

SCHOOL OF LAW
OBLIGATORY ESSAY-15
1994/95

**UNIVERSITY OF ZAMBIA
SCHOOL of LAW**

I recommend that the obligatory essay prepared
under my supervision

by

MONICA KATEBE MUSONDA

Titled

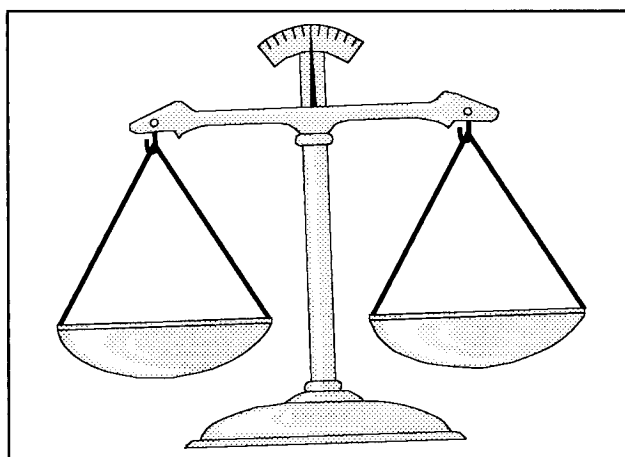
**THE WAR AGAINST A WOMAN:
VIOLENCE AGAINST WOMEN AS A VIOLATION
OF HUMAN RIGHTS**

be accepted for examination. I have checked it
carefully and I am satisfied that it fulfils the
requirements relating to the format as laid down
in the regulations governing obligatory essays.

Supervisor:  Date: 6.10.95

Ms. M. Munalula

THE WAR AGAINST A WOMAN:
VIOLENCE AGAINST WOMEN AS A VIOLATION
OF HUMAN RIGHTS



by

MONICA KATEBE MUSONDA

Being a paper submitted in partial fulfilment of the examination requirements for the Degree of Bachelors of Laws of the University of Zambia.

DEDICATION

This obligatory essay is dedicated to Professor Moses Musonda and Mrs. Lucy Musonda . . . my parents, for all your sacrifices and because you started it all!

ACKNOWLEDGEMENTS

There are a number of people to whom I owe my appreciation. The completion of this work would not have been so smooth without them.

First, I would like to thank God, for all the gifts He has given to me. I owe it all to Him!

I would like to thank my parents and family for all their patience, support and encouragement. Thank you for teaching me to believe in myself. I am also indebted to my supervisor Ms. Munalula for her guidance, time, ideas and materials. My gratitude goes to Mrs. D. Rubingo, Ms. D. Rude of the Young Women's Christian Association (YWCA), Mr Francis Musonda and Ms. E. Chinkobebe of Zambia Police, Force Headquarters and Dr. T.K. Mabula, Assistant Dean of the School of Law for their assistance.

Thanks to all my Law School friends, in particular to Muna, Zuzu, Mwila and James.

Finally, I need to give special thanks to Lyn and MJ for being around and giving me the extra encouragement when it was needed. To Sulanji Siwale, for his supreme efficiency and mastery of the word processor and for supporting me in more ways than I am aware of. Thanks!

ABSTRACT

This paper provides an overview of violence against women in Zambia. It is meant to provide an insight into the Zambian experience of violence against women vis a vis legislation and responses relating to the same. The nature of the subject is broad. Therefore, it is not intended to delve into great depth of the general issues of violence against women but to narrow the analysis to major legal perspectives. In order to introduce the paper to the reader, there is a discussion in the initial chapter on the various types of violence against women as well as the international development of laws to enhance the protection of women. The paper will then analyze local legislation, illustrate the manifestations of violence against women. The conclusion provides recommendations.

OBJECTIVES

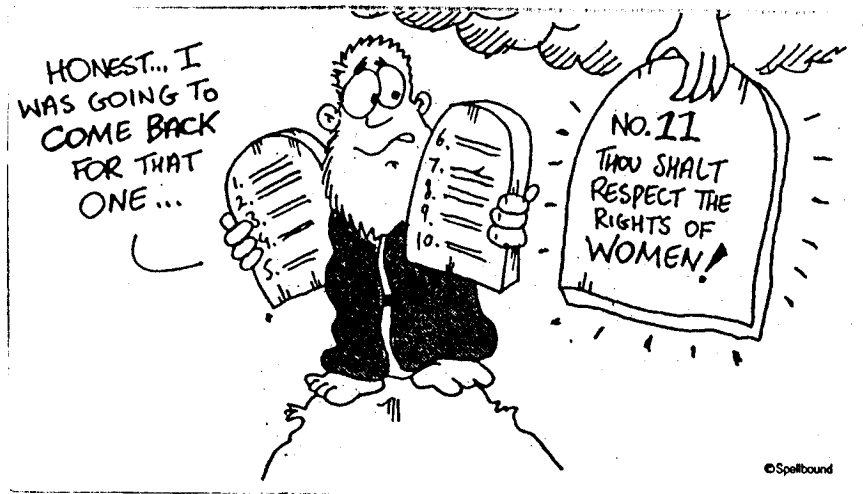
- i) To discuss the different types of violence against women.
- ii) To discuss the development of how violence against women is a violation of Human Rights.
- iii) To critically analyse local legislation that deals with violence against women.
- iv) To discuss the responses by the judicial system and other administrative organs. There will be an attempt to show that such responses are responsible for why women do not seek protection from the law.
- v) To make recommendations in areas where is felt that certain factors need to be considered.

METHODOLOGY

This research is based on data obtained by way of library research, interviews, official publications, statutory laws and other relevant literature.

OUTLINE OF CHAPTERS

- Chapter 1:** An introductory chapter which deals with the various types of violence against women which are prevalent in Zambia. It also presents the concept of violence against women being a violation of Human Rights by examining the Zambian Legal Framework and International Instruments.
- Chapter 2:** Attempts to analyse local legislation dealing with violence against women. It discusses the problem that the dual system of law creates when addressing the issue of violence against women in the family.
- Chapter 3:** Discusses the manifestations of violence against women in Zambia - What do statistics say?
- Chapter 4:** Presents a discussion on the possible responses to violence against women and it attempts to answer the question of why women cover up abuses.
- Chapter 5:** Presents the conclusion drawn from the paper together with recommendations.



"Violence toward women is a global challenge. It is also endemic throughout Africa and wears many faces. Domestic violence, rape, sexual harassment and female circumcision are but a few. They embody disrespect and powerlessness that permeate women's lives. They are also examples of problems where many changes in the law have little or no effect on practices. This problem is a legal challenge that must be met by all of us in pursuit of human rights.'

**Judge Enoch Dumbutshena
Retired Chief Justice,
Zimbabwe Extract from a
speech made at the opening
of Women, Law and
Development in Africa
Conference - Harare,
February 1990.**

TABLE OF CONTENTS

	P A G E NO.
PREFACE	1
CHAPTER 1 VIOLENCE AGAINST WOMEN - A MYTH OR REALITY	3
1.2 The General Types of Violence	3
1.3 Ours by Right! Violence Against Women as a Violation of Human Rights	8
1.4 Principles and Realities	12
CHAPTER 2 DEALING WITH VIOLENCE THROUGH THE LEGAL SYSTEM - A CRTITICAL ANALYSIS	14
2.2 Violence Against Women in the Family	14
2.3 Sexual Violence	23
2.4 Sexual Harrassment	30
2.5 Conclusion	38
CHAPTER 3 THE MANIFESTATIONS OF VIOLENCE AGAINST WOMEN - HOW MUCH EXISTS?	42
CHAPTER 4 THE RESPONSES TO VIOLENCE AGAINST WOMEN - WHY THE GREAT COVER UP?	47
4.2 The Cultural Root	47
4.3 The Response by the Law Enforcement Agency	49

4.4	The Court Role: Gender Bias in the Zambian Court System	52
4.5	The Church Role	54
4.6	Conclusion	55
CHAPTER 5	THE SOUL THAT WALKS IN FEAR KNOWS NO FREEDOM - RECOMMENDATIONS FOR A MORE RESPONSIVE LEGAL SYSTEM	58

PREFACE

- "Question** : What do mules and women have in common?"
"Answer : A good beating makes them both better."¹

Violence against women is a reality within our **Zambian** society. It exists in various forms in everyday life. It maybe physical, psychological, social, economic, sexual or cultural violence; usually a woman is faced with a combination of these. They are victims of such violence purely because they are women.

Survivors of such violence are often faced with conflicts of loyalties, as all to often they blame themselves for their abuses and feel that nothing can be done. They are often caught in a vicious circle of economic dependence, fear of their children's welfare as well as their own, repeated pregnancies, shame, ignorance of their rights before the law and other social pressures. Apprehension about the attitude of the police and others around them, influence their decisions to remain quiet and bear the pain. Abuse cannot be attributed to anyone factors, for example poverty. It could be considered the result of inequalities in our society. "The inequalities women face in their daily lives are reinforced by the media which portrays women as being delighted with their roles as house cleaners and being less intelligent than men. Christianity constantly emphasizes that woman came from a man's rib, and therefore, women are second class citizens in this world. The legal and judicial system treats female bodies as unimportant by failing to hold men accountable for their violent action against women and girls. The political system reinforces women as not being capable by constantly failing to appoint more than a handful to policy making and leadership positions.'²

Another source of gender affiliated abuse lies in the firmly entrenched patriarchal traditions and attitudes which have been passed on for generations. Thus men do not see anything wrong with their action because they think their behaviour is acceptable. Such beliefs have contributed to making violence against women "a hidden crime'.

Violence restricts a woman's freedom of speech, movement, and assembly; it erodes her sense of human dignity and makes her suffer from low self-esteem.

As such violence becomes a barrier to national development as women are not given to the opportunity to participate fully in society. Violence in all forms disrupts a woman's life in that she is unable to take full control of her life physically, economically, politically, and culturally. It is a direct contradiction of development goals.

Violence against women is a violation of Human Rights according to the Zambian-ratified UN Convention on the Elimination of all forms of Discrimination. It truly becomes a war against a woman when she is faced with violence within and outside the home. The fact that the present Legal system has not provided for any comprehensive legal protection for her means she is faced with a constant struggle to achieve liberty and human dignity in a world in which she makes up over half of its population. Her efforts perform over two thirds of the world's work and what is her reward . . . violence of a physical, psychological, sexual, cultural and economic nature!

1. *United nations' Violence Against Women in the Family*
Vol. 189-56940 (UN, New York, 1989) Pg. 69.
2. *YWCA Violence Against Women Zambian Perspectives*
(Lusaka, 1994) Pg. 18.

CHAPTER 1: VIOLENCE AGAINST WOMEN - A MYTH OR REALITY?

1.1 Introduction

"Violence against women is any action directed against a woman or girl child BECAUSE of her sex, which causes suffering, pain or discomfort to her body, mind or social well being, or diminishes her ability to make decisions or choices about her life. These injurious acts can be physical, psychological, sexual, economic, social or cultural."¹

"Adding the gender dimension to that definition amplifies it to include violent acts perpetrated on women because they are women."² The problem of violence against women is not simplistic. Violence against women is a prevalent problem which touches all aspects of a woman's life - from the home, to her place of work, to the street. It can happen to any woman regardless of age, colour, education, wealth or economic status. It cuts through all lines of income, class or culture. It has no nationality, country, or ethnic group. Violence against women has been part of everyday life since the beginning of recorded history. However, it has been hidden due to several factors such as privacy and to some extent tradition and custom. "Research indicates that violence against women is not confined to violence perpetrated by strangers."³ This suggests that women are often susceptible to abuses from those who they live with.

This Chapter focuses on the different types of violence against women which exist in Zambia, as well as on how violence against women is a violation of human rights within the context of the Zambian Legal Framework and International Instruments.

1.2 The General Types of Violence Which Occur In Zambia

Violence against women in Zambia can be said to exist in various forms of everyday life. They range from the subtle and indirect abuses to the most blatant abuse.

1.2:1 Physical Violence

Physical violence can be described as any act of violence of a physical nature such as "slapping, shoving (assault), sexual assault, battery or murder" 4. However, it can encompass much more. For example when a husband passes on a sexually transmitted disease to his wife. This can be a form of physical violence as it will inevitably cause the wife a lot of pain and suffering. Another form of physical violence within the home, is when a pregnant woman is made to carry heavy workloads. Outside the home or family setting, physical violence has been said to include beatings given to female students by male students, for not participating in demonstrations and boycotts. Physical violence can cause serious injuries to a woman's body. Dr C.M. Osborne is quoted as saying "The victim's physical injuries can range from minor bruises to life threatening fractures and internal haemorrhages from organ injury."5

1.2:2 Psychological Violence

Violence is psychological in nature when "a woman as a result of violent acts, loses her self-esteem and her sense of human dignity, for example after a wife is beaten, she may be repeatedly called "useless ...". Although her scars may heal, her self-esteem will decrease because she will come to believe that indeed she is "useless". Other examples of psychological violence can be:

- "i) when a wife has been deserted by a husband because he wants to stay with a girlfriend, often the feeling of "not being good enough" haunts them.
- ii) husbands blaming wives for any misbehaviour of the children, for example when a daughter becomes pregnant, the wife is usually told that she was not a good mother and did not bring up the children well.
- iii) forced marriage.
- iv) (outside the home) a woman fearing being attacked by young men on the street or bus conductors."7

A factual example of psychological violence was reported in The Sun Newspaper **8** under the headline "**Tough life leads woman to attempt suicide**". The article tells the sad story of how an Ethiopian family fled their native home and sought asylum in Zambia. Shortly after their arrival, Mr Ali married a Zambian woman. Mrs. Ali was subjected to daily beatings and other abuses from both her husband and his new wife. She eventually caught tuberculosis and because of all the suffering she began to contemplate suicide. She wanted to kill herself because she had no home, no food, no job and felt she was helpless.

1.2:3 Social Violence

The increase of social violence in societies finds its roots deeply embedded in societal attitudes that a woman is subordinate to a man, thus his interests should be looked into first before that of a woman. Examples of social violence include:

- "i) the fact that women are not permitted by relatives to be executors of their late husband's estate.
- ii) women face hardships getting bank loans."**9**

Society perceives women to be little more than infants, who are not independent and cannot handle certain affairs such as the administration of an estate.

1.2:4 Economic Violence

This form of violence has been defined as "any act which takes away or prevents a woman using or enjoying something or any act which results in the exploitation of the woman to gain benefit."**10** The economic situation that exists in Zambia at the moment has made many women dependant on men for survival. This makes them vulnerable to economic exploitation both at home and at national level as they are unable to make choices. Economic exploitation within the home can take place in various forms such as where there is a direct loss of income; or "where the husband takes away a woman's own income to meet his own needs, or where the husband

neglects his family and spends his income on himself or others outside the family; or where a husband is transferred to another place and a woman is compelled to give up her job and follow him".¹¹ Another form of economic violence concerns the inheritance of property when a husband dies. As a practice, the relatives of the deceased grab all the property without considering that the wife too may have contributed to the family wealth.

At national level, women are exploited or suffer economic violence in various ways. Women are over-represented in lower paying professions and jobs such as nursing, whilst they are under-represented in higher paying professions and jobs such as Medical Doctors and Engineers. Until a few years ago, women paid higher taxes since they were taxed as single persons and were not entitled to the same deductible allowances as men; for example, men were entitled to the child and family allowance while women were not.

Another example of economic violence is where women are forced to turn to prostitution to feed their families because the jobs offered to them do not pay the enough to sustain their families.

1.2:5 Sexual Violence

Sexual violence is said to include "rape, incest, dry sex practices, any sexual act which degrades or hurts a woman or those which cause the health problems, cases of women submitting to husbands demand for sex at any time, the cleansing of widows; incest and the fact that women do not have reproductive and bodily rights in that they are commanded when to become pregnant."¹²

1.2:6 Cultural Violence

This form of violence stems from the firmly entrenched patriarchal traditions which have been passed on for generations. A famous Zambian saying that when a husband beats his wife, it is a sign of love suggests that such attitudes and traditions are widely held. A woman is always under the control of a man - whether it is her

father, brother or husband. She is not free to make her own choices and decide what is good for herself and her body because certain traditions demand compliance regardless of whether the woman likes it or not. For example:

- i) before her wedding, a woman is taught how to sexually satisfy a man without necessarily satisfying herself.
- ii) She is told not to shout or to demand too much of her husband, even when he does wrong because such action will drive him away.
- iii) Women are often harassed if they do not bear children within a required period. They are often the ones assumed to be sterile.
- iv) Men pay "Lobola" (bride price) to the woman's family. It gives a feeling of ownership to the husband and gives him the license to abuse his wife as he deems fit.

An example of cultural violence was found in the Zambia Crime News, 13 under the headlines "**Man Fined K15,000 for Beating Someone's Wife**". The story read that a Mr. Mulundu was fined merely on account that he did not have the consent of the husband. The local court alluded to the traditional belief that the wife was the property of the husband and he could do anything he so wished with her - even allow another man to beat and possibly injure her, as long as he (the husband) authorized it. Thus violence can be widely defined to include physical, psychological acts, as well as acts which deprive a woman of vital resources.

Essentially, violence takes place within the family and the community and such has been condoned by the state. Within the family, because of the acceptance of the "hierarchal relations expressed in the unequal divisions of labour between the sexes"¹⁴, wives are often subject to various types of abuses. There is overt control of a woman's sexuality that she is commanded when to be pregnant or may sometimes be forced to have an abortion by the male- this is sexual violence. A woman may experience threats of reprisals for failing to conform to expected cultural norms, for example one must respect in-laws and their views, even when they might cause harm to the woman- cleansing ; the risk of catching a sexual transmitted

disease. She may even be physically assaulted for non-conformity. With the community, it is essential to note that "people derive their sense of identity and key values from each other and as such it plays a critical role in reinforcing the position of women within it."¹⁵ Acts like cleansing occur with the support of the community. In places of work, harassment and coercion is commonly tolerated. Women are constantly being intimidated and stripped in town and they lack any form of protection. The state is blameworthy as well because of their failure to pass or even enforce laws and policies to protect women.

1.3 "Ours by Right!"

Violence against Women as a Violation of Human Rights

1.3.1 The Zambian Legal Framework

Women are subjected to violence that results in the deprivation of their fundamental human rights. 'Human rights can be said to be those necessary requirements which must be given to person simply because they are human beings'.¹⁶ Many countries have recognised the importance of human rights and have embodied the same into their supreme laws. In Zambia, for instance, Part III of the Republican Constitution provides for the protection of these fundamental rights irrespective of sex, race...etc.

Article 11(a) protects life, liberty, security of the person and the protection of the law. This provision can be interpreted to mean that the provision guarantees a right that a person shall not be subjected to any acts that are likely to cause injury to his or her physical body or health- as such violence against women falls within this ambit. Among many characteristics of human rights, the following are listed as illustrative but not exhaustive examples:

- "a) Human rights are inherent
- b) Human rights are inalienable
- c) Human rights are equal among themselves
- d) Human rights advocate equality of all human being

- e) Human rights are against discrimination based on several differentials
- f) Human rights are against victimization of any group of People
- g) Human rights advocate respect for human dignity, freedom and Justice."¹⁷

In the case of Sarah Longwe v Intercontinental Hotels ¹⁸, the Learned Judge alluded to a definition of human rights from an article in the Colombia Law Review ¹⁹. It states that human rights are claims which every individual has or should have upon the society in which she or he lives. To call them human rights suggests that they are universal; they are due of every human being in every human society. They do not depend on gender or race, class or status. To call them "rights" implies that they are claims "as of right" and not merely appeals to grace or charity or brotherhood or love; they need not be earned or deserved but claims of entitlement and corresponding obligation in some political order under some applicable law....²⁰

1.3.2 International Instruments and their development towards the Protection of a Woman.

On the international scene, human rights are protected and enshrined in international instruments such as the Universal Declaration of Human Rights, adopted by member states on December 10th, 1948. According to this Declaration, everyone has the right to life, liberty, and security. (Article 3) Further, no one shall be subject to torture or to cruel, inhumane or degrading treatment. The Covenant on Civil and Political Rights states in Article 6 ' Every human being has the inherent right to life. This right shall be protected by the law. No one shall be arbitrarily deprived of his/her life' This means that every woman has the right to life and nobody can deprive her of that right. It has also been suggested that life loses meaning if one lives in total fear and indignity of repeated abuse. Article 7 of the same Covenant provides that everyone has the right to liberty and security of person.

It should be noted that although the UN Charter affirmed fundamental human rights and the equal rights of men and women, the 1948 Universal Declaration of Human

Rights contained an implied contradiction. Implicit in its articles was the idea that women belong to the private sphere, men the public. The private sphere- the family - was declared to be the natural and fundamental group unit of the society... entitled to protection by society and the state. Everyone has the right to a private family life. That is to say that individuals do have rights, but the family members are under the jurisdiction of the male head. "While privacy and autonomy in family life are desirable to protect ordinary people against unnecessary intrusions of the state, the concept of family privacy has two important negative effects in the context of family violence. First, members are severely constrained from seeking help outside the family for to do so would amount to an admission by the individual family that it was not providing ideal comfort and nurturance which, given the societal pressure to keep family problems in the home, is a shameful failure. Secondly, intervention from outsiders is discouraged. Violence within the family, therefore, is ignored or trivialized because acknowledgement of its existence would infringe the privacy of the family."²¹ Thus it is evident that the maintenance of the family as a unit may take precedence over the safety of the woman.

Until recently, neither the Human Rights Commission nor the Commission on the Status of Women (CSW) dealt directly with this dilemma. The Human Rights Commission concentrated on civil and political rights, while CSW concentrated on women's political rights - the right to vote and to hold office. But later on, the CSW focused on the controversial topic of equal rights in the marriage and family relations. The CSW's first step to deal with the implied contradiction in the Universal Declaration came about when it asserted that marriage "should be a partnership among equals, with men and women having equal parental, nationality and property rights."²² Thus they condemned the common practice in many countries of selling girls and women into marriage. It also argued for minimum age restrictions and registration in marriage laws.

By 1979 - the mid point of the " UN Decade for Women", the CSW drafted the Convention on the Elimination of All Forms of Discrimination Against Women, which was modified and adopted by the General Assembly. It was then presented at

the Second World Women's Conference in 1980. The Convention called for "the guaranteeing of women's basic human rights by ending discrimination against women in education, health, employment, marriage and family law, using temporary special measures (affirmative action) if necessary."²³ Violence against women was not mentioned but Article 6 states that governments should take measures "to suppress all forms of traffic in women and exploit of prostitution. Another provision alluded to the unequal treatment in penal codes dealing with adultery and so called crimes of honour ".²⁴ Numerous countries signed the convention and it was ratified within year as it was an international treaty.

Still, the convention received very little attention vis -a- vis violence against women. It was not till the World Conference in 1985 did the UN focus on violence against women as an issue on its own. It responded with a Declaration on Violence against Women, which called for the "punishing of perpetrators and the establishing of educational, research and legal programs to change customs and traditions that might sanction or ignore violence".²⁵ On December 20th, 1993 the Declaration on the Elimination of Violence Against Women was adopted by the General Assembly in Resolution 48/104. It recognizes that violence against women both violates and nullifies the enjoyment of women's rights and freedoms. The Convention is now a treaty. The Draft Platform for Action at the Forth World Conference on Women, proposes to ensure that member countries:

- "a) take measures to prevent and eliminate violence against women
- b) enact and enforce legislation against perpetrators of practices and acts of violence against women
- c) train legal, medical, social, educational, police and immigration personnel to ensure fair treatment of women
Victims of violence
- d) document incidents of all types of violence
- e) consider enacting legislation aimed at preventing Sex Tourism and trafficking."²⁶

1.4 Principles and Reality

A rule of international law states that international conventions can not directly be enforced in national courts unless their provisions have been incorporated by legislators in domestic law. Further, treaties operate on the principle of Pacta Sunt Servanda meaning that treaties must be observed with good faith and must be respected. This, however, suggests that if a country does not observe a treaty, no sanction will as such apply.

Looking at the Zambian situation, Zambia has failed to pass an implementing statute or to include the salient points of the Declaration in the Constitution, and may thereby not be living up to her international commitments. With that being the case, women can not get all their rights provided for them by the Declaration on the Elimination of Violence Against Women and even its predecessors, by coming to courts when those rights are not reflected in the Republican Constitution. In fact, the Republican Constitution in its preamble contains the same implied contradiction as the Universal Declaration.²⁷ Despite all the other rights which are claimed to be given to women, Zambian women and girls continue to be systematically subjected to violence, torture and sexual abuse because they are female.

.In December 1993 in Zambia 5 women were gang raped at Independence Stadium after a rhumba concert. Police arrested 42 men, but all were released without being charged.

.On the 24th of March 1994, in Lusaka, a group of street vendors descended on a woman because of her mini-skirt, stripped her naked and pinned her to the ground to display her nakedness to the crowd.

.During the months of February to April, 1994, a group of male students surrounded women's residences and chanted "Mwe Mbwa Mwe" after the were reported incidents that female university students were engaging in sexual intercourse with dogs for money.

END NOTES

1. YWCA Violence against Women Zambian Perspectives : An Evaluation Report of the initiatives of the YWCA of Zambia (Lusaka, 1994) pg 18
2. Margaret Shuler (ED) Freedom from Violence Women's Strategies From around the World (UNIFEM ,New York , 1992) pg 3
3. United Nations Violence Against Women in the Family Vol. 89-56940 (UN, New York, 1989) pg 12
4. Opcit pg 19
5. Osborne C.M. Dr. Physical Battering - a paper presented at YWCA Seminar in Lusaka, 1991
6. Opcit pg 20
7. Ibid pg 20
8. The SUN Newspaper July 3 - 8th 1995 (Printpak, Ndola, 1995) Pg 6
9. Opcit pg 21
10. Josephine B. Muchelema Economic Battering - a paper presented at a YWCA Seminar 1991
11. Ibid pg 24
12. YWCA Violence Against Women Zambian Perspectives pg 22
13. June 18 - 24th , 1995
14. M. Shuler Freedom from Violence Women's Strategies From Around the World (UNIFEM, New York, 1992) pg 12
15. Ibid pg 13
16. V.A.L. Kabonga Human Rights and Ethical Aspects of Public Health Measures Occasional Paper (Lusaka, 1993) pg 4
17. Ibid pg 5
18. 1992/HP/765
19. (1981) Colombia Law Review pg 1582
20. Ibid pg 1584
21. United Nations Violence Against Women in the Family (UN, New York, 1989) pg 49
22. Fraser- Arvonnes The Feminization of Human Rights JX.A53 (Foreign Service Journal, 1993) pg 32
23. Ibid pg 32
24. Where the laws allow men who kill adulterous women to go unpunished
25. Opcit pg 32
26. From the Fact Sheet for the Forth World Conference on Women
27. It reads that the natural and fundamental group unit of society is the family and it is entitled to protection by the society and the state
28. You, dogs you (translated from Bemba)

CHAPTER TWO: DEALING WITH VIOLENCE THROUGH THE LEGAL SYSTEM - A CRITICAL ANALYSIS OF THE LAW DEALING WITH VIOLENCE AGAINST WOMEN.

2.1 Introduction

This chapter responds to the question "Does an abused woman have at her disposal any legal remedies?" It focuses on three types of violence:

- a) violence against women in the family - domestic violence.
- b) sexual violence; rape, incest, defilement, wherein the victim is forced to have intercourse with her assailant or take part in unwanted sexual activity.
- c) sexual harassment.

From this starting point, the chapter discusses what the law is (with special reference to assault, rape, incest, defilement and indecent assault) and concludes by critically analysing all relevant laws.

2.2 Violence Against Women in the Family

"... the wife: however brutal a tyrant she may be unfortunate chained to - though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him - [he] can claim for her and enforce the lowest degradation of a human being, that of being made the instrument of animal function contrary to her inclinations."¹

The word "family" to many would suggest a shelter for safety and security, where one can hide from the pressures of the outside world. However, this is hardly the case. The family has been described as "a cradle of violence".

-- "Irene is 24. She is a housewife and an expectant mother. Because of her condition, she often feels sick and too weak to carry out any household chores. Her husband is unsympathetic and often beats her. Her mother-in-law blames Irene, claiming that she is selfish and her son should have married another woman. She cannot be treated at the University Teaching Hospital without a police report, which she is too afraid to get, fearing it will not solve any problems. So she spends much of her time at home avoiding people.

-- Clara and her husband are young and newly wed. They often attend receptions together because her husband is a successful and influential man in society. At one reception, he claims that she is getting drunk and too friendly with a male guest. He finally leaves the party, leaving her to find her own transport home. When she arrives home the next morning, he accuses her of having an affair and beats her. She then spends the rest of the day nursing her wounds and blaming herself for his violent attack ... after all, she says "He loves me".²

Violence against women in the family has been defined as "violence perpetrated by a man upon a woman in the domestic sphere."³ It does not necessarily confine itself to legally married couples but to those merely cohabitating or even couples who live apart (i.e where a boyfriend constantly beats his girlfriend). For the purpose of this study however, the definition does not extend to include other forms of family ^{violence} such as child abuse. It is primarily concern^{ed} with "abuse by husband of wives: that is where there is some element of conjugality, but not necessarily of cohabitation, and where the relationship should be one of equality or between peers."⁴

2.2:1 Law Relating to Domestic Violence

Zambia has a dual system of law i.e. customary law and statutory law. As such both statutory marriages and customary law marriages are recognised.

2.2:2 Customary Law and Domestic Violence

It has been observed that most marriages in Zambia are contracted under customary law. What this means is that the original jurisdiction for these marriages is in the local court. This customary law is based on traditions and customs of a particular social setting. "So where a custom directs that an attitude has to be perceived in a certain way, it is traditional law that has to be complied with and where this is not done then a local court will call for liability. Customary law principles are heavy-laden with cultural biases and practices directed against women."⁵

Although customary laws vary according to each ethnic and religious group within Zambia, laws exist which allow a man to chastise his wife for wrong doing but does not allow a woman to sue for divorce due to ill-treatment by the husband, unless under very extreme cruelty circumstances. Usually when a wife goes to a local court and sues for divorce, her claim is unsuccessful. "The traditional perception of value is that women constitute a sector of society which has a low status and are expected to be subordinates. Thus Customary Laws are reluctant to allow a woman to have human rights."⁶

In a Chingola Local Court ⁷, a woman who was married for thirteen years sued her husband for assault. She testified that she had been assaulted several times and that she was fed up. The local court justice ruled that "the institution of marriage is an important institution and should not be tempered with; and that customs of society allow a husband to beat his wife where she misbehaves and further if he was not her husband then the court would have attended to her claim."⁸ Similarly in Kaputa v Ngoma ⁹, the plaintiff was a victim of domestic violence. She was often accused of having extra-marital affairs, and as a result was often badly beaten. One day the plaintiff discovered strange beads on her bed and a pair of women's shoes. She accused him of adultery and took her case to the local court. The courts refused to grant her a divorce, stating that there was insufficient evidence to prove adultery. However, a man need only prove that his wife was in the presence of another man for his ground of adultery to succeed. In cases of extreme cruelty and where there

is overwhelming evidence of wife abuse, local courts may offer compensation to be given to an abused wife. In Mwepu v Kamandisha 10, the plaintiff sued for divorce on the grounds for matrimonial disputes. She accused the defendant of constantly assaulting her. There was evidence that she had been admitted to the University Teaching Hospital on numerous occasions. She claimed that the defendant wanted to kill her for no apparent reason. She went as far as taking the matter to the police, who advised her to forget the assault and take the matter to the local court for either divorce or compensation. The court granted the plaintiff two hundred Zambian Kwacha (K200) compensation, on the ground that there was evidence that she loved her husband. The court in this case did not address the beatings. This may have been because criminal proceedings are entertained by other courts and not the local court. It is submitted that the local courts should refer such cases to other courts and should not proceed on the facts.

2.2:3 Statutory Law and Domestic Violence

2.2:3.1 a) Civil Jurisdiction: Matrimonial Relief

The situation prevailing at the moment shows that there are no proper statutory laws providing for women's protection against violence. Those that seem to be to this effect only deal with compensation or divorce. For example, the Matrimonial Causes Act, 1973, under section 1 (2) (c) states that a petition for divorce may be presented to court by either party to a marriage on the grounds that the marriage has broken down irretrievably. To prove an irretrievable break down, the court must be satisfied that one of the following five facts been proved:

- "s. 1 (2) a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
- b) that the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent.

- c) the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.
- d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (two years separation).
- e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (five years separation)." **11**

The onus of proof is on the petitioner and the standard of proof required is proof on the balance of probabilities. However, a petition may fail, where despite the proof of one or more specified facts the court is not satisfied that the breakdown is irretrievable. The question of whether the breakdown is irretrievable depends upon whether or not there is any prospect of reconciliation. The chances of reconciliation are slim where the spouses have reached a state of proceedings for divorce and the reason is because s. 6 (1) of the 1973 Act provides that where the solicitor acts for the petitioner for divorce, a certificate for reconciliation must be filed with the petitioner. Under s. 6 (2) if at any stage of the proceedings, it appears that there is a reasonable possibility of reconciliation the court may adjourn the proceeding to enable attempts to be made to effect reconciliation. The Act does not grant divorce for domestic violence per se. An abused woman seeking a divorce would have to rely on s. 1 (2) b ... "that the respondent has behave in such a way that the petitioner cannot be reasonably expected to live with the respondent."

In Katz v Katz **12**, the learned judge alluded to behaviour as "something more than a mere state of affairs or state of mind. It may take the form of an act or omission or maybe a course of conduct and must have some reference to the marriage."**13** Thus a repugnance to sexual intercourse would not of itself suffice and neither would a husband's feeling that his wife was unable to show him the spontaneous demonstrative affection which his nature demanded."**14** Thus, threats of violence can fall into the ambit of behaviour. The test, however, is objective and as Bagnall J. in

- c) the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.
- d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (two years separation).
- e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (five years separation)." **11**

The onus of proof is on the petitioner and the standard of proof required is proof on the balance of probabilities. However, a petition may fail, where despite the proof of one or more specified facts the court is not satisfied that the breakdown is irretrievable. The question of whether the breakdown is irretrievable depends upon whether or not there is any prospect of reconciliation. The chances of reconciliation are slim where the spouses have reached a state of proceedings for divorce and the reason is because s. 6 (1) of the 1973 Act provides that where the solicitor acts for the petitioner for divorce, a certificate for reconciliation must be filed with the petitioner. Under s. 6 (2) if at any stage of the proceedings, it appears that there is a reasonable possibility of reconciliation the court may adjourn the proceeding to enable attempts to be made to effect reconciliation. The Act does not grant divorce for domestic violence per se. An abused woman seeking a divorce would have to rely on s. 1 (2) b ... "that the respondent has behave in such a way that the petitioner cannot be reasonably expected to live with the respondent."

In Katz v Katz **12**, the learned judge alluded to behaviour as "something more than a mere state of affairs or state of mind. It may take the form of an act or omission or maybe a course of conduct and must have some reference to the marriage."**13** Thus a repugnance to sexual intercourse would not of itself suffice and neither would a husband's feeling that his wife was unable to show him the spontaneous demonstrative affection which his nature demanded."**14** Thus, threats of violence can fall into the ambit of behaviour. The test, however, is objective and as Bagnall J. in

- c) the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.
- d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (two years separation).
- e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (five years separation)." **11**

The onus of proof is on the petitioner and the standard of proof required is proof on the balance of probabilities. However, a petition may fail, where despite the proof of one or more specified facts the court is not satisfied that the breakdown is irretrievable. The question of whether the breakdown is irretrievable depends upon whether or not there is any prospect of reconciliation . The chances of reconciliation are slim where the spouses have reached a state of proceedings for divorce and the reason is because s. 6 (1) of the 1973 Act provides that where the solicitor acts for the petitioner for divorce, a certificate for reconciliation must be filed with the petitioner. Under s. 6 (2) if at any stage of the proceedings, it appears that there is a reasonable possibility of reconciliation the court may adjourn the proceeding to enable attempts to be made to effect reconciliation. The Act does not grant divorce for domestic violence per se. An abused woman seeking a divorce would have to rely on s. 1 (2) b ... "that the respondent has behave in such a way that the petitioner cannot be reasonably expected to live with the respondent."

In Katz v Katz **12**, the learned judge alluded to behaviour as "something more than a mere state of affairs or state of mind. It may take the form of an act or omission or maybe a course of conduct and must have some reference to the marriage."**13** Thus a repugnance to sexual intercourse would not of itself suffice and neither would a husband's feeling that his wife was unable to show him the spontaneous demonstrative affection which his nature demanded."**14** Thus, threats of violence can fall into the ambit of behaviour. The test, however, is objective and as Bagnall J. in

Ash v Ash 15 put it, "can this petitioner with his or her character and personality, with his or her faults and other attribute, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with the respondent ... if each is equally bad, at any rate in similar aspects, each can reasonably be expected to live with the other." **16** S. 3 (2) allows leave to be granted to a petitioner to sue for divorce before the expiration of six months, where the court is satisfied of exceptional hardship if it were not granted. The Act further states that if the parties lived with each other for a period after the date of final incident relied on by the petitioner, then they can rely on this fact. The Marriage Act 17 does not have any provision concerning domestic violence. It only covers steps taken for contracting a valid marriage.

2.2:3.2 Civil Law Remedies

The Zambian legal system provides an aggrieved person with personal remedies at civil law, for any wrong that has been done to him or her. Thus, if a person is assaulted by another, she or he can proceed against the attacker at civil law, in tort, for monetary compensation. In principle, therefore, a wife should be able to bring an action in tort against her husband who has performed a civil wrong doing against her. However, the wife is often denied this right. For example, an abused woman cannot go to the court and get an order to prevent her spouse molesting or harassing her unless she also applies for some form of relief such as divorce. She wants the beatings and harassment to stop and not necessarily her marriage to end. Thus the few civil remedies available in actual fact, do not offer women adequate protection.

2.2:3.3 Conclusion

Despite the remedies that may be available to an abused woman, she is not guaranteed the enjoyment of her rights as a full and equal citizen because of the contradictions which present themselves through the dual system of law. For the women married under customary law, incidents of abuse are overlooked. They carry the heavy burden

of convincing a biased local court magistrate that divorce is necessary for their own safety. The local courts are renown for taking measures to protect the sanctity of marriage at the expense of the woman's safety. In Mwepu v Kamadisha, the courts disregarded the fact that the wife was beaten on several occasions and for the sake of sanctity of marriage, convinced the plaintiff that she still loved her husband and sent her back to an abusive home. The court ordered compensation to be paid by the husband. One questions the logic of such a judgement. By sending the wife home and ordering the husband to pay compensation presents more problems. An already abusive, arrogant man (who believes that he is the head of the house and because he made marriage payments, owns his wife and the fruits of her labour) will not pay compensation to the woman he keeps in his house.

It has been argued that there is more protection for women under the statutory law on marriage. It is submitted that such protection is limited by the contradictions between the two systems of law. Often there is intrusion of traditional behaviour into areas which are supposed to be governed by statutory law and further there is a tendency for customary practice to dominate within the family. Thus, even where a woman is married under statutory law, the payment of "lobola"¹⁸ is very common in the formalization of her marriage. Such payments would make a man believe that he owns his wife and he has the right to discipline as well as beat her. And when the time comes, a choice will have to be made in cases of separation, divorce, inheritance, etc., as to which laws will apply. In many ways the provisions of the two sets of laws are mutually different and exclusive, and a compromise would seem impossible.

In many cases, women choose to shun divorce because it is culturally and socially unacceptable. Further because many women are indoctrinated with the philosophy of "Tolerate and Accept", under the Matrimonial Clauses Act, they would be barred from obtaining a decree made absolute. Section 2 (3) reads "where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the

date of occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 1 (2) (b) ... if the length of that period or those periods together was six months or less." Therefore it is submitted that although the statutory marriage law "seeks to enhance the economic position of women in marriage through provisions for maintenance and sharing of matrimonial property at divorce, in actual practice, the assumptions of the Marriage Act do not necessarily coincide with those on which Zambian couples base their behaviour."¹⁹

2.2:3.1 b) Criminal Jurisdiction

There is no written law in the Penal Code ¹⁹ which serves to suggest that domestic violence is in itself, a crime. As such an abused woman has to seek refuge in other laws such as the law on assault. According to Gilmer's Law Dictionary ²⁰, assault is defined as:

- i) a threatening gesture, with or without verbal communication.
- ii) an attempt to cause or purposely, knowingly or recklessly cause bodily injury to another, or negligently cause bodily injury to another with a deadly weapon, or attempting by physical menace to put another in fear of imminent serious bodily injury.
- iii) a threat to strike or harm."²¹

This definition suggests that the offence of assault has many ingredients. A person may merely threaten to attack you by using abusive language or may attempt to injure you and does, knowingly, recklessly or negligently. He can then be said to be guilty of assault. Gilmer differentiates assault from battery by stating that battery is the "unlawful touching, beating or wounding of another person without his/her consent."²² Unfortunately, the Laws of Zambia do not provide an illustrative definition of what assault encompasses. S. 247 of the Penal Code states that "any person who unlawfully assaults another is guilty of a misdemeanour and if the assault is not committed in circumstances for which a greater punishment is provide this

code, is liable to imprisonment for one year."

This section merely classifies common assault as a misdemeanour **23** and in a rather winding way states that in the event of an assault being committed, the perpetrator is liable to imprisonment for one year, if he is not guilty of other crimes as well. For instance, if Banda armed with a "panga" threatens actual violence to Phiri in order to obtain Phiri's goods, Banda is guilty of both assault and aggravated robbery but will however not be imprisoned for one year but for life (on conviction). Section 248 provides for assault occasioning actual bodily harm. It states that the offence is also a misdemeanour but is punishable by 5 years imprisonment. Apart from lacking a definition, the aforementioned sections are silent on the sex, marital or familiar status of the victim or the perpetrator. Even other related sections in the Code such as "unlawful wounding" (section 232) or "grievous harm" (section 229) are silent on the same. Further, there is no immediate relief in the legal system offered to a woman, from the time she files a report of assault and has been chased away from home up till the court date.

Even with such laws, a review of certain cases indicates that in practice the courts do not tend to see violence against wives in the same light as other crimes. "Although they do not support a man's belief that he has the right to beat his wife, the court often seem to excuse him from doing so ..."**24** As such they reinforce the acceptance of violence against wives/girlfriends in our society. In R. Musonda v F.C. Musonda **25**, the respondent was constantly beaten by her husband (the petitioner), which resulted in hospitalization on several occasions. On one occasion, she broke four ribs and sustained severe damage to her left eye. When she became pregnant, he ordered her to have an abortion and then undergo sterilisation. The respondent responded negatively to her environment and drank excessively, thinking her problems would go away. The petitioner then sought to sue for divorce which was granted, as the courts felt that the marriage had broken down irretrievably. However, the court made no mention of the petitioner's constant violent outbreaks and did not attempt to caution him since such behaviour amounted to assault, which is a crime. In other words, more and more husbands are likely to be excused or pardoned. Such rulings

have continued to promote the use of violence by men as a means of control over women, often because they know they can get away with it.

Therefore because of an "evidently" difficult legal system, difficult access to courts and many strong cultural and social pressures, many women do not use the laws available to them.

2.3 Sexual Violence

When a woman experiences sexual violence it transforms her life forever as she will never again feel quite as invulnerable. Sexual assaults are some of the most serious crimes in Zambia. This section will focus on rape, defilement, incest and indecent assault. There will also be a mention of the Termination of Pregnancy Act.

2.3:1 Legal Definitions of Rape, Defilement and Incest

i) Rape

Rape has been defined as "non-consensual sexual penetration of an adolescent or adult obtained by physical force, threat of bodily harm, or when the victim is incapable of giving consent by virtue of mental illness, mental retardation or intoxication."²⁶

In Zambia , rape is an offence created under s. 132 of the Penal Code, and it reads as follows:

"any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if 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 impersonating her husband ..."²⁷

Section 133 states that any person who commits rape will be liable to imprisonment for life. The phrase "unlawful carnal knowledge" can be interpreted to mean

intercourse "outside the bonds of marriage. There should be an absence of consent and this must be proved by the prosecution. If consent can be proved, it provides a defense for the accused. It should be emphasized that force is no longer a determining factor for rape as a woman may be raped without the use of force, for instance through false representations (as the Act provides). Another ingredient for rape is that there must be penetration. In R v Yohani Mprokoso 29, it was held that carnal knowledge was not proved where the prosecution merely stated in evidence that upon waking up, she found the accused on top of her. A false representation as to the nature of the act also negates consent so that the man who so represents, is guilty of rape. In R v Williams 30, the accused was giving singing lessons to a girl aged 16. He cheated her that if her voice was to improve, he had to carry out an operation on her. He, in the process inserted his penis into her private parts to satisfy his sexual desire. He was found to be guilty of rape. The Zambian definition of rape can be seen to be rather restrictive. Firstly, it does not extend penetration beyond penile-vaginal intercourse and thus excludes oral sex such as fellation and cunnilingus, anal sodomy and penetration by fingers or objects. Secondly, it does not delineate a category of rape that is non-forceful but takes improper advantage of an incapacitated victim, i.e. one who is mentally retarded. There is also no mention of spousal rape, giving the impression that spousal rape is not a crime.

The common law rule that a husband cannot be convicted of raping his wife applies to Zambia by virtue of Chapter 4 of the Laws of Zambia.³¹ It was stated in Hale 32 that:

"the husband cannot be guilty of rape by himself upon his lawful wife, for their matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract."³³

However, in England the law has changed. A husband can be convicted of raping his wife. The law recognises that the husband has a right to sexual intercourse but states that he is not entitled to use force or violence in order to exercise that right. The wife is no longer seen as having irrevocable consent as she may refuse to submit due

to unreasonable demands or the fact that he could be suffering from a venereal disease 34. Further, intercourse can be termed as unlawful, where there has been a judicial separation or decree nisi of divorce or nullity, as was the case in H.M. Advocate v Duffy 35.

It can be said to be rape if one forcibly has carnal knowledge with his wife during their separation and if the separation agreement contains a non-molestation clause. In R v Miller 36, the wife left her husband but did not apply for a separation order or for an action of judicial separation. There was also no separation agreement between the parties. In 1953, she presented a petition for divorce on grounds of adultery. Before the petition was heard, her husband had intercourse with her against her will. He was then charged on indictment with rape and assault occasioning actual bodily harm. It was held that the fact that the wife had left her husband and presented a petition for divorce did not amount to revocation of the consent of marital intercourse impliedly given by her at the time of marriage. He was held not to be guilty of rape. Section 11 (1) of the High Court Act 37 states "the jurisdiction of the courts in divorce and matrimonial causes and matters shall, subject to this Act and any rules of the court, be exercised in substantial conformity with the law and practice for the time being in force in England. " This suggests that all matrimonial causes and matters which are in force in England, are to be applied in Zambia. However, since rape is a criminal offence and the law governing it is found in the Penal Code, it does not fall under s. 11, and is an exception.

ii) Defilement

Section 138 of the Penal Code states that any person who has unlawful carnal knowledge with a girl under the age of 16 is guilty of defilement and is liable to imprisonment for life. However, section 138 (2) provides a defense for the perpetrator in that if he can prove that he had reasonable cause to believe that the girl was over 16, he would not be guilty of defilement. In the case of Nsofu v The People 38, the appellant was convicted on three counts of defilement. Two of the girls were nine years old and the other seven years old. The appellant took the girls

into the kitchen of his house and had sexual intercourse with them. Afterwards, he gave them 10 ngwee each. Baron D.C.J. in his judgement stated that the appellant could not rely on the proviso because he had not satisfied the court that he had reasonable cause to believe that the girls were above the age of sixteen. Similarly in the case of C. Mulele v The People 39, the accused was convicted of defilement after he had tricked an eight year old girl to have sexual intercourse with him, by offering to give her sweets. He did not rely on the proviso but claimed that the girl had consented. He was convicted and sentenced to five years imprisonment, with hard labour.

iii) Incest

Incest consists of sexual intercourse between persons within a specified degree of consanguinity. The law concerning this offence is found in section 159 to 164. Section 159 provides:

" that any person who has carnal knowledge of a female person, who is to his knowledge his grand - daughter, daughter, sister or mother is guilty of a felony and is liable to imprisonment for five years. "

However, if the girl is under twelve years of age, on conviction the perpetrator shall be liable to imprisonment for life. Section 159 (2) states that a woman or girl - child's consent is irrelevant. It would then seem, that the consent by a woman is sufficient to negate the charge of rape but will not necessarily amount to a defense to the accused for the purpose of this offence. Section 162 provides the test for the relationship and states that "brother" or "sister" includes "half-brother" or "half-sister" respectively. The section also makes it clear that the prohibition applies equally to legitimate as well as to illegitimate blood relationships. In the People v George Sangwe Nyangwe 40, the accused was charged with having sexual intercourse with his daughter. His wife's sister discovered that the girl often cried when she urinated and often played on her own. When she bathed the child, she

discovered that she was badly bruised near her vagina. After questioning the child, it was discovered that the father was sexually abusing his daughter, claiming that they were playing a game. The case proceeded to court, where after several adjournments, the accused was acquitted because of the lack of evidence.

iv) Indecent Assault

The law on indecent assault is found in section 137 (1) of the Penal Code, which states "any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for fourteen years," Mwanza v The People **41** enunciated the principle that indecency under this section can be made out even without the explicit evidence of sexual desire. Care J was of the view that indecent assault can occur even without there being overt sexual conduct or private lustful gratification for example the mere stripping of a woman by a man vested in authority to search (as was the case in Mwanza) would constitute indecent assault, because the common practice is that men do not search women (and vice versa) In The People v Lovwell Mweene **42**, the accused was a witch doctor who was approached to help rid the complainant of the ghost of her dead baby. He sprinkled water on her body and continuously asked her to undress. When she did, he inserted his fingers into her vagina. She asked him repeatedly to stop, to which he replied that if the procedure was not followed she would be haunted for the rest of her life. The next day, she went and filed a report with the Police. When the case reached court, the learned trial judge noted the definition of indecent assault as being an act of a male person taking indecent liberties with a female without her consent and against her will but with no intent to commit the crime of rape. She then went to convict him and sentenced him to three years imprisonment.

The Termination of Pregnancy Act Cap 554

This Act makes an abortion illegal. However, under section 3 (a), it does not make abortion an offence if the pregnancy is terminated by a registered medical practitioner

if the continuance of the pregnancy would involve

- " i) risk to life of the pregnant woman
- ii) risk of injury to the physical and mental health of the pregnant woman
- iii) risk of injury to the physical or mental health of any existing children of the pregnant woman
- iv) if there is a risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped."⁴³

This Act denies a woman a right to choose what she wants to do with her body. The burden falls on the medical practitioner, who, depending on the way he/she views the circumstances may give or even deny to give a woman an abortion. It becomes violence against women when women are forced to get back door abortions and put their lives at risk.

Case Studies of Sexual Violence

Sexual violence has become so prevalent in our society, it appears in our local papers every day. In the Zambia Daily Mail, on the 22nd of July, 1995 it was reported that a three year old girl of Kitwe was raped by a 28 year old man. Witnesses claimed that the accused had lured the girl by offering her bubble gum and in the process locked her into a room and had sexual intercourse with her. The same newspaper reported that three other cases of rape had been reported on the Copperbelt the day before. On the 5th of June, 1995 the Sun Newspaper reported that a Lusaka woman had told a story of how her husband sexually abused his step daughter for five years.

At the local hospital (UTH), the nurses and doctors claim that there is not a day when a rape does not come to the Gynaecology, Casualty and female Surgical Wing. In fact, they commented that the victims of rape cases are mostly the young ones - ranging from as young as six to twenty-one years old. On the 5th of May, 1995 a six year old girl had just been raped by her neighbour and the doctor merely stated that " it was an all too common sight ⁴⁴. The YWCA Drop in Centre had been

keeping a five year old girl who had been raped by her elderly cousin. She was often times found rubbing her private parts and often cried when urinating. It was much later when the mother discovered sores, which when she was taken to UTH turned out to be syphilis.

Sexual assaults can take place anywhere. At the University of Zambia, on the 4th of April, 1995, men in a male residence witnessed the rape of an eighteen year old girl from Kalingalinga Compound. The student did not seem to mind the fact that several people had gathered round his room with the hope of rescuing the screaming girl. Someone managed to get into the room and the student was immediately taken to Chelston Police. But after a day, charges were dropped as the girl contended that she was not in fact raped. The student as of today has not gone through any disciplinary proceedings.

The reality of the situation is that the actual numbers of acts of sexual violence will never be known. Many do not report such because of fear, intimidation and the degrading social stigma that is attached to offences such as rape. Even when cases are reported, the police are not always seen to be helpful. As such, many of the figures they give out are largely diluted because many are not even reported in the occurrence books. Some do, however, reach courts of law and convictions are the result. For example in The People v Simon Phiri **45**, the accused was charged with unlawful carnal knowledge of a Eunice Simalenga. The facts were that as she walked home from a funeral, the accused grabbed her and threatened to kill her if she didn't have sexual intercourse with him. He dragged her to a dilapidated house and had sex with her three times before assaulting her and letting her go. He was convicted and sentenced to three years imprisonment with hard labour.

" Sexual assaults like rape, is a trauma, just like a major disaster such as a tornado or a bad car accident." **46**

2.4 Sexual Harassment

What constitutes sexual harassment ?

" Sexual harassment is defined as requests for sexual favours, unwelcomed, repeated or flagrant sexual advances, or demanding verbal or other expressive behaviour of a sexual nature when

- . submission is made either explicitly or implicitly a terms and condition of an individual's employment or status as a student; or
- . submission or rejection by an individual is used as a basis for employment or academic decisions affecting him or her, or for awarding or withholding favourable employment or academic opportunities, evaluation or assistance; or
- . its purpose or effect is interference with the individual's performance at work or in study by creating an intimidating hostile or offensive environment in which to work or learn."**47**

Unfortunately, people tend to forget that sexual harassment is, in fact, a form of violence against women. It affects millions of women around the world regardless of profession. It " violates that right to integrity of the body and personality, which belongs to every person, "**48** as it causes discomfort to a woman's body and mind.

Sexual harassment maybe physical or verbal. Physical harassment may range from " staring, ogling, patting, squeezing, pinching to forced sexual relations. "**49** Verbal harassment could be " lewd or suggestive comments or jokes, sexual innuendos or undesired flirtation, threats, proposition or other demands for sexual activity "**50**

Sexual harassment may range from outright assault to distasteful, sexist jokes and comments. For example what is the difference between a pregnant woman and a light bulb ? - you can unscrew one - the light bulb; or, a blind man was approaching a fish market. As he walked past, the strong smell of fish hit his nose to which he replied... " Oh hello ladies!"

The Frequency of Sexual Harassment

Sexual harassment knows no residence, that is to say it can happen to any woman, at any place. The most common types of harassment take place at places of employment, at learning institutions and on the streets.

Sexual Harassment at places of Employment

In places of employment, sexual harassment may occur when the harasser is among co-workers of equal rank; it may occur when the harasser is of a higher rank and in this case if the harasser is in a position to influence the career or employment conditions of the victim including hiring, assignment, contract renewal, performance evaluation or even promotion, it becomes a serious and injurious problem. This is because it involves the abuse of administrative power entrusted by the administration to the harasser.

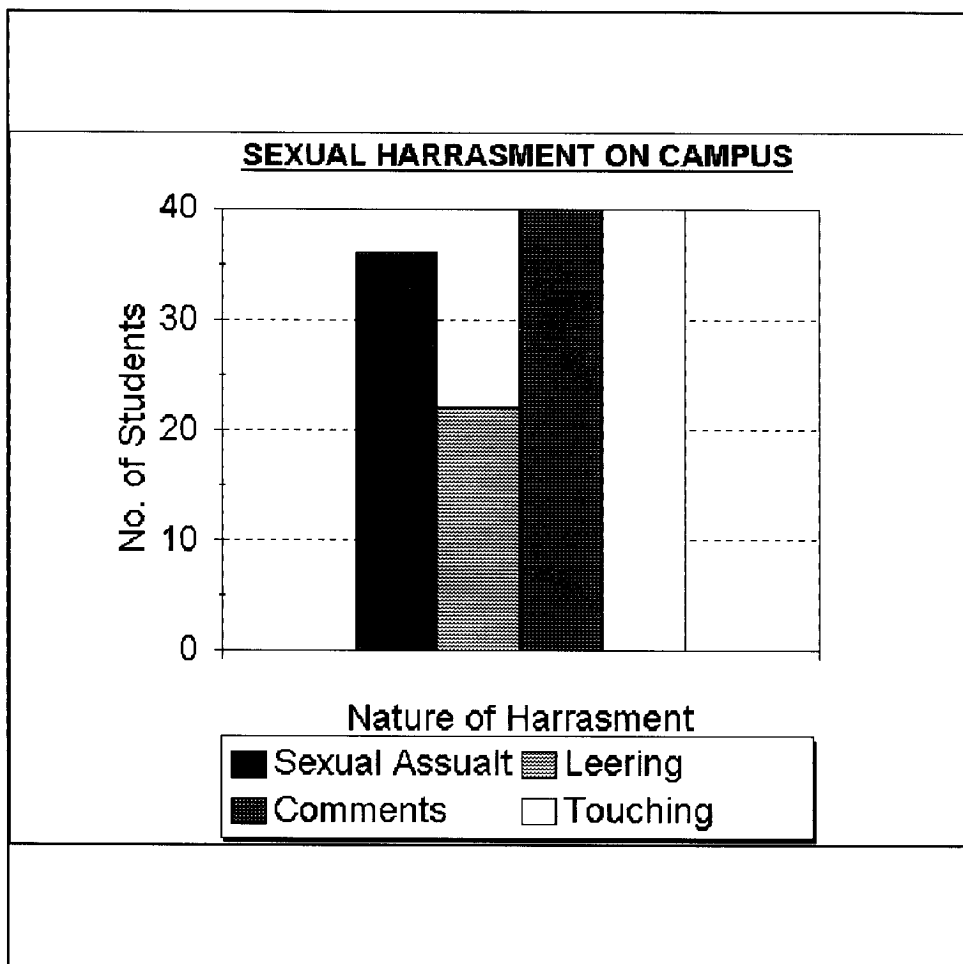
" The tautology of the secretary/mistress might be a cliché, but when management has to choose between losing a highly qualified and competent male executive and a dispensable female secretary, the choice is obvious." 51

Sexual Harassment at Learning Institutions

Although, sexual harassment at learning institutions has been a prevalent problem for sometime, it has just started to be dealt with. For the purpose of this section the writer has focused much research on the University of Zambia, Lusaka Campus.

Forty students (both male and female) were asked what sexual harassment meant. The replies varied and are illustrated in Figures 1 (a-d)

Figure 1. Sexual harassment on Campus



The bar graph suggests that more people felt that comments and touching constituted sexual harassment. There was some confusion as to what leering was but when it was explained, not many opted to include it into sexual harassment. The four students who did not classify sexual assault as sexual harassment felt that it was a different form of violence against women and should be treated separately.

NB. Students were allowed to choose more than one.

Figure 1b. Frequency of Harassment

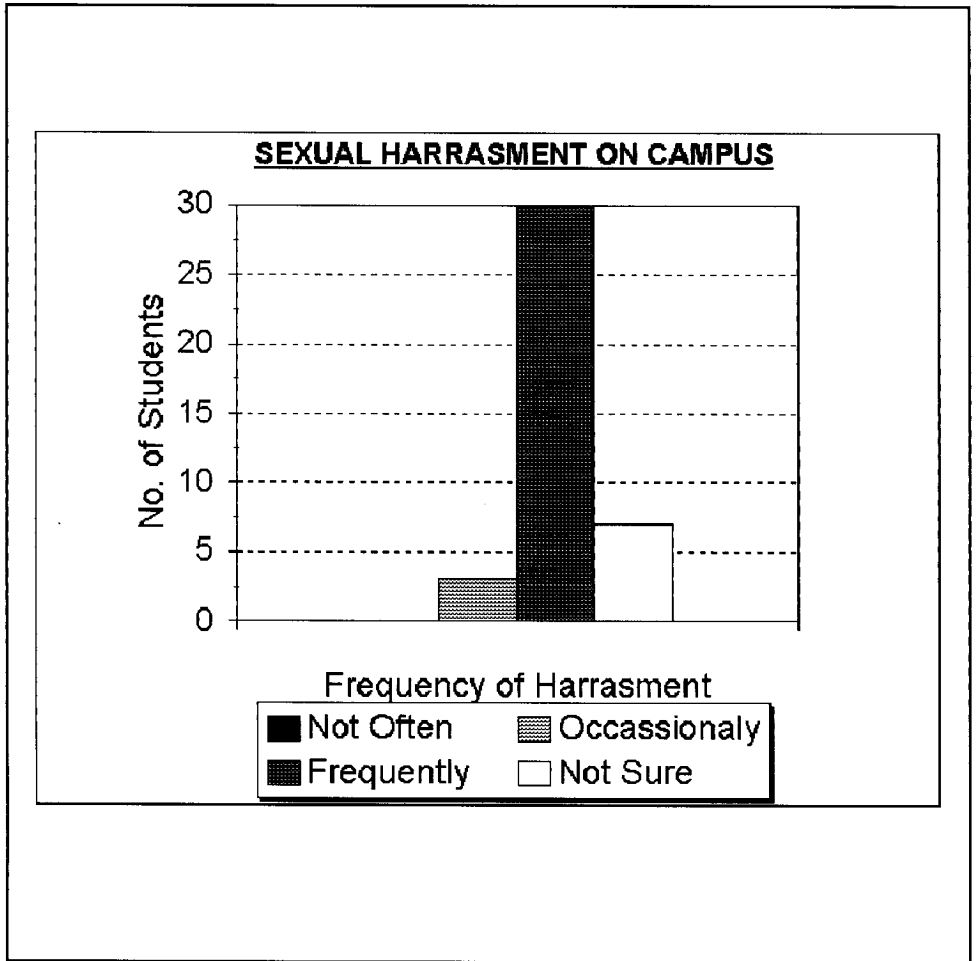


Figure 1c. Place of Harassment

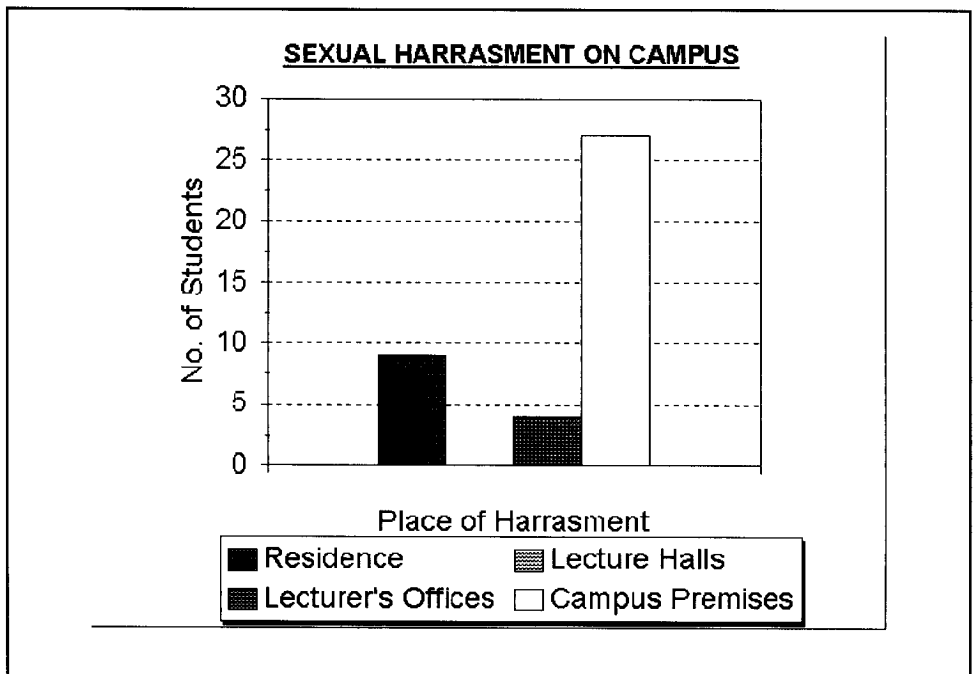
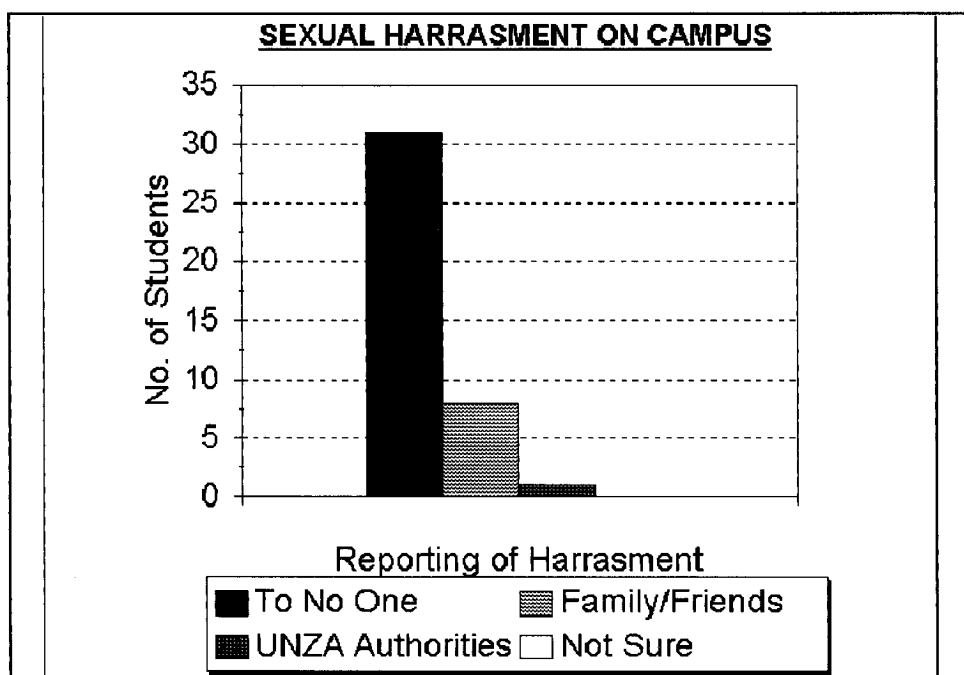


Figure 1d. Reporting Harassment



Most of the students felt that sexual harassment occurred frequently. Those who replied "not sure" felt that sexual harassment did not affect them so they were not even bothered about it. It was discovered that people felt that harassment occurred anywhere on the campus but some opted to be specific and stated that it happened in the rooms. An overwhelming number felt that sexual harassment usually went unreported, while a few contended that people confided in family and friends. The one who claimed that sexual harassment was reported blamed the women for always withdrawing cases before the right action could be taken against an assailant or perpetrator.

Peer Harassment

This is used to refer to sexual harassment between students. It covers a wide range of behaviours. Such behaviours include

- a) groups of men surrounding a women's residence, chanting sexist vulgarism and singing

- b) the showing of pornographic movies in some male residences on a regular basis
- c) a group of men banging on doors demanding for sexual favours
- d) the hurling of insults at women when they do not participate in demonstrations.

In general, however, peer harassment has a broader meaning than the behaviours described above. It includes " threats or acts that interfere with a student's education and social life or that creates an intimidating, hostile or demanding environment because of a student's race, sex, religion, disability or sexual preference."53

Harassment is not only physical and a picture has emerged in that too many young students on the campus are engaging in behaviours that can best be described as emotional or psychological harassment for example the constant insulting of women. Such behaviours are disrespectful and can poison a woman's experience on campus.

The Counselling Centre, student union and most UNZA authorities are aware of such problems but have not taken any steps to address it. The University has no code of conduct or disciplinary framework to deal with such complaints. According to the counsellor, section 20 of the Regulations states that fighting, harassment and the use of abusive language is prohibited. Harassment is not defined and is left to the discretion of the Disciplinary committee at the Dean of Students office to discover. Unfortunately, not even the Disciplinary Committee has guidelines to help them when faced with problems of sexual harassment. As such there is a certain level of tolerance which leaves the victim of such, disabled because she has no form of assistance and this only reinforces the notion that such action are condoned and hence accepted.

Staff Harassment

The University of Zambia also has problems of staff harassing female students. This occurs where a male lecturer/tutor demands sexual favours from a student and he will reciprocate by passing her in that course or giving her exam papers. The Staff Code of Conduct stipulates that such behaviour is prohibited and any lecturer found doing so will be liable for suspension. However, it provides for no mechanisms for dealing with such problems. This is why in 1993, the Lovelace Commission set up to investigate the Exam leakage in the School of Law had a hard time getting it's feet off the ground.

It is submitted that the UNZA should take positive steps to eliminate practices that perpetuate sexist attitudes or that encourage sexual harassment. There can be no policy that prohibits sexual harassment and then condone or turn a blind eye towards the behaviours that violate the very spirit of the policy. UNZA officials or student leaders should be seen to act against incidents so as to send a strong message to the student body that such behaviour is unacceptable. There should be an educational program that provides clear guidelines on what constitutes sexual harassment. There is also need for a responsible counselling structure, where students will be listened to and advised on possible alternatives.

Street Harassment

There have been cases where a woman has been stripped naked in the streets allegedly because of their " indecent dressing ". Many street vendors take the law into their own hands and strip the unfortunate women. There was a case of an American tourist who was on her way to Zimbabwe and decided to visit Lusaka's city market. She was dressed in black nylon bicycle shorts which were covered by a t - shirt. She was grabbed three times on the buttocks by three different men. A crowd of young men hurling insults at her grew. Luckily, she was whisked away by a white couple who rushed to her rescue. However not everyone is as lucky as she was. On the

23rd of March, 1994 in Lusaka a group of street vendors descended on a woman because of her mini skirt. They stripped her naked and pinned her down to the ground. No one came to her rescue, not even the Police, who apparently stood at a distance and watched the whole affair.

Laws relating to Sexual Harassment

In the absence of a legal definition of sexual harassment, there are few legal mechanisms that exist to combat it. Section 137 (3) provides for the offence of indecently insulting or annoying females. It provides that any person "for the purpose of indecent curiosity observes any woman/ girl in the state of undress or semi - undress or uses insults to annoy women will be guilty of a misdemeanour and will be liable to imprisonment for a year. " **54** The offence restricts itself only to situations where a man observes a woman in the state of undress or semi - undress. There is as such a limitation on when this section can be relied on. It does not cover for situations where a woman is stripped naked and people gather round to watch the scene.

Section 172 provides for the offence of common nuisance. This occurs where a person " cause common injury or danger or annoyance or obstructs or causes inconveniences to the public in the exercise of their common rights. " **55**

Section 173 provides for the offence of watching and besetting, where a person prevents, by the use of violence, intimidations etc, another from exercising his/her legal right. It reads that every person who compels another from doing or abstaining from doing any act by,

- a) using violence to or intimidation
- b) persistently following such other person about from place to place; or
- c) hiding any tools, clothes or other property owned or used by such other person or depriving him/her of or hindering him/her in the use

thereof; or

- d) following such other person in a disorderly manner shall be guilty of an offence. **56**

Any person who besets another by preventing him/her from doing any act which he/she has the legal right to do is guilty of an offence under section 173.

Despite what is provided in the Penal Code, it is very difficult to prove that someone used sexist language or made advances at you which prevented you from exercising your legal duty. Even with this small legal recourse, women are still afraid to take action in fear of being fired, penalized or ridiculed. However, some countries have made head way in recognising sexual harassment as a problem. In the US, for example, in 1980 the Equal Employment Opportunity Commission published a set of guidelines identifying harassment and hostile environment harassment. In 1986, the Supreme Court ruled that sexual harassment constituted a violation of the 1964 Civil Rights Act. Now the Courts extend the definition and even penalize companies with punitive damages, as such some companies are being forced to listen to women's demands for dignity in the workplace.

2.5 Conclusion

The Zambian legal system has done little to protect women. The dualism in Zambian law creates many contradictions and as such discriminates against women. For example, the mere fact that a woman is married under customary law, means a case for matrimonial relief will only be entertained in the local court. Customary laws are unwritten and although they vary from tribe to tribe, there is evidence to show that there are similarities especially when dealing with the position of women. Consequently, these laws often place women in the inferior position and regard them as no more than the property of their husbands.. Therefore, husbands who beat their wives are protected by laws which allow for the chastisement of women and as such the rights of women are breached in the guise of African Customary Law.

Although many would think that statutory laws would provide a more meaningful sense of protection. This view, however, does not necessarily follow. This is because there is an intrusion of traditional elements into statutory marriages; for example the payment of bride price (lobola) is often used to formalize marriages under the Act. Further legislation relating to violence against women is inadequate. For example the law on rape in the Penal Code. It does not provide for situations where a woman/girl is forced to have oral sex with her perpetrator or where someone forcibly inserts objects up a vagina. Does there have to be penetration only by the penis ? What about other objects ? Further the law on rape does not specifically and explicitly cover the husband who forces his wife to have sex with him. The rationale is that no husband can rape his wife because there is irrevocable consent given when they first contracted the marriage. The law in this case would rather support " sanctity of marriage " rather than the safety of the individual in particular the woman.

On the issue of sexual harassment, the law provides for the offences such as common nuisance, watching and besetting, using insults but leaves such other forms of sexual harassment like advances and leering. As a result, I submit that there is need for law reform to provide adequate means for a woman to seek redress.

END NOTES

1. The Subjection of Woman quoted in Violence Against Women in the Family (United Nations V. 89-56940 Oct. 1989) pg 11
2. Interviews with abused housewives, Lusaka. 1995
3. Opcit pg 164. Supra pg 16
5. Gender Bias in the Zambian Court System : (WLSA/WILDAF, Zambia, June 1994) pg 13
6. Ibid pg 15
7. Opcit pg 16
8. Supra pg 19
9. 8/114/1995
10. unreported 1986
11. The Matrimonial Causes Act 1973 section 1 (2)
12. (1972) 3 All ER 219
13. Ibid pg 223
14. Pheasant v Pheasant (1972) Fam. 202, 208
15. (1972) Fam 135
16. Ibid 141
17. Cap 211
18. Marriage Payments
19. Cap 146
20. W. Gilmer Gilmer's Revision the Law Dictionary (6th Ed. Anderson Publishing Co, Cincinnati, 1986.)
21. Ibid pg 23
22. Ibid pg 43
23. misdemeanour means any offence which is not a felony
24. E.C. Phiri (Feasibility Study) Violence Against Women in Zambia (YWCA, January 1993) pg 13
25. 1993/HP/D. 26
26. Mary P Koss, Mary R. Harvey The Rape Victim Clinical and Community Interventions 2nd ED. (SAGE Library of Social Research, 1991) pg 3
27. Section 132 of the Penal Code
28. Chapman (1958) 3 ALL ER 143
29. 2NRLR 152
30. (1923) 1 KB 340
31. British Law (Extent of Application) Act
32. IPC 629
33. J.C. Hogan, B. Smith Criminal Law (Butterworths, London, 1988) pg 430
34. Roberts (1986) Crim. L.R. 188 CA
35. (1983) SLT 7
36. (1954) 2 ALL ER 529
37. Cap 50
38. (1973) ZR 34
39. SP5- 85 - 95
40. SP1- 102 - 94
41. (1976) ZR 12
42. SP5 - 47 - 94
43. Cap 50
44. Dr. Chola Gynaecology Dept. UTH
45. SP5 - 3 - 95

46. Koss/Harvey The Rape Victim pg 72
47. Final Report of the committee of Enquiry into Sexual Harassment at the University of Capetown (Published by Equal Opportunity Research Project, Protea. Oct 1992) pg 46
48. De Kock, Arthur J v M Ltd Industrial Court, 22nd Feb. 1989 (Industrial Law Journal V. 10 1989)
49. UN 1994: PEACE: Measure to eradicate Violence Against Women in the Family and Society pg 73
50. Ibid 73
51. Opcit 74
52. To glance especially sideways with a lascivious or malign expression
53. Final Report (supra 47)pg 28
54. s. 137 (3) of Cap 146
55. s. 172 of Cap 146
56. s. 173 of Cap 146

CHAPTER THREE: THE MANIFESTATIONS OF VIOLENCE AGAINST WOMEN HOW MUCH VIOLENCE REALLY EXISTS?

Many women in Zambia have fallen victim to crime. Some have been killed, physically maimed and are now living in constant fear of being offended through sexual violence. The national crime statistics reveal a frightening picture. According to National Crime Statistics on women killed by their husbands and vice versa as from 1st January, 1991 to 31st December, 1993 indications are:

Table 1.1

PROVINCE	WOMEN KILLED	MEN KILLED
Copperbelt	22	3
Western	13	3
Northern	23	1
North-Western	8	2
Luapula	0	0
Eastern	2	0
Central	7	1
Southern	12	1
Lusaka	3	2
TOTAL	90	13

- 1 Table 1.1 shows that more husbands killed their wives than wives killed their husbands during the period in question.

In addition, crime statistics on violence against women as from 1st January, 1991 to 30th June 1994 indicate the following:

Table 2.2

RAPE

YEAR	REPORTED	CLEARED	NOT CLEAR	CONVICTION	AQ.
1991	835	104	337	373	21
1992	257	54	113	63	27
1993	491	158	179	131	23
1994	276	73	93	101	11
TOTAL	1,859	389	722	668	82

**Table
2.2**

ATTEMPTED RAPE

YEAR	REPORTED	CLEARED	NOT CLEAR ED	CONVIC.	AC QUI TT ALS
1991	35	23	8	3	21
1992	42	14	13	15	27
1993	46	16	5	29	23
1994	21	8	5	5	11
TOTAL	144	61	31	52	82

ASSAULTS
**Table
2.3**

YEAR	REPORTED	CLEARED	NOT CLEAR ED	CONVICTION S	AC QUI TT ALS
1991	12,674	5,222	1,517	5,375	560
1992	15,038	7,708	4,056	2,698	576
1993	14,168	6,761	4,180	2,714	513
1994	7,084	3,380	2,090	1,349	265
TOTAL	48,964	23,071	11,843	12,136	1,914

2

The tables indicate that over a period of 4 years, there were a high number of crimes committed against women. For example 48,964 assaults were reported. However, the fact that women reported these crimes did not, in every case, lead to convictions. Disappointingly, the number of convictions were comparably less than those reported. For example, in 1992, there were 150038 cases of assault reported, however only 2698 convictions were secured. Similarly, in 1993 there were only 491 rapes reported but only 101 cases led to full convictions. However the police statistics only provide for a mere fraction of the cases of violence against women. Some cases are never reported because of guilt, shame or loyalty. Some fear that by reporting, for example wife battery, they may lose the economic support of their husbands or harm his career. In particular, victims may be very reluctant to report their problems because police response is almost always negative. " More over, even if the victim does make a report the statistics may be lost because the official fails to record the

incident or records the incident in such a fashion that it becomes meaningless for research purposes. Frequently, statistics do not show cross - reference of the sex of the victim to the sex of her assailant and very often fail to indicate the relationship between victim and offender. As such, it is impossible to distinguish wife assault from any other crime." 3

In another research carried on by the YWCA, at the Casualty and Gynaecology Outpatients Department, "they recorded 788 assaults, between April and June 1992. In the Gynaecology admission ward, a total number of 82 rapes were recorded between the months of April to June 1992." The writer recorded 96 cases of rape and 73 cases of defilement between the months of March to June 1995, in the Gynaecology Admission Ward.

Conclusion

Owing to the paucity of research and the taboos surrounding admissions of violence against women, the actual numbers will never be known. For example, the fact that wife battery is generally condoned and considered part and parcel of marital life, rather than a crime, creates a vague picture of its high incidence.

Further it is difficult to make reliable estimation of actual levels of violence because research is relatively new and available information can be so disorganized and sometimes inaccurate. Often reports are only the tip of the iceberg as many cases go unreported. The statistics further indicate that the law that exists is just paper legislation in that it has not been enforced and has failed to provide any protection for women.

END NOTES

1. *Zambia Police Force Headquarters Research Paper on Violence against Women National Crime Statistics*
2. *Ibid* pg 2
3. Koss/Harvey *The Rape Victim* 2nd Ed. (SAGE Library of Social Research 1991) pg 45

CHAPTER 4 THE RESPONSES TO VIOLENCE AGAINST WOMEN ... "Why The Great Cover Up"?

4.1 Introduction

The question which remains to be answered is why do women choose to remain silent and bear the pain, even where it is obvious that the abuse they have suffered is a recognised crime and they ^{can} seek redress? It is a fact that survivors of violence are often faced with conflicts of loyalties, as all too often they blame themselves for their abuses and feel that nothing can be done. The question of why abuses occur can not be easily answered. It is often wrongly blamed on alcohol and poverty but it can not be attributed to any one factor, as the problem is coloured by a number of social valves.

This chapter examine the socio-cultural framework for violence against women and focuses specifically on cultural influences, police insensitivity, gender bias in the Zambian court system (as well as complicated court procedures and problems of accessibility) and the insensiv^tity of Christianity.

4.2 The Cultural Root to Violence Against Women

A source of gender affiliated abuse seems to lie in the firmly entrenched patriarchal traditions attitudes which have been passed on for generations. Such traditions are found globally. For example,

.The gist of a Spanish riddle is:

"Question: What do mules and women have in common?

Answer: A good beating makes them both better,"

. "A little rape is good for a man's soul" 1 (American Author Norman Mailer)

"If a husband beats his wife, it is a sign of love" (An often said phrase among women and men in Zambia)

These attitudes clearly show that men do not see anything wrong with their action because they are brought up believing that their behaviour is acceptable.

Within the family, in Zambia, like in many countries in the world, the man is viewed as the head of the family. These beliefs, and attitudes stem from customary laws, which vary according to each ethnic group within Zambia. Generally, lobola (bride price) is paid to the bride's family. Lobola is crucial to understand the position of the Zambian woman. It usually consists of payments in cash or livestock and when such payments are made the marriage is said to be formalized. The widely held view is that once "lobola is paid, the woman, her child-bearing ability as well as her earning ability is entirely owned by her husband if she leaves her husband and returns to her family, the lobola has to be repaid." ² The social consequence of lobola impinges directly on the problems of domestic violence. The generally held view is that once lobola has been fully paid, a husband has a right to chastise his wife whenever necessary. "Women are like children, if you love them discipline them." ³

Further, the wife is told before her wedding that if the husband does not beat her, he does not love her. So she is told to expect it and accept it when it comes, and not see it as a sign of abuse but affection. She is also told that she must not initiate sex but must be ready to have sexual intercourse anytime her husband demands unless she is sick. Wives are further reminded that the family is considered a private place where outsiders should not intervene even when problems are serious. The rationale used is that such matters are to be dealt within the family.

In cases where a woman becomes a widow, on the death of her husband, she is often commanded by her in-laws to be cleansed, i.e. to have sexual intercourse with her deceased husband relative. She may not want to do such an act but all in the name of tradition, she turns off and does not see the act as rape, but as an act of necessity to rid herself of her deceased husband's spirits.

Therefore, it can be said that patriarchal patterns determine women's predicaments once violence becomes a part of the relationship. "Women feel guilty and trapped in

these relationships. Guilt, because cultural prescriptions make family problems into women's problems regardless of source. Trapped, because it is considered disloyal to betray patriarchal privacy by seeking help from outsiders and expose their husbands and family to potential scrutiny."⁴ Thus social prejudices reinforce domestic violence against women. Particularly, since wives are often considered as little as more than their spouse's property, husbands assume that the woman's role, gives them the tacit right to abuse their wives in order to keep them in their place.

4.3 The Law Enforcement Agency: Their Response to Violence Against Women

"The police are the only agency that offers the woman a combination of coercive power of the state and accessibility" ⁵. Although, the police role is critical, their response to the issue has been viewed as inadequate. They are often viewed as unhelpful as they dismiss cases as being family matters. "You may go to the police and file a police report but generally they do nothing because it is a domestic affair."⁶

It was discovered that the police find cases of violence against women, especially domestic violence cases frustrating to deal with. They often do not proceed with charges because women do not follow through to court or events suggest that such cases will lead to unsuccessful prosecution. They feel that such matters should be dealt with elsewhere, for example YWCA. The police are not seen to offer a woman adequate protection from a violent man as they often underestimate the violence and dismiss appeals for help because they are of the view that there are insufficient grounds for intervention. They tend to place greater value on privacy and marriage rights, than on the woman rights of freedom from assault, rape etc.

When the police deal with cases of rape and incest, they are seen to be unsympathetic and often cause unnecessary delays. When speaking to a mother of a 6 year old girl, who had just been raped, she complained that it took the whole morning for the police to apprehend the suspect, only to let him go again. She felt bitter and felt that the

police were not taking such cases seriously.

When the Police deal with rape cases, it was discovered that the complainants moral character was weighed heavily on police assessment of her credibility. Credibility was established by assessing: (a) her way of life, (b) her respectability and (c) her criminal record. Her credibility then affected their subsequent decision about prosecution. It is submitted that the criteria used by the police when deciding whether or not to prosecute, discriminates against women and causes great bias. It would be unfair for a woman who has just suffered the ordeal of being raped to have her hopes quashed on the merely fact that she was at one time convicted of loitering. "Many of the men in the force come from homes where there are cases of domestic violence, harassment and rape. Nothing is done and the acts are accepted. They have been socialized in believing that such acts are to be accepted." 7

4.3.1 The Police and the Law

S.5 of the Police Act (Cap 133) states the function of the Police. "The Force shall be employed in and throughout Zambia for preserving the peace, for the prevention and detection of crime and for the apprehension of offenders against peace..."⁸ Under Part IV (Powers, duties and privileges of the police officers) s 14(3) states "It shall be the duty of every police officer... to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist." ⁹

Basically the Police are a government agency charged with the duty of maintaining law and order and dealing with reported crimes. However, when dealing with cases of violence against women, police response is a reflection of deeply entrenched social attitudes that tend to trivialize assaults, rapes etc. These attitudes reveal the fact that traditional values have been indoctrinated into administrative practices. The law requires the police to investigate and charge suspected criminals and not decide to get

involved merely on the fact that a crime has taken place outside the home. There is clear demonstration of discrimination and partiality of particular laws, clearly imbued with value judgements, about which and what forms of violence should be regulated. "In the process of applying law, individuals bring to it, particular perceptions and attitudes, so that its application becomes selective and inconsistent. The Police are among a number of agencies involved in the mediation, translation and negotiation of law. Laws are variously translated, depending on the predilections of individual police officers, within the possibilities and ambit of procedural rules." ¹⁰ Thus it is no accident that a man who beats his wife in the street is more likely to be prosecuted than the man who behaves in exactly the same way at home.

"Perhaps the greatest fault in the traditional police response to violence against women is best described as an unwillingness to act but over willingness to assume the judgement of Solomon" There is evidence that the police do have judgemental attitudes to behaviour of women victims which they may consider contributory to the man's violence, for example if they think the woman is nagging, hysterical sluttish housewife". ¹¹ It is submitted that the police recognise their social work role should not interfere with their law enforcement role-because by doing so it will lead a woman to believe that there is no real alternative for her except her current abusive situation. Police must be provided with clear policies and should be assured that the rest of the criminal justice system is co-ordinated to support these policies. These policies should be designed to create attitude changes in the officers. The training program should include courses which aim to sensitize police officers of women's problems. The Zambia Police have taken such steps and have created the Victim Support Unit. The unit is a group of law enforcement officers, who co-ordinate efforts with crime victims. These officers will be involved in counselling victims and will also co-ordinate efforts with crime victims and will also co-ordinate with the victim's family, friends, the victim advocate etc, in order to provide protection.

In a speech read by the Deputy Secretary to the Cabinet when opening the victim support Unit on Monday 10th April, 1995, he was quoted as saying "Our main concern is on those victims who are vulnerable to attacks and who may be unwilling to have their attackers prosecuted for fear of the unknown or because they are

ignorant of the criminal procedure". 12

4.4 The Court Role: Gender Bias in the Zambian Court System

The influence that societal value and attitudes have over law interpretation can not be over emphasized. Gender bias in our court system is generated from the very fact that societal beliefs, and values create different roles for men and women. Men's roles are perceived as being more superior to those of women. "Discrimination on the basis of gender comes in different forms such as cumbersome court procedures, contort and effect of the law, and the manner in which these laws are interpreted." 13

To a large extent, the protection of women depend on the reaction of judges. This is to say that if judges uncritically listen to pleas of provocation, trivialize violence, and reinforce traditional beliefs, the victim will receive neither justice or protection. Further, very often legislation is open to differing interpretation, and judges must exercise their discretion in absence of clear guidelines. They may lead to biases especially where a judge reinforces traditional beliefs when passing judgement.

Like many other professions in Zambia, the Judiciary employs more men than women "Only 14% of the bench are women out of which none is a local court justice. Over 70% of the local court justices are above (50) years of age which implies that they fall within the conservative generation." 14 This brings to light two problems. First most judgements which are made, will be in line with tradition, which in many ways discriminate against a woman. It should be reiterated that most marriages in Zambia are contracted under customary law as such local courts have original jurisdiction. As such severe discrimination on the basis of culture is the likely consequence. For example, it was discovered that in the 1993 period, 100% of the petitions for divorce brought forth to the local court, on the grounds of a husband's adultery, were thrown out on the basis, that a man can not commit adultery. This view was reflected in a Kabushi local court, in Ndola, were a man petitioned for a divorce on the grounds that his wife was seen with another man in a car and that therefore she was an

adulterer. His petition was granted. The rationale given for the complainant to seek compensation and divorce was that there was an infringement of the man's exclusive rights to the sexual services of his wife. However this right is not reciprocal. The courts when deciding such cases often use circumstantial evidence and presumptions.

It is submitted that the traditional perception of a woman is that she is subordinate to a man and such customary laws are reluctant to allow a woman to have human rights. It can be safely argued that since over 90% of the matrimonial cases are handled by local courts, cases of violence against women will inevitably be influenced by cultural attitude presenting a bias.

"Statistical evidence shows that gender biases increase with decreasing hierarchy of the court structure. The strong belief in cultural practices can be evidenced by the fact that 100% of the local courts justice are married under customary laws." **15**

Court procedures and their accessibility especially to higher courts (Subordinate, High, Supreme Courts) produce many problems especially to the less educated woman who occupy a lower status in society. Many do not understand the technicalities in procedures and can not afford legal representation. The Legal Aid Department which was created in 1969 to cater free legal service is understaffed and is decentralised, meaning people in remote areas are unable to have access to the services. In fact, only 6% of the women who brought their cases before magistrate courts on the Copperbelt Province in 1993 were represented by a lawyer. This was unlike the men where 59% of them were represented. A raped woman is haunted by the feeling that no one will believe her story; she exposes herself to social rejection and fear of embarrassment. When cases do reach court, victims are put on trial as rules of evidence suggest that evidence of bad reputation of the prosecutrix, such as being a common prostitute is admissible for her character regarded as being an issue. This suggests that the moral character of the prosecutrix can be attacked. The questioning that goes with attacking the character of the prosecutrix often scares away many, as they will feel they are the accused, when the prosecution brings to light past sexual incidents. Another fact why women do not proceed to take cases to court is that such

cases are dealt with in open court, meaning people are free to come and attend hearings. This often makes women too embarrassed or guilty to explain in detail, their ordeal.

4.5 The Church Role

Even Christianity has deepened a woman's scar in that, rather than offering assistance, abused women are blamed or told that it is part of their Christian duty to accept suffering and that they must pray over it. They do not offer solutions and wrongly interpret the Bible. Those often cited are:

- a) Woman is less than man because woman was made from Adam's rib
Genesis 2, verse 21-23 reads, "The Lord God made man fall into a deep sleep, and while he was sleeping, he took out one of the man's ribs and closed up the flesh. He formed a woman out of the rib and brought her to him. Then man said, "At last, here is one of my own
land Bone taken from my bone and flesh from my flesh." Woman is her name because she was taken out of man...
- b) Women are the root of all evil and so must be suffer at the hands of man.
- c) the role of a woman is to submit to her husband Ephesians 5, Verse 21-23 discuss relationships between husbands and wives. All too often, only certain verses have been used in order to distort the relationship between the two.

For example, "Wives, submit to your husbands as to the Lord. For a husband has authority over his wife, just as Christ has authority over his church.." Women believing that the Lord desires submissiveness and suffering, accept violence as their fate and do not report abuses or seek legal recourse.

Violence against women is partially a manifestation of historically unequal power relation between the sexes, which has led to the domination of and discrimination against women, and has resulted in the prevention of their advancement. For time

immemorial, women have been recognised as being vulnerable because they occupy an "underprivileged" position in society. The disadvantage socio-economic position of the women in Zambia society has resulted in the uneven distribution of opportunities for economic participation between women and men. The high cost of living has brought about retrenchments and frustrations. Often men take it out on their wives, girlfriends or other women, by battering them, raping them even harassing them. And because the woman is virtually dependant on the man for survival, she will not report matter.

4.6 Conclusion

It is submitted that there are several reasons why women tend to cover up their abuses. Attitudes based on patriarchal traditions have infiltrated in homes and have created an environment, where the wife plays a subordinate role and her husband is given tacit right to abuse her. Because of the tradition that has been embedded into the minds of the wife, many feel that domestic violence is not really a problem. It is something they have to accept. But even outside the family within modern state apparatus, a woman may find that traditional values influence administrative practice in the male dominated bureaucracy such as the police. Many of the decisions not to prosecute arises from the negative attitudes the police officers inherited, when dealing with women problems. They much rather not get involved. With the Judiciary the fact that customary laws overtly discriminates against the woman and puts her into a situation where she is no more than a helpless child, creates grave problems. The woman is often ridiculed of example, a Lusaka local court justice was quoted as saying "Are you the first woman to be beaten by a husband." Her case was later thrown out. The Judiciary, like many profession in Zambia, is male dominated which means many judges will be insensitive towards cases of violence against women. The Church has in some ways offered few alternatives for the abused woman, asking them to pray for their suffering to end and fail to offer solutions.

These factors inevitably force a woman to keep quiet about her abuse. She may have

her own problems at home and may feel that she does not need to go through any more. However it must be noted that the way in which people respond to cases of violence against women affects whether or not such a woman is going to file a report and get legal assistance. The two are connected.

Thus in conclusion, violence against women is not simply a legal problem. It is a social problem that the legal system can not eliminate on its own. Attitudes towards women, too, must change.

FOOTNOTES (CHAPTER 4)

1. Quotation from Freedom from Violence Ed. By M.Shuler
2. Sheelagh Stewart Zimbabwe Working the System Sensitizing the Police to right of Women
From Schuler's Freedom from Violence (Unifem) pg 100
3. Ibid pg 161
4. Kersti YiiO Feminist Perspectives on Wife Abuse (Sage publications, Newbury, 1988) pg 57
5. United Nations Violence Against Women in the Family (New York, 1991) pg 56
6. YWCA Violence Against Women in Zambia Pg 36
7. Words of the Public Relations Officer Francis Musonda
8. S.5 Cap 133
9. S.14(3) Ibid
10. S.S.M. Edwards Policing Domestic Violence (Sage, Newbury, 1991) pg 25
11. Ibid
12. Speech delivered by Deputy Secretary to the Cabinet 10th April 1995
13. Gender Bias in the Zambian Court System (WLSA Lusaka, 1994) pg 12
14. Ibid 14
15. Opcit 15

CHAPTER 5 CONCLUSION: THE SOUL THAT WALKS IN FEAR KNOWS NO FREEDOM

Recommendations for a more responsive legal system

Although the problem of violence against women has recently sparked off debate and become a public issue, it is not a new phenomenon. Decades ago such issues were acknowledged but little attention was paid to them. Now violence is not only physical abuse. It encompasses psychological, sexual, economic, social or cultural abuse. *Additionally* violence against women is a violation of human rights. Human rights of the woman and the of girl-child ^{are} inalienable. For too long international human rights issues have been approached from a descriptive level when what is urgently needed are deepened perceptions, investigation and practical solutions. International concern for human rights will only have really meaning if it is part of an active international concern for the fate and welfare of the woman in general. It is submitted that gender based violence all forms of sexual harassment and exploitation must be eliminated. The human rights of women should form an integral part of the United Nations Human Rights activities including the promotion of all human rights instruments relating to women.

The Zambian legal system has enacted laws intended to protect the women. Unfortunately such laws are only viewed to be "paper legislation". They do not offer adequate protection and do not deter would _{law} be offenders. Further, because of the problems that result in having a dual system of _{law} rights of a woman are constantly abrogated in the guise of customary laws. Statistics that exist indicate that violence of all kinds is a common problem within the Zambian society. The causes of violence are not susceptible to easy definition. "The problem is complex and multifaceted and thus require solutions that are similarly complex and multifaceted"

It is submitted that the mere fact that there exist some laws which shield a woman from violence, an illusion of improvement in a woman's position must not be created. The law does not stop violence. There should be an evaluation of the laws- for example the penal code; law on rape only applies where there is penile penetration

into the vagina. All other forms of sexual abuse like anal intercourse are treated differently. It is suggested that the definition of rape be broadened. Even the rules of evidence should be rewritten because such rules often put the victim on trial rather than the perpetrator. It gives a free hand to the defense to defame a victim character and make her look as if she is of loose morals and as such could have consented to the alleged rape. The rules do not take into consideration the woman rights to refuse sex and the man's responsibility to respect that decision. Abused women must be given all the necessary assistance so that she had a clear access to legal remedies, should she wish to use them.

The writer admits that tradition is a necessary evil because it gives a society its identity. However there must be an attempt to codify customary laws to remove the element of discrimination towards women as well as to make them written and certain. Through codification, many inconsistencies with the written law and abrogations of rights will be avoided. Further, there is need for total reform in the justice system. Access to courts should be simple and free from administrative maze. Judges need to see that the law does not operate in a vacuum. Police and court procedures must assure sensitive and humane treatment of the victims, by means include ensuring anonymity and trials closed to the public. The police must also develop adequate protocols to manage the problem and act so that existing inadequacies of the law do not completely deprive a woman of protection,. Police practise must be improved- There should exist clear and explicit policies indicating how violence against women ought to be treated, for example there should be a policy that states that wife assault should be treated the same way any other assault should be treated. Thus there is need for the police, at all levels to undergo special training to understand the dynamics of gender abuse and equip them in techniques on how best to handle such situations.

It is submitted that the law can not be effective if people are unaware of it. There should be more efforts to arouse social consciousness of the injustice towards women. Awareness can be created through education. Schools should stress equality between men and women, and teach how to resolve conflicts peacefully. People need to be

aware that protection of women, respect for their human rights is equally as important as the maintenance of their family. The Zambia Civic Association should take the task of emphasising that a woman too has rights and that the recognition and implementation of such rights will lead to development and peace.

Laws should provide for the special reporting clinic, to make it easier for women to report their abuses. Further community shelters should be created with the aim of helping cushion the adversarial process envisioned by the law. Here people will be able to counsel women on available options and not necessarily tell them what to do. By demanding that abused women leave violent homes, will give such centres names like marriage breakers. Their role should be merely to outline various options an abused woman can take, offer shelter when necessary and stand by the victim when she makes her choice, even if it means securing her legal counsel. Further it must be pointed out that merely enacting laws is a fruitless exercise unless the persons for whose benefit then laws exist can seek redress through them. If they lack the means of claiming their rights, then nothing is achieved. This can be because of prohibitive legal costs illiteracy and fear of public exposure resulting in stigmatization.

BIBLIOGRAPHY

BOOKS

- Bart P. and Morgan E.G. (Ed) Violence Against Women: The Bloody Footprints (Sage Publications, Newbury Park 1993)
- Edwards Susan S.M. Policing Domestic Violence Women the Law and the State (Sage Publications, Newbury Park, 1989)
- Hansen M. and Harvey M. Battering and family Therapy A Feminist Perspective (Sage Publications, Newbury Park, 1991)
- Koss. M. P. and Harvey M.R. The Rape Victim (Sage Publications, Newbury Park, 1991)
- Schuler M. Freedom from Violence: Women Strategies from Around the World. (Ofe International, Unifem, New York 1992)
- Taylor J. and Stewart S. Sexual and Domestic Violence: Help Recovery and Action in Zimbabwe Von Glehn, Women and the Law in Southern Africa, Zimbabwe. 1991

Articles and Papers

"Efforts to eradicate violence against women in the family and society," prepared by the division for the Advancement of women UN DOC E/CN.6/1988/6 (30th Dec. 1987)

"Policies to End Violence Against Women" Prepared by the division for Advancement of Women UN DOC EGM/VAW/1991/WP.7

OFFICIAL PUBLICATIONS AND REPORTS

- Kankasa T. *The status of Zambian Women: Laws and Reality (obligatory essay 1979/80)*
- Mulonda P.C. *Human Rights Violations: A case study of Women's Rights in Zambia. (obligatory essay 1993/94)*
- Musho Lewis *Women, the Problem of Equality and Development in Zambia: A legal Perspective. (obligatory essay 93/94)*
- United Nations *Violence Against Women in the Family. New York 1989*
- YWCA, Zambia *Violence Against Women in Zambia Lusaka 1993*

Newspapers

- The Sun* May 22nd to 28th 1995
The Sun June 5th to 11th 1995
Zambia Crime News June 18th to 24th 1995
Zambia Daily Mail June 22nd 1995

Legislation

- The Constitution of the Republic of Zambia*
Universal Declaration of Human Rights
The Covenant of Civil and Political Rights
The Convection on the Elimination of all Form of Discrimination Against Women (1979)
Declaration on Violence Against Women (1993)
The Matrimonial Causes Act, 1973
The Marriage Act Cap 211
The Penal Code Cap 146
The Termination of Pregnancy Act Cap 554
The Police Act Cap 133

CASES

- Kaputa v Ngoma* (8/1114/1995)
Mwepu v Kamadisha (unreported 1986)
Katz v Katz (1972) All ER 219
Ash v Ash (1972) Fam 135
R. Musonda v F.C. Musonda 1993/HP/D.26
R v Yohani Mporokoso 2NRLR 152
R v Williams 1923 1 KB340
Hale IPC 629

<i>H.M. Advocate v Duffy</i>	(1983) SLT7
<i>R v Miller</i>	(1954) 2 All ER 529
<i>Nsofu v The People</i>	(1973) ZR 30
<i>C.Mulele v G.S. Nyangwe</i>	(SP5-85-95)
<i>The People v G.S. Nyangwe</i>	(SP1-102-94)
<i>Mwanza v The People</i>	(1976) ZR6
<i>The People v L Mweene</i>	SP5-47-94
<i>The People v Simon Phiri</i>	SP5-3-95