- ii) The National Constitutional Conference should facilitate the amendment of certain parts of the Constitution, specifically; Article 23 (4) (c) which is implicitly discriminatory. That is, discriminatory customary practises should not be condoned.
The Directive Principles of State Policy should be made justiciable so as to enable women to petition the courts as regards

violations of their economic, social and cultural rights.

- iii) The Penal Code Act should be amended;
To reconcile the apparent discrepancy between section 138 which criminalises defilement and customary law on the other hand which validates carnal knowledge of a minor provided there is in existence a valid marriage under customary law.
To provide for and criminalise marital rape.
- iv) The Matrimonial Causes Act should be amended to;
Apply also to marriages solemnized in accordance with customary law.

There is also need for reform in the institutional safeguards of women's rights. Particularly;

- i) There is need to conduct seminars on gender sensitisation for officers of the Judiciary particularly, local court justices.
Further, mechanisms should be put in place by the government to increase women's awareness levels about the availability of the formal justice system.
An example of one such mechanism is media coverage on the formal justice system through television, radio and newspapers.
- ii) As regards the Victim Support Unit;
There is need to establish offices in more districts and towns so as to cater for a larger number of people.
Furthermore there is also need to train police officers adequately on how to handle matters pertaining to gender-based violence.
- iii) Concerning the Young Women's Christian Association;
It is of great importance that women are sensitised (for instance through the media) on the appropriate action to take when faced with sexual offences, so as not to distort evidence.
There is also need for the government to put in place measures to curb corruption at the local court. This can be achieved by improving the conditions

of service of the Local court justices and thus making them less susceptible to bribery and corruption.

If this is achieved, it will greatly enhance the operations of YWCA as a safeguard of women's rights.

iv) In relation to Women and Law in Southern Africa;

It is important that WLSA sensitises the public at large on the atrociousness of certain practices and beliefs perpetuated in the name of tradition and customary law. It is thus hoped that through the implementation of this recommendation men and women alike will desist from perpetuating these negative practises.

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UNZA

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