

UNIVERSITY OF LUSAKA

RESEARCH TITLE: GENDER BASED VIOLENCE AGAINST
MEN IN ZAMBIA: THE INEFFECTIVE
ENFORCEMENT OF THE ANTI-GENDER
BASED VIOLENCE ACT OF 2011

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Declaration Page

I **Kafwilu Kamenji Chinambu of** student number PHDL 1712606, do hereby declare that the contents of this thesis are entirely based on my own findings and that I have not in any way, used any persons work without acknowledgement. I therefore, take full responsibility for the contents, errors, defects or omissions herein.


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Recommendation

I recommend that this thesis prepared under my supervision by Kafwilu Kamenji Chinambu titled, 'Gender Based Violence against Men in Zambia: The Ineffective **Enforcement of the Anti-Gender Based Violence Act of 2011 and Related Laws**', be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing directed research.

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Dedication

I would like to dedicate this thesis to all my children, I love you so much.

Acknowledgements

I would like to take this opportunity to acknowledge everybody that was so instrumental during the time I was writing this thesis. I must hasten to add that the journey was not smooth, but with your support the journey became manageable. The support rendered morally, spiritually, financially, and in any other way is much appreciated.

Great thanks to the Almighty God whose grace is more than sufficient for me. I can't find the right words to express to describe a God who is so indescribable, and to explain his love which is unexplainable, am at a loss for words and my heart sings Oh, Oh Lord, am nothing without you.

My sincere gratitude goes out to my entire family I can't manage to mention individuals but your love and support keeps me going and it will go a long way; my good friend Sarah Zimba for being there for me when I needed her most; special thanks to all my research assistants(Cephas Siame; Brian Matemba; Macklina Chulu; Derrick Mwamba Chileshe; Dorcas Basila; Metson Hamusokwe and Rapheka Malunga to mention a few, who were on the ground ensuring that the information needed to complete this study was collected; special thanks to Cavendish University Zambia, members of staff and management. Thank you for all the wise counsel especially from Mr. Hudson Kaneneka, who I may call my life coach and many thanks to the School of Law. My gratitude also goes to Dr. Charles Mbita who set the pace for me to begin my thesis. Lastly but not the least, a big thank you to all my students past, present and future from different institutions, you give me a reason to work hard each day through your encouragement. May God bless you all.

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Abstract

Despite the enactment of the Anti-Based Violence Act of 2011 and other laws to curb gender-based violence, Zambia continues to experience alarming levels of gender-based violence. These include spouse battery, murder, sexual exploitation, rape, defilement, incest, forced prostitution, sexual harassment, sexual cleansing, early marriages and other forms of violence. In the first quarter of 2022 **6,915 cases of Gender Based Violence were reported countrywide compared to 4,254 recorded in the first quarter of 2021 showing an increase of 2,661 cases translating to a 62.5%.** The objectives of the study were to investigate causes of gender-based violence against men; to explore the provisions of the Anti- Gender based Violence Act of 2011 aimed at curbing GBVAM; to interrogate the causes of the ineffective enforcement of the Anti-gender-based violence Act of 2011 in curbing GBVAM. This study is useful to members of society, the government, non-governmental organisations, CSOs, the church, the international community, in short all stakeholders; as it unveils the reality of GBVAM which if taken seriously can contribute to the eradication of the GBV with the inclusion of all sexes, female and males respectively.

The literature review was organized in such a way that it addresses the fundamental issues raised in the research questions and objectives such as the forms, causes, and consequences of female domestic violence against men. The theories employed were feminist, masculinity and social vs. biological theories. The research methodology employed in the study was the Socio-Legal Research or Study, which is an event where the science of law meets the science of society. The mixed research method was used; comprising qualitative and quantitative research methods. The study unfolded that the major Causes of the Ineffective Enforcement of the Anti-Gender Based violence Act of 2011 and Related Laws are Male Dominance in Heterosexual Relations; Withdrawal and Failure to prosecute some cases leads to Ineffective enforcement of the Anti-Gender Based Violence Act and related Laws; Patriarchy results in the ineffective enforcement of the Anti-Gender Based Violence Act and related laws and other legal challenges. The study recommends that the Government Must reform the Law on Gender-Based Violence; The Government through the Ministry of Chiefs Must Empower Traditional Leaders; The Government must intensify on gender roles sensitization; The Government must consider Alternative Measures to Address GBVAM; All stakeholders Must Support victims of GBVAM more and the Government Must Reform the Zambian Human Rights System.

This thesis calls for and indeed opens up doors for future research on GBVAM in Zambia, as evident from the available literature that very few writers have directed their minds to writing on it as it is still a new occurrence. The researcher was of the view that future studies should contribute to scholarship on GBVAM in Zambia by embarking on the following equally important topics which are why empowered women are more prone to commit GBV against their partners; research on the relationship between poverty and GBV; why married women are also cheating on their husbands; to study the extent to which the law has failed to curb GBVAM and lastly, but not the least, why victims of GBVAM may not report to the police.

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Acronyms

ACHPR.....	African Charter on Human and Peoples' Rights
AGBV.....	Anti-Gender Based Violence
AIDS.....	Acquired Immunodeficiency Syndrome
ANOVA.....	Analysis of Variance
Assault OABH.....	Assault Occasioning Actual Bodily Harm
ATM.....	Automated Teller Machine
BC.....	Before Christ
CEDAW.....	Convention on the Elimination of All Forms of Discrimination against Women
CJS.....	Criminal Justice System
CPR.....	Cardiopulmonary resuscitation
DR Congo.....	Democratic Republic of Congo
ECOSOC.....	United Nations Economic and Social Council
ESCR.....	Economic, Social and Cultural Rights
GBV.....	Gender Based Violence
GBVAM.....	Gender Based Violence against Men
GBVAW.....	Gender based Violence Against Women
HIV.....	Human Immunodeficiency Virus
HMO.....	Health Maintenance Organization.
IBM.....	International Business Machines
ICC.....	International Criminal Court
ICRC.....	International Committee of the Red Cross
IPV.....	Intimate Partner Violence
IWRAW.....	International Women's Rights Action Watch Asia Pacific
MANOVA.....	Multivariate Analysis of Variance
MoCTA.....	Ministry of Chiefs and Traditional Affairs
NIPA.....	National Institute of Public Administration
NLACW.....	National Legal Aid Clinic for Women
PC.....	Penal Code
SADC.....	Southern African Development Community

SGBV.....	Sexual and Gender Based Violence
SME.....	Subject Matter Expert
SPSS.....	Statistical Package for Social Sciences
TAAS.....	Texas Assessment of Academic Skills'
TV.....	Television
UDHR.....	Universal Declaration of Human Rights
UK.....	United Kingdom
UN.....	United Nations
UNCSW.....	United Nations Commission on the Status of Women
UNFPA.....	United Nations Population Fund
UNICEF.....	United Nations International Children's Emergency Fund
USA.....	United States of America
UTH.....	University Teaching Hospital
VAW.....	Violence against Women
VBA.....	Visual Basic for Applications
VSU.....	Victim support Unit
WhatsApp.....	Messenger is a cross-platform mobile messaging app which allows you to exchange messages without having to pay for SMS
WILSA.....	Women in Law in Southern Africa
ZDHS.....	Zambia Demographic Health Survey
ZLDC.....	Zambia Law Development Commission
ZPS.....	Zambia Police Service

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0. Introduction

Human rights are rights that every human being is entitled to by virtue of being born human. These are moral guarantees that can be invoked. There are several human rights that were developed after the Second World War due to atrocities suffered during the war. Since then, human rights have begun to receive recognition from various players, and amongst them states, who have begun to promote and protect human rights. The United Nations has played a pivotal role in promoting human rights around the world, which include the promotion and protection of women's rights, women being identified as a vulnerable group. Women were considered as the weaker sex compared to their male counterparts, hence the enactment of various pieces of legislation to protect them.

In pursuance of this, the Zambian Parliament on April 15th 2011 enacted the Anti-Gender Based Violence Act.¹ An Act to provide for the protection of victims of gender-based violence; constitute the Anti- Gender-Based Violence Committee and establish the Anti-Gender-Based Violence Fund. Furthermore, Parliament enacted the Gender Equity and Equality Act No. 22 of 2015.² The Act to establish the Gender Equity and Equality Commission and provide for its functions and powers; provide for the taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity, equality and integration of both sexes in society; promote gender equity and equality as a cross cutting issue in all spheres of life and stimulate productive resources and development opportunities for both sexes; prohibit harassment, victimization and harmful social, cultural and religious practices; provide for public awareness and training on issues of gender equity and equality; provide for the elimination of all forms of discrimination against women, empower women and achieve gender equity and equality by giving effect to the Convention on the Elimination of all Forms of Discrimination against Women, the Protocol to the African Charter

¹ No. 1 of 2011

² Zambia's Progress Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcomes of the twenty-third special session of the General Assembly (2000). In the context of the Twentieth Anniversary of the Fourth World Conference on Women and the adoption of the Beijing Declaration and Platform for Action 2015.

on Human and People's Rights on the Rights of Women in Africa and the Southern African Development Commission (SADC) Protocol on Gender and Development; and provide for matters connected with, or incidental to, the foregoing.³

Since time immemorial women and children have been considered to be the only victims of domestic violence perpetrated by men. There is yet, another unexpected development of women also perpetrating violence against men; gender-based violence by women against men.

There has been an increased number of cases of spousal homicide committed by women.⁴ This has left a wave of fear and uncertainty which calls for a renewed commitment to justice if this vice is to be curbed. Several reasons have been advanced as to what may be the probable cause of the commission of such violence, which will be discussed later. It is still not yet known how this vice can be curbed, though inevitably the law is one of the important instruments to be employed.

It is undisputed that the pieces of legislation that have so far been enacted in Zambia on gender based violence were mainly targeted at protecting women. This gives rise to the need to review these laws so that they can cover both men and women. This paper will set forth the ways in which embracing a balanced legal framework can enhance opportunity and human rights for all genders in Zambia.

1.1. What is meant by 'gender'?

To say that domestic abuse is 'gender-based' does not mean that all perpetrators are male and all victims are female. It is vital to distinguish between sex and gender. Sex refers to the biological characteristics (anatomical and genetic) which distinguish the human species as male and female.⁵

³ Ibid

⁴ Dutton, Donald G.; Nicholls, Tonia L. (September 2005). "The gender paradigm in domestic violence research and theory: Part 1 — the conflict of theory and data". *Aggression and Violent Behavior*. **10** (6): 680–714.

⁵ Dutton, Donald G.; Nicholls, Tonia L. (September 2005). "The gender paradigm in domestic violence research and theory: Part 1 — the conflict of theory and data". *Aggression and Violent Behavior*. **10** (6): 680–714.

These relate to the system of reproduction, but do not themselves determine the differences in non-reproductive roles, behaviours, status or qualities which are attributed in any given social context to women and men. Biological theories, or ideological belief systems which claim a dichotomy of natural, innate and immutable social distinction between biological male and female human beings are demonstrably wrong: the evolutionary capacities which are human ‘species characteristics’ belong to both sexes, while differences between and within male and female human beings vary widely across time and place. The idea of two sharply differentiated sexes is largely a social creation, unsupported by any ‘natural order’. It has required constant vigilance, coercion and persuasion for its historical maintenance and the concept of gender is at the heart of that project.⁶

Gender refers to the array of socially constructed roles, traits, attitudes, behaviours, values, responsibilities, relative power, status and influence ascribed to male and female humans on a differential basis.⁷ Gender ascriptions (masculinity/femininity) are not biological, but learned. They are changeable over time, contested and vary widely within and across cultures. Gender refers not simply to women and/or men, but to the relationships between and among them, and to the social structures and mechanisms which affect our everyday lives. Gender orientation condition the way human beings are perceived, and how they are expected to think and act. Women and men are made, not born.⁸

1.1.1. Gender Based Violence

Gender Based Violence (GBV) is not only a serious public health social problem in Zambia but all over the world. The vast majority of victims are overwhelmingly girls and women. Although some men are victims of GBV, they constitute a much smaller number. The public may have the mistaken assumption that GBV, also called Intimate Partner Violence (IPV), only happens when extremely unstable drunk men or husbands beat up or rape their wives after a drunken night out. Gender Based Violence has wide a definition that includes many abusive behaviors that men direct

⁶ Ibid

⁷ Ibid

⁸ Ibid

at women and girls. Sexual and Gender Based Violence is “physical, mental, or social abuse that is directed against a person because of his or her gender role in a society or culture.”⁹

1.1.2. Domestic Violence against Men

Domestic violence against men deals with domestic violence experienced by men or boys in an intimate relationship such as marriage, cohabitation, dating, or within a family. As with domestic violence against women. Violence against men may constitute a crime, but laws vary between jurisdictions.

Whereas there have been efforts to encourage female victims of domestic violence to report it to the authorities, there have been comparatively few efforts to encourage male victims to report. Men who report domestic violence can face social stigma regarding their perceived lack of machismo and other denigrations of their masculinity.¹⁰ Additionally, intimate partner violence (IPV) against men is generally less recognized by society than IPV against women, which can act as a further block to men reporting their situation.¹¹

The relative prevalence of IPV against men to that of women is highly disputed between different studies, with some countries having no data at all. Some researchers believe the actual number of male victims may be greater than law enforcement statistics suggest due to the number of men

⁹ (ASAZA SGBV Training Manual, n.d., p.9)

¹⁰ Lupri, Eugene; Grandin, Elaine (2004), Intimate partner abuse against men, National Clearing House on Family Violence.

¹¹ Migliaccio, Todd A. (Winter 2001). "Marginalizing the Battered Male". The Journal of Men's Studies. **9** (2): 1–18. Doi:10.3149/0902.205

who do not report their abuse.¹² However, for both men and women, domestic violence is among the most underreported crimes worldwide.¹³

IPV against men is a controversial area of research, with terms such as *gender symmetry*, *battered husband syndrome* and *bidirectional IPV* (intimate partner violence) provoking a great deal of debate. The lines of the debate tend to fall between two basic polemics. The first of these argues that scholars who focus on female-perpetrated IPV are part of an anti-feminist backlash, and are attempting to undermine the problem of male-perpetrated abuse by championing the cause of the man, over the much more serious cause of the abused woman.¹⁴ The second polemic argues that IPV against men is a significant problem and underreported, and that it puts women in even greater risk of victimization by abusive men, which domestic violence researchers and radical feminists have ignored in order to protect the fundamental gains of the battered women's movement, specifically, the view that intimate partner abuse is an extension of patriarchal dominance.¹⁵ One

¹² Watson, Dorothy; Parsons, Sara (2005). *Domestic Abuse of Women and Men in Ireland: Report on the National Study of Domestic Abuse* (PDF). Dublin: National Crime Council of Ireland. p. 169. Retrieved June 28, 2014.

¹³ Strong, Bryan; DeVault, Christine; Cohen, Theodore (February 16, 2010). *The Marriage and Family Experience: Intimate Relationships in a Changing Society*. Cengage Learning. p. 447. ISBN 978-1133597469. Archived from the original on January 10, 2017.

¹⁴Yllö, Kersti (1988). "Political and Methodological Debates in Wife Abuse Research". In Yllö, Kersti; Bogard, Michele. *Feminist Perspectives on Wife Abuse*. Thousand Oaks, CA. Sage. pp. 40–47. ISBN 9780803930537.

¹⁵ Worcester, Nancy (November 2000). "Women's Use of Force: Complexities and Challenges of Taking the Issue Seriously". *Violence against Women*. **8** (11): 1390–1415.

of the tools used to generate statistics concerning IPV perpetration, the conflict tactics scale, is especially contentious.¹⁶

Gender based violence is a big problem not only in Zambia but globally, and efforts are being made by stakeholders to try to control the problem. Zambia has laws protecting women, children, persons with disabilities and the aged, including men from all forms of Gender-based violence under a number of her statutes. Gender Based Violence (GBV) can include physical, sexual, psychological, or other forms of violence.¹⁷

Gender Based Violence (GBV) against men is largely invisible, unrecognized and trivialized. As compared to GBV against women, society chooses not to believe that GBV can be initiated by women. A limitless amount of literature on GBV against women shows that it has been an endemic problem that is as a result of various factors. The common forms of violence found are physical, verbal, sexual and psychological. These are mainly caused by infidelity on the part of men, suspected male impotence, children from other marriages, violence as retaliation and alcohol abuse. Male victims choose not to report incidents of physical abuse because they perceive it to be a private matter or an incident that is too minor to warrant police involvement. The cultural norms that require men to present a strong image means abused men are less likely to verbalize fear of any kind which keeps them from reporting physical abuse. The various forms of physical abuse share many risk factors in both men and women. Some are psychological and behavioral characteristics such as poor behavioral control, low self-esteem, disorders in personality and conduct. Others are due to experiences, such as lack of emotional bonding and support. Abuse of drugs and alcohol is frequently associated with interpersonal violence, and poverty as well as income disparities and gender inequality stand out as important community and societal factors.¹⁸

¹⁶ Loseke, Donileen R.; Gelles, Richard J.; Cavanaugh, Mary M. (2005). *Current Controversies on Family Violence*. SAGE. ISBN 9780761921066.

¹⁷ Jeni Klugman. *Gender-Based Violence and the Law*. World Development Report Background Paper, World Bank, Washington DC. 2017.

¹⁸ Ibid

Social norms and attitudes perpetuate gendered disparity and violence. It is widely understood that the reality of GBV is that it is the cause and consequence of gender power imbalance and structural inequality. This makes it difficult for men and children to report and pursue prosecution of GBV related offences and fully benefit from the protection provided there under. Almost all tribes in Zambia identify men as providers and protectors of the family and women having a supplementary role, which largely centers on taking care of the family. The bible was quoted often to validate this social construction of family. The onus of safeguarding the dignity and respect of the family is very much on the woman. This relegates women into a domain that perpetuates male dominance, continually justifying discrimination and inequality. This is typically demonstrated in the predominant practice of traditional marriage counselling where women are taught to obey and please their husbands unconditionally. Although the Penal Code Chapter 87 of the Laws of Zambia does not provide for effective protection against violence in domestic relationship, the Anti-GBV Act is clearer cut in providing for measures that encourage survivors of domestic violence to report. The study however shows that as long as one gender exerts control and dominance in a relationship which is legitimized by the society, culture and religion, then it will be difficult for the survivor as well as the community to recognize, acknowledge and report physical, sexual or psychological and emotional abuse and seek recourse under the Act. In terms of consequences, physical injuries, emotional problems financial difficulties and HIV/AIDS are the negative outcomes of female-induced violence. Therefore, there is need for the government to educate society about the plight of male victims of female violence.¹⁹

1.2. Motivation

It is alarming how for some time now the issue of gender based violence has become rampant in society today. Hardly a week passes without hearing of a case of gender based violence.²⁰ This violence which takes various forms including psychological, verbal and physical abuse, and in extreme cases even results in the death of the victims.²¹

Surprisingly, there has been a turnaround of events as compared to previously, where the victims were mainly women and children, but now men are becoming increasingly vulnerable to acts of

¹⁹ Ibid

²⁰ Zambia Police Report on GBV Statistics, 2020

²¹ Ibid

gender based violence by women. A practice that is known as a taboo in many African societies including Zambia.

Imagine a group of people who have for a long time been considered as being strong enough to defend themselves being singled out as victims for several reasons including self-defense by women. Yet society is quiet about it and no one wants to talk about it. It is rarely acknowledged that violence against men, many of whom are brutalized from the cradle to the grave because of their gender is one the most pervasive human rights violation today in the world.²²

Gender Based Violence (GBV) is a major social problem in Zambia.²³ Though, there is legislation in place,²⁴ little has been done to curb the vice. The term GBV is widely used as a synonym for violence against women, as women are often victims and survivors of GBV. However, it must also be appreciated that the number of GBV cases against men is also on the rise.

1.3. Background of Gender Based Violence in Zambia

Gender-based violence has long been recognized as a problem all over the world. Although it affects both males and females, women and children are particularly vulnerable to gender-based violence due to various factors. In many cases, gender-based violence culminates into injury and loss of human life.²⁵ In particular, sexual gender-based violence has become a major health concern, causing not only physical but also emotional and psychological harm to its victims.²⁶ In the era of HIV and AIDS and considering all the serious consequences associated with the pandemic, there is great need to urgently address the situation.²⁷ Since the outbreak of COVID-19, violence has significantly increased in countries where the ‘stay at home’ measure was

²² (Bunch, 1999:1).

²³ Country Reports on Human Rights Practices for 2020 United States Department of State • Bureau of Democracy, Human Rights and Labor: ZAMBIA 2020 HUMAN RIGHTS REPORT EXECUTIVE SUMMARY Country Reports on Human Rights Practices for 2020 United States Department of State

²⁴ Anti-Gender Based Violence Act of 2011

²⁵ Country Reports on Human Rights Practices for 2020 United States Department of State • Bureau of Democracy, Human Rights and Labor: ZAMBIA 2020 HUMAN RIGHTS REPORT EXECUTIVE SUMMARY Country Reports on Human Rights Practices for 2020 United States Department of State

²⁶ Ibid

²⁷ Ibid

implemented to control the spread of the virus. The COVID-19 pandemic worsens the situation in multiple ways. Firstly, the incidence of gender-based violence has dramatically increased, mainly because the ‘stay at home’ measures and of the increased insecurity and stress the pandemic has inflicted on the society.²⁸ Zambia is no exception to the worldwide phenomenon of gender-based violence, and many Zambian men, women and children are faced with the risks associated with this vice on a day to day basis.

In fact, it is disheartening to note that available statistics indicate that the number of reported cases of gender based violence in Zambia has been increasing.²⁹ Recognizing the seriousness of the problem, Zambia has ratified various major regional and international instruments seeking to promote the eradication of gender-based violence.

These include the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of a Child (CRC), the African Charter on Human and People’s Rights (ACHPR) and the Southern African Development Community (SADC) Declaration on Gender and Development. By committing herself as a State Party to these regional and international instruments, Zambia has accepted the obligations therein to work towards protecting the rights of children, women and vulnerable men and in particular towards elimination of gender-based violence. It is, therefore, necessary that Zambia domesticates the relevant parts of the aforementioned Conventions and Declarations through enacting or amending relevant legislation.

Women and children hitherto, have been notoriously known to be the main victims of domestic violence until recently when the number of gender based violence cases by women against men have begun to rise. Several reasons have been advanced to account for this.

Historically, cultural traditions and dualistic belief systems have ascribed superior status to masculinity, and have developed diverse hierarchical gender orders which legitimize male

²⁸ Raymond Gemen, 2021, **Gender-based violence during COVID-19: it’s the weakest taking the blows**

²⁹ Ibid

authority and control over females and other subordinates.³⁰ These have then been presented as the ‘natural order’, rooted in our biology, or in divine intention. Such gender orders and regimes intersect with those constructed around race, class, ethnicity, sexuality, disabilities and other aspects of identity in complex ways to foster and sustain inequality. A fundamental cross-cultural reality, both historically and in the present, has been the socially sanctioned use of violence, among other practices, as a means of social control to preserve male dominance. Despite considerable and continuing social change, gender remains the overriding context for all kinds of violence, including domestic abuse.³¹ It cannot be ignored or trivialized if we want to eradicate abuse and violence.

1.4. Statement of the Problem

Gender-based violence has long been recognized as a problem all over the world. Although it affects both males and females, women and children are particularly vulnerable to gender-based violence due to various factors. It is time for us to face up to an ugly truth that it is not just men who can be murderers and violent, women too have lately been making headlines about abusing and attacking the opposite sex.³² Slowly, society is becoming violent and unsafe for everyone.³³ In the celebrated case of **Esther Mwiimbe v The People**³⁴, a woman murdered her husband by pouring hot cooking oil on him and she pleaded the defence of provocation, she was sentenced to death. At the time this case took place, there were very few cases of gender based violence against men reported, this has in the past few years brought into grim focus cases of women murdering men on the rise.³⁵ Such stories shatter the trend that only women get battered, that men are never victims, and that women never attack.³⁶ But the system is stacked against men because statistics show that more women are abused and murdered by men.³⁷ In the fourth quarter of 2021, there was a total of 7,920 cases of GBV reported. Out of this number 4,790 representing 60.6% were women; while 1,316 were men representing 16.6%; 1,814%

³⁰ Ibid

³¹ Johnson-Odim (2009). "For their freedoms!: The anti-imperialist and international feminist activity of Funmilayo Ransome-Kuti of Nigeria". *Women's Studies International Forum*. **32** (1): 55. Doi:10.1016/j.wsif.2009.01.004. Retrieved November 16, 2021

³² Oxford University African Society Conference, Corpus Christi College, Oxford University, May 5, 2012

³³ Jonsson, U., Patel, M., Kamchedzera, G., Rozka, D., Balaji, L., Betts, M. et al., 2001, Monitoring the realization of rights to adequate food, health and care for good nutrition: A way forward to identify appropriate indicators? Report by a pre-ACC/SCN Task Force, Nairobi, Kenya

³⁴ (1986) ZR 15

³⁵ La Fontaine, 1960

³⁶ Cipparone, 1987

³⁷ Munalula, 2005:148

were children representing 26%. The issue has become a taboo because victims are often too ashamed to talk about their experiences. For example Joseph Phiri, a Lusaka dweller who confesses to have on several occasions fallen victim of both verbal and physical violence by his wife, thinks reporting her to the police is taboo.³⁸ In view of the above, Anti-Gender based Violence Act of 2011 was passed to deal with Gender Based Violence. However, this law has a bias towards women. Although women murdering men is still mercifully rare, the truth is that men too are slowly becoming victims rather than perpetrators. There is need to come up with a strategy that can protect both males and females. The Act,³⁹ of course is aimed at curbing GBV however, various stakeholders have expressed concern over difficulties faced in the application and implementation of the Anti-GBV Act of 2011 and the court rules. The solution is likely to be found in a harmonized and collective approach that deeply addresses the concerns and issues of both men and women. Gender based violence is a phenomenon which is experienced all over the world. If not dealt with can result in negative impact on society including social, economic, health and political etc. Notwithstanding the fact that women and girls are more vulnerable to violence, sidelining male victims could have negative consequence on the efforts towards preventing and eradicating the scourge of GBV. This is particularly important to all stakeholders.

Gender based violence cases have continued to rise in the past few years. Beginning form 2013, gender based violence cases have continued to rise with 25,121 in 2019; 26,370 in 2020 and 2021 experiencing a slight drop to 20,540.⁴⁰ However, this decrease of the total cases does not include GBVAM as statistics indicate that cases of GBVAM in 2021 increased steadily over the fourth quarter, mainly 627 cases reported in the first quarter, 533 in the second; 578 in the third and 1,316 case in the fourth quarter bringing it to a total of 3,053 cases for the whole year. In the first quarter of 2022 6,915 cases of Gender Based Violence were reported countrywide compared to 4,254 recorded in the first quarter of 2021 showing an increase of 2,661 cases translating to a 62.5%. A total of 1088 men were also abused. Compared to the first quarter of 2021, there is an increase in

³⁸ NGOCC Report on the Commemoration of 16 Days of Gender Activism, 2021

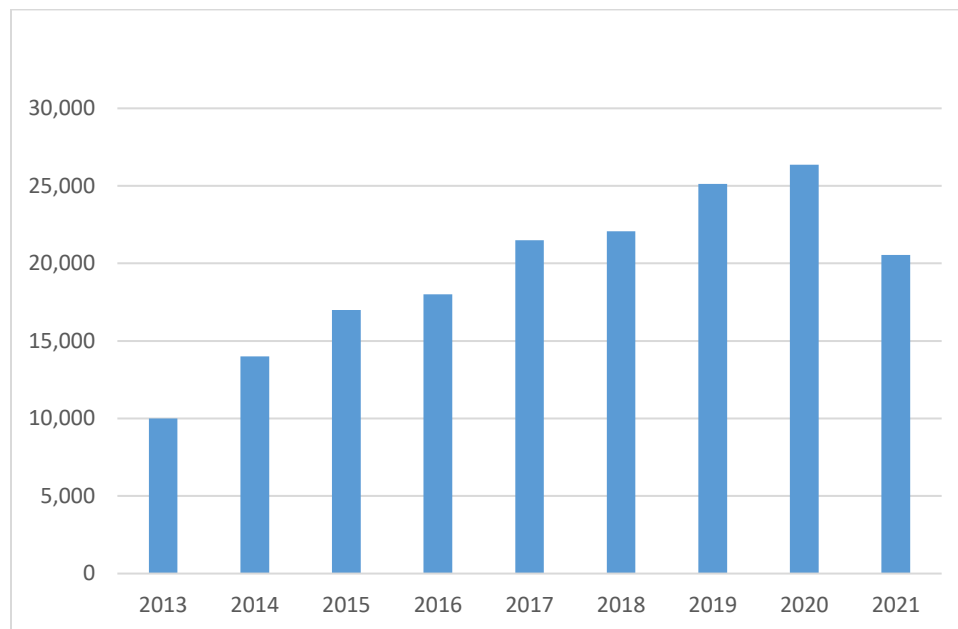
³⁹ Ibid

⁴⁰ Zambia Police GBV Report, 2022

cases of GBVAM as compared to last year the figure was 533. This calls for concerted efforts to fight this scourge using the medium of the law.⁴¹

Below is a summary of the total number of GBV cases reported all over the country.

Figure 1:GBVAM cases reported at police stations throughout Zambia:2013 to 2021



Source: Zambia Police

It must be appreciated that the above figures represent only those cases reported at police stations throughout the country, leaving out unreported cases.

1.5. General Objective

The primary objective of the study is to:

- Identify factors perpetuating the ineffective enforcement of the Anti-Gender Based Violence Act of 2011 in curbing GBVAM.

1.5.1. Specific Objectives

- (i) To investigate causes of gender based violence against men.

⁴¹ Ibid

- (ii) To explore the provisions of the Anti- Gender based Violence Act of 2011 aimed at curbing GBVAM.
- (iii) To interrogate the causes of the ineffective enforcement of the Anti-gender-based violence Act of 2011 in curbing GBVAM.

1.6. Primary Research Question

- Which factors perpetuate the ineffective enforcement of the Anti-Gender Based Violence Act of 2011?

1.6.1. Investigative Research Questions

- (i) What are the causes of gender based violence against men?
- (ii) What provisions in the Anti-Gender-based violence Act of 2011 address GVBAM?
- (iii) What causes the Anti-Gender Based Violence Act ineffective in enforcing GBVAM?

1.6.2. Research Hypothesis

It is hypothesized the enforcement of the Anti-GBV Act of 2011 has a bias towards GBVAW and hence ineffective in curbing GBVAM.

1.7. Significance of the Study

This study is particularly important in enhancing awareness on GBVAM; a phenomenon that has never been given the attention that it requires. It is notoriously known that men are the ones prone to display culpable behaviour of committing violence against women. This however, at present does not portray a true picture. In the recent past it has been discovered that women too are increasingly becoming perpetrators of gender based violence against men. Unfortunately, there is very little awareness on this issue as it is a controversial issue and society finds it hard to comprehend. The study gives an in-depth and introspective perspective on several aspects of GBVAM ranging from its historical development, the legislative framework and makes reference to factual cases on GBVAM obtaining in the country. Furthermore, the study unwinds the provisions of the Anti-Gender Based Violence Act of 2011, by highlighting some of its weak provisions, as well as challenges faced in the prosecution of GBVAM cases. Then the ineffective enforcement of the aforementioned provisions is also unfolded. Therefore, this study will be useful

to members of society, the government, non-governmental organisations, CSOs, the church, the international community, in short all stakeholders; as it unveils the reality of GBVAM which if taken seriously can contribute to the eradication of the GBV with the inclusion of all sexes, female and males respectively. Further it specifically points to some of the inadequacies being faced under the current regime and suggests ways in which the system can be reformed.

1.8. Scope and Delimitation of the Study

Going by the Anti-Gender Based Violence Act of 2011, the Act involves a vast number of provisions relating to GBV generally which may include women and children. For the purpose of this study the discussion will be narrowed to the ineffective enforcement of this Act as far as fighting GBVM is concerned which may result in spousal homicide. The study is also limited to heterosexual relationships, it does include same sex couples. Hence, the population of the study will comprise a total of 5,879 respondents; comprising perpetrators of GBV, victims of GBV, members of the general public and stakeholders involved in the fight against GBV. The study population is drawn from three towns; Lusaka from Lusaka Province; Kabwe from Central Province and Solwezi from North-Western Province. The period of study being between 2018 and 2021. The study population is 18,019, being the total number of GBV cases against men between 2018 and 2021 countrywide.

1.9. Justification of the Study

Gender based violence against men is a subject that for long has not been discussed due to its controversial nature. Society has not yet accepted the fact that women too, can inflict violence on their male partners. Hence the issue of GBVAM has been disregarded by many including the government and other stakeholders, as something unheard of as much emphasis is placed on protection of women and girls as the main victims of GBV, as evidenced from the statistics above. The main law on GBV in Zambia is the Anti-Gender Based Violence Act of 2011; which however, was enacted on the premise of protecting mainly the rights of women and children, being the main victims of gender based violence. It must also be appreciated that the Act does not operate in isolation, but with other laws. In most cases, it has been very difficult to deal with GVBAM as in some instances, the law does

not provide for male victims, e.g. in sexual offences, descriptions of certain offences such as defilement and rape are more tilted towards women and children as the only victims of sexual offences. GBV is usually related to feminism. As such there is very little literature on the subject of GBVAM as most as countless studies have been done of GBVAW as compared to GBVAM. This study therefore, is timely, as it unfolds the untold truth of men being victims of gender based violence. The study further elucidates the fact that the fight against GBV remains futile if GBVAM is not given the same weight as GBVAW.

1.10. Definition of Terms

“*Gender*” refers to the array of socially constructed roles, traits, attitudes, behaviors, values, responsibilities, relative power, status and influence ascribed to male and female humans on a differential basis. Gender ascriptions (masculinity/femininity) are not biological, but learned. They are changeable over time, contested and vary widely within and across cultures. Gender refers not simply to women and/or men, but to the relationships between and among them, and to the social structures and mechanisms which affect our everyday lives. Gender identities condition the way human beings are perceived, and how they are expected to think and act.

“*Gender based*” refers individuals of only one sex, i.e. Only to women or only to men, but not to both.

“*Violence*” as defined by the WHO as the intentional use of physical of power, threatened or actual, against oneself, another person, or against a group of or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.⁴²

“*Violence against Men*” Domestic violence against men deals with domestic violence experienced by men or boys in an intimate relationship such as marriage, cohabitation, dating, or within a family. As with domestic violence against women.

Therefore, gender based violence against men (GBVAM) refers to the intentional use of power by women directed towards their male counter parts.

⁴² Krug et al., “World Report on violence and health”, World Health Organisation, 2002.

1.11. Overview of the Chapters

The study comprises eight chapters; Chapter One provided an introduction and the motivation for the study, the background to the study and outlined the statement of the research problem, research questions and investigative (sub) questions, the primary research objective and secondary research objectives. The chapter statistically specified the scale and intensity of GBVAM in Zambia. The chapter also outlined the delimitation of the study.

Chapter Two reviewed relevant literature and the legal frame work on GBVAM, as it interrogated power imbalances between men and women on a personal, household and community levels. In addition, the chapter discussed the status of men in society.

Chapter Three discussed research methodologies and methods that were employed in the study. The chapter also unpacked tools of data collection (research methods), sample size, research sites and analysis of the collected data.

Chapter Four consisted of the theoretical framework underpinning the study. The theoretical framework provides the explanation as to why the prevalence of GBVAM and further gives an appreciation of reasons responsible for the perpetuation of GBVAM.

Chapter Five makes a presentation of the results. These are the results which were collected using the research instruments specified in Chapter Three. Chapter Six gives a discussion of the findings from the data collected. Chapter Seven discusses the findings in the light of what was reviewed in the literature review in Chapter Two and also discusses the findings against what is obtaining in other jurisdictions. While Chapter Eight gives the conclusions of the study and makes recommendations of the study.

1.12. Conclusion

In the past women have been victims of domestic violence, at home and away from home. This has resulted in deaths of both women and girls. In view of the above, several pieces of legislation both domestic and international have been enacted to promote and protect women's rights. Hitherto, the efforts being made by the international community may not have achieved their

objectives as women have now joined their male counterparts in perpetrating violence, which in some cases is fatal, resulting in death. This is not only a violation of human rights, but also a criminal offence. Several reasons have been advanced as to what may be the probable cause of such unfortunate occurrences. Considering the recent situations, it is evident that one of the major causes of domestic violence is the failure by married couples to know how to handle their differences; it may also extend to unmarried couples that are intimately involved. Parties to such relationships resort to violence in circumstances where their expectations are not met. Many couples do not have conflict management skills at all. So, they resort to fists of fury. There is also generally, a lack of support from social structures, and women also have learnt to hit back. It is still not yet known how this vice can be curbed, though inevitably the law is one of the important instruments to be employed.

CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction

Gender based violence has been the subject of many academic writings and comments. The literature review is seen as a synthesis of relevant previous studies and theoretical positions that frames empirical studies. It is premised as such in the current study so as to gain insight regarding the dynamics of research done in the subject of female violence against men. It is also done in order to identify common methods and theoretical frameworks that have been previously used in similar studies. It will be noted from the outset that most of the studies reported here were done in the western countries. This is due to the dearth of regional and Zambian literature on the topic, the more reason why this study is relevant.

The literature review is organized in such a way that it addresses the fundamental issues raised in the research questions and objectives such as the forms, causes, and consequences of female domestic violence against men. Several data sources were consulted to enrich this literature review and these include books (both paper and electronic), journal articles and a few unpublished theses and dissertations.

2.1. Historical Perspective

Female domestic violence against men has always been the most controversial subject in the field of domestic violence.⁴³ Literature shows that domestic violence against women is a norm, while violence against men is not only regarded as an exception, but almost non-existence. This kind of conceptualization of domestic violence has historical underpinnings. From medieval times, within patriarchal societies, it has been considered a "great taboo" for a man to be a victim of violence initiated by a woman. George⁴⁴ argues that this was due to the coalescence of two forbidden beliefs in society: first, that a man can never be beaten by a woman, which is an anathema particularly to men; second, the uncomfortable reality that women can be aggressive and violent, which

⁴³(Carney et al., 2006)

⁴⁴(2004)

contravenes stereotypical notions of femininity and is an attribution that neither men nor women wish to acknowledge.

The researcher totally agrees with the two writers. It has been believed for a very long time that women are weak and therefore, cannot be perpetrators of any form of violence against men who are strong physically as well as emotionally. This is true, for example, in Zambia, most of the laws relating to sexual offences favor women more than men e.g. Rape is defined in Section 133 of the Penal Code:⁴⁵

“Any person who commits the offence of rape is liable, upon conviction, to imprisonment for a period of not less than fifteen years and may be liable to imprisonment for life.”⁴⁶

“Any person who has unlawful [sex with] a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed ‘rape’.”⁴⁷

It is clear from the above excerpts that the offence of rape has been defined more to suit females. The question that can be raised here is, what happens to man who is a victim of a sexual crime? This is so because, since time immemorial, women and children have been considered to be victims of GBV. The term "sexual and other forms of gender-based violence" comprises not only and attempted rape, but also sexual abuse, sexual exploitation, forced early marriage, domestic violence, marital rape, trafficking and female genital mutilation.⁴⁸

It is for this reason that, historically in France and England, society ridiculed and humiliated husbands thought to be, battered and/or dominated by their wives.⁴⁹ Such treatments for these husbands have been attributed to their perceived inability to live up to the male-orientated patriarchal ethos in society, which persisted well into the twentieth century.⁵⁰

⁴⁵ Cap 87 of the Laws of Zambia

⁴⁶ Penal Code Amendment Act, 2010 (No. 2 of 2011)

⁴⁷ Linda Kasonde, Zambia Daily Mail, November, 27 2018

⁴⁸ WHO, 2019, Humanitarian Health Action Newsletter?

⁴⁹ (Steinmetz, 1977)

⁵⁰ (Pleck, 1987)

The researcher totally agrees with the above writer as it is common to find that a number of women in Zambia rely on their husbands for survival. It is evident from the statistics below obtained from a research:

“Most of the women had attained primary education (57%), were married (89%), and were Protestants (82%). About two-thirds (65%) were in the lowest three categories of the wealth index, while about half (49%) were employed for cash and 42% were not employed. Most of respondent’s husbands were employed for cash (75%), and most had attained at least eight years of education (52%).”⁵¹

Coltrane,⁵² says that the maintenance of a gendered patriarchal framework in society is premised on the unequal distribution of power and resources between people, particularly men and women. In terms of partner abuse, such power inequalities are seen to be maintained in and through gender stereotypes of the man as aggressive and dominant and the woman as passive and submissive.⁵³ This view point is complemented by George⁵⁴ when he argues that the history of domestic violence is linked to the patriarchal ideas of men always being the perpetrators, as in earlier periods women had fewer rights than men and were subordinate to them in the home. Such stereotypes have not been helped by the surge of feminist scholarship in the early 1970s and this is because gendered structures in society were seen as the bedrock of female oppression and were thus the fulcrum of feminist research. This has been succinctly put by Hoyle & Young:⁵⁵

“It is thus evident that core feminist principles are seen to have specific application to domestic violence research. Feminists view the gendered structure of society as an instrumental facilitator of violence against women. Men are the holders of public and private power, which creates a subordinate underclass of women. By holding this power, they exercise social control” over women, which at its extreme is expressed using violence, especially within the home.”

Although scholars like Malcolm George have shown from English historical evidence, and later analysis of it, that in the nineteenth century and before there was considerable concern for the

⁵¹Simona J. Simona1 Mazuba Muchindu, Harriet Ntalasha, September 2015, Intimate Partner Violence (IPV) in Zambia: Sociodemographic Determinants and Association with Use of Maternal Health Care.

⁵² (1998)

⁵³ (Dobash and Dobash, 2002)

⁵⁴ (2004)

⁵⁵ (2002: 79)

violation of patriarchal norms of the violence of wives against husbands, this was not taken seriously because it contradicted the principles of feminism. Johnson⁵⁶ also refers to the work of Steinmetz⁵⁷ who first described, battered husband' syndrome and the impact that this had on the view of domestic violence as a solely male against female action. She reported that violence against men by women was as common in the United States of America (USA) as men against women.

This is true and clearly indicative of what is currently obtaining here in Zambia, although not reported for fear of the male “ego”. However, Kelly⁵⁸ describes how Steinmetz was ridiculed and received verbal abuse and bomb threats and efforts were made to remove her from her academic posts because of her “unconventional study”. This made other researchers in the same field back away from this area because of the feminist lobby. In the historical context Kelly⁵⁹ contends “Criticisms have ranged from personally attacking the researchers, to more academic efforts directed at attacking the work itself by denying the validity of the reports, to an outright defense of the violent behavior of women or otherwise minimizing its significance”.

As the feminist perspective on domestic abuse has been so strong in recent years this has therefore meant that male victims have subsequently been deselected from any sample groups and “accordingly, one can assert that the feminist analysis of domestic violence is gender-biased, and its findings will reflect such a bias”.⁶⁰ Thus, it sounds plausible to conclude that contradictory views to feminist theory of men being perpetrators have continuously been suppressed, unreported, reinterpreted, or denied. This against the backdrop of evidence that demonstrates that there is now a recognition that a serious problem exists with every type of domestic violence by whichever gender, although the police and support services have not fully responded to the change. It is within this framework that the current study is premised.

St. Bernard posits that historians believe that Carnival was introduced to Trinidad by French Catholics in the eighteenth century, with the participation of Africans who brought Canboulay

⁵⁶ (2005)

⁵⁷ (1977)

⁵⁸ (2003)

⁵⁹ (2003:801)

⁶⁰ (Hoyle and Young, 2002: 81)

after Emancipation in 1833, adding a new cultural dynamic to its events. Constant transformation has been evident in this festival since its origins. These have been traced to medieval Latin *carnevelevarium*, Roman Catholic pre-lenten merrymaking, and celebration of the rebirth of nature in the ancient Roman pagan Saturnalian, and they have resemblances to the annual Hindu spring festival of Holika.⁶¹ The heightened participation of women in this festival from the late twentieth century has encouraged feminist perspectives which vacillate between discourses of victimhood and female agency.⁶² This has led to a shift in the manner in which most things are done in society including family, career, health, and all spheres in life generally.⁶³

The shift in culture dynamics has seen a change in the lifestyle of society. This includes the nature of relationships. Particularly to heterosexual relationships. For example, previously in Zambia, when women were being married off, they were counselled by traditional counsellors to have the interest of their husband at heart and be submissive to their husbands. This meant that women were submissive to their husbands and this trend was passed on even to their children. Therefore, it was rare to hear cases of women wishing to divorce their husbands or wilfully walking out of their marriages as is the case now.

The culture being exhibited by women presently is different from what it was back then. Back then women were taught to “*shipikisha*” (meaning to endure) in the marriage even under very strenuous circumstances. This may not be a very good proposition itself because it violates against the rights of women. But in a way, relationships were being sustained as women were quite passive and not as adventurous as the modern women who has been introduced to women empowerment.

Marriage under Customary law becomes valid only after acceptable traditional steps as accredited by that custom are taken. For example, one of the steps for a marriage to be valid is if the man has paid some form of dowry (lobola) to the family of the woman.⁶⁴ From then a woman is then nurtured of how to take care of her home and her marriage. According to Mbita, women under traditional marriages are taught to raise a hand against their spouses. This is

⁶¹ (Asha St. Bernard, p. 128),

⁶² Frances Henry & Dwaine Plaza (eds.), *Carnival is Woman: Feminism and Performance in Caribbean Mas*. Jackson: University Press of Mississippi, 2020.

⁶³ Ibid

⁶⁴ Chondoka, 1998

demonstrated during marriage rites when they are told to pick up small needles using form the floor with their mouths whilst in a kneeling position.⁶⁵

Most of our parents for example, were able to sustain their marriages mainly because of these teachings which promoted humility in women. With the advent of human rights particularly women's rights, we see a relaxation of most of the customs; the traditional practices have now been diluted with the western culture, even the types of marriages, after the European cultures became into integrated into the African culture, different values apply all together in the marriage set up. Issues of gender have now creped in giving both parties to a marriage an equal footing. This in itself has advantages as well as disadvantages. One disadvantage is that it has contributed to the increase of GBVAM cases.⁶⁶

In the case of **Mary Nalwimba**,⁶⁷ the Ndola High Court sentenced the accused to three years imprisonment for killing her husband using a brazier after they picked up a quarrel instigated by her deceased husband. She was charged with his murder. In passing sentence, the court held that as there was no justification for what she had done and since, as a woman, she was expected to be passive towards her deceased husband, she, therefore, had to pay for her actions. This reasoning of the court however, may not be justifiable in a democratic society like Zambia which is supposed to uphold human rights. The Constitution for example in Article 11 of the Zambian Constitution⁶⁸ provides that:

“there shall be no discrimination on grounds of race, place of origin, political opinions, colour, creed, sex or marital status.”

Discrimination in this case is vivid in the sense that a woman is not allowed to raise her hand against her husband. Looked at critically, we are talking about a gender that has been victim to uncountable cases of violence, yet even when they face the violence, they are not allowed to fight back.

⁶⁵ Dr Charles Mbita, 2012, Women's Violent Crimes against Abusive Partners in Zambia: A Critique of the Defence of Provocation; Masters' Dissertation

⁶⁶ Own research

⁶⁷ Unreported 2007

⁶⁸ Constitution of Zambia, Act No.1 of 1996

In another case of **Esther Mwiimbe v The People**,⁶⁹ the court dismissed firstly, the defence of self defence, then secondly the defence of provocation. This in a way was an unfair judgment as the court should have looked at the facts leading to the case, which could have resulted in cumulative provocation. This is also known as the “Baula”, which means a slow buildup of anger over a long period of time which leads to one reacting or even over-reacting to a given set of circumstances.⁷⁰

In contrast with the case of **R v Ahluwalia**,⁷¹ The appellant, Ahluwalia, suffered abuse and violence from her husband for years. After one violent evening, she went to bed thinking about her husband’s behaviour and could not sleep. She finally went downstairs, poured petrol into a bucket, lit a candle, went to her husband’s bedroom and set it on fire. Her husband died from his injuries. Ahluwalia pleaded manslaughter on grounds that she did not intend to kill him, only to inflict pain. She also pleaded the defence of provocation on grounds of her treatment during the marriage. Ahluwalia was convicted of murder and appealed the decision. The appeal was therefore allowed and a retrial ordered. Perhaps the Zambian courts should have taken a similar approach.

It is clear therefore, from the above cases that female violence against men is not well received in our society and females found liable for inflicting violence on men receive heavy punishment.

2.2. Causes of Female Domestic Violence against Men

2.2.1. Self-defence

There is no consensus in literature about the causes of female domestic violence against men. Most of the literature especially those which have feminist overtones suggest that women only engage in violence in self-defense, fear or retribution for real or perceived wrong doing on the part of men.⁷² Self-defense is often listed as a motivation for committing violence. In an analysis of women’s motivations for violence by Swan and Snow,⁷³ self-defense was the most frequently endorsed motive, with 75 per cent of participants stating that they had used violence to defend themselves.

⁶⁹ (1986) ZR 15 (SC)

⁷⁰ Ibid

⁷¹ [1992] 4 All ER 889; (1993) 96 Cr App R 133; [1993] Crim LR 63; (1992) 142 NLJ 1159

⁷² (Barnett et al., 1997)

⁷³ (2003)

For example, in the case of **Esther Mwiimbe v The People**⁷⁴ that sparked my interest in the subject of women's violence against men. The accused had suffered an abusive relationship with her deceased husband over a long period of time as he was extremely violent and frequently assaulted and injured her. On the fateful day, the deceased ordered her to cook some chips and sausages for him. She noticed that under the bed, he had a hammer, a pounding stick and a knife with which he threatened to kill all the children and the appellant. She went into the kitchen and fetched some hot cooking oil and told him that if he did not stop his ill intentions against them, he should surrender all the weapons to her. He picked up a knife and, instead of giving it to her gently and in a civil manner, he threw it at her injuring her on the arm as he advanced towards her. She then threw the hot cooking oil at him, burning him extensively. He was taken to the hospital where he subsequently died.

The learned High Court Judge found among other things that; (i) her actions did not demonstrate the fact that she did not fight as the deceased made no immediate attempt to harm her, (ii) the court found that she had every opportunity to run away and that her action was not instinctive but deliberate and unreasonable, (iii) the court disbelieved her and found that she poured cooking oil on the deceased as he lay in bed and, (iv) the court further rejected pleas of self-defense and, in the alternative 'provocation', holding that; both were unavailable on the facts of the case. The Supreme Court upheld the High Court's reasoning and condemned her to death. At the time Esther had killed her abusive husband, there is no doubt that she was condemned both by society and the criminal justice system. However, having embarking upon this study, I can safely say that her actions were justified and that the criminal justice system should have shown her mercy and imposed on her a sentence less than death. Taking the case of Mwiimbe⁷⁵ as a first point of reference, despite evidence being adduced to the effect that she had suffered an abusive relationship with her deceased husband over a long period of time, till she killed him in self-preservation, the High Court condemned her to death as 'she had every opportunity to run away and that her action was not instinctive but deliberate and unreasonable.' In disagreeing with the assertions of the learned High Court Judge that Esther had every opportunity to run away, empirical research has actually indicated that, in the case of 'battered women', it is important to remember

⁷⁴ Ibid

⁷⁵ Ibid

that... ‘Even where options of escape exist, the woman may be unable to act or even perceive the existence of such options’.⁷⁶ This then explains why Mwiimbe did not leave the abusive relationship. In the case of Mwiimbe, the court should have had taken the position of the American case of **State v Kelly**,⁷⁷ where the New Jersey Supreme Court recognized the fact that a battered woman did not have the choice to leave her husband due ‘to her feelings that if she tried to leave, she would be subjected to even more merciless treatment.’

Precious Longwe v The People.⁷⁸ In this case the appellant was trialed for murder because she killed her husband. The defence of provocation was denied. The appellant told the court that on 24th may 2016, after knocking off from work, she informed her husband that she was going to join friends for a drink at O’hagan’s pub in woodlands; he did not disapprove of it. That evening, she took alcoholic drinks from various places and through SMSs; she continually updated him of her whereabouts. At some point, she informed him that they had moved to Chez Ntemba Night Club and in turn he informed her that he would join her there. When she got home, she found her husband lying on a couch in the sitting room. He had also placed a gun on the table. She said she was apprehensive because he had a history of being violent. When she saw him go for the gun, she went for it as well and they ended up struggling for it. As they struggled, she heard a gunshot; the gun had discharged and shot him accidentally. She then saw him put his hand on the chest and then started to advance towards her. He charged at her and they ended up struggling for the gun again. She was in fear and in confusion, the gun discharged again.

The case of **Rosalyn Thandiwe Zulu v The People**⁷⁹ was referred to and it was submitted that in the face of evidence that her husband had previously acted violently towards her the court should have considered how a reasonable person, in her situation, would have reacted. The appellant believed that he was going to attack her and draw the gun.

⁷⁶ (Cipparone, 1987)

⁷⁷ 24 US 417 (1826)

⁷⁸ 2017/2018 appeal no. 182

⁷⁹ 1981 ZR 341

However, some scholars have refuted the above hypotheses and tagged them, a feminist way of denying the phenomenon of women as perpetrators of violence. Fiebert and Gonzales⁸⁰ are perhaps the fiercest critics of the self-defence hypothesis. They argue that data doesn't support such a hypothesis, instead, they posit that there are three reasons found from empirical studies why female violence against men exist: "to resolve an argument; to respond to family crisis; and to stop him bothering me."

The researcher partially agree with the writer above, but it is not true to assert that women do not act in self defence as they do according to the evidence given above. It is a common occurrence to find women killing their husband in self-defence for fear that they may be killed themselves. However, it is worth noting that, in most cases women who killed self-defence have been condoned in so doing. The question that remains to be answered is what should be done to reduce such incidents?

Professor Munalula⁸¹ made valuable contribution that; 'provocation' seems to be a male defence because the requirement for the reaction to be immediate, eludes most women. Even though CEDAW⁸² is regarded as a human rights charter for women, to which Zambia is a signatory, adopts a substantive model of equality. This is not simply concerned with equal treatment in law, but rather with equality in terms of the actual impact of the law.⁸³

2.2.2. Masculinisation

The other possible cause of female domestic violence which was proposed by Corry⁸⁴ is that of Masculinisation. The concept entails that females are capable of taking on a more masculine role in society and this makes them perform gender roles typical for men. Such women are able to enact controlling behaviour on other people including men. This is similar to the concept of performativity as coined by Judith Butler which she uses to deny the existence of rigid and natural

⁸⁰ (1997)

⁸¹ Munalula .M. (2005) Women, Gender Discrimination and the law: Cases and materials, Lusaka, Unviersity of Zambia Press.

⁸² The Convention on the Elimination of All Forms of Discrimination against Women (1979)

⁸³ Ibid

⁸⁴(2000)

gender roles in society.⁸⁵ Both concepts posit that people choose to either perform masculine or feminine gender roles depending on their social environment.

With activism on gender equality and equity. In Zambia, the Gender Equity and Equality Act provides in its pre-amble that:

“An Act to establish the Gender Equity and Equality Commission and provide for its functions and powers; provide for the taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity, equality and integration of both sexes in society; promote gender equity and equality as a cross cutting issue in all spheres of life and stimulate productive resources and development opportunities for both sexes; prohibit harassment, victimisation and harmful social, cultural and religious practices; provide for public awareness and training on issues of gender equity and equality; provide for the elimination of all forms of discrimination against women, empower women and achieve gender equity and equality by giving effect to the Convention on the Elimination of all Forms of Discrimination against Women, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development; and provide for matters connected with, or incidental to, the foregoing”.

Clearly embracing the international instruments on women’s rights. It is therefore, not surprising to hear of incidents where women hold high positions; become bread winners, in short performing task equal to those of men. It’s worth noting that equality refers to equality in terms of opportunities.⁸⁶ This perception is misconceived most of the time. In the researcher’s analysis, this women empowerment in a number of instances has led to problems mostly in the social sphere of life. Especially in relationships, women who are independent financially do not maintain relationships including marriages. A woman dependent on her husband and is not educated, or gets less money than the husband is more likely to show respect to her husband. Most empowered women are culpable to be perpetrators of GBVAM against their partners in many ways.

In **Mutubila v Mutubila**,⁸⁷ The Lusaka High Court granted former Zambian Ambassador to Italy, Frank Mutubila divorce from his wife, Evelyn. In this matter, Mr. Mutubila had asked the court to dissolve his marriage on account of his wife, Evelyn’s alleged unreasonable behaviour. Mr Mutubila said while he served as Ambassador in Italy, the respondent did not play her role as a

⁸⁵ (Butler, 1999)

⁸⁶ Own research

⁸⁷ Unreported: 2016

wife of an envoy, as she was usually away pursuing her studies. In his judgment, Judge, Mwiinde Siavwapa observed that the differences between Mr Mutubila and his wife are irreconcilable, adding that their marriage has broken down irretrievably. Judge Siavwapa said he was satisfied that no right thinking person, who knows what Evelyn did would expect Mr Mutubila to continue living with her.

This is a typical example of the behaviour exhibited by empowered women. On the other hand, society views the adultery of a man to be normal; while in most cases the adultery or any other form of misconduct is frowned upon by society and there is a stigma attached to it. Men's economic dependence and limited access to employment, education, training, money and credit makes them vulnerable to abuse. Changing environment (resulting in changes in gender roles) where women are in employment and earning more than men leads to fear of loss of power by men and increased violence against them. Interestingly, if looked at carefully, it appears that most cases of GBV are triggered by the contribution of both parties and just depends on who throws in the last punch.

2.2.3. Inequality of Men and Women

Gender experts say the root causes of GBV can largely be narrowed down to inequality for women and the associated violence and harmful and controlling aspects of masculinity that result from patriarchal power imbalances embedded in much of Africa's traditional and cultural beliefs. This imbalance often leads to pervasive cultural stereotypes and attitudes that perpetuate the cycle of GBV. Communities, especially in the rural areas, have continued to embrace negative cultural beliefs whereby GBV is the norm. If a man does not beat his wife, it is taken to mean he does not love her. Some beliefs condone men's infidelity, but never women. The dependency syndrome, whereby women depend on the perpetrators of violence for survival, puts survivors in vulnerable situations.

Taking infidelity as an example, the infidelity of a woman cannot be condoned. It is possible that the infidelity of a man can be tolerated, but that of a woman cannot be. In the case of **Enock Mafuta**,⁸⁸ the accused killed his wife for alleged infidelity by shoving her violently to the ground

⁸⁸ Unreported: 1986

and sentenced him to 18 months imprisonment, effective from the time he was arrested by the police, a period which had already elapsed whilst he was in custody pending the court proceedings. Similarly the court held that; ‘any reasonable man would have been provoked the way the accused did upon hearing stories of his wife’s infidelity’. In the case of **Paul Katemo**,⁸⁹ the accused killed his wife by striking her to death with a hose-pipe fitted with an iron bar on mere suspicion of infidelity, he was sentenced of 2 years with hard labour. Interestingly, In **Esther Mwiimbe’s Case**,⁹⁰ Esther Mwiimbe⁹¹ was sentenced to death for killing her husband, yet in that case it was after a series of threats of death from the deceased. Could it then be said that women killing men face more grave punishments? If so, the law is inherently not applied equally between men and women.

In the case **Mukata v Mukata**,⁹² Lusaka High Court judge Dorcus Malama dissolved the marriage between former Chilanga UPND Member of Parliament Keith Mukata and wife Maricoh Roisin Hoare. Last year on November 5, Maricoh filed for divorce, alleging that her marriage with Mukata had broken down irretrievably. In response, Mukata filed an answer and cross-petition in which he admitted that their marriage had broken down irretrievably. Delivering judgment in the matter, judge Malama said it was clear from Mukata’s evidence on record that there was no mutual love between the couple and that there was no recognition of the existence of their marriage. She found that Maricoh’s behaviour towards her husband was not only unreasonable but also atypical of the union of marriage.

This case looked at from a different perspective, in some way indicates that the evidence produced by Mukata, was considered to be of more probative value than then tendered by the Petitioner. Secondly, it is worth noting that the Respondent was incarcerated because he short his security guard in the company of his lover. This too was adultery that was committed by the Respondent. It appears in the opinion of the researcher that it is true that the adultery of a woman is more pronounced than that of a man. No one talked about the man’s adultery but the wife’s adultery was so serious.

⁸⁹ Unreported: 1994

⁹⁰ Ibid

⁹¹ Ibid

⁹² Unreported:2022

In February 2017, Judge Susan Wanjelani sentenced Mukata to death by hanging for the murder of his security guard, but acquitted his co-accused and lover Charmaine Musonda on all counts. In her judgment, Justice Wanjelani said she was convinced beyond reasonable doubt that Mukata's guard died from gun shots, which were discharged by him.⁹³

Perhaps, the court should have also considered the aspect of the Respondent also committing adultery, but it appears that the main contention and the grounds on which the marriage was dissolved were the grounds contained in the answer and cross petition.

Stanko,⁹⁴ argues that the sanctioning of even minor amounts of violence opens the door to more brutal and possibly fatal levels. He further observes that while justices are not reported to condone directly violence in the home, there appeared to be an assumption that the perpetrators (men) could not control their anger. The above unreported cases where men had killed their partners confirms Tibatemwa-Ekirikubinza,⁹⁵ analysis that 'courts have established that a wife's adultery (in patriarchal society) is a wrong of such gravity to the husband that it is likely to lead an ordinary normal man to lose self-control and in the heat of passion kill the wrong doer (either a woman or her lover) and that courts have enabled such men to pass the objective test required in provocation.'

The law provides for the principle of non-discrimination. The Constitution of Zambia prohibits discrimination in different articles and the grounds on which a person may not be discriminated against are included in two different constitutional provisions – Article 23(3) and Article 266. Apart from the Constitution, some pieces of legislation prohibit discrimination and provide for grounds against which a person may not be discriminated against which are not provided for in the Constitution. Jurisprudence from Zambian courts has not been consistent on the question of whether the list of the grounds against which a person may not be discriminated against is exhaustive. With the exception of the ground of disability, the Constitution does not define the other grounds on which a person may not be discriminated against.⁹⁶

23. *[Protection from discrimination on the ground of race, etc.] (1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect. (2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of*

⁹³ Keith Akekelwa Mukata v The People (10 of 2018) [2019] ZMCA 63 (27 May 2019)

⁹⁴ (1994)

⁹⁵ (2007)

⁹⁶ Jamil, Ddamulira Mujuzi

*any written law or in the performance of the functions of any public office or any public authority. (3) In this Article the expression "discriminatory" mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.*⁹⁷

*" discrimination " means directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status;*⁹⁸

In **Sarah Longwe v Intercontinental Hotel**⁹⁹, this was a test case on gender-specific discrimination and violation of freedom of movement and association as provided for under Articles 11 and 23¹⁰⁰ of the Constitution of Zambia. In this case it was stated that the hotel placed a rule that no woman shall be allowed at the bar alone unless accompanied by a man as a way of reducing prostitutes. At 7:00 p. m on the evening of February 4th, 1984 she attempted to enter a hotel in Lusaka to fetch her two daughters who had been at a party. However, a security guard at the door told her that she couldn't enter because she was an unaccompanied woman. She further elaborated how she attempted to pass him and he caught hold of her, she stated that since she was quite stronger and somewhat larger than the security personnel, she managed to throw him off and entered to register a complaint with the manager on duty with good reason. But the manager was unimpressed and still stood on the security guard's word that it was a policy that the hotel had so as to prevent prostitutes from entering the hotel.¹⁰¹

Longwe¹⁰² argued that the hotel had violated her rights pursuant to the articles provided for in the constitution. It is surprising how the hotel could assume that any woman who entered the hotel unaccompanied was a prostitute. This is unacceptable level of discrimination. Wouldn't the same be said about the men who went unaccompanied. For any act of prostitution to take place, there are two parties involved which includes the males. The policy should have instead stated that no one should go unaccompanied applying to both males and females. For sure there are also male prostitutes. This is a clear case of discrimination. Sara Longwe

⁹⁷Constitution of Zambia, 1996

⁹⁸ Article 266, Constitution of Zambia Act No.2 of 2016

⁹⁹ 1992/HP/765

¹⁰⁰ The constitution of Zambia 1996

¹⁰¹ Legalized Discrimination Against Women In Zambia, Sara Longwe Zambia association for Research and development (ZARD) November 1985

¹⁰² Ibid

happens to be one of the leading feminist movement advocates in Zambia who has championed a number of amendments to a number of discriminatory laws in the country.

At national level Ms. Sara Longwe reviewed some parts of the constitution and cited some vital articles that were not in support of women at law, not only were these laws reviewed but they birthed new statutory instruments. This review led to the birth of relevant international instruments and principles that Zambia has ratified or adopted, and these are; the *African Charter on Human and People's Rights*, *The Convention on the Elimination of all Forms of Discrimination Against Women and the Principles of 1980*.¹⁰³ It is quite fascinating that upon petition the case of this case it brought about such important statutory instruments which uphold the rights of women in society today.

With such activism women have become aware about their importance to the society not just from a matrimonial point of view but that they can add value be it in politics, education, justice, economics or the health sector and the mining sector too, although Zambia and other mining countries women are still in the minority however, their number as a proportion to the workforce continues to rise and it is likely to rise as the mining industry grows.¹⁰⁴

This is evident in so many cases here in Zambia, an example is drawn from the case **Edith Zewelani Nawakwi v The Attorney General**,¹⁰⁵ the appellant an unmarried woman, applied to the court for a declaration that her two children should be included on her passport without the consent of their putative father. The applicant argued that the need to swear an affidavit as a single mother violated various articles of the constitution. The high court in appreciating the equality of both sexes held that:

The mother of an illegitimate child has authority over the child as the father. Either the father or the mother of such a child can have the child included on their passport. Therefore, the integration of equality into the law and social structures may not be achieved overnight. It must be appreciated that some progress in being made through inequality sometimes does not seem to be explicit. If meaningful changes is to be seen more effort needs to be put in to raise

¹⁰³ AfricaBib.org Kankasa-mabula, Tukiya

¹⁰⁴ <https://women//mining for zambia.com>

¹⁰⁵ (1990-1992) ZR 112 H.C

more awareness on these issues as they stand as serious challenges and are an impediment to development.

2.2.4. Culture and Religion

Culture and Religion are also major cause of GBV though in most cases, they manifest through the laws that are applied in different jurisdictions. For example, in the book of Mathew 19, the Pharisees come to Jesus and ask “*Is it lawful to divorce one’s wife for any cause?*” Jesus’ answer goes back to the creation account and God’s original intention for marriage in Genesis 1 and 2. Jesus quotes Genesis¹⁰⁶ (the Creator “*made them male and female*”) and 2:24 (“*therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh*”). Next, He underlines that fact that when a man and woman are married they “*are no longer two but one flesh. What therefore God has joined together, let not man separate*”.¹⁰⁷

Furthermore, however, the Pharisees then ask another question: “*Why then did Moses command one to give a certificate of divorce and to send her away?*”¹⁰⁸ versus’ the verdict in Matthew¹⁰⁹ is: “*whoever divorces his wife, except for sexual immorality, and marries another, commits adultery.*” Therefore, Jesus allows divorce only in the case of sexual immorality.¹¹⁰

It is clear then that most cultural and religious practices do manifest in most of the laws that are prevalent in certain countries. It is also true from the readings for one to conclude that the drafters of the Matrimonial Causes Act of 2007 had in mind the biblical teachings on marriage and divorce. As adultery which has been pointed out here, is actually one of the grounds covered in Section 9.¹¹¹ The definition of marriage according to **Hyde v Hyde**

¹⁰⁶ 1:27

¹⁰⁷ Matthew 19:6

¹⁰⁸ Matthew 19:7

¹⁰⁹ 19:9

¹¹⁰ Matthew 19:9

¹¹¹ MCA of 2007

and Woodmansee,¹¹² is a clear indication of marriage as designed by God as defined above in the book of Genesis.

Since time immemorial, the church has been looked at as the anchor of marriages, a place where broken marriages are mended and a place known for so long as safe haven, paradoxically the church is equally an arena where so many marriages are breaking and in certain cases, spousal homicide is experienced. Divorce cases are alarmingly high in churches today. In certain cases the art of forgiveness between couples does not seem plausible as the marriage would have broken down irretrievably. The end result in such cases may end being infidelity by both parties; as well violence exhibited in other forms.

This position is now proving not to be true. For example in the case of In a shocking incident which left the Seventh Day Adventist (SDA) community in Lusaka, Zambia, a few years ago, stunned after an angry wife, Mrs Milumbe allegedly killed her husband, Mr. Milumbe over a disagreement.¹¹³ The couple had been living apart and they picked an argument over custody of the children. Then she ran over him with her vehicle in the presence of their 8 and 6 year old kids and he died on the spot. Unfortunately this woman was later acquitted. Ruling on case to answer, High Court judge Charles Chanda set Jacqueline free saying there was no evidence implicating her to death of her deceased's husband.

This was quite unfortunate as the case was not professionally handled to secure a conviction. Had the matter been properly investigated, the conviction would have been successful. This is a weakness in the criminal justice system when it comes to dealing with cases such as this one.

Suffice to say that in some cases church doctrines may bind two people to stay together yet they have since grown apart. If a marriage has broken down irretrievably, and the two parties to the marriage can no longer be expected to live together, perhaps separating the two may be a solution to preventing GBVAM as well as divorce in worst scenario cases.

¹¹² 1866, 1 P.D. 130

¹¹³ Ibid

However, for example the Roman Catholic doctrine does not embrace divorce. Yet it is evident that even within the church GBV is prevalent.

Furthermore, the clash of cultures and traditions may also perpetrate violence against men, (Whose culture is superior in the homes)? For example, who is to have custody of children at divorce? The Bemba speaking people believe in matrimonial kinship system which gives the children to the mother upon the death of their father or upon divorce. The mother and her family have the obligation to maintain them, and the father is cut off, where as some tribes practice patrilineal kinship system which is the converse of the matrilineal. The father keeps custody of the children and he and his family are responsible for their welfare, and the mother will usually not have access to them at all.¹¹⁴ Such patterns can cause problems in future. In the case of patrilineal system where the man has custody of the children, the woman may feel sidelined and begin to make attempts to have custody of the children. As this struggle continues eventually it may culminate in behaviour being exhibited by the woman in the form of GBV. Therefore, it is right to say that such traditional practices are a potential cause of GBVAM. Culture is at the core of promoting gender based violence. It is true that the most women suffer at the hands of abusive partners for the sake of maintaining the marriage or relationship.¹¹⁵

Munalula,¹¹⁶ looks at the process of achieving gender equity through law reform. By tracing the process of amending the Constitution and other overtly discriminating laws in Zambia. She questions the effectiveness of legal centralism in circumstances which clearly indicate the existence of legal pluralism. Whilst acknowledging the importance of a formal legal framework with which to challenge the manifestation of discrimination. She argues that law should be treated with care because it may be innately incapable of ensuring protection and the upholding of rights. Even where it is available, it may not be resorted to for myriad reasons. She thus, suggests that the

¹¹⁴ Lillian Mushota., (2005). Family Law in Zambia. P. 357

¹¹⁵ Simon Mwanza, Joseph Phiri, Akombelaw Muyanga, Agness chibamba, June 2019, Understanding Cultural Roles of Traditional Marriage Counsellors in Ng'ombe Compound of Zambia

¹¹⁶ Margaret Munalula, 1995, Feminism, Women Law Bureacracy International Journal of Discrimination And The Law Vol1 Issue 2 1995, Zambia Law Journal

search for gender equity should not stop at the law, nor should it be derailed by successes in law reform. Real change requires a broader strategy

Gender inequality is prevalent in many sectors and is reflected in low status and limited opportunities for women and girls. In addition to poverty, cultural and traditional practices continue to infringe the rights of women and girls. Some of the customary practices that contribute to discrimination against women and fuel violence include sexual cleansing (a tradition whereby a woman is expected to have sex as a cleansing ritual after her first period or after becoming widowed, initiation ceremonies that indoctrinate young women to be submissive to male domination, early marriages, *lobola* (bride price) and polygamy.¹¹⁷

2.2.5. Emotional Control Problems and Fear

Women often used violence to get even with their partners for something they had done against them. In terms of fear, Archer,¹¹⁸ indicates that some women's violence occurs in the context of fear of assault from their partners and the need to protect themselves from physical harm. This is true in many cases when a woman is subject to abuse, she tends to use the force necessary for fear of being harmed by her husband.

Situational Couple Violence occurs when a disagreement that turns into an angry argument escalates into violence, which can be mild or severe. It may be an isolated incident, or there can be a recurring pattern. As implied, the violence is situational, but is not used as part of a general process of coercive control. Although women and men may both be perpetrators, men usually do more serious damage, and their violence is more likely to introduce fear into a relationship. Even if not starkly gendered as the intimate terrorism which mostly connects power and control with notions of male entitlement, it has differential impacts and meanings for women and men. Robertson and Murachver¹¹⁹ have pointed to the emotional imbalance manifested in all perpetrators of violence and they argue that female perpetrators are not an exception in this regard. They hold that perpetrators of both sexes often have emotional control problems and a related inability to communicate while talking through issues in homes. They also argue that many

¹¹⁷ Africa renewal, A Procast form the UN 28th September, 2021

¹¹⁸ (2000)

¹¹⁹ (2009)

perpetrators were victims of domestic violence themselves previously, this could be when they were growing up as children.

For example, the court in the case of **Phillia Chisokonono**,¹²⁰ the court sentenced her to 6 years imprisonment for causing the death of her husband whom she hit on the head with a piece of firewood after a domestic quarrel initiated by him. The finding of the court was to the effect that: ‘Society does not expect a woman to be violent towards her husband; as such courts should not hesitate to show this indignation by passing befitting sentences.’

Bou-Franch and Garces-Coejos Blitvich¹²¹ explain how conflict begins, unfolds and ends in a WhatsApp interaction within a Spanish family on 2018’s International Women’s Day. The results show that conflict is constructed across multiple turns when some participants’ pro-feminist views are seen negatively by others. Thus, feminism emerges as a source of conflict among the family members. Another important issue drawn from the findings is the key role played by multimodal elements which have different functions related to how conflict is created and unfolds, such as being the origin of conflict itself, showing disapproval with others’ opinions, intensifying opinions to show emotion or trying to reduce face-threat.¹²²

Fear is the main cause for women killing their partners on grounds of self-defence; and this has already discussed in depth above.

2.2.6. Growth of Feminism

Whilst domestic violence against women receives significant international attention and prominence within the scholarly, media and policy discourses, much silence and reservation is evident in the case of domestic violence against men by women. The dominant societal notion portrays women as the natural victims and men as perpetrators, making it challenging to contextualize men’s experiences of domestic violence in the intimate relationship. Currently, there is a paucity of scholarly information on domestic violence against men and policy, legal and social

¹²⁰ Unreported:

¹²¹ 2014

¹²² Lucía Fernández-Amaya, Managing conflict originated by feminism A case study from WhatsApp interaction among Spanish family members Journal of Language Aggression and Conflict, Volume 8, Issue 1, Mar 2020, p. 88 - 117

supports available for these victims require attention. It is thus, suggested to break the social prejudice associated with such violence and adopt appropriate policy and legal interventions including gender-neutral laws to protect men at home from violence perpetrated by women.¹²³

The growth of feminism has seen society completely turn a blind eye to GBVAM. While GBV has always been characterized by female victimhood and male perpetration, it is worth noting that this definition makes no explicit reference to the gender of either the victim or the perpetrator. The possibility, then, of male victimhood, is important to consider. This is not to deny that most of the energy and resources should focus on women and girls as victims (and indeed on marginalized victims such as trans-people, gay men and lesbian women, and people who are gender variant). McMahon,¹²⁴ for example, points out that there is no international legal instrument specifically prohibiting sexual violence against men, which she believes reinforces the prevailing notion that only women and girls are victims of GBV. Yet the European Institute for Gender Equality states that "... it is always understood that gender-based violence means violence against women".¹²⁵ This is also true with Zambia, there is no specific law that protects men as victims of GBV not even the 2011 Act itself. Yes there are several laws that have been enacted to promote and protect the rights of women. It is evident then that the liberal feminists did work hard that laws have been passed to promote women's rights.¹²⁶

Munalula,¹²⁷ gender discrimination embedded in the legal system has impacted the delivery of justice in Zambia over twenty-five years. The Zambian standard of justice differentiates between man and women on the basis of gender as well as differentiating between different groups of women on the basis of legal prescription. The problem associated with this double standard are rooted in the Constitution of Zambia, which does not categorically

¹²³ Anisur Rahman Khana. Female perpetrated domestic violence against men and the case for Bangladesh Department of Sociology, East West University, Dhaka, Bangladesh: Journal of Human Behavior in the Social Environment Published online: 29 Mar 2012

¹²⁴ (2018)

¹²⁵ (EIGE, 2018)

¹²⁶ Rob Hamilton, 2018, Hidden traumas when men are victims of sexual and gender based violence.

¹²⁷ Margaret Munalula, 2008, Gender discrimination, legislation and administration of justice, Zambia Law Journal

prohibit gender discrimination. Resistance from both individual women litigants and the women movements as a whole, premised on a feminist critique of the law and fueled by international standards, has chipped away at patriarchal attitudes on the part of the courts, albeit in a haphazard fashion. In the 1980s and early 1990s a number of statutory law reforms, particularly in respect of women property rights, notable the Intestate Succession Act No. 59 of 1989, but also with regard to spousal homicide, were enacted. It is also increasingly possible to identify clear improvements in the judgment of the courts, especially at higher levels. The courts must themselves take ultimate responsibility for the quality of justice they deliver. Within the terms of the law, the courts have sufficient discretionary power to take an overtly feminist or anti-feminist approach.

This is conclusive of the facts that feminism is heavily embraced within our legal system here in Zambia. And the challenges associated with feminism, as already discussed above, cannot be over emphasised.

2.2.7. Intimate relation (sexuality issues)

Physical violence occurs also where there is a suspicion of extra marital affairs, which in some cases even results into death. Infertility as well is a source of violence, where no children are being born in the marriage or where the children being born are of preferred sex, (girls rather than boys or vice versa) or in some cases where the child born is of a physical challenge. Partners may further complain of sexual dissatisfaction and these days it is common for women to have multiple sexual partners even when they are married. Some married women may even end up being impregnated by other men, but yet hold their husbands that they are responsible.

When a couple is in a relationship especially a sexual relationship, they create a bond. This bond is the one which causes people in a relationship to have a claim over their partners whether married or un-married. The feeling of belonging to the other causes a sense of insecurity, fear and jealousy to the people in the relationship. Hence this causes various reactions in several by the parties to the relationship, which in most cases leads to GBV in which they may not even be aware that they are committing the offence. Some think that maybe wife battering is a sign of love; or jealousy is a sign of love. There is a

common proverb in Zambia which states that “*nsanje ndiye chikondi*”, meaning that if your partner is jealous then he or she loves you.¹²⁸

Most of the cases of GBV that occur between couples involve sexual relationships. This is what causes partners to react to certain situations. In one of the most recent GBVAM cases in Zambia, Annie Monta, 30, is alleged to have murdered her husband Mbulu popularly known as Chile One on April 30th this year at their home in riverside Kitwe after a marital dispute. Monta, who was brought in a private vehicle amid tight security by police in full riot gear, appeared for mention before Chief resident magistrate Chongo Musonda who explained to her the charge of murder contrary to section 200 of the penal code chapter.¹²⁹ Monta has since been committed to the high court for trial.¹³⁰ It is true to say that this is intimate partner violence.

2.3. Forms of Violence Women Use on Men

There are a few types of female domestic violence against men existing in literature and these are physical, emotional, verbal and economic violence. The USA Department of Justice¹³¹ indicates that both women and men have been killed and physically abused as a result of domestic violence. It further stresses that physical violence often occurs after a period of months or even years of other forms of abuse, such as threats, intimidation and controlling behaviors such as restrictions of the other person's self-determination, through isolation, manipulation and placing of limits on personal choices and freedoms.

A number of men are in abusive relationships. It happens to men from all cultures and all walks of life. Therefore, hiding the abuse that they may be going through may not be the best option especially with the escalating numbers of men being killed by their spouses. Though a majority of domestic violence victims are women, abuse of men happens far more often than anyone would probably expect. The recent reports of male abuse have been in the limelight mainly because deaths occurred. In fact, there are a lot of men that are in abusive relationships, but could never disclose

¹²⁸ Own Research

¹²⁹ Ibid

¹³⁰ Lusaka Times, 1st May, 2022

¹³¹ (2007)

even to their closest relative or best friend. Some men have been battered, clobbered and have undergone all forms of abuse but non-of-them has the guts to come out in the open and report to the relevant authorities or even just their relatives. Many men feel great shame that they have been beaten down by a woman or failed in their role as protector and provider for the family. Families have reported the cases to police after losing a loved one, a situation that is sad because that is a permanent loss that probably could have been avoided if men report abuse at an infant stage.

2.3.1. Physical Violence

Physical abuse is any intentional act causing injury or trauma to another person or animal by way of bodily contact. In most cases, children are the victims of physical abuse, but adults can also be victims, as in cases of domestic violence or workplace aggression. Alternative terms sometimes used include physical assault or physical violence, and may also include sexual abuse. Physical abuse may involve more than one abuser, and more than one victim. Physical abuse means any non-accidental act or behavior causing harm to a person, trauma, or other physical suffering or bodily harm. Abusive acts toward children can often result from parents' attempts at child discipline through excessive corporal punishment.¹³² Physical violence is one of the most common forms of domestic violence being experienced by men around the world

Section 248 of the Penal Code, Chapter 87 of the Laws of Zambia, is the major statutory provision criminalizing physical violence in general terms and provides that:

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years.”

Section 248 of the Penal Code¹³³ does not define what amounts to ‘Assault O.A.B.H’ as the statutory provision only defines the offence as a less serious offence (misdemeanor) and outlines the penalty a court may impose on a perpetrator. However, as a matter of practice, within the CJS, Assault O.A.B.H is deemed to be abrasions or cuts where a sharp instrument

¹³²McQuigg, Ronagh J.A. (2011)"Child physical abuse". American Humane Association.

¹³³ Chapter 87 of the Laws of Zambia

was not used to inflict injuries on a victim as opposed to unlawful wounding, where a sharp instrument has to be used to inflict injuries on a victim for the offence of ‘unlawful Wounding’ to suffice. Going by the English case of *R v. Miller*,¹³⁴ the court *held* that the assault may be psychic or physical. ‘Occasioning’ may be understood as causing or resulting in...‘actual bodily harm,’ which is to say; any injury which interferes with the health or comfort of the victim. As a matter of practice, to secure a conviction for the offence of Assault O.A.B.H, the State must produce a medical report form revealing the extent of injuries inflicted on a victim at the hands of the accused, however, in the case of *Maxwell Chanda v. The People*,¹³⁵ the High Court *held* that:

*...in the case of Assault O.A.B.H, medical evidence is
necessary only when the defense denies injury and the same is
in issue.*

What emerged from the case of *Chanda* is the fact that a medical report form is not a prerequisite in a case of physical violence, however, the practice within the CJS, more so on the part of the police is that a case of physical violence is often not processed to court if there is no medical report form in the docket (case file). A medical practitioner only signs the medical report form once payment is made by the victim, and there is no provision for the police to pay on behalf of victims.

Similarly, in Zambia it is common to hear stories of women physically abusing their partners. Reeves Malambo, owner of Autoforce, was stabbed by his girlfriend and died from excessive bleeding. The facts leading to the case were that the accused Tshabu Benos ‘hit’ businessman Reeves Malambo with a knife that allegedly killed him as she tried to save herself from being hit on the floor. In this case, Benos was charged with the murder of Malambo, who was Auto Force proprietor. Allegations are that the accused committed the offence on January 28, 2017. Delivering the over two-hour judgment in a packed courtroom, Judge Chawatama said after analysing the evidence before her, she found that the act of stabbing Malambo in the back and the way it happened was not an act of self-

¹³⁴ (1954) 2 QB at 282

¹³⁵ (1971) Z.R. 34 (H.C.) 120

defence. She added that there was no evidence to suggest that Benos's life was in danger. Unfortunately, most cases of physical violence do result in death.¹³⁶

2.3.2. Physical Violence resulting in Sexual violence

Sexual violence can be in the form of rape (including marital rape), defilement of child, incest, unnatural offences, and sexual harassment, which includes words or touching such as spreading sexual rumors, rude gestures or noises, inappropriate touching or rubbing and offensive comments about someone's clothing or body. Sexual violence is common in homes, at work and in learning institutions and is mostly committed by someone who is in a position of power such as guardian, boss, teacher or lecturer in case of those in high learning institutions. Some men who have survived sexual assault as adults feel shame or self-doubt, believing that they should have been "strong enough" to fight off the perpetrator. Many men who experienced an erection or ejaculation during the assault may be confused and wonder what this means. These normal physiological responses do not in any way imply that you wanted, invited, or enjoyed the assault. Section 3 (1)¹³⁷ provides that, sexual abuse includes, the engagement of another person in sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person's sexual integrity, or sexual contact by a person aware of being infected with HIV or any other sexually transmitted infection with another person without that other person being given prior information of the infection.

Unfortunately, most laws in Zambia are framed in such a way that for most sexual offences, according to the wording of the different Acts, it envisages that a male is the perpetrator in most cases. The *mens rea* for rape is the intention to have sexual intercourse; while the *actus reus* is penetration of the vagina with penis without the consent of the woman or girl.¹³⁸

It is evident that the perpetrator are male while females are expected to be victims. This somehow makes it difficult to prosecute sexual offences against males. Yet Zambia does record cases of males being victims of sexual violence, but the law has not been reformed to adequately provide for this. For example, on 22nd February in Ndola, a 45 year old woman of Mushili village defiled a child of 13 year old boy of Lubuto Township was convicted.

¹³⁶ <https://www.znbc.co.zm.news.2018>

¹³⁷ Anti-Gender Based Violence Act of 2011

¹³⁸ Simon E Kulusika, 2006, Text on Cases and Materials in Criminal Law, p512

Majory Palansha has since been committed the High Court for sentencing. The crime has a minimum sentence of 15 years.¹³⁹

This position is supported by the case of **Charity Mulenga v The People**¹⁴⁰ in which the victim was a young boy. The accused was convicted and sentenced. On appeal to the Supreme Court, the sentence slapped on the convict by the High Court was reduced because according to the Supreme Court, defilement on a boy child is not prevalent in Zambia. **Steven Makayo v The People**¹⁴¹ which was a defilement case the magistrate convicted the accused and committed him to the High Court for sentence. In passing sentence, the Judge had this to say: “I have considered the mitigation but this is yet another shocking set of facts that an old man decides to defile a 5 year old child. We can only ask God to save this country from this evil that has intoxicated so many men. I sentence you to 40 years imprisonment with hard labour.” Further, sexual offences need to be corrected. However, the position is not clear as to how this can be achieved.

To be considered sexual violence there does not have to be penetration to the vagina or anus. It is a common misunderstanding that so long as there has been no penetration, we don't have to worry too much. Yet, to be considered sexual abuse, i.e. in case of children, behaviors do not have to involve penetration to the vagina, anus, or mouth (by penis, tongue, finger or object), or involve force. Any touching of a child's or teen's genitals for the needs or sexual pleasure of an adult or older child is sexual abuse, and while it may not cause immediate physical harm to the child, it is abusive.

Kombe v The People¹⁴²Mwanamwambwa, JS, in delivering the judgment of the Supreme Court observed as follows: “in sexual offences, such as rape and defilement, corroboration is required as a matter of law before there can be conviction. Law is not static; it is developing and therefore, there need not now be a technical approach to corroboration.

Further, sexual intercourse must be proven. Several judges in Zambia have been quite consistent and clear with regard to the evidence the prosecution needs to provide when providing the

¹³⁹ Zambia Daily Mail, Court Room News, 22nd February, <http://epaper.daily-mail.co.zm/>

¹⁴⁰ SCZ Appeal No.41/2007

¹⁴¹ Article 2(2) of the CRC

¹⁴² 2009, ZR 282

age of a minor in defilement cases. Following the 1973 precedent of the case of **Phiri (Macheka) v. The People**,¹⁴³ most judges have gone to hold that “age should be proven by one of the parents or by whatever other best evidence is available.” This case has formed an integral part of Zambia’s evidence law. In a criminal case, the state has a burden of proving beyond reasonable doubt all elements of a case. In the case of child defilement, the prosecution must prove that an accused had sexual intercourse (the act) with a child and did this intentionally (the mental element). The elements of defilement are (1) sex taking place (2) with a minor and (3) the accused did this intentionally.¹⁴⁴ Dimba popularly known as General Kanene was sentenced with 18 years of imprisonment for defilement, He however appealed on the ground that the prosecution did not adduce sufficient evidence as to the age of the girl. The convict denied that the victim was not a minor but did not deny having sex with her or having done it intentionally.¹⁴⁵ The parents of the girl did testify that she was below the age of sixteen at the time the sexual act took place. The 2005 reforms to Section 138 of the Penal Code expunged the defence of “reasonable belief” from the offence of child defilement. Even this reform was meant to tighten punishment for sexual offences, of course with the intention of protecting women.

2.3.3. Social-Economic Violence

Social economic violence involves wrongly depriving the surviving spouse and children or any person of a property or any part of the property or a share in property of the deceased, to which she or he is entitled without due regard to their welfare.

Section 3(1)¹⁴⁶ provides that, economic abuse means:

- (a) the unreasonable deprivation of any economic or financial resources to which a victim, or a family member or dependent of the victim is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, medical expenses or school fees and mortgage bond repayments or rent payments in respect of a shared household;

¹⁴³ [1972] ZR 145

¹⁴⁴ Section 138 of the Penal Code

¹⁴⁵ Christopher Dimba v The people (): Unreported

¹⁴⁶ Anti-Gender Based Violence Act, 2011 of the laws of Zambia

- (b) denying a person the right to seek employment or to engage in an income-generating activity;
- (c) unreasonably depriving a victim, a family member or dependent of the victim, of property in which the victim, family member or dependent of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property; or
- (d) Intentionally destroying or damaging property in which the victim of gender-based violence, a family member or a dependent of the victim of gender-based violence has an interest or a reasonable expectation of use.

Economic abuse as a form of violence against men happens when their wives have control over their access to economic resources. Brewster,¹⁴⁷ contends that economic abuse is real in situations where the husband does not work and depends on the wife for financial support. Economic abuse may involve preventing a spouse from resource acquisition, limiting the amount of resources to be used by the victim, or by exploiting economic resources of the victim. Furthermore, it is argued that the motive behind preventing a spouse from acquiring resources is to diminish the husband's capacity to support himself, thus forcing him to depend on the wife financially and this makes men to be slaves in the homes.¹⁴⁸

*Silberschmidt*¹⁴⁹ in her East African study covering Tanzania and Kenya posits that the ideology of men as breadwinners is forcefully alive as stereotyped notions shared by both genders are that a man should be the head of the family, he should provide a house (and land), pay school fees and clothes for the wife and children. Such a man has social value and respect. 53 men interviewed by *Silberschmidt*¹⁵⁰ about their 'status' in the household, all acknowledged they were born head of households as a God given fact, and that women are like children and should be guided by men. Men are viewed as lions, and women like sheep.

In **Jennifer Chipasha**,¹⁵¹ the Ndola High Court condemned her to death for killing her husband after allegedly misusing some money she had lent him to start a business, as over a number of

¹⁴⁷ (2003)

¹⁴⁸ (Follingstad and Dehart, 2000)

¹⁴⁹ (2005:194-195)

¹⁵⁰ Ibid

¹⁵¹ (2009; Unreported)

years he had failed to fend for the family. In condemning her to death the court held that; ‘though no one saw her kill her husband, she was however linked to the offence by circumstantial evidence which suggested that as a woman she was not happy with the way her husband handled the money.’

According to both male and female informants in her study, when husbands are crushed down economically, they suffer from feelings of inferiority, as a man’s ego is hurt. As a result, ‘men lose their vigor and women take over,’ and when a man has lost control over his household and is humiliated by his wife, his wife may resort to violence in the process of domestic disputes.

Just to affirm what has been discussed above, the following is the GBV report form Zambia Police, which gives the breakdown of GBV cases reported countrywide in the last quarter of 2021. A total of 7,920 cases of Gender Based Violence were reported Countrywide during the Fourth Quarter of 2021 compared to 8,557 cases of Gender Based Violence (GBV) cases recorded in the Fourth Quarter of 2020 showing a reduction of 637 cases translating to 7.4% reduction. Out of 7,920 reports, 4,948 were criminal cases while 2,972 were non-criminal reports translating to 62.5% and 37.5% respectively. The 2021 Fourth Quarter Gender Based Violence Disaggregated Data indicates that 1,814 child victims were abused countrywide representing 22.9% of all the victims of Gender Based Violence. Out of the 1,814 children, 1,342 were girls representing 74% while 472 were boys representing 26% of all abused child victims respectively.

4,790 women and 1,316 men were abused countrywide representing 60.5% and 16.6% respectively. In terms of gender vulnerability, a total of 6,132 women and girls representing 77.4% while 1, 788 men and boys representing 22.6% were abused during the period under review countrywide.

Under forms of violence in the criminal data category, the highest reports filed were under Physical Violence with 3,055 Physical abuse cases translating to 61.7%, 881 Sexual Offences translating to 17.8%, 728 Economic Violence translating to 14.7% and 272 emotional abuse translating to 5.5%.

Lusaka Province recorded the highest GBV reports totaling to 1,004 translating to 20.3%, followed by Copper belt with 928 GBV reports translating to 18.8%, Airport Division recorded the lowest number of GBV reports with 15 cases translating to 0.3%.¹⁵²

¹⁵² Ibid, February, 2022

2.4. Extent and Severity of Female Domestic Violence against Men

Worldwide, there are few statistics about female domestic violence against men because it has just been accepted as a problem. However, violence against men by women is now being recognized throughout most of the world as a significant social problem. It has been identified by many countries, the United Nations and the European Union as an issue of human rights.¹⁵³ Traces of concrete statistics of female domestic violence against men can be seen in the western literature beginning as far back as the first U.S. National Family Violence Survey of 1975 which unexpectedly found women to be as violent as men.¹⁵⁴ The findings were not readily accepted because it contradicted both common sense and the burgeoning feminist scholarship. Steinmetz's study in 1977 also affirmed that the number of threats of domestic violence from wives against husbands exceeded the threats from the husbands and it concluded that women have more intentionality of violence than men. The study was conducted on fifty-seven residential families in New Castle County, Delaware, United States. The result was that 93 per cent of the sample of people interviewed used verbal aggression and 60 per cent used physical aggression, like throwing objects or pushing their spouse to solve marital conflicts.¹⁵⁵

In Africa studies of female domestic violence against men are rare. But this is not surprising because it is in this part of the world where discourses of patriarchy and male-dominated cultures are most common and thus female domestic violence against men is theoretically farfetched. In Botswana however, a study by Raditloaneng acknowledged that both men and women are victims of GBV. Furthermore, Botswana 11 Police Service reports¹⁵⁶ and statistics on GBV from the Ministry of Labor and Home affairs indicate that in 2003, there were fifty-four passion killings, which claimed forty-six women and eight men.

2.5. Effects of GBV against Men

While women are usually the immediate victims of gender violence, the consequences of gender violence extend beyond the victim to the society as a whole. Gender violence threatens family

¹⁵³ (United Nations, 1995; Kelly, 1997)

¹⁵⁴ (Carney, 2006)

¹⁵⁵ (2010)

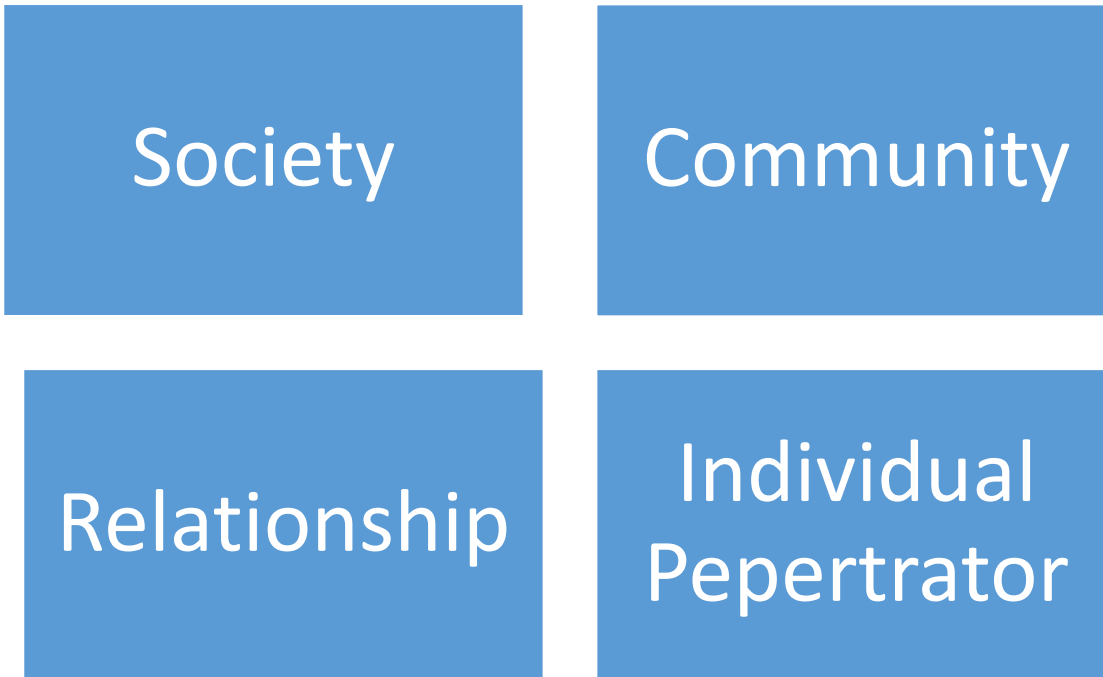
¹⁵⁶ (2012)

structures; children suffer emotional damage when they watch their mothers and sisters being battered; two-parent homes may break up, leaving the new female heads of household to struggle against increased poverty and negative social repercussions. Psychological scars often impede the establishment of healthy and rewarding relationships in the future. Victims of gender violence may vent their frustrations on their children and others, thereby transmitting and intensifying the negative experiences of those around them. Children, on the other hand, may come to accept violence as an alternative means of conflict resolution and communication. It is in these ways that violence is reproduced and perpetuated.

The effects of violence on men vary widely. It depends on the nature of the particular incident, the man's relationship with his abuser, and the context in which it took place. Gender-based violence typically has physical, psychological, and social effects. For the survivors, these are interconnected. The root cause of gender-based violence lies in unequal power relations between women and men. However, a variety of factors on the individual level, the family level, and at the level of community and society, often combine to raise the likelihood of violence occurring. The effects of gender-based violence are far-reaching and extend beyond the individual survivor, to the family and society as a whole. Potential social responses to gender-based violence are most effective when there is a common understanding of the nature and causes of gender-based violence and it is addressed from all angles, through the participation of multiple sectors and entire communities.

Figure 2. Factors associated with gender based violence

Figure 2: Factors Associated with Gender Based Violence



Source: Own Source

Society:

- ✓ Norms granting men social control over female behaviour
- ✓ Acceptance of violence as a way to resolve conflict
- ✓ Notion of masculinity linked to dominance, honor and aggression
- ✓ Rigid gender roles

Community:

- ✓ Poverty, low social economic status, unemployment
- ✓ Associating with peers who condone violence
- ✓ Isolation of women and family

Relationship:

- ✓ Marital conflict
- ✓ Male control of wealth and decision making in the family

Individual Perpetrator:

- ✓ Witnessing material violence as a child
- ✓ Absent or rejecting father
- ✓ Being abused as a child
- ✓ Alcohol use

2.5.1. Connection between HIV, COVID-19 and GBV

Beginning in the late 1990s, researchers started to recognize that there might be a relationship between HIV/AIDS and GBV. They found that women who are in abusive relationships are at a higher risk of contracting HIV and women who have HIV are more likely to have experienced GBV than those who are not HIV positive. In “The Intersections of HIV and Violence: Directions for Future Research and Interventions” Maman et al. examined multiple studies looking at the relationship between HIV/AIDS and GBV. This review indicated that various types of violence (e.g. childhood violence, intimate partner violence) put women at higher risk of contracting HIV across various age groups and countries. The fact that these trends were seen in women of various backgrounds strengthens the argument that there is a relationship between HIV/AIDS and GBV. Very few studies have been conducted specifically on this intersection in Zambia. It is possible that Zambia shares some characteristics with other countries also experiencing high rates of GBV and HIV, but it is also possible that there are confounding factors, such as government structure, healthcare resources, and education system structure, that are impacting these issues in Zambia. As long as GBVAM is on the rise the rate of HIV also will keep rising as there is a very close link between HIV and GBVAM as will be discussed in details later in the study. There is also a close link between Covid-19 and GBV in that the many adverse effects that Covid-19 has on society, has led to an increase in GBV cases. Covid-19 has affected the male and females as well as adolescent boys and girls differently. The coming of Covid-19 brought inequality especially to women, they have a lot of work to do because their businesses have gone down but for men it was not that bad. For the boys and girls, they

experienced a lot of work the time they closed schools. This resulted in physical and economic violence. Girls have become prostitutes and boys were abusing drugs; whereas the men and women were fighting in their homes they were at home all the time. There have been a lot of cases of GBV because the tension was high in confined spaces. Some people have become homeless and others are being abused by their landlords. There has also been loss of income among the among men and women as well as adolescent boys and girls leading to various forms of violence. Both males and females are not coping very well because a lot of people have lost their jobs. Some businesses were affected such as bars and the crime levels are very high in the community. There has been a lot divorce cases, stealing, prostitution, and poverty levels have gone up.” “Due to the partial lockdown and restriction in movements, husbands and wives are spending too much time together and are now discovering things about each other such as cheating.” Men who lost their jobs are usually stressed and end up venting their frustrations on their spouses and children.

2.6. Legal Framework on Gender Based Violence in Zambia

At the policy level, there have been some improvements towards gender equality. In 2012, the Ministry of Gender became an independent ministry and the National Gender Policy was formulated in 2014 This policy lists the strategy and actions to be implemented by government ministries and agencies in 15 different fields to achieve gender equality, although there are no formal commitments in terms of indicators and annual budgets.

In 2005, the Penal Code was revised making the punishments for (sexual) violence against women and children stricter, and the Anti-Gender Based Violence Act was enacted in 2011. However, the actual enforcement of these laws and policies has been slow and acceleration of their enforcement is sought. The Gender Equity and Equality Act was also passed in 2015.

There was also an attempt to revise the Constitution which included includes (i) revision of the text in line with the CEDAW and other human rights-related documents, and (ii) rectification of the dual structure of statutory law and customary law to realize gender equality. The bill was aimed at (i) incorporating the spirit of the human rights-related documents in national laws and policies, and (ii) establishing the Gender Equity and Equality Commission as an organization to supervise the implementation of gender equality. Unfortunately, this failed as the 2016 referendum did not meet the 50% threshold.

2.6.1. The Constitution of Zambia

The Zambian Constitution guarantees formal equality of women and men. Importantly, however, the Constitution¹⁵⁷ contains a limitation that reserves the right to legislate laws with respect to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law” with no requirement to ensure equal rights to women and men. The Constitution of Zambia¹⁵⁸ is silent on the issue of women’s rights. The protection of women’s rights in Zambia mainly relies on international legislation for the protection of women’s rights.

Rights embodied in Part III of the Zambian Constitution¹⁵⁹ provide for the protection of fundamental rights and freedoms. However, the rights pertaining to the improvement of the welfare of the citizenry such as education, health, housing, employment and social security are not placed in the Bill of Rights even though economic, social and cultural rights have been recognized to be important in the realization of political and civil rights. These rights are placed under Part IX of the Constitution, which deals with Directive Principles of State Policy, and may be may be attained in as far as State resources permit. The challenge to progressively realize economic, social and cultural rights in accordance with the ICESCRs which Zambia has ratified is actually enormous for a developing country like Zambia with inadequate resources to provide enough schools, hospitals, social security, decent shelter and clean water to the majority of the population. Women’s rights fall under this broad subject of human rights.

Zambia is signatory to many international instruments. Although the country is quick to ratify, implementation is often slow or never materializes. Zambia belongs to the dualist tradition, thus views international law and domestic law as two separate legal systems. Hence domestication of international law by an Act of Parliament is necessary before international law can be applied. This of course excludes customary international law which is binding on all states. The Attorney General is mandated by article 54(2) (b) to draft and peruse treaties and agreements the government of Zambia is party to.

¹⁵⁷ Article 23[4] [c]

¹⁵⁸ Chapter 1 of the Laws of Zambia

¹⁵⁹ 1996, Constitution of Zambia

The Constitution of Zambia¹⁶⁰ provides for fundamental human rights. Article 11 of the Constitution¹⁶¹ prohibits discrimination on the grounds of sex and marital status, inter alia; while articles 23(1) and (2) provide the most encompassing statements that can be attributed to gender equality and women's rights. In article 23(4)(c), however, the guarantees of fundamental rights, given by the right hand, are taken away by the left, as that sub-article excludes the application of anti-discriminatory provisions to matters of personal law, tribal customs, and traditional practices.¹⁶² Personal law represents particularly pernicious discrimination against women, because often a man, as head of the family, is endowed with roles that are superior to women. Personal law includes laws related to marriage, divorce, maintenance, custody of children, property rights, and, in many cases, participation in societal affairs. I argue that while the Constitution is the highest law of the land, by exempting personal law from the anti-discriminatory provisions under the Bill of Rights, the Constitution is subordinating itself to traditional laws and practices.¹⁶³

In a landmark decision, also by **Musumali J, is Longwe v Intercontinental Hotel**.¹⁶⁴ Longwe sued Intercontinental Hotel, seeking, inter alia, declarations pursuant to articles 11 and 23(2) of the Constitution. Briefly, the facts are that Sara Longwe, a pregnant woman, had been at the Intercontinental Hotel, attending a workshop hosted by the Zambia Association for Research and Development (ZARD). She was one of the organizers of the event. After the closure of the workshop, she remained in the conference room to pack materials, and then followed her colleagues to Luangwa Bar in the hotel for refreshments. She was refused entry on the ground that she did not have male company, which was a requirement by the hotel for women wanting to go into the bar. She challenged that requirement and argued that Zambia had ratified many international and regional treaties, including the Convention on the Elimination of All Forms of

¹⁶⁰ 1996 Constitution of Zambia

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³ Article 23(1) – “Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect.” Article 23(2) – “Subject to clauses (6), (7) and (8), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.” Article 23(4) – “Clause (1) shall not apply to any law so far as that law makes provision – (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.”

¹⁶⁴1992/HP/765, J16

Discrimination against Women (CEDAW), and was a party to the African Charter on Human and Peoples' Rights (ACHPR). She also quoted the Bangalore Principles of Judicial Conduct.¹⁶⁵

It must be noted that the respondent, Intercontinental Hotels, had argued that constitutional provisions apply to state actions and public bodies or offices only and that their application is vertical and not horizontal, as between private individuals.

Henkin,¹⁶⁶ who said that human rights are: ... claims which every individual has, or should have, upon the society in which he/she lives. To call them human [rights] suggests that they are universal: they do not differ with geography or history, culture or ideology, political or economic system, or stage of development. They do not depend on gender or race, class or status.¹⁶⁷ Musumali J concluded that "the Constitutional provisions in this country are intended to apply to everybody: public or private persons unless the context otherwise dictates".¹⁶⁸ He also pointed out that most, if not all rights guaranteed in the Bill of Rights, are also covered by personal or private law, such as the law of torts or criminal law, and that an aggrieved party had a choice to proceed under the Bill of Rights or under another branch of the law – "[t]he golden choice in this regard is the aggrieved person's".¹⁶⁹ He ordered that the regulation be scrapped forthwith on the basis that it discriminated on the grounds of sex.¹⁷⁰ The Longwe decision was not appealed against, and remains law until over-ruled or reversed by the Supreme Court.

After analysing the facts and the constitutional provisions, Musumali J concluded: Before I end, I have to say something about the effect of International Treaties and Conventions which the Republic of Zambia enters into and ratifies. The African Charter on Human and People's Rights and the Convention on the Elimination of All Forms of Discrimination Against Women are two such examples. It is my considered view that ratification of such documents by a nation State without reservations is a clear testimony of the willingness by that State to be bound by the provisions of such a document. Since there is that willingness, if an issue comes before this court which would not be covered by local legislation but would be covered by such international

¹⁶⁵L Henkin "Rights: Here and There" (1981) 81 Colum L Rev 1582, 1582

¹⁶⁶ Ibid

¹⁶⁷ Cited in Longwe v Intercontinental Hotel 1992/HP/765, J15

¹⁶⁸ Longwe v Intercontinental Hotel 1992/HP/765, J16.

¹⁶⁹ Id J17. 20 Id J20. 21 See a discussion on the policy of hotels to refuse women, and on the Longwe and Mwanza and Mulenga cases in S Longwe "Case Study: Legal Action to Stop Hotels Discriminating against Women in Zambia" (2011)

¹⁷⁰ Ibid

document, I would take judicial notice of the Treaty or Convention in my resolution of the dispute. As for documents such as the Bangalore Principles, I am of the view that they do not enjoy the same status as the Treaties and Conventions. This is because it is my very considered view that in the separation of powers principle, I do not think that a meeting of jurists in an international forum can make resolutions which are binding on their respective States, in law. I am of the strong view that such powers are entrusted in the executive wing of the State. So whilst it is not wrong to take note of such resolutions I think it is a misdirection in law to treat them as standing at par with Treaties and Conventions entered into and ratified by the executive wing.¹⁷¹

Subsequently, and in a similar vein, Ngulube CJ, in the often-cited High Court case of **Sata v Post Newspapers Ltd and Another**,¹⁷² held: I make reference to the international instruments because I am aware of a growing movement towards acceptance of the domestic application of international human rights norms not only to assist to resolve any doubtful issues in the interpretation of domestic law in domestic litigation but also because the opinions of other senior courts in the various jurisdictions dealing with a similar problem tend to have a persuasive value. At the very least, consideration of such decisions may help us to formulate our own preferred direction which, given the context of our own situation and the state of our own laws, may be different to a lesser or greater extent. What is certain is that it does not follow that because there are these similar provisions in international instruments or domestic laws, the courts in the various jurisdictions can have or have had a uniform approach. For one thing, as the examples I have quoted show, the right to free expression and free speech is qualified by exceptions, in some cases more heavily than in others. For another, we are at different stages of development and democratization and the courts in each country must surely have regard to the social values applicable in their own milieu.¹⁷³ While the above passage by Ngulube CJ shows both an acceptance of reference to international law and a caution against its use, the first part of the passage has been quoted as authority for referring to international law in the High Court case of **Kingaipe and Another v Attorney General**,¹⁷⁴ where Muyovwe J noted: This court is at large to consider and take into account

¹⁷¹ M Hansungule “Domestication of International Human Rights Law in Zambia” in M Kilander (ed) International Law and Domestic Human Rights Litigation in Africa (2010) 83-108, 76. 23 1992/HP/765 (HC)

¹⁷² 26 [1995] ZMHC 1

¹⁷³ Ibid

¹⁷⁴ 2009/HL/86. Lillian Mushota

provisions of international instruments and decided cases in other courts. Zambian courts are not operating in isolation.¹⁷⁵

Ngulube CJ has, however, re-emphasised the need for caution in the Supreme Court case of **Mmembe and Mwape v The People**.¹⁷⁶ Nevertheless, the Supreme Court has, at times, taken considerable note of comparative jurisprudence to interpret constitutional rights – even if not explicitly acknowledging that it is doing so.¹⁷⁷ In **Attorney General v Clarke**,¹⁷⁸ in which the respondent claimed a violation of his rights to freedom of expression and non-discrimination, the Supreme Court said: We agree that in applying and construing our statutes we can take into consideration international instruments to which Zambia is a signatory. However, these international instruments are only of persuasive value unless they are domesticated in our laws.¹⁷⁹ Interestingly, the extent to which courts can use international law to interpret constitutional rights has most often been raised in cases relating to freedom of expression and freedom from discrimination. This is precisely because the Constitution of Zambia, in its current form, contains outdated limitations which inhibit rights unless interpreted within a broader international human rights framework. That said, the Supreme Court’s hesitance to embrace international customary law and international treaties to which Zambia is a signatory, is disappointing. A stronger formulation in line with other courts in the region would have been that courts must have regard to international treaties to which a state is party, even if not domesticated, unless explicitly contradicted by existing domestic law.

The **Kenya Court of Appeal case of Rono v Rono**¹⁸⁰ is also instructive. Section 82 of the Constitution of Kenya is similar to article 23 of the Constitution of Zambia. The case dealt with distribution of the deceased estate of a man who had been in a polygamous marriage, and who had sons from one marriage and daughters from the other marriage. On appeal, all three judges agreed that there could be no basis for distinguishing between sons on the one hand, and daughters on the other. Despite being a dualist country, the Court held that international law was relevant in consideration of the case and interpretation of the exception to the prohibition against

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Ibid, Ngulube

¹⁷⁸ 96 Of 2004 (2008) ZMSC 4

¹⁷⁹ Ibid

¹⁸⁰ 2005 AHRLR 107 (KeCA 2005)

discrimination. The Court acknowledged that “current thinking on the common law theory is that both international customary law and treaty law can be applied by state courts where there is no conflict with existing state law, even in the absence of implementing legislation”.¹⁸¹ The Court cited the Longwe case, with approval. Waki JA further cited Principle 7 of the Bangalore Principles, which provide that: It is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes – whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law ... Waki JA, going a step further than the view expressed above by Msusumali J in the Longwe case, held that the Bangalore Principles “amongst others, has been reaffirmed, amplified, reinforced and confirmed in various other international fora as reflecting the universality of human rights inherent in men and women”.¹⁸² Because the Kenya Court of Appeal was so unequivocal in its support of international law, the Kenya High Court was subsequently, in **Estate of Musyoka**,¹⁸³ able to affirm that – based on Rono – international law is applicable in Kenya as part of its law, as long as it is not in conflict with existing law, even without it being adopted by specific legislation. Thus, it was held that the limitations to the prohibition against discrimination which exempted customary law must be read in terms of the provisions of CEDAW and the ACHPR, which require the elimination of discrimination against women.¹⁸⁴

Therefore, the principle laid down by Judge Musamli,¹⁸⁵ states that where the domestic laws do not provide for a particular issue, reference will be made to international laws. However, since Zambia takes the dualistic approach to recognition of international laws in its legal system, the international laws remain merely persuasive and not binding; not until they are domesticated by an Act of Parliament (enabling Act) being passed by Parliament.

¹⁸¹ Ibid

¹⁸² Ibid

¹⁸³ Succession Cause of 303 of 1998

¹⁸⁴ INTERNATIONAL LAW, WOMEN’S RIGHTS AND THE COURTS: A ZAMBIAN PERSPECTIVE1 Lillian Mushota

Advocate of the High Court and the Supreme Court of Zambia in private legal practice; Former lecturer at the University of Zambia, School of Law 2000 – 2010; LLB (University of Zambia), LLM (University of Birmingham).

¹⁸⁵ Ibid

2.6.2. The Anti-Gender Based Violence Act of 2011

Zambia's landmark enactment of the Anti-Gender Based Violence Act of 2011 should have marked the extinction of heinous acts of violence against women and girls because it clearly spells out how victims, communities, organization, police, health workers and judiciary personnel have to deal with perpetrators. The Anti-GBV Act branded Zambia as a pioneering nation in the GBV fight but sadly three years later (in 2014), we had the distinction of topping the list of GBV perpetration in a survey of six (6) SADC countries by a non-governmental organization- 'Gender links,' in which the study found high levels of GBV in the six (6) countries surveyed with the highest incidence in Zambia: 89% of women in Zambia's four (4) districts of Kasama, Kitwe, Mansa and Mazabuka had experienced GBV in their lifetime. 86% of women in Lesotho, 68% of women in Zimbabwe, 67% of women in Botswana, 50% of women in some provinces of South Africa and 24% of women in Mauritius have experienced GBV.¹⁸⁶

Section 3 of the Anti-Gender Based Violence Act No.1 of 2011, defines GBV as: any physical, mental, social or economic abuse against a person because of that person's gender, and includes-

- (a) violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to the person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and
- (b) actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship.

Going by the definition of GBV in the Act, it is evident that that GBVAW is quiet broad and is not limited to physical and sexual violence only, but includes also psychological harm. However, in Zambia; GBVAW is more inclined to the two forms of GBVAW as opposed to psychological harm.

Even though Zambia enacted the Anti-ender Based Violence Act No 1 of 2011 which provides good measures in dealing with GBV as the Act provides for the protection of victims of GBV, Protection orders, Shelter for Victims, establishment of an Anti-GBV Committee, establishment of an Anti- Gender Based Violence fund among other things.

¹⁸⁶ (Chanda, 2014:13)

Despite this good move and political will show by government, the implementation of the Act remains a huge challenge as the ‘rules of enforcement’ have not yet been drawn by the Chief Justice. The implication is that as much as ills relating to women and girls can potentially be addressed under the provisions of the Act, it is impossible to enforce them. Women have continued dying at the hands of their husbands and vice versa as a week hardly passes without a case of a woman being battered by her spouse and in some cases resulting in death. This problem has continued to worry the civil society to what has gone wrong with the men and women in the country.¹⁸⁷

2.6.2.1. Salient provisions of the Anti-Gender Based Violence Act of 2011

Part I

Interprets some of the terms used in the Act.

2.6.2.1.1. Part II

Filing and Dealing with complaints of Gender Based Violence

Section 4: Number of acts amounting to GBV

Section 5: Duty of the police officer to assist, or inform victims of rights

Section 6: Filing of Complaint to Police

Section 7: Police to respond promptly

Section 8: Police assistance after receipt of complaint

Section 9: Arrest by Police

Part III

Filing of, and Dealing with, Complaints of Gender Based Violence

Section 10: Application for Protection Order

Section 11: Conduct of proceedings

Section 12: Interim Protection Order

Section 13: Issuance of Protection Order

Section 14: Effect of Protection Order

Section 15: Conditions of Protection Order

Section 16: Modification of Protection Order

¹⁸⁷ Ibid

- Section 17: Duration of Final Protection Order
- Section 18: Extension of Protection Order to Other Person
- Section 19: Grant of protection order to other persons
- Section 20: Occupation Order
- Section 21: Appeals
- Section 22: Power to discharge protection order
- Section 23: Contravention of Protection order

Part IV

Shelter for Victims

24. Establishment of shelters for victims
25. Minimum norms and standards of shelters
26. Inspectors of shelters
27. Shelters for child victims
28. Shelters for adult victims
29. Assessment of victim
30. Rehabilitation of victim

Part V

Anti-Gender Based Committee

31. Anti-Gender Based Violence Committee

Part VI

Anti-Gender Based Violence Committee

32. Establishment of fund
33. Administration and management of fund
34. Accounts and audit

Part VII

General Provisions

35. Service of process
36. Settlement of matter out of court
37. Proceedings in camera
38. Publication of proceedings prohibited
39. Public education

40. Rules of court

41. Regulations

The Anti-Gender Based Violence Act of 2011 operates alongside Statutory Instrument No.8 of 2016, these are the Anti-Gender Based Violence (Court) Rules 2016. Under Part I this Act is the preliminary; Part II provides for Forms and Commencement for Application or Action; Part III Service of Process; Part IV Protection Orders; Part V Proceedings of the Court; Part VI Judgment, Review and Appeal.

2.7. Gender Equity and Equality Act No.22 of 2015

An Act to establish the Gender Equity and Equality Commission and provide for its functions and powers; provide for the taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity, equality and integration of both sexes in society; promote gender equity and equality as a cross cutting issue in all spheres of life and stimulate productive resources and development opportunities for both sexes; prohibit harassment, victimization and harmful social, cultural and religious practices; provide for public awareness and training on issues of gender equity and equality; provide for the elimination of all forms of discrimination against women, empower women and achieve gender equity and equality by giving effect to the Convention on the Elimination of all Forms of Discrimination against Women, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development; and provide for matters connected with, or incidental to, the foregoing.

2.8. The Penal Code

The Penal Code¹⁸⁸ is the major source of criminal law in Zambia, whereby, to a large extent deals in general terms with cases of spousal homicide, physical and sexual violence. The Act is significant in the fight against GBV compared to the Anti-Gender Based Violence Act of 2011, which was hurriedly enacted by the then MMD government due to pressure from NGO's. The Penal code criminalizes physical as well as sexual violence and homicide with

¹⁸⁸ Chapter 87 of the Laws of Zambia

well defined stiff punitive measures in place as opposed to the Anti-Gender Based Violence Act of 2011. Chapter XXIV deals with physical violence in form of ‘Assaults,’ Chapter XIX deals with murder and manslaughter, and Chapter XV deals with offences against morality (sexual violence).

Other laws dealing with Gender-based violence in Zambia are:

(1) The Children’s Act, No.12 of 2022

In traditional Zambia, it is believed that children are meant to be ‘seen’ and not ‘heard’. This tends to imply that a child remains an insignificant part of society and cannot contribute much until they are older. Consequently, children become victims of several human right violations ranging from corporal punishment, child marriage, child abuse, exploitation, to mention but a few. And because they are taught never to be heard, these crimes stay unreported.

In light of the above, there have for a very long time been minimal efforts to implement laws regarding the protection of children. Where the laws are available, there have still been so many gaps which leave enforcement of some of a child’s rights difficult.

This plight resulted in the rise of many institutions and child advocacy organisations working hand in hand with parliamentarians towards proposing a Bill before the National Assembly in an effort to protect children. Once a Bill was drafted and presented, it took about 12 years for the enactment of what became The Children’s Code Act No.12 of 2022.

The Children’s Code is a consolidation of various pieces of legislation relating to children. These include; The Adoption Act, the Legitimacy Act, The Affiliation and Maintenance of Children Act, The Juveniles Act and The Probation of Offenders Act. Some salient features that have been introduced to the Code include;

The Definition of a child.

Previously, the definition of a child varied in the different pieces of legislation mentioned above, which created ambiguity and conflicting views as to the correct definition of who a child is. The

Children's Code harmonises this by defining a child in line with the provisions of the Zambian Constitution. A Child is now defined as any person who is the age of 18 or below.

Domestication of international instruments.

The Code has gone a step further to domesticate international standards provided by the African Charter on the Rights and Welfare of the Child, The Convention on Protection of Children and Corporation in respect of Inter-Country Adoption and The Convention on the Civil Aspects of International Child Abduction.

One cardinal principal which was previously provided by international law and was only applied as of persuasive value and not binding to the Zambian jurisdiction was 'The best interest of a Child' principal. This principal is now enshrined in the Code and forms a part of Zambia's adopted laws. This is a huge milestone for the Zambian Child because the best interest of every child will be considered before anything else.

Child Marriage.

The Code further outlines Children's rights and protections. Of particular interest is the provision that outlaws Child Marriage. This finally brings an end to the huge debate as to what law applies when considering Customary marriages in Zambia, what amounts to defilement and what is considered a child marriage. The law as it was previously left a gap and made it difficult to implement or enforce any policies against child marriages. A customary marriage in Zambia which followed the right procedures was correct in the eyes of the law regardless of the considerations of one's age. The only qualification under customary law for marriage was attaining the age of puberty.

The provision of this law, however, seems to treat the symptom but neglects to deal with the problem that leads to child marriages, i.e., economic hardships of families. Families may not be able to take care of their children and marrying them off as soon as they attain puberty seems a better solution for them. They receive bridal fees from the groom and their child is now the responsibility of the groom.

The Children's Code also fails to factor in the hardships that may result from criminalising child marriages. In an instance where a young girl is married off and later such marriage is reported to the authorities, the young girl's support system and the people responsible such as the in-laws, parents and husband may be arrested. This leaves the child bride vulnerable and with no financial assistance. In the saddest of scenarios, such a girl may most likely already be pregnant or with a child. These considerations for children who are forced to get married may discourage them from running to the authorities.

Corporal Punishment.

Another outstanding feature under the protection of Children's rights is the banning of Corporal Punishment at all levels, be it in the home, school or any other place. Considering that corporal punishment has been a common form of disciplinary measure in most homes, this will probably spur huge debates and raise questions among parents. However, this will provide a platform for a child victim in the circumstances to report and have this right enforced. This was never the position before. A child could be undergoing gruesome treatment in the home or learning institution and would have no recourse.

(2) The Anti-Human Trafficking Act, No. 11 of 2008:

This Act makes provision for the prohibition, prevention and prosecution of human trafficking. Establishes the Committee on Human Trafficking and provides for its powers and functions as well as establishing centers for the victims of trafficking. A Human Trafficking Fund is also to be created. Domesticates the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime. Human trafficking is actually a form of GBV.

(3) The Constitution of the Republic of Zambia, Chapter 1 of the laws of Zambia:

The Zambian constitution is a set of laws, customs and principals by which the state is acknowledged to be governed. It was amended and assented on by then President Edgar Chagwa Lungu on the 5th of January, 2016. A Constitution is a document which is used to govern people, and by which they (the people) have agreed to be ruled. It determines the fundamental

principles of government; it gives power to government and the limit of that power. It is important to point out that every state or nation has defined objectives established to accomplish those objectives, needs a constitution to define powers, rights and duties of the state or nation. The laws also regulate the internal working of a nation or state which also makes provisions for the manner in which the nation or state relates to outside bodies. Human rights in Zambia are protected under the Constitution, therefore it is the Constitution that provides for protection against GBV for both sexes.

(4) The Criminal Procedure Code, Chapter 88 of the laws of Zambia:

The Penal Code Act Chapter 87 of the Laws of Zambia (PC) is the primary Act that codifies crimes and provides for their corresponding penalties in Zambia. The primary Act that prescribes the process to be followed during the course of criminal proceedings- the arrest, trial and sentencing of a person who has been accused of having committed a crime is The Criminal Procedure Code Act Chapter 88 of the Laws of Zambia (CPC). In order to successfully prosecute GBV cases, the provisions of this Act are applied.

(5) The Intestate Succession Act, Chapter 59 of the laws of Zambia:

According to the Intestate Succession Act, Cap. 59 of the Laws of Zambia, the term intestate means a person who dies without having made a will and includes a person who leaves a will but dies intestates as to some beneficial interest in his movable or immovable property. Intestate Succession requirements are very clearly set out in the Intestate Succession Act and the exact proportions that each beneficiary is supposed to get is clearly tabulated by law. According to the Act a surviving spouse will be entitled to 20% of the estate, and a life interest in the matrimonial home. The children of the family will be entitled to 50% of the estate according their educational needs and ages. A 50% for the children may seem sufficient for some and this provision may sometimes raise problems with children from a single partner or even multiple partners. Parents are entitled to 20% of the estate and where the parents are deceased the portion will be split equally between spouse and children. The remaining 10% will revert to any dependents of the deceased. Succession issues are equally a major source of GBV in Zambia, hence this Act endeavors to resolve some of the disputes which may arise from succession issues.

(6) The Juvenile Act, Chapter 53 of the laws of Zambia:

This is an Act to make provision for the custody and protection of juveniles in need of care; to provide for the correction of juvenile delinquents; and to provide for matters incidental to or connected with the foregoing. Juveniles both male and female are prone to be victims of GBV. Hence this Act has provisions to prevent and deal with issues regarding GBV experienced by juveniles; and special procedures have been established to deal with GBV cases against both male and female juveniles.

(7) The Marriage Act, Chapter 50 of the laws of Zambia:

An Act to provide for the solemnization of marriages; to provide for the validation of marriages already solemnized; and to provide for matters incidental to or connected with the foregoing. Marriage is one of the major causes of GBV. Therefore, by invoking the proviso of this Act, GBV cases emanating from marriages are resolved.

(8) The Matrimonial Causes Act, No. 20 of 2007:

An Act to provide for the solemnization of marriages; to provide for the validation of marriages already solemnized; and to provide for matters incidental to or connected with the foregoing. A lot GBV cases are also experienced during matrimonial causes. This Act therefore, ensures that the weaker party of the marriage is protected by even criminalizing some acts amounting to GBV and works consistently with some criminal laws such as the PC.

(9) The Wills and Administration of Testate Estates Act, Chapter 60 of the laws of Zambia:

An Act to simplify the law governing the making of wills; to provide for adequate financial and other provisions to be made for dependents in a will; to provide for the administration of estates of persons dying having made a valid will; and to provide for matters connected with or incidental to the foregoing. This Act also helps to curb GBV cases, especially economic violence.

2.9. National Gender Policy of 2014

*Bbuku-Chuulu et al*¹⁸⁹ observes that at the national level, Zambia has adopted a National Gender Policy in which GBV is one of the priority areas of concern. The government has through the

¹⁸⁹ (2001:2-3)

gender policy put in place the following measures aimed at eliminating violence against women and children: a) Promoting awareness through campaigns to change harmful and negative cultural practices of society especially through health and media personnel: the police and other security and defence agencies towards gender issues, b) Encouraging victims, through appropriate mechanisms, to report cases of all forms of violence and sexual abuse to the relevant law enforcement agencies, c) Establishing a mechanism to coordinate the effort of the police, social welfare workers and legal personnel in dealing with cases of gender violence, d) Expanding and strengthening the operations of the police victim support unit to effectively cover the entire country, e) Building capacity among law enforcement agencies to handle cases of gender violence by increasing their skills in counselling, psychology, social work, gender and human rights, f) Establishing and encouraging institutions dealing with rehabilitation of victims of gender violence, g) Promoting and conducting awareness campaigns targeted at women and men on the existence of legal provisions in the PC, Intestate Succession Act and other laws protecting women and those with disabilities against violence, sexual harassment and abuse, and h) Improving women's participation in law enforcement and crime prevention. This policy is the revised version of the National Gender Policy (NGP) of 2000. Since the adoption of the first Policy in 2000, Zambia has made progress in the advancement of gender equality and empowerment of women in some sectors, though critical challenges still remain. The first National Gender Policy was aimed at achieving full participation of both women and men in the development process at all levels in order to ensure sustainable development and attainment of equity and equality between sexes. In implementing the Policy, the focus was to: i) Facilitate the repeal and amendment of legislation that discriminate against women; ii) Increase access to and control over productive resources such as land and credit facilities; iii) Enhance access and utilisation of information and technology; and iv) Mainstream gender in all socio-economic and political policies, programmes, plans, projects and the national budgets to ensure that they are gender responsive.

According to *Mutua*¹⁹⁰ human rights are supposed to represent a higher form of human intelligence. Basic human rights are even more precious and inviolable because they are universally accepted and no State can be permitted to deviate from them. Such rights

¹⁹⁰ (2011:456)

protect identities and persons from discrimination or capricious treatment. To date there are a number of protected classes of rights and people from which no deviation is permitted. These classes and identities are race, religion, sex, gender, language, national origin, marital status, age, racial and ethnic minorities, social standing, ethnicity, disability and political opinion. The question is whether sexual orientation, which includes homosexuality, is or should be, among these protected identities and classes. Mostly, Human Rights are categorised into two broad categories of: Civil and Political Rights (CPRs) and Economic, Social and Cultural Rights (ESCRs). CPRs entails government not doing anything against its people such as formulating laws which prevent individuals or groups from enjoying their right to fundamental freedom of speech and assembly.

2.10. Institutional Framework

In Zambia, there are a number of institutions established to promote and protect human rights. Since gender based violence is seen as a violation of human rights, and that the framework of human rights is one of the most suitable mechanisms of curbing GBV, it would be prudent at this point to also consider the human rights framework which can be used to address issues of GBV. The major institutions promoting and protecting human rights, directly or indirectly, are:

2.10.1.0. The Human Rights Commission- established in 1997 in accordance with the Paris Principles. It is mandated, inter alia, to investigate human rights violations and maladministration of justice, and propose measures to prevent human rights abuses.

2.10.1.1. The Judiciary is the primary institution charged with the protection of human rights through enforcing the Bill of Rights entrenched in the National Constitution. Anyone who feels that his or her human rights have been or are about to be violated can seek redress through the High Court which enforces the Bill of Rights.

2.10.1.2. The National Assembly, which consists of elected and nominated Members of Parliament, carries out a wide range of important public responsibilities that enhance democratic governance in Zambia. These responsibilities include making laws (Acts of Parliament), approving

proposals for taxation and public expenditure, and keeping the work of the Government under scrutiny and review.

2.10.1.3. The Judicial Complaints Authority receives and investigates allegations of misconduct against judicial officers. In their adjudicative duties, officers are expected to conduct themselves with integrity, independence and impartiality in accordance with the Judicial Code of Conduct.

2.10.1.4. The Police Public Complaints Authority, established in 2002, addresses public complaints against police misconduct in order to protect the rights of citizens. It has been reported that a number of officers found to be violating or abusing human rights have been dismissed from Police Service as a result of the work of the Authority.

2.10.1.5. The Zambia Police Service - Despite being charged with the responsibility to ensure protection of human rights, the Police Service is often a major violator of human rights. Some of the worst human rights abuses such as torture and extra-judicial killing of suspects have been committed by police officers, and these have been widely condemned by human rights defenders. Other common human rights abuses by the officers include false arrests, illegal and over detention without trial. However, within Police Service, a Victim Support Unit exists in almost all parts of the country to deal with violations of human rights, especially of women and children.

2.10.1.6. The Commission for Investigations – is empowered to investigate complaints of mal-administrative actions by public authorities brought to its attention. It can also recommend corrective action to the affected agencies and obtain redress for a deserving complainant.

2.11. The Zambian Criminal Justice System

Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have some protections against abuse of investigatory and prosecution powers. Criminal justice system refers to the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. The criminal justice system consists of three main parts: (1) Legislative (create laws)-law enforcement (police, sheriffs, marshals); (2) adjudication (courts

which include judges, prosecutors, and defense lawyers); and (3) corrections (prison officials, probation officers, and parole officers). In a criminal justice system, these distinct agencies operate together under the rule of law and are the principal means of maintaining the rule of law within society.

2.11.1. The Police

The first contact a defendant has with the criminal justice system is usually with the police (or *law enforcement*) who investigate the suspected wrongdoing and make an arrest, but if the suspect is dangerous to the whole nation, a national level law enforcement agency is called in. When warranted, law enforcement agencies or police officers are empowered to use force and other forms of legal coercion and means to effect public and social order. The term is most commonly associated with police departments of a state that are authorized to exercise the police power of that state within a defined legal or territorial area of responsibility. The word comes from the Latin *politia* ("civil administration"), which itself derives from the Ancient Greek πόλις, for *polis* ("city").¹⁹¹ The first police force comparable to the present-day police was established in 1667 under King Louis XIV in France, although modern police usually trace their origins to the 1800 establishment of the Marine Police in London, the Glasgow Police, and the Napoleonic police of Paris.¹⁹²

¹⁹¹ Harper, Douglas. "police". Online Etymology Dictionary. Retrieved 2007-02-08.

¹⁹¹ Marine Support Unit. Metropolitan Police. Archived from the original on 2007-07-16. Retrieved 2007-02-10.

¹⁹¹ We find that the percentage of favorable rulings drops gradually from ≈65% to nearly zero within each decision session and returns abruptly to ≈65% after a break." Shai Danziger; Jonathan Levav; Liora Avnaim-Pessoa (11 April 2011). "Extraneous factors in judicial decisions". *Proceedings of the National Academy of Sciences of the United States of America* **108** (17): 6889–92. Bibcode:2011PNAS..108.6889D. doi:10.1073/pnas.1018033108. PMC 3084045. PMID 21482790. Retrieved 15 November 2011.

¹⁹² Wolfgang, Marvin (1990). "Crime and Punishment in Renaissance Florence". *Journal of Criminal Law and Criminology* (Northwestern University) **81** (3): 567–84. doi:10.2307/1143848. JSTOR 1143848.

¹⁹² Garland, David (2002). "Of Crimes and Criminals". In Maguire, Mike, Rod Morgan, Robert Reiner. *The Oxford Handbook of Criminology*, 3rd edition. Oxford University Press. p. 20.

¹⁹² Dale, Elizabeth. *Criminal Justice in the United States, 1789–1939* (Cambridge University Press, 2011)184 pp

The Zambia Police Service (ZPS) reports to the Ministry of Home Affairs. Divided into regular and paramilitary units, the ZPS has primary responsibility for maintaining law and order. The Zambia Security and Intelligence Service, under the Office of the President, is responsible for intelligence and internal security. The Central Police Command in Lusaka oversees 10 provincial police divisions with jurisdiction over police stations in towns countrywide.

2.11.2. The Courts

The courts serve as the venue where disputes are then settled and justice is administered. With regard to criminal justice, there are a number of critical people in any court setting. These critical people are referred to as the courtroom work group and include both professional and non-professional individuals. These include the judge, prosecutor, and the defense attorney. The judge, or magistrate, is a person, elected or appointed, who is knowledgeable in the law, and whose function is to objectively administer the legal proceedings and offer a final decision to dispose of a case. The courts of Zambia can be represented in the shape of a pyramid, with more than 464 local courts at the bottom and the Supreme Court and Constitutional Courts at the very top.¹⁹³

2.11.3. Corrections

Offenders are then turned over to the correctional authorities, from the court system after the accused has been found guilty. Like all other aspects of criminal justice, the administration of punishment has taken many different forms throughout history. The Zambia Correctional Service is governed by chapter 97 of the laws of Zambia (Prisons Act), which was under review in 2016 following the Service’s name change from Zambia Prisons Service to Zambia Correctional Service on 5th January 2016. According to article 193 of the Republican Constitution, the Service is mandated to manage all prisons and correctional centers across the country.

Figure 3: Zambia’s Correctional Facilities

Type of Prison	Number	Occupants
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¹⁹³ WLSA Zambia, Justice in Zambia, 2020

Standard	54	Convicted and unconvicted with sections for women and juveniles.
Open Air	34	Convicted and unconvicted with sections for women and juveniles.
Juvenile	1	Exclusively juveniles
Female	1	Exclusively women

Source: The effects of living conditions on the Right to Health for Prisoners and Circumstantial Children in Zambia¹⁹⁴

2.12. Regional Instruments on GBV

*Munalula*¹⁹⁵ points out that in addition to global or universal standards, Zambia is also subject to regional standards of gender equality. The status of regional instruments in terms of application within the Zambian legal system is much the same as it is with regard to UN instruments. At the regional level, there are a number of human rights instruments and documents that are relevant in terms of setting regional standards. These include the following:

2.12.1. The African Charter on Human and People’s Rights (ACHPR)¹⁹⁶

ACHPR (often referred to as the Banjul Charter) entered into force in 1986. It enshrines the African concept of rights and aims to be accessible to African philosophy: it is striking among international and regional instrument in its emphasis on human and peoples’ rights and its’ cataloguing of the duties of the individual group to the State. A further notable

¹⁹⁴ Inside the Prison Walls, Panos Institute of Southern Africa (PSAf), 2018

¹⁹⁵ (2005:32)

¹⁹⁶ 1981

feature is that, unlike other international and regional instruments, States are not permitted to derogate from the Articles of the Charter.¹⁹⁷

2.12.2. Southern African Development Community (SADC) Protocol on Gender Development¹⁹⁸

*Smith*¹⁹⁹ is of the view that there are many advantages to developing regional systems of human rights. Fewer States will be involved thus political consensus should be more forthcoming on both texts and any monitoring/enforcement machinery. Many regions are also relatively homogeneous with respect to culture, language, and tradition which has obvious advantages. However, all region systems remain creatures of international law. They are created by treaties, which may be applied and interpreted in accordance with the Vienna Convention on the law of Treaties, and function purely because of inter-State consensus. Accordingly, regional systems exist under international law and bear witness to many of the same problems as regards, for example enforcement. Part six of the SADC Protocol discusses GBV and the girl child and how State parties should eradicate GBV by 2015. Article 2 of the Protocol defines GBV as:

...all acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could cause them physical, sexual, psychological, emotion or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private and public life in peace time and during situations of armed or other forms of conflict.

The Article further defines gender equality to mean:

¹⁹⁷ (Smith, 2005:133)

¹⁹⁸ 2008

¹⁹⁹ (2005:84)

...the equal enjoyment of rights and access to opportunities and outcomes including resources by women, men, girls and boys.

Article 20 (1) (a) provides that State parties shall, by 2015 review and reform their criminal laws and procedures applicable to cases of sexual offences to eliminate gender bias; and ensure justice and fairness are accorded to survivors of GBV in a manner that ensures dignity, protection and respect. Section H (iv) of the Declaration commits SADC States to repealing and reforming all laws, amending constitutions and changing social practices which subject women to discrimination and enacting empowering gender sensitive laws.

2.13. International Laws and Policies on GBV

2.13.1. UNIVERSAL DECLARATION OF HUMAN RIGHTS²⁰⁰

Adopted in 1948 by 58-member states of the United Nations, UDHR defines human rights as fundamental to all human beings and requires governments to take actions to protect human rights of all beings. The Preamble to the Universal Declaration of Human Rights recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as being the foundation of freedom, justice, and peace in the world. It also reiterates the pledge which UN member States take to achieve the promotion of universal respect and observance of human rights and fundamental freedoms. Article 1 provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

2.13.2. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN²⁰¹

Adopted in 1979 by the UN General Assembly, CEDAW has been ratified by 187 countries. CEDAW does not explicitly mention VAW, but it defines what constitutes discrimination against women, establishes norms and standards, and obligates states that have ratified the convention to end discrimination against women and girls.

²⁰⁰ 1966

²⁰¹ 1979

*Anyangwe*²⁰² points out that by ratifying or acceding to the Convention, a State party *ipso facto* condemns discrimination against women and agrees to pursue by all appropriate means and without delay a policy of eliminating gender discrimination. To that end, a State party undertakes: to embody gender equality in its' national constitution, to adopt appropriate legislative and other measures prohibiting all discrimination against women, to modify or abolish laws, regulations, customs and practices which constitute discrimination against women; to modify discriminatory social and cultural patterns, to suppress exploitation of women, to support the advancement and development of women in all fields, and to adopt temporary special measures, if needed, to accelerate *de facto* equality between men and women. Discrimination in Article 1 of the Convention is defined as:

...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Echoing the Declaration, the Preamble to the Convention recalls that discrimination against women violates the principle of equality of rights and respect for human dignity. Unlike the Declaration, the Convention seeks to be an international bill of rights for women. *Smith*²⁰³ asserts that the range of rights included in its ambit is reflective of this goal. It requires State parties to eliminate discrimination against women in the enjoyment of all civil and political, economic, social, and cultural rights. The Convention is implemented through a system of State periodic reports, although the 1999 Optional Protocol thereto seeks to provide a mechanism for the consideration of individual communications. State parties also accept a positive obligation to ensure the development and advancement of women towards a situation of equality of rights. As proposed in the Declaration, the parties to the Convention agree to modify the social and cultural patterns of conduct of men and women 'with a view to achieving the

²⁰² Ibid

²⁰³ (2005:189)

elimination of prejudices and customary...’practices’ based on the inferiority of women.²⁰⁴

This means Zambia, like many other State parties, is obligated to take appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination. Going by Article 23 of the Zambian Constitution, elimination of all forms of discrimination to some extent has been covered. However, in the case of Zambia not all CEDAW provisions are fully domesticated so as to give a strong platform for the fight against gender based violence.²⁰⁵

The Universal Declaration of Human Rights is a UN General Assembly declaration that does not in form create binding international human rights law, but it has provided the basis for subsequent international human rights instruments that form binding international human rights law.

Besides the adoption in 1966 of the two wide-ranging Covenants that form part of the International Bill of Human Rights namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, a number of other treaties have been adopted at the international level. These human rights instruments are:

Convention on the Prevention and Punishment of the Crime of Genocide²⁰⁶; Convention Relating to the Status of Refugees²⁰⁷; Convention on the Elimination of All Forms of Racial Discrimination²⁰⁸; Convention on the Elimination of All Forms of Discrimination Against Women²⁰⁹; United Nations Convention Against Torture²¹⁰; Convention on the Rights of the Child²¹¹; International Convention on the Protection of the Rights of All Migrant Workers and Members of their

²⁰⁴ Ibid

²⁰⁵ Human Rights, 2014:23).

²⁰⁶ 1948

²⁰⁷ 1951

²⁰⁸ 1965

²⁰⁹ 1981

²¹⁰ 1984

²¹¹ 1989

Families²¹²; Convention on the Rights of Persons with Disabilities ²¹³; International Convention for the Protection of All Persons from Enforced Disappearance.²¹⁴

It must be appreciated that the United Nations, so far, is the only organisation which has gained the status of an international organisation as evidenced from history. It has managed to operate under a universalist approach and therefore, one of its main functions is to protect and promote human rights as evidenced above. However, for reasons of efficiency the UN gives a leeway to other institutions to join forces with it for this noble cause. These are regional institutions; furthermore it also encourages each state to have a system of respecting human rights.

2.14. Regional protection and institutions

Regional systems of international human rights law supplement and complement national and international human rights law by protecting and promoting human rights in specific areas of the world. There are three key regional human rights instruments which have established human rights law on regional basis:

2.14.1. Americas

The Organisation of American States and the Council of Europe, like the United Nations have adopted treaties containing catalogues of economic, social and cultural rights. The conventions dealing with civil and political rights are the European social Charter of 1961 and an additional Protocol which has been in force since 1998 and the Protocol of San Salvador for the Americas in 1988 in force since 1999.

2.14.2. Africa

The African Union (AU) is a supranational union consisting of 53 African countries.²¹⁵ The African Charter on Human and People's Rights is the region's principal human rights

²¹² 1990

²¹³ 2008

²¹⁴ 2006

²¹⁵ "AU Member States". African Union, 2018

instrument. It emerged under aegis of the Organisation of African Unity (OAU) since replaced by the African Union.

The African Commission on Human and People's Rights is a quasi-judicial organ tasked with the responsibility of promoting and protecting human rights and collective peoples' rights throughout the African continent, as well as with interpreting the African Charter on Human and People's Rights and considering individual complaints of violations of the Charter.²¹⁶ The Court of Justice of the African Union is a body that hears matters of human rights violations referred to it by the African commission and passes binding decisions.

2.14.3. Inter-American System

The Organisation of American States is an international organisation headquartered in Washington. The Inter-American Commission on Human rights is an autonomous organ of the Organisation of American States. The Inter-American Court of Human Rights is one of the bodies in the American system for the promotion and protection of human rights. It is a permanent body which meets in regular and special sessions several times a year to examine allegations of human rights violations in the hemisphere.

2.14.4. European System

The Council of Europe founded in 1949 is the oldest organisation working for European integration. This council is responsible for both the European Convention on Human Rights and the European Court of Human Rights.²¹⁷ The Council is separate from the European Union but it includes all members of the European Union. The European Union has a separate human rights document, the Charter of Fundamental Rights of the European Union.²¹⁸ The European Court of Human Rights is the only international court with jurisdiction to deal with cases brought by individuals rather than states.²¹⁹

2.15. State Institutions

²¹⁶ Mandate of the African Commission on Human and Peoples' Rights",2018

²¹⁷ "Social Charter". Council of Europe,2017

²¹⁸ Juncker, Jean-Claude (11 April 2006). "Council of Europe – European Union: "A sole ambition for the European Continent"" (PDF). Council of Europe.

²¹⁹ *a b c* "Historical Background to the European Court of Human Rights". European Court of Human Rights. Archived from the original on 22

Each state is expected to have certain institutions that are directly involved in safeguarding human rights. Institutions best placed to facilitate enforcement at the national level include: Government/Executive, Courts, Parliament, National human rights institutions. The media can also be a tool of advocacy directed at the institutions concerned. After having looked at the various regional institutions that are involved in the promotion and protection of human rights, it is inevitable to discuss how the observance of these human rights is monitored and implemented under the system of International law.

2.15.1. Monitoring, implementation and enforcement

There is currently no international court to administer international human rights law, but quasi-judicial bodies exist²²⁰ under some United Nations treaties like the Human Rights Committee under the ICCPR. The International Criminal Court has the jurisdiction over the crime of genocide, war crimes and crimes against humanity. The European court of Human Rights and the Inter-American Court of Human Rights enforce regional human rights law.

The United Nations human rights bodies do have some quasi-legal enforcement mechanisms. These include the treaty bodies attached to the seven currently active treaties, and the United Nations Human Rights Council complaints procedures, with Universal Periodic Review and United Nations Special Rapporteur.²²¹ The enforcement of human rights is the responsibility of the nation state. It is the primary responsibility of the State to make the human rights of citizens a reality. The following are the ways through which human rights can be monitored and implemented:

States to ratify human rights instruments-States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When domestic law fails to provide a remedy for human rights abuses, parties may be able to resort to regional or international mechanisms for enforcing human rights.

²²⁰ "The Guardian". *The Guardian*. UK. 16 July 2008

²²¹ Known as the 1235 and 1503 mechanisms respectively OHCHR. "Human Rights Council Complaint Procedure"

Institutions to promote and protect human rights-International law provides that each country must come up with institutions that safeguard human rights to report on legal aid and access to judicial and other recourse mechanisms, to be required to exhaust domestic remedies.

Regional bodies to monitor human rights-Another way through which human rights can be monitored and implemented is through the international, regional and national bodies taking up a regulatory role to ensure that their member states promote and protect human rights. One such example is the United Nations role.

Punishment of human rights violators- At international law there a system through which violations of human rights are dealt with. This is one way of monitoring as those violators are penalised and other people are deterred from violating human rights for fear of punishment.

Observance of democracy-democracy is a system of government which promotes human rights. This can be used as tool to monitor human rights as human rights violations are reported.

Educating the public-this is another way through which human rights are monitored, once the public is educated they supplement government effort to safeguard human rights.

Reporting mechanisms-each country has a reporting mechanisms on any possible violation of human right both at national and international levels. This is in pursuance of monitoring so that all state parties observe human right and also penalties to be snapped on human rights violators.

2.15.2. United Nations Human Rights Monitoring Mechanisms

At the heart of the United Nations monitoring system are the two types of human rights monitoring mechanisms. The so-called conventional mechanisms refer to the specific committees formally established through the principal international human rights treaties. These "treaty bodies" monitor the implementation of the individual conventions by the States parties. Over the years, the United Nations has also developed an independent and ad hoc system of fact-finding outside the treaty

framework, which is referred to as extra-conventional mechanisms or "Special Procedures". Independent experts report in their personal capacity as special rapporteurs or as members of working groups.

2.15.2.1. Treaty Bodies (Conventional Mechanisms)

Treaty bodies have been set up for the six core United Nations human rights treaties to monitor States parties' efforts to implement the provisions of the international instruments.

The **Human Rights Committee** monitors the implementation of the International Covenant on Civil and Political Rights. Composed of 18 independent experts of recognized competence in the field of human rights. The First Optional Protocol, which entered into force together with the Covenant, authorizes the Committee to consider also allegations from individuals concerning violations of their civil and political rights.

The **Committee on Economic, Social and Cultural Rights** monitors the International Covenant on Economic, Social and Cultural Rights. Composed of 18 internationally recognized independent experts in the relevant fields.

The members of the Committee on Economic, Social and Cultural Rights are elected by ECOSOC, to which they report.

The **Committee on the Elimination of Racial Discrimination**) monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. Composed of 18 independent experts, and is the oldest treaty body.

The **Committee on the Elimination of Discrimination against Women**, composed of 23 independent experts, has monitored the Convention on the Elimination of All Forms of Discrimination Against Women since 1981.

The **Committee Against Torture** monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Composed of 10 independent experts, the Committee was established in 1987.

The **Committee on the Rights of the Child**, composed of 10 independent experts, has monitored the Convention on the Rights of the Child since 1991.

Special Procedures of the Commission on Human Rights (Extra-conventional Mechanisms)

The ad hoc nature of the special procedures of the Commission on Human Rights allows for a more flexible response to serious human rights violations than the treaty bodies. Experts entrusted with special human rights mandates act in their personal capacity and are variously designated as Special Rapporteur, Representative, and Independent Expert or, when several experts share a mandate, Working Group. They examine, monitor and publicly report to the Commission either on human rights situations in specific countries and territories or on global phenomena that cause serious human rights violations worldwide. Certain special mandates are also entrusted to the Secretary-General or his Special Representatives. While never originally conceived as a system, the nearly 50 country and thematic mechanisms that have been established thus far clearly constitute and function as an effective system of human rights protection.

Country Mechanisms

Currently, some 20 mandates monitor the human rights situation in specific countries, including Afghanistan, Burundi, Cambodia, the Democratic Republic of the Congo (former Zaire), Equatorial Guinea, Haiti, Islamic Republic of Iran, Iraq, Myanmar, Nigeria, Rwanda, Somalia, Sudan, and the former Yugoslavia.

The General Assembly has established a Special Committee to Investigate Israeli Practices affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

Thematic Mechanisms

The General Assembly established a Special Representative of the Secretary-General for Children in Armed Conflict.

However, despite the effort put in by the international community in monitoring and implementing human rights, there are still a vast number of cases reported on human rights

violations world over. Some example are America's attack on the Taliban has up to date not been justified under humanitarian law. This shows how state parties to the agreements do not follow the treaties that they themselves entered into. In practice, many human rights are difficult to enforce legally due to the absence of consensus on the application of certain rights, the lack of relevant national legislation or of bodies empowered to take legal action to enforce them.²²² The following, must be implemented to advance human rights' protection:

- To establish an international institution that will pass binding decisions
- To come up with mechanisms that will ensure that states adhere to human rights
- To encourage co-operation amongst member states to support each other in safeguarding human rights
- Member states must practice observance of human rights and not merely sign on paper.
- To come up with stiffer punishments for human rights violators

At the time these laws were being passed, only women and children were mainly the victims of GBV while men were mainly the culprits. However, this assertion no longer stands accurate. In the past few years women have also displayed behaviour that amount to GBV.

2.16. Conclusion

The last two hundred years have witnessed a substantial, historically, unprecedented expansion of women's rights both economic and political. In almost all the industrialized countries, women were previously treated as the property of their husbands and those not married of their fathers, with very few legal rights to possessing the same political rights and most of the same economic rights as men.²²³ Enhancing the participation of women in democratic transitions remains a major challenge in many African states. This is closely linked to the notion that females are now reacting to the previous state of affairs, and thus becoming violent against their male counter parts. This chapter discussed some of the causes , forms and effects of women's violence against men, and in certain instances pointing out

²²² Redress, Enforcement of Awards for Victims of Torture and Other International Crimes, May, 2006

²²³ The Global Gender Gap Report, 2007

the actual case of GBV against men. The literature review is seen as a synthesis of relevant previous studies and theoretical positions that frames empirical studies. The legal framework supporting GBV has also been explored, the successive chapters will unfold more information on the subject.

CHAPTER THREE

THEORETICAL AND CONCEPTUAL FRAMEWORK

3.0. Introduction

The theoretical and conceptual framework explains the path of a research and grounds it firmly in theoretical constructs. The overall aim of the two frameworks is to make research findings more meaningful, acceptable to the theoretical constructs in the research field and ensures generalizability. They assist in stimulating research while ensuring the extension of knowledge by providing both direction and impetus to the research inquiry. They also enhance the empiricism and rigor of a research. Thus, it is no exaggeration for Imenda²²⁴ to say that both the theoretical and conceptual frameworks give life to a research. Unfortunately, many postgraduate students and faculty staff at universities are confused of the two terms and apply them wrongly in their research papers. As a result, their research findings become weak because of the inappropriate application of a suitable theoretical framework and/or conceptual framework. This blurs the understanding of readers of the research paper who are lost, not knowing the purpose of the study, the importance of the study and the scholars the researcher is in dialogue with, whether in agreement or disagreement.²²⁵ A research without the theoretical or conceptual framework makes it difficult for readers in ascertaining the academic position and the underlying factors to the researcher's assertions and/or hypotheses. This renders the research sloppy and not appreciable as contributing significantly to the advancement of the frontiers of knowledge.

3.1. Theoretical Framework

Considering the topic under consideration in this study, the most appropriate theories employed were feminist theories in the sense that since the focus is on women committing GBV, it was imperative perhaps to look at some theories under feminism which may be responsible for women perpetuating violence against men. It may be appreciated also that feminism differs, hence two classes were picked to help in adducing how feminism has contributed to IPV against men. It was also important to bring to light masculinity as the

²²⁴ (2014)

²²⁵ (Evan, 2007)

converse of feminism. Masculinity was particularly important in the study as in some cases it also influences women's violent behaviour as well as rendering the ineffective enforcement of the law; it perpetuates certain attitudes amongst men. Lastly, biological and sociological theories were also employed in determining especially behavioral patterns contributing to the rise of cases of GBVAM.

3.2. Feminist theories

Feminist theory is an extension of feminism into theoretical or philosophical discourse. It aims to understand the nature of gender inequality. It examines women's social roles, experience, interests, and feminist politics in various fields. Feminism is the organized movement which promotes equality for men and women in political, economic and social spheres. Feminists believe that women are oppressed simple due to their sex based on the dominant ideology of patriarchy. Patriarchy is the system which oppresses women through its social, economic and political institutions. Throughout history men have had greater power in both the public and private spheres. To maintain this power, men have created boundaries and obstacles for women, thus making it harder for women to hold power. There is an unequal access to power. Patriarchy also includes the oppression of minorities and homosexuals. Ridding society of patriarchy will result in liberation for women, men, minorities, and gays. Feminism ideology can take many different forms. In the 1970's, women started developing a theory which helped to explain their oppression. Pockets of resistance began to organize and challenge patriarchy. By the 1980's, however, feminists started disagreeing on particular issues linked to feminism. What was once one theory began to branch out into many theories that focused on different feminist issues. Today, there are as many definitions of feminism as there are feminists. Each definition of feminism depends on a number of factors including one's own beliefs, history and culture.

3.2.1. Radical Feminism

Radical feminism promotes the basis for many of the ideas of feminism. They usually clash with the ideals of the liberal feminist, because radical feminists believe that society must be changed at its core in order to dissolve patriarchy, not just through acts of legislation. Unfortunately, this type of feminism also attracts a lot of negative media attention creating a backlash of feminism. Radical feminists believe that the domination of women is the oldest and worst kind of oppression in the

world. They believe this because it spans across the world oppressing women of different races, ethnicities, classes and cultures. Radical feminists want to free both men and women from the rigid gender roles that society has imposed upon them. It is this sex-gender system that has created oppression and radical feminist's mission is to overthrow this system by any possible means. Sometimes radical feminists believe that they must wage a war against men, patriarchy, and the gender system which confines them to rigid social roles. They completely reject these roles, all aspects of patriarchy, and in some cases, they reject men as well. Radical feminists emphasize their difference from men. They form groups that exclude males completely. This type of feminist highlights the importance of individual feelings, experiences and relationships. Radical feminists have divided into two groups with very different views.

3.2.2. Liberal Feminism

Liberal feminism was most popular in the 1950's and 1960's when many civil rights movements were taking place. The main views of liberal feminists are that all people are created equal by God and deserve equal rights. These types of feminists believe that oppression exists because of the way in which men and women are socialized, which supports patriarchy and keeps men in power positions. Liberal feminists believe that women have the same mental capacity as their male counterparts and should be given the same opportunities in political, economic and social spheres. Women should have the right to choose, not have their life chosen for them because of their sex. Essentially, women must be like men. Liberal feminists create and support acts of legislation that remove the barriers for women. These acts of legislation demand equal opportunities and rights for women, including equal access to jobs and equal pay. Liberal feminists believe that removing these barriers directly challenges the ideologies of patriarchy, as well as liberates women.

Liberal feminists are responsible for many important acts of legislation that have greatly increased the status of women, including reforms in welfare, education and health. Unfortunately, liberal feminism has been known to only concentrate on the legislation aspect in the fight against patriarchy. It has been criticized for not breaking down the deeper ideologies of society and patriarchy. Also, it has been criticized for ignoring race and class issues.

3.3. Biological versus Social Theories

Most sociologists reject predominantly biological explanations of patriarchy and contend that social and cultural conditioning are primarily responsible for establishing male and female gender roles.²²⁶ According to standard sociological theory, patriarchy is the result of sociological constructions that are passed down from generation to generation.²²⁷ These constructions are most pronounced in societies with traditional cultures and less economic development. Even in modern, developed societies, however, gender messages conveyed by family, mass media, and other institutions largely favor males having a dominant status.²²⁸

Biologist Richard Lewontin asserts that patriarchy persists through social and political reasons, rather than purely scientific reasons. Opponents of gender feminism, such as Christina Hoff Sommers, have argued that patriarchy has its origin in biological factors. This is called biological determinism, which looks at humanity from a strictly biological point of view. Thus, the evolution of science in a patriarchal society's focus begins with man and woman. The male testosterone hormone is, for instance, known to greatly enhance risk taking behaviour; which can generate increased status in groups if successful (balanced with an equal increase in number of failures, with potential losses of status or death as result). The potential magnitude, frequency and longevity of the increased status from a hormonally driven risk-taking success depends on opportunities, which increases rapidly with societal complexity. A hypothetical patriarchal culture based primarily on a hormonally-driven increased rate of male successes, thus require a certain critical level of societal evolution before it could evolve. Other proponents of this theory posit that because of a woman's biology, she is fit to perform roles such as anonymous child-rearing at home, rather than high-profile decision-making roles, such as leaders in battles. Through this simple basis, "the existence of a sexual division of labor in primitive societies is a starting point as much for purely social accounts of the origins of patriarchy as for biological." Hence, the rise of patriarchy is recognized through this apparent "sexual division".²²⁹ Although patriarchy exists within the

²²⁷ Macionis, John J.; Plummer, Ken (2000). *Sociology: A Global Introduction*. Harlow: Prentice Hall. p. 347. ISBN 9780130407375

²²⁸ Ibid, above.

²²⁹ Ibid, Lewontin

scientific atmosphere, "the period over which women would have been at a physiological disadvantage in participation in hunting through being at a late stage pregnancy or early stage of child-rearing would have been small", during the time of the nomads, patriarchy still grew with power. Lewontin and others argue that such biological determinism unjustly limits women. In his study, he states women behave a certain way not because they are biologically inclined to, but rather because they are judged by "how well they conform to the stereotypical local image of femininity". Feminists believe that people have gendered biases, which are perpetuated and enforced across generations by those who benefit from them. For instance, it has historically been claimed that women cannot make rational decisions during their menstrual periods. This claim cloaks the fact that men also have periods of time where they can be aggressive and irrational; furthermore, unrelated effects of aging and similar medical problems are often blamed on menopause, amplifying its reputation. These biological traits and others specific to women, such as their ability to get pregnant, are often used against them as an attribute of weakness.²³⁰

A growing body of research has found key points of the biological argument to be groundless. For example, it was asserted for over a century that women were not as intellectually competent as men because they have slightly smaller brains on average.²³¹ However, no substantiated significant difference in average intelligence has been found between the sexes. However men have a greater variability in intelligence and except in tests of reading comprehension, perceptual speed, and associative memory, males typically outnumber females substantially among high-scoring individuals. Furthermore, no discrepancy in intelligence is assumed between men of different heights, even though on average taller men have been found to have slightly larger brains. Feminists assert that although women may excel in certain areas and men in others, women are just as competent as men. Therefore, through the growing power of the patriarchal system, a gender bias is created in the work force, leading to a situation in which "men are more likely to be cabinet

⁴⁵ Coney, Sandra (1994). *The menopause industry: how the medical establishment exploits women*. Alameda, California: Hunter House. ISBN 9780897931618.

⁴⁶ Gould, Stephen (1992) [1980]. *The panda's thumb: more reflections in natural history*. New York: Norton. pp. 152–159. ISBN 9780393340839.

ministers or parliamentarians, business executives or tycoons, Nobel Prize-winning scientists or fellows of academies, doctors or airline pilots. As for women they are more likely to be secretaries, laboratory technicians, office cleaners, nurses, airline stewardesses, primary school teachers, or social workers." Within the structure of a patriarchal society, patriarchal biases and values are more likely to be promoted in the educational system. Particularly in mathematical and scientific fields, boys are presumed to have more keen spatial abilities than girls, whereas girls are supposed to assume better linguistic skills. These stereotypical manifestations within educational institutions contract with the notions of differently gendered brains and a "relationship between intelligence and brain size". However, there is "no correlation between skull capacity and hence brain weight and 'intellectual power' yet there is still a constant struggle of gender bias in science.

Sociologist Sylvia Walby has composed six overlapping structures that define patriarchy and that take different forms in different cultures and different times:

1. The state: women are unlikely to have formal power and representation
2. The household: women are more likely to do the housework and raise the children
3. Violence: women are more prone to being abused
4. Paid work: women are likely to be paid less
5. Sexuality: women's sexuality is more likely to be treated negatively
6. Culture: representation of women in media, and popular culture is "within a patriarchal gaze".²³²

Some sociologists, such as Steven Goldberg, argue that social behavior is primarily determined by genetics, and thus that patriarchy arises more as a result of inherent biology than social conditioning. Goldberg also contends that patriarchy is a universal feature of human culture. In 1973, Goldberg wrote, "The ethnographic studies of every society that has ever been observed explicitly state that these feelings were present, there is literally no variation at all." Goldberg has critics among anthropologists. Concerning Goldberg's claims about the "feelings of both men and

²³² Walby, Sylvia (1990). *Theorizing patriarchy*. Oxford, UK Cambridge, Mass: Wiley-Blackwell. p. 20. ISBN 9780631147688.

women", Eleanor Leacock countered in 1974 that the data on women's attitudes are "sparse and contradictory", and that the data on male attitudes about male–female relations are "ambiguous".

An early theory in evolutionary psychology offered an explanation for the origin of patriarchy which starts with the view that females almost always invest more energy into producing offspring than males, and therefore in most species females are a limiting factor over which males will compete. This is sometimes referred to as Bateman's principle. It suggests females place the most important preference on males who control more resources that can help her and her offspring, which in turn causes an evolutionary pressure on males to be competitive with each other in order to succeed in gaining resources and power.²³³ While this account continues to be popular with the laymen and the media, an alternative evolutionary theory has superseded it in scholarly circles. Attachment Fertility Theory,²³⁴ based on attachment theory, observes that human infants are born with a level of helplessness unknown elsewhere in the animal kingdom and that father involvement is critical to human infant survival. Because the investment in offspring required by human males and females is nearly equal, they are proposed to have evolved sex-similar mating preferences (Mutual Mate Choice), that is, both men and women prefer caring, attractive, and successful partners.

The idea that patriarchy is natural has, however, come under attack from many sociologists, explaining that patriarchy evolved due to historical, rather than biological, conditions. In technologically simple societies, men's greater physical strength and women's common experience of pregnancy combined together to sustain patriarchy. Gradually, technological advances, especially industrial machinery, diminished the primacy of physical strength in everyday life. Similarly, contraception has given women control over their reproductive cycle.

²³³ Buss, David Michael; Schmitt, David P. (May 2011). "Evolutionary psychology and feminism". *Sex Roles*. Springer. **64** (9–10): 768–787. doi:10.1007/s11199-011-9987-3.

⁴⁹ Miller, Lynn Carol; Christensen, John L.; Pedersen, William C.; Putcha-Bhagavatula, Anila; Appleby, Paul Robert (2013). "Attachment fertility theory: Complex systems of mechanisms simplify sex, mating, and sexual risks". *Psychological Inquiry*. Taylor and Francis. **24** (3): 211–220. doi:10.1080/1047840x.2013.817322.

There is considerable variation in the role that gender plays in human societies. Although there are no known examples of strictly matriarchal cultures, there exist societies which have been shown to be matrilinear or matriloal, primarily among indigenous tribal groups. Some hunter-gatherer groups have been characterized as largely egalitarian. Others have argued that patriarchy is a cultural universal. Barbara Smuts argues that Patriarchy evolved in humans through conflict between the reproductive interests of males and the reproductive interests of females. She lists six ways that it emerged: 1. a reduction in female allies 2. Elaboration of male-male alliances 3. Increased male control over resources 4. Increased hierarchy formation among men. 5. Female strategies that reinforce male control over females. The evolution of language and its power to create ideology.²³⁵

3.4. Masculinities

As the study focused on GBVAM perpetrated by women, it is the considered view of the researcher that it is essential to unpack the theoretical concept which causes subordination of women by men, by interrogating masculinity theories. *Morrell*²³⁶ asserts that masculinity is a term which refers to a specific gender identity, belonging to a specific male person. While this gender identity is acquired in social contexts and circumstances, it is 'owned' by an individual. Masculinity is not inherited nor is it acquired in a one way off. It is constructed in the context of class, race and other factors which are interpreted through the prism of age. Boys develop a masculine gender identity which is deficient relative to the adult masculinity of men. The stages by which boys become men-manhood are a source of anxiety and a rite of passage. There is no set or prescribed procedure but the determination to become 'a man' is a powerful feature of masculinity. While masculinity is not automatically acquired, it is also true that boys and men are not entirely free to choose those images which please them. Their tastes and their bodies are influenced; some would say shaped by discourses of gender which they encounter from birth. According to *Nkiwane*,²³⁷ the term

²³⁵ Smuts, Barbara. "The Evolutionary Origins of Patriarchy." *Human Nature*, Vol. 6, No. 1, 1995

²³⁶ (2001:7-8)

²³⁷ (2011:267)

masculinity is not easy to define as it varies in history, time and space. *Epprecht* defines masculinity as:

*‘...the ideals and codes of behaviours by which men define themselves as men. Masculinity is what makes men socially (as opposed to biologically) distinguishable from boys and women. It sets out for mature male-bodied people what their proper relations with other people should be, including what they may or may not say, feel, wear, and do, when they may appropriately laugh, cry, propose love and so on’.*²³⁸

However, *Morrell*,²³⁹ has correctly pointed out that the term masculinity is often implored to talk about ‘a specific identity, belonging to a specific male person’. He adds:

...while this gender identity is acquired in social contexts and circumstances, it is ‘owned’ by an individual. It bears the marks and characteristics of the history which formed it- frequently with salient childhood experiences imparting a particular set of prejudices and preferences, joys and terrors. Masculinity viewed in this particular way can be understood as something that can be deployed or used. Individuals can choose to respond to a particular situation in one way or another way. While there are criticisms of this conceptualization as voluntaristic, such a construction allows for the examination of individual masculinities at work. It also promotes the examination of micro aspects of masculinity, particularly of the body- that major bearer of masculine value and symbolism.

The most coherent and consistent account of masculinity is found in the work of the Australian sociologist, *Connell* and expanded on by different authors. She demonstrated that gender is a concept of power and as such ‘being a man conferred power’ which has been used to subordinate women. In more general terms, hegemonic masculinity is...a social ascendancy achieved in a play of social forces that extends beyond contests of brute power into the organization of private life and cultural processes. In a connection to crime and violence. ‘Hegemony’ does not refer to ascendancy based on force, but it is not irreconcilable with the use of violence.²⁴⁰ Men enjoy the ‘patriarchal dividend,’ the advantage men in general gain from the overall subordination of women.²⁴¹

²³⁸ (Epprecht, 1998:117-142).

²³⁹ (2001:7)

²⁴⁰ (Connell, 1987:184)

²⁴¹ (Connell, 1995:79)

In *Masculinities*, *Connell* developed the theory of different masculinities where she argued that while men oppressed and exploited women, some men dominated and subordinated other men. Under this theory, *Connell* observed four different categories of masculinities, first there is *hegemonic masculinity*, which refers ‘to the cultural dynamic by which a group claims and sustains a leading position in social life’.²⁴²

Hegemonic masculinity is regarded as the norm and it allows for men’s dominance over women and considers women, as well as men falling below the standards set by hegemonic masculinity, as the ‘other’.²⁴³

Hegemonic masculinity to some extent is similar to ‘existentialist’ feminism as both theories are associated with the overall subordination of women by men, whereby women classified as the ‘other’. *Morrell* points out that:

‘Hegemonic masculinity does not rely on brute force for its efficiency, but on a range of mechanisms which create a gender consensus that legitimizes the power of men’²⁴⁴.
Furthermore, Connell²⁴⁵) also developed three categories of non-hegemonic masculinities:

Subordinate masculinities which entail specific gender relations of dominance and subordination between groups of men within the overall framework of society. *Oliver Phillips* articulates that one significant group of men subjected to subordination is that of homosexuals who are dominated by heterosexuals.²⁴⁶

Hegemony relates to cultural dominance in society as a whole. Within that overall framework there are specific gender relations of dominance and subordination between groups of men. Oppression positions homosexual masculinities at the bottom of a gender hierarchy among men. Gayness, in patriarchal ideology, is the repository of whatever is symbolically expelled from hegemonic masculinity, the items ranging from fastidious taste in home decoration to receptive anal pleasure. Hence, from the

²⁴² (Connell, 1995:76-79)

²⁴³ (Nkiwane, 2011:267-268)

²⁴⁴ (*Morrell*, 2001:9)

²⁴⁵ (1995:76-82)

²⁴⁶ (see Phillips, 1997:471-492)

point of view of hegemonic masculinity, gayness is easily assimilated to femininity. And hence, in the case of some gay theorists- the ferocity of homophobic attacks. Gay masculinity is the most conspicuous, but it is not the only subordinated masculinity. Some heterosexual men and boys too are expelled from the circle of legitimacy. The process is marked by a rich vocabulary of abuse: wimp, milksop, nerd, turkey, sissy, lily liver, jellyfish, yellow belly, candy ass, ladyfinger, pushover, cookie pusher, cream puff, motherfucker, pantywaist, mother's boy, four-eyes, ear-'ole, dweeb, geek, milquetoast, cedrick, and so on.²⁴⁷

Complicit masculinities which refer to masculinities constructed in ways that realize the patriarchal dividend without the tensions or risks of being the frontline troops of patriarchy.' Complicity is the second category, which according to *Connell* determines relations among masculinities. This category refers to the extension and institutionalization of a male power group under mutual agreements. Thus, a group agrees on the procedures through which subordination is going to be carried out. Hegemony is not actually effective if a careful and strategic plan is not well designed to guarantee power control. That is why complicity is a cautious conspiracy and one of the main important factors in the power of masculinity because it refers to the intellectual planning to dominate other groups.²⁴⁸

Marginalized masculinities which come in as a factor of the interplay between gender and other factors such as race, class and ethnicity. This is where certain attributes, activities and behaviours are associated with certain groups based on race and class, and in such situations, one race or ethnic group may see itself as dominant over and superior to the other. The interplay of gender with other structures such as class and race creates further relationships between masculinities. In the case of race relations, as by way of example; in a white-supremacist context, black masculinities play symbolic roles for white gender construction. For instance, black sporting stars

²⁴⁷ (Connell,1995:78-79)

²⁴⁸ (Connell, 1995:79-80)

become exemplars of masculine toughness, while the fantasy figure of the black rapist plays an important role in sexual politics among whites, a role much exploited by right-wing politics in the United States; conversely hegemonic masculinity among whites sustains the institutional oppression and physical terror that have framed the marking of masculinities in black communities. Marginalization is always relative to the *authorization* of the hegemonic masculinity of the dominant group. Thus in the United States, particular black athletes may be exemplars for the hegemonic masculinity. But the fame and wealth of individual stars has no trickle-down effect; it does not yield social authority to black men. The relation of marginalization and authorization may also exist between subordinated masculinities. A striking example is the arrest and conviction of *Oscar Wilde*, one of the first men caught in the net of modern anti-homosexual legislation. *Wilde* was trapped because of his connections with homosexual working-class youths, a practice unchallenged until his legal battle with a wealthy aristocrat, the *Marquess of Queensberry*, made him vulnerable.²⁴⁹

Subordinate, complicit and marginalised masculinities are those developed outside the corridors of power.²⁵⁰

The concept of 'hegemony', deriving from *Antonio Gramsci's analysis* of class relations, refers to the cultural dynamic by which a group claims and sustains a leading position in social life. At any given time, one form of masculinity rather than others is culturally exalted. This is in line with *Connell's* definition of hegemonic masculinity as:

*The culturally idealized form of masculine character as well as the subordination of women and the marginalization of gay men.*²⁵¹

She argues that such an idealized form of masculinity becomes hegemonic when it is widely accepted in a culture and when that acceptance reinforces the dominant gender ideology of the culture. Connell further defined 'hegemonic masculinity' as: ...the 'configuration of gender practice which embodies the currently

²⁴⁹ (Connell, 1995:80-81)

²⁵⁰ (Morrell, 2001:7)

²⁵¹ (Connell, 1990:83-95)

*accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women.*²⁵²

Masculinity is considered to be hegemonic when power is defined in terms of physical force and control. *Connell* asserts that force and competence are translated into the language of the body of the social relations which define men as holders of power, women as subordinate, and which is one of the reasons why the superiority of men becomes ‘naturalized.’²⁵³ In which case the male body comes to represent power, and power itself is masculinized as force, control, physical strength, speed and domination.²⁵⁴ Masculinity is associated with providing financial security, and also come to be associated with being the bread winner.²⁵⁵ It is this breadwinner role which often causes men to be perpetrators of physical and sexual violence against women. Masculinities are fluid and should not be considered as belonging in a fixed way to any one group of men. They are socially and historically constructed in a process which involves contestation between rival understandings of what being a man should involve. Masculinities are constantly being protected and defended, are constantly breaking down and being recreated. For gender activists this conceptualization provides space for optimism because it acknowledges the possibility of intervening in the politics of masculinity to promote masculinities that are more peaceful and harmonious. For gender scholars, the challenge is to identify what forces operate to effect change in masculinities, when, where and how such changes occur, and what their effects are.²⁵⁶

3.5. Conceptual Framework

A conceptual framework is a structure which the researcher believes can best explain the natural progression of the phenomenon to be studied.²⁵⁷ It is linked with the concepts, empirical research and important theories used in promoting and systemizing the knowledge espoused by

²⁵² (Connell, 1995:77).

²⁵³ (See Connell, 1983)

²⁵⁴ (Messer, 1990:97-108)

²⁵⁵ (Connell, 1995:90)

²⁵⁶ (Morrell, 2001:7-8)

²⁵⁷ (Camp, 2001)

the researcher.²⁵⁸ It is the researcher's explanation of how the research problem would be explored. The conceptual framework presents an integrated way of looking at a problem under study.²⁵⁹

In a statistical perspective, the conceptual framework describes the relationship between the main concepts of a study. It is arranged in a logical structure to aid provide a picture or visual display of how ideas in a study relate to one another.²⁶⁰ Interestingly, it shows the series of action the researcher intends carrying out in a research study.²⁶¹ The framework makes it easier for the researcher to easily specify and define the concepts within the problem of the study.²⁶² Miles and Huberman²⁶³ opine that conceptual frameworks can be 'graphical or in a narrative form showing the key variables or constructs to be studied and the presumed relationships between them. A conceptual framework is a structure which the researcher believes can best explain the natural progression of the phenomenon to be studied.²⁶⁴

It is linked with the concepts, empirical research and important theories used in promoting and systemizing the knowledge espoused by the researcher.²⁶⁵ It is the researcher's explanation of how the research problem would be explored. The conceptual framework presents an integrated way of looking at a problem under study.²⁶⁶ In a statistical perspective, the conceptual framework describes the relationship between the main concepts of a study. It is arranged in a logical structure to aid provide a picture or visual display of how ideas in a study relate to one another.²⁶⁷ Interestingly, it shows the series of action the researcher intends carrying out in a research study.²⁶⁸ The framework makes it easier for the researcher to easily specify and define the concepts within the problem of the study.²⁶⁹ Miles and Huberman²⁷⁰ opine that conceptual

²⁵⁸ (Peshkin, 1993)

²⁵⁹ (Liehr & Smith, 1999)

²⁶⁰ (Grant & Osanloo, 2014)

²⁶¹ (Dixon, Gulliver & Gibbon, 2001)

²⁶² (Luse, Mennecke & Townsend, 2012)

²⁶³ (1994, p.18)

²⁶⁴ (Camp, 2001)

²⁶⁵ (Peshkin, 1993)

²⁶⁶ (Liehr & Smith, 1999)

²⁶⁷ (Grant & Osanloo, 2014)

²⁶⁸ (Dixon, Gulliver & Gibbon, 2001)

²⁶⁹ (Luse, Mennecke & Townsend, 2012)

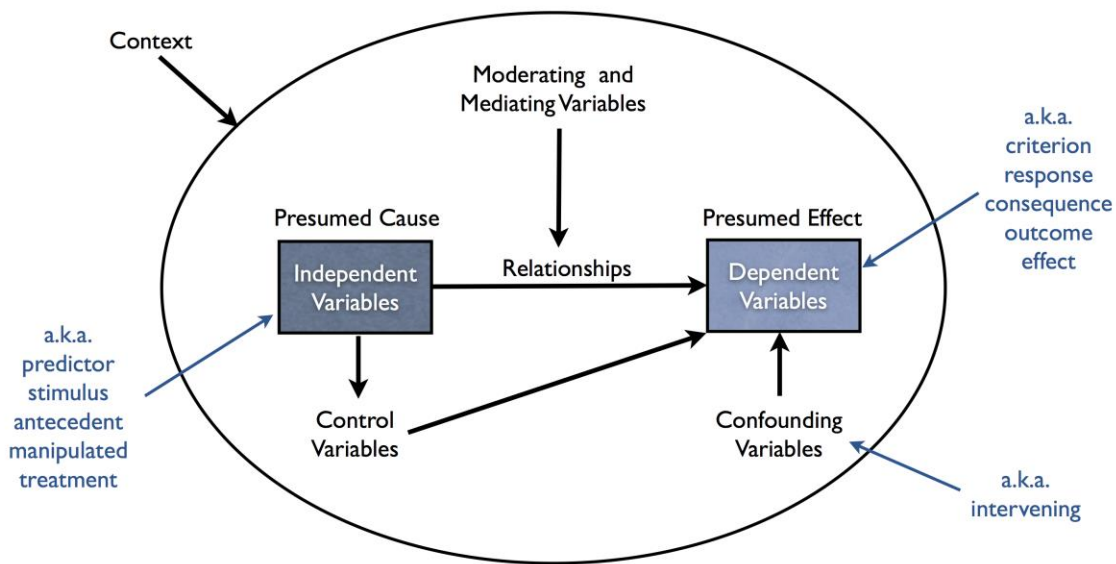
²⁷⁰ (1994, p.18)

frameworks can be ‘graphical or in a narrative form showing the key variables or constructs to be studied and the presumed relationships between them.

Figure 4: Conceptual Framework Fundamentals

Conceptual Framework Fundamentals

Note 1: Two Benefits are Focusing and Bounding the Study



Note 2: Variables and Relationships are Identified from Theory and Experience

John Latham (c) 2005

Source: John Latham © 2005

3.5.1. Importance of Conceptual Frameworks

*Miles & Huberman*²⁷¹ assert that a conceptual framework explains either graphically or in narrative form, the main things to be studied, the key factors, constructs or variables and the presumed relationships among them. Frameworks can be rudimentary or elaborate, theory driven or commonsensical, descriptive or casual.²⁷² Others stipulate that the term

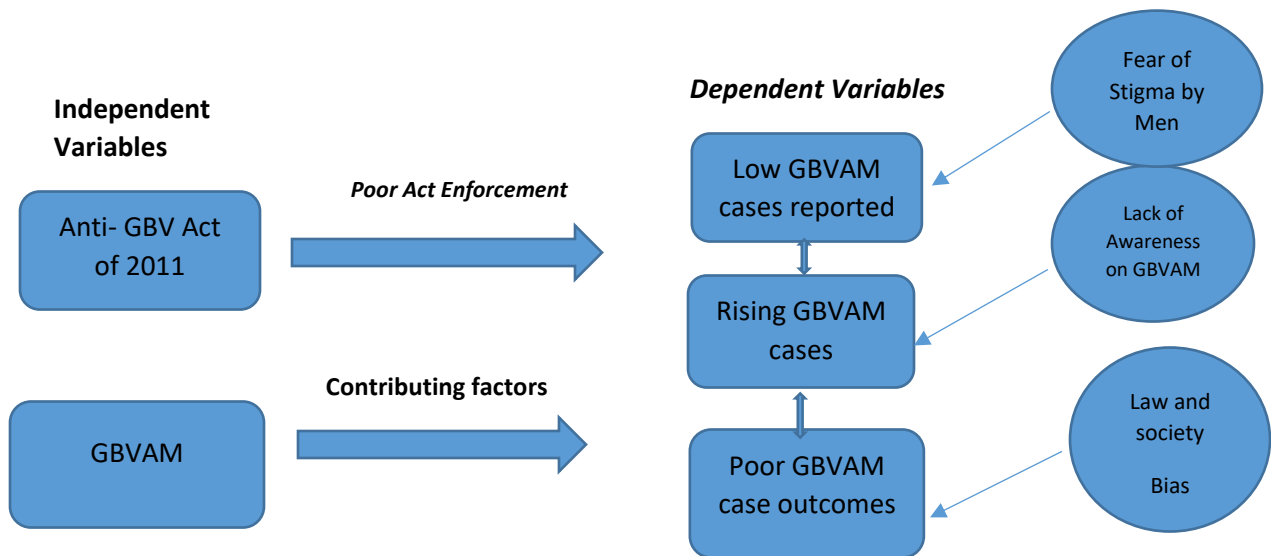
²⁷¹ (1994:18)

²⁷² *Maxwell* (2005:33)

is sometimes defined rather more widely, e.g. ‘the system of concepts, assumptions, expectations, beliefs and theories that supports and informs a research. The approaches employed in this study are the feminist approach, biological versus sociological approach and masculinity approach.

The Conceptual framework highlights the variables to be studied, with two independent variables which are: The Anti-Gender Based Violence Act of 2011, GBVAM and dependent variables which include low reporting of GBVAM cases to the police, rising cases of GBVAM committed as well as poor case outcomes in court for GBVAM. These are compounded by factors as highlighted graphically below:

Figure 5: Conceptual Framework



3.6. Conclusion

A conceptual framework is an analytical tool with several variations and contexts. It can be applied in different categories of work where an overall picture is needed. It is used to make conceptual distinctions and organize ideas. Strong conceptual frameworks capture something real and do this in a way that is easy to remember and apply. Isaiah Berlin used the metaphor of a "fox" and a "hedgehog" to make conceptual distinctions in how important philosophers and authors view the

world.²⁷³ Berlin describes hedgehogs as those who use a single idea or organizing principle to view the world (such as Dante Alighieri, Blaise Pascal, Fyodor Dostoyevsky, Plato, Henrik Ibsen and Georg Wilhelm Friedrich Hegel). Foxes, on the other hand, incorporate a type of pluralism and view the world through multiple, sometimes conflicting, lenses (examples include Johann Wolfgang von Goethe, James Joyce, William Shakespeare, Aristotle, Herodotus, Molière, and Honoré de Balzac). Economists use the conceptual framework of "supply" and "demand" to distinguish between the behavior and incentive systems of firms and consumers.²⁷⁴ Like many conceptual frameworks, supply and demand can be presented through visual or graphical representations (see demand curve). Both political Science and economics use principal agent theory as a conceptual framework. The politics-administration dichotomy is a long-standing conceptual framework used in public administration.²⁷⁵ All three of these cases are examples of a macro level conceptual framework.

²⁷³ Berlin, Isaiah (1953), *The Hedgehog and the Fox: An Essay on Tolstoy's View of History* London: Weidenfeld & Nicolson; 1986 New York: Simon and Schuster, introduction by M. Walzer.

²⁷⁴ Berlin, Isaiah (1953), *The Hedgehog and the Fox: An Essay on Tolstoy's View of History* London: Weidenfeld & Nicolson; 1986 New York: Simon and Schuster, introduction by M. Walzer.

²⁷⁵ *Ibid.*

CHAPTER FOUR

RESEARCH METHODOLOGY

4.0. Introduction

This chapter discusses research methodology employed in the study. Research methodology is the specific procedures or techniques used to identify, select, process, and analyze information about a topic. In a research paper, the methodology section allows the reader to critically evaluate a study's overall validity and reliability. The methodology section answers two main questions: How was the data collected or generated? How was it analyzed? This chapter seeks to address the aforementioned questions and give the rationale for each method used.

4.1. Research Methodologies and Methods Defined

For the purpose of this study; research methods are defined as tools of data collection, whilst research methodologies being the approach employed in the study. The research methodology employed in the study was the Socio-Legal Research or Study, which is an event where the science of law meets the science of society. This research requires a multidisciplinary approach to analyze and interpret the law, the legal phenomenon, the relationship between those two and also their relationship with the society in its widest sense. Socio-Legal Research has its theoretical, practical and methodological bases in the social sciences. Law is an important aspect when it comes to any social investigation. The originates and functions in a society based upon the particular needs, customs, traditions of the society and it also possesses the ability to greatly influence the social structure and functions of any society. Therefore, just as researchers are clueless and hapless if they have no knowledge of even the basics of the law, legal system and the various important if not all the law institutions, legal researchers too would be clueless and hapless and would do no justice whatsoever to legal inquiry if they do not possess the basic knowledge and are not aware of the mechanics of social research methods. In societies where the development is planned, law plays the role of a catalyst which helps and speeds the process of social reform. Thus in a dynamic or developing society a legal researcher must adopt a multi-disciplinary approach as the legal

problems in the society will be largely in connection with the social, economic, political and psychological issues.²⁷⁶

Hence the choice of this methodology in this study was so as gather as much information as possible, as issues of gender based violence may not be exclusively in the domain of the law, but multidisciplinary as rightly put in the above paragraph. This is true of the gender based violence, it is not exclusively within the domain of the law. It intermingles with disciplines such as sociology; medicine; economics, politics, *inter alia*. Hence the necessity of using the socio-legal research method as this topic is multi- disciplinary and multi-faceted.

Under the umbrella of the socio-legal research, the study employed the mixed research method in collection and analysis of data. The original legal research has been doctrinal research which is qualitative in nature; however, with the development and dynamics of society it is inevitable that legal research also begins to embrace stasis for example, which are necessary in certain cases which are cardinal in arriving at viable conclusions of certain studies such as this one. This automatically brings to the fore, the issues of statistics which embrace quantitative methods. For example for this study, quantitative methods are particularly important in gathering the actual numerical value of the prevalence of GBVAM, *inter alia*. The mixed methods approach which encompasses both qualitative and quantitative methods was used in respect of perpetrators of GBVAM; in analysis of reported cases; in respect of the stakeholders in the fight against GBVAM; and in respect of new emerging theories on the causes and effects of GBVAM. A socio-legal approach seeks to gain empirical knowledge and an understanding of how the law and legal proceedings impact on the parties involved. It often fills a gap in the understanding of ‘law in action’ found in black letter

²⁷⁶ Prof. Ranbir Singh and Others, ‘ Research methodology’ (MHRD) < http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09._research_methodology/04._socio-legal_research/et/8151_et_et.pdf> as accessed on 24th August 2018

methodology perspective.²⁷⁷ Empirical Legal Research²⁷⁸ describes how to investigate the roles of legislation, regulation, legal policies and other legal arrangements at play in society. It is a guide on how to do empirical legal research, covering history, methods, evidence, growth of knowledge and links with normativity. This multidisciplinary approach combines insights and approaches from different social sciences, evaluation studies, Big Data analytics and empirically informed ethics.²⁷⁹

4.2. Mixed Methods Research²⁸⁰

Mixed methods research is a methodology for conducting research that involves collecting, analyzing and integrating quantitative (e.g., experiments, surveys) and qualitative (e.g., focus groups, interviews) research. This approach to research is used when this integration provides a better understanding of the research problem than either of each alone.

- (a) **Quantitative data** includes close-ended information such as that found to measure attitudes (e.g., rating scales), behaviours (e.g., observation checklists), and performance instruments. The analysis of this type of data consists of statistically analysing scores collected on instruments (e.g., questionnaires) or checklists to answer research questions or to test hypotheses.
- (b) **Qualitative data** consists of open-ended information that the researcher usually gathers through interviews, focus groups and observations. The analysis of the qualitative data

²⁷⁷ All Answers Ltd, 'Writing A Law Dissertation Methodology' (Lawteacher.net, July 2019) <<https://www.lawteacher.net/law-help/dissertation/writing-law-dissertation-methodology.php?vref=1>> accessed 24 July 2019

²⁷⁸ Cane, Peter, and Herbert M Kritzer. *The Oxford Handbook of Empirical Legal Research*. New York: Oxford University Press, 2010.

²⁷⁹ Creswell, John W. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. 3rd. Los Angeles: Sage, 2009.

²⁸⁰ Food Risk Benefit and Risk Communication, European Union's Seventh Framework Programme for Research, technological development and demonstration. © 2016.

(words, text or behaviours) typically follows the path of aggregating it into categories of information and presenting the diversity of ideas gathered during data collection.²⁸¹

By mixing both quantitative and qualitative research and data, the researcher gains in breadth and depth of understanding and corroboration, while offsetting the weaknesses inherent to using each approach by itself. One of the most advantageous characteristics of conducting mixed methods research is the possibility of triangulation, i.e., the use of several means (methods, data sources and researchers) to examine the same phenomenon. Triangulation allows one to identify aspects of a phenomenon more accurately by approaching it from different vantage points using different methods and techniques. Successful triangulation requires careful analysis of the type of information provided by each method, including its strengths and weaknesses.

4.2.1.. Types of mixed methods research designs

When deciding what type of mixed methods design to use, it is important to take into account the overall purpose of the research (e.g., exploration or generalization), the specific research questions, and the strengths and weaknesses of each design. The four major mixed methods designs are identified below and compared in terms of their purposes, strengths and weaknesses. Examples of each design are also described.

Sequential explanatory design

This design involves the collection and analysis of quantitative data followed by the collection and analysis of qualitative data. The priority is given to the quantitative data, and the findings are integrated during the interpretation phase of the study.

When to use it?

To help explain, interpret or contextualize quantitative findings.

- To examine in more detail unexpected results from a quantitative study.

Strengths:

²⁸¹Epstein, Lee, and Gary King. "The Rules of Inference." *The University of Chicago Law Review* 69, no. 1 (2002): 1-133.

- Easy to implement because the steps fall into clear separate stages.
- The design is easy to describe and the results easy to report.

Weaknesses:

- Requires a substantial length of time to complete all data collection given the two separate phases.

Sequential exploratory design

In this design, qualitative data collection and analysis is followed by quantitative data collection and analysis. The priority is given to the qualitative aspect of the study, and the findings are integrated during the interpretation phase of the study.

When to use it?

- To explore a phenomenon and to expand on qualitative findings.
- To test elements of an emergent theory resulting from the qualitative research.
- To generalize qualitative findings to different samples in order to determine the distribution of a phenomenon within a chosen population.
- To develop and test a new instrument

Strengths:

Easy to implement because the steps fall into clear, separate stages.

- The design is easy to describe and the results easy to report.

Weaknesses:

- Requires a substantial length of time to complete all data collection given the two separate phases.
- It may be difficult to build from the qualitative analysis to the subsequent data collection.

Concurrent triangulation

In this design only one data collection phase is used, during which quantitative and qualitative data collection and analysis are conducted separately yet concurrently. The findings are integrated during the interpretation phase of the study. Usually, equal priority is given to both types of research.

When to use it?

- To develop a more complete understanding of a topic or phenomenon.
- To cross-validate or corroborate findings.

Strengths:

- Provides well-validated and substantiated findings.
- Compared to sequential designs, data collection takes less time.

Weaknesses:

- Requires great effort and expertise to adequately use two separate methods at the same time.
- It can be difficult to compare the results of two analysis using data of different forms.
- It may be unclear how to resolve discrepancies that arise while comparing the results.
- Given that data collection is conducted concurrently, results of one method (e.g., interview) cannot be integrated in the other method (e.g., survey).

Concurrent nested

In this design only one data collection phase is used, during which a predominant method (quantitative or qualitative) nests or embeds the other less priority method (qualitative or quantitative, respectively). This nesting may mean that the embedded method addresses a different question than the dominant method or seeks information from different levels. The data collected from the two methods are mixed during the analysis phase of the project.

When to use it?

- To gain broader and in-depth perspectives on a topic.
- To offset possible weaknesses inherent to the predominant method.

Strengths:

- Two types of data are collected simultaneously, reducing time and resources (e.g., number of participants).
- Provides a study with the advantages of both quantitative and qualitative data.

Weaknesses:

- The data needs to be transformed in some way so that both types of data can be integrated during the analysis, which can be difficult.
- Inequality between different methods may result in unequal evidence within the study, which can be a disadvantage when interpreting the results.²⁸²

Concurrent triangulation will be used in this study where both qualitative and quantitative information will be obtained concurrently and given priority. This will assist in achieving the objectives of research as this process is time efficient and will enable the researcher to obtain information under both methods which supplement each other in determining the findings, and finally recommendations.

After having looked at the different types of research methods that can be used in a study such as this one, it is inevitable to now delve into the research methods that will be employed for this study.

4.2.2. Qualitative Research²⁸³

This is carried out when we wish to understand meanings, look at, describe and understand experience, ideas, beliefs and values, intangibles such as these. This is carried out when we wish

²⁸²Keller, Dana K, and Mary Lou Casadevall-Keller. *The Tao of Research: A Path to Validity*. Los Angeles: Sage, 2010.

²⁸³ Anderson, Claire. "Presenting and Evaluating Qualitative Research." *American Journal of Pharmaceutical Education* 74 (2010): 1-7; Denzin, Norman. K. and Yvonna S. Lincoln. *Handbook of Qualitative Research*. 2nd edition. Thousand Oaks, CA: Sage, 2000; Merriam, Sharan B. *Qualitative Research: A Guide to Design and Implementation*. San Francisco, CA: Jossey-Bass, 2009.

to understand meanings, look at, describe and understand experience, ideas, beliefs and values, intangibles such as these. *Example:* an area of study that would benefit from qualitative research would be that of students' learning styles and approaches to study, which are described and understood subjectively by students.

Figure 3 Qualitative Research Methods



Source: 2020 Question Pro-Survey Software

The justification for using qualitative research is that in this study, reference will be made to reported cases and other available literature on this topic, therefore, making qualitative research an appropriate method to use.

4.2.2.1. Qualitative Research Methods

Qualitative research methods are designed in a manner that they help reveal the behavior and perception of a target audience with reference to a particular topic. There are different types of qualitative research methods like an in-depth interview, focus groups, ethnographic research, content analysis, case study research that are usually used. The results of qualitative methods are more descriptive and the inferences can be drawn quite easily from the data that is obtained.

Qualitative research methods originated in the social and behavioral sciences. Today our world is more complicated and it is difficult to understand what people think and perceive. Qualitative research methods make it easier to understand that as it is more communicative and descriptive.

The following are the qualitative research methods that are frequently used:

1. One-on-One Interview: Conducting in-depth interviews is one of the most common qualitative research methods. It is a personal interview that is carried out with one respondent at a time. This is purely a conversational method and invites opportunities to get details in depth from the respondent. One of the advantages of this method provides a great opportunity to gather precise data about what people believe and what their motivations are. If the researcher is well experienced asking the right questions can help him/her collect meaningful data. If they should need more information the researchers should ask such follow up questions that will help them collect more information. These interviews can be performed face-to-face or on phone and usually can last between half an hour to two hours or even more. When the in-depth interview is conducted face to face it gives a better opportunity to read the body language of the respondents and match the responses.

2. Record keeping: This method makes use of the already existing reliable documents and similar sources of information as the data source. This data can be used in a new research. This is similar to going to a library. There one can go over books and other reference material to collect relevant data that can likely be used in the research.

3. Process of observation: Qualitative Observation is a process of research that uses subjective methodologies to gather systematic information or data. Since, the focus on qualitative observation is the research process of using subjective methodologies to gather information or data. The qualitative observation is primarily used to equate quality differences. Qualitative observation deals with the 5 major sensory organs and their functioning – sight, smell, touch, taste, and hearing. This doesn't involve measurements or numbers but instead characteristics.

4.2.2.2. Qualitative Data Collection

Qualitative data collection allows collecting data that is non-numeric and helps us to explore how decisions are made and provide us with detailed insight. For reaching such conclusions the data that is collected should be holistic, rich and nuanced and findings to emerge through careful analysis.

4.2.2.3. Qualitative Data Analysis

Qualitative data analysis such as notes, videos, audio recordings images, and text documents. One of the most used methods for qualitative data analysis is text analysis. Text analysis is a data analysis method that is distinctly different from all other qualitative research methods, where researchers analyze the social life of the participants in the research study and decode the words, actions etc. There are images also that are used in this research study and the researchers analyze the context in which the images are used and draw inferences from them. In the last decade, text analysis through what is shared on social media platform has gained supreme popularity.

4.2.2.4. Characteristics of Qualitative Research Methods

1. Qualitative research methods usually collect data at the sight, where the participants are experiencing issues or problems. These are real-time data and rarely bring the participants out of the geographic locations to collect information.
2. Qualitative researchers typically gather multiple forms of data, such as interviews, observations, and documents, rather than rely on a single data source.
3. This type of research method works towards solving complex issues by breaking down into meaningful inferences that is easily readable and understood by all.
4. Since it's a more communicative method, people can build their trust on the researcher and the information thus obtained is raw and unadulterated.

4.2.3. The advantage of using qualitative methods is that they generate rich, detailed data that leave the participants' perspectives intact and provide multiple contexts for understanding the phenomenon under study. In this way, qualitative research can be used to vividly demonstrate phenomena or to conduct cross-case comparisons and analysis of individuals or groups.

Among the specific strengths of using qualitative methods to study social science research problems is the ability to:

- Obtain a more realistic view of the lived world that cannot be understood or experienced in numerical data and statistical analysis;
- Provide the researcher with the perspective of the participants of the study through immersion in a culture or situation and as a result of direct interaction with them;
- Allow the researcher to describe existing phenomena and current situations;
- Develop flexible ways to perform data collection, subsequent analysis, and interpretation of collected information;
- Yield results that can be helpful in pioneering new ways of understanding;
- Respond to changes that occur while conducting the study [e.g., extended fieldwork or observation] and offer the flexibility to shift the focus of the research as a result;
- Provide a holistic view of the phenomena under investigation;
- Respond to local situations, conditions, and needs of participants;
- Interact with the research subjects in their own language and on their own terms; and,

Create a descriptive capability based on primary and unstructured data.

4.2.4. Limitations of Using Qualitative Methods

It is very much true that most of the limitations you find in using qualitative research techniques also reflect their inherent strengths. For example, small sample sizes help you investigate research problems in a comprehensive and in-depth manner. However, small sample sizes undermine opportunities to draw useful generalizations from, or to make broad policy recommendations based upon, the findings. Additionally, as the primary instrument of investigation, qualitative researchers are often imbedded in the cultures and experiences of others. However, cultural embeddedness increases the opportunity for bias to enter into the way data is gathered, interpreted, and reported.

Some specific limitations associated with using qualitative methods to study research problems in the social sciences include the following:

- Drifting away from the original objectives of the study in response to the changing nature of the context under which the research is conducted;

- Arriving at different conclusions based on the same information depending on the personal characteristics of the researcher;
- Replication of a study is very difficult;
- Research using human subjects increases the chance of ethical dilemmas that undermine the overall validity of the study;
- An inability to investigate causality between different research phenomena;
- Difficulty in explaining differences in the quality and quantity of information obtained from different respondents and arriving at different, non-consistent conclusions;
- Data gathering and analysis is often time consuming and/or expensive;
- Requires a high level of experience from the researcher to obtain the targeted information from the respondent;
- May lack consistency and reliability because the researcher can employ different probing techniques and the respondent can choose to tell some particular stories and ignore others; and,
- Generation of a significant amount of data that cannot be randomized into manageable parts for analysis.²⁸⁴

4.3. Research Approach

Under qualitative research, the following data collection methods were used:

4.3.1. Interviews

Interviews enable face to face discussion with human subjects. Notes are taken while conducting interviews. Interviews do not require speculation and they tend to produce short answers. There are several types of interviews namely:

Structured interviews consist of a series of pre-determined questions that all interviewees answer in the same order. Data analysis usually tends to be more straightforward because researcher can compare and contrast different answers given to the same questions.

²⁸⁴ For further information see Chapters 11 and 16 of The Postgraduate Research Handbook by Gina Wisker.

Unstructured interviews are usually the least reliable from research viewpoint, because no questions are prepared prior to the interview and data collection is conducted in an informal manner. Unstructured interviews can be associated with a high level of bias and comparison of answers given by different respondents tends to be difficult due to the differences in formulation of questions.

Semi-structured interviews contain the components of both, structured and unstructured interviews. In semi-structured interviews, interviewer prepares a set of same questions to be answered by all interviewees. At the same time, additional questions might be asked during interviews to clarify and/or further expand certain issues.

Semi-structured interviews will be used as this will allow the author to collect more information even for those issue which were not previously envisaged, but incidental to collecting data. This will also ensure that information is comprehensively collected and gathered.

Advantages of interviews include possibilities of collecting detailed information about research questions. Moreover, in in this type of primary data collection researcher has direct control over the flow of process and she has a chance to clarify certain issues during the process if needed. Disadvantages, on the other hand, include longer time requirements and difficulties associated with arranging an appropriate time with perspective sample group members to conduct interviews.²⁸⁵

While the disadvantages are that there is a risk of interviewee bias during the primary data collection process and this would seriously compromise the validity of the project findings. Some interviewer bias can be avoided by ensuring that the interviewer does not overreact to responses of the interviewee. Other steps that can be taken to help avoid or reduce interviewer bias include

²⁸⁵ Connaway, L.S.& Powell, R.P.(2010) “Basic Research Methods for Librarians” ABC-CLIO

having the interviewer dress inconspicuously and appropriately for the environment and holding the interview in a private setting.²⁸⁶

Owing to the advantages flowing from interviews, interviews were used as a means of primary data collection aimed at collecting information from perpetrators of GBVAM, and victims. This was particularly important in ascertaining extent of the prevalence of this vice and may address one of the research questions that is the causes of GBVAM. Interviews were particularly used to collect information from perpetrators of GBVAM as well as different classes of stakeholders. It was very difficult to get one on one interviews with victims of GBVAM as most men would rather not talk about such issues.

4.3.1.1. Interview Guide

Creating an interview guide helps interview research in a number of ways. An interview guide is simply a list of the high level topics that you plan on covering in the interview with the high level questions that you want to answer under each topic. We usually limit the guide to one page so that it's easy to refer to and to make sure that we're not getting too low level. The process of creating such a guide can help to focus and organize your line of thinking and therefore questioning.²⁸⁷ The interview guide for purposes of this research was carefully developed to cover some of the key issues which the research intended to discover. This included questions such as the extent of knowledge on the Act; reasons that have contributed to the rise in cases of GBVAM; what can be done to curb GBVAM. The interview guide is attached under a appendices.

4.3.1.2. Expert Judgment²⁸⁸ is a technique in which judgment is provided based upon a specific set of criteria and/or expertise that has been acquired in a specific knowledge area, application area, or product area, a particular discipline, an industry, etc. Such expertise may be provided by

²⁸⁶ Connaway, L.S.& Powell, R.P.(2010) "Basic Research Methods for Librarians" ABC-CLIO

²⁸⁷Copyright © 2020 Elsevier B.V. or its licensors or contributors. ScienceDirect ® is a registered trademark of Elsevier B.V.

²⁸⁸ Mauro Sotille on Sep 18, 2016 2:22 AM; Copyright © 2020 ProjectManagement.com All rights reserved

any group or person with specialized education, knowledge, skill, experience, or training.²⁸⁹ This knowledge base can be provided by a member of the project team, or multiple members of the project team, or by a team leader or team leaders. However, typically expert judgment requires an expertise that is not present within the project team and, as such, it is common for an external group or person with a specific relevant skill set or knowledge base to be brought in for a consultation. Such expertise can be provided by any group or individual with specialized knowledge or training and is available from many sources, including:

- Units within the organization;
- Consultants;
- Stakeholders
- Professional and technical associations;
- Industry groups;
- Subject matter experts (SME);

4.3.1.3. Application

Expert Judgment is use for situations which require recourse to expert judgment by completing, validating, interpreting and integrating existing data, assessing the impact of a change, predicting the occurrence of future events and the consequences of a decision, determining the present state of knowledge in one field, providing the elements needed for decision-making in the presence of several options.

A number of experts were consulted including lawyers; magistrates, judges and other key stakeholders. A comprehensive list is attached under appendices.

4.3.2. Participant Observation as a Data Collection Method

Observation, particularly participant observation, has been used in a variety of disciplines as a tool for collecting data about people, processes, and cultures in qualitative research. Marshall and Rossman²⁹⁰ define observation as "the systematic description of events, behaviors, and artifacts in

²⁸⁹ Project Management Institute. A Guide to the Project Management Body of Knowledge (PMBOK® Guide) – Fifth Edition, 2013

²⁹⁰ (p.79) (1989)

the social setting chosen for study".²⁹¹ Observations enable the researcher to describe existing situations using the five senses, providing a "written photograph" of the situation under study.²⁹² Demuck²⁹³ describe participant observation as the primary method used by anthropologists doing fieldwork. Fieldwork involves "active looking, improving memory, informal interviewing, writing detailed field notes, and perhaps most importantly, patience".²⁹⁴ Participant observation is the process enabling researchers to learn about the activities of the people under study in the natural setting through observing and participating in those activities. It provides the context for development of sampling guidelines and interview guides.²⁹⁵ Senschul²⁹⁶ define participant observation²⁹⁷ as "the process of learning through exposure to or involvement in the day-to-day or routine activities of participants in the researcher setting".²⁹⁸

Observation methods are useful to researchers in a variety of ways. They provide researchers with ways to check for nonverbal expression of feelings, determine who interacts with whom, grasp how participants communicate with each other, and check for how much time is spent on various activities.²⁹⁹ Participant observation allows researchers to check definitions of terms that participants use in interviews, observe events that informants may be unable or unwilling to share when doing so would be impolitic, impolite, or insensitive, and observe situations informants have described in interviews, thereby making them aware of distortions or inaccuracies in description provided by those informants.³⁰⁰

4.3.2.1. Advantages and Disadvantages of Using Participant Observation

DeMunck and Sobo³⁰¹ provide several advantages of using participant observation over other methods of data collection. These include that it affords access to the "backstage culture" (p.43); it allows for richly detailed description, which they interpret to mean that one's goal of describing

²⁹¹ Ibid

²⁹² (ERLANDSON, HARRIS, SKIPPER, & ALLEN, 1993)

²⁹³ DeMUNCK and SOBO (1998)

²⁹⁴ (DeWALT & DeWALT, 2002, p.vii)

²⁹⁵ (DeWALT & DeWALT, 2002)

²⁹⁶ SCHENSUL, SCHENSUL, and LeCOMPTE (1999)

²⁹⁷ (p.91)

²⁹⁸ Adler, Patricia A. & Adler, Peter (1994). Observation techniques. In Norman K. Denzin & Yvonna S. Lincoln (Eds.), *Handbook of qualitative research* (pp.377-392). Thousand Oaks, CA: Sage.

²⁹⁹ (SCHMUCK, 1997)

³⁰⁰ DeMunck, Victor C. & Sobo, Elisa J. (Eds) (1998). *Using methods in the field: a practical introduction and casebook*. Walnut Creek, CA: AltaMira Press.

³⁰¹ (1998)

"behaviors, intentions, situations, and events as understood by one's informants" is highlighted³⁰² and it provides opportunities for viewing or participating in unscheduled events. DeWalt and DeWalt³⁰³ add that it improves the quality of data collection and interpretation and facilitates the development of new research questions or hypotheses.³⁰⁴

DeMunck and Sobo also share several disadvantages of using participation as a method, including that sometimes the researcher may not be interested in what happens out of the public eye and that one must rely on the use of key informants. The Mead-Freeman³⁰⁵ controversy illustrates how different researchers gain different understanding of what they observe, based on the key informant(s) used in the study. Problems related to representation of events and the subsequent interpretations may occur when researchers select key informants who are similar to them or when the informants are community leaders or marginal participants.³⁰⁶ To alleviate this potential bias problem, Bernard³⁰⁷ suggests pretesting informants or selecting participants who are culturally competent in the topic being studied.³⁰⁸

The processes of conducting observations

1. The first is *descriptive observation*, in which one observes anything and everything, assuming that he/she knows nothing; the disadvantage of this type is that it can lead to the collection of minutiae that may or may not be relevant to the study.
2. The second type, *focused observation*, emphasizes observation supported by interviews, in which the participants' insights guide the researcher's decisions about what to observe.³⁰⁹

³⁰² (p.43);

³⁰³ (2002)

³⁰⁴Ellis, Carolyn (2003, May). Grave tending: with mom at the cemetery [8 paragraphs]. *Forum Qualitative Sozialforschung / Forum: Qualitative Social research* [On-line Journal], 4(2), Art.28. Available at <http://www.qualitative-research.net/fqs-texte/2-03/2-03ellis-e.htm> [April 5, 2005].

³⁰⁵ Erlandson, David A.; Harris, Edward L.; Skipper, Barbara L. & Allen, Steve D. (1993). *Doing naturalistic inquiry: a guide to methods*. Newbury Park, CA: Sage.

³⁰⁶ (DeMunck & Sobo, 1998)

³⁰⁷ (1994)

³⁰⁸ Bernard, H. Russell (Ed.) (1998). *Handbook of methods in cultural anthropology*. Walnut Creek: AltaMira Press.

³⁰⁹ King, Gary, Robert O Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, New Jersey: Princeton University Press, 1994.

3. The third type of observation, considered by Angrosino and DePerezto be the most systematic, is *selective observation*, in which the researcher focuses on different types of activities to help delineate the differences in those activities.³¹⁰
4. The type of observation which the researcher used was focused observation which was aimed at addressing specific research questions. It was the most appropriate in view of the fact that interviews have already been integrated, as this type of observation may involve indirect interviews. Observations were also useful in obtaining information from perpetrators and victims; as well selected stakeholders such as NGOs. This was a suitable way of collecting information as most people did not easily open up owing to the nature of the topic.

Observation was a very important method of collecting data particularly for this study. This is due to the fact that the topic in contention is one where it is not easy to access information from the people involved because it is a subject that most people do not easily open up to talk about. For ages this is an issue that is unheard of, therefore acquisition of information directly from respondents was not that easy. However, employing observation, the researcher gathered a lot of information by talking to different classes of people who had the relevant information to respond to the questions posed in this study; secondly by observing behaviour patterns of people the researcher was able to write down some notes from information gathered during this period. The observation used was a combination of descriptive, focused and selective. This method was mainly used to collect information from victims of GBVAM. Through various conversations, the researcher was able to collect information from victims of GBVAM. Further, information was also obtained from some perpetrators of GBVAM, particularly selective observation.

4.3.3. Desk Research

As depicted by name Desk Research is the research technique which is mainly acquired by sitting at a desk. Desk research is basically involved in collecting data from existing resources hence it is often considered a low cost technique as compared to field research, as the main cost is involved in executive's time, telephone charges and directories. However, it could also be a complete waste

³¹⁰ Angrosino & Deperez, 2000, p.677

of time and money if the researcher does not have the proper knowledge of how the research is performed. Desk research is very effective and can be conducted in starting phase of market research as it is quite quick and cheap and most of the basic information could be easily fetched which can be used as benchmark in the research process.

There are basically two types of desk research techniques:

1. **Internal Desk Research** - Internal desk research can be treated as the most reasonable starting point of research for any organization. Much Information could be generated internally within the organization as a course of normal process. The main advantage here in performing internal desk research is that it involves internal and existing organizational resources to organize the collected data in such a way that it is not only efficient but also usable. Internal desk research is comparatively very cheap and effective as internal resources are deputed and the expenditure in getting data from outside is less.
2. **External Desk Research** - External Desk Research involves research done outside the organizational boundaries and collecting relevant information. These outside resources are described below:
 - a. **Online Desk Research** - There is incredible amount of data available online on internet. The important aspect here is to refine the searching techniques in such a way that results are promising and relevant. For this it is necessary that the researcher should know the importance of the research and follow the guideline intellectually to reduce the efforts made and time consumed in searching.
 - b. **Government published data** - Government usually publishes a great extent of data online that can be used in the research process. This data is related to social, financial and economic aspects. The government websites are mostly free to access and contains most prominent information. Thus, this could be the cheapest medium of gathering the information.

Both internal and external desk research was used. Internal was used as it is cheaper and faster, external was also used to obtain further information especially due to the facts that research title hinges on governmental responsibility. Desk research was an appropriate method in that as the research topic suggest that it is an analysis, secondary data will be analyzed

comprising the laws, various institutions involved in GBV issues namely National Legal Aid Clinic for Women and Women in Law in Southern Africa (WILSA). and also reported cases, and how they have been enforced this far. This will enable the researcher to have a rich volume of information to make the necessary recommendations.

Although the main methodology here is legal, the contention is not that GBVAM is exclusively to legal institutions or lawyers. Even if the interrelation of non-legal method with the aspects covered in this study is not spelt out, the observations made and conclusions reached in this work will reveal their interdependence and interaction with the political, social, economic, health, historical, and demographic contexts.

4.3.4. Snowball Sampling³¹¹

This technique is called “snowball” because the sample group grows like a rolling snowball. Non-probability sampling means that researchers, or other participants, choose the sample as opposed to randomly selecting it, so not all members of the population have an equal chance of being selected for the study.

A **sample** is the participants you select from a target population (the group you are interested in) to make generalizations about. As an entire population tends to be too large to work with, a smaller group of participants must act as a representative sample.

Representative means the extent to which a sample mirrors a researcher's target population and reflects its characteristics (e.g. gender, ethnicity, socioeconomic level). In an attempt to select a representative sample and avoid sampling bias (the over-representation of one category of participant in the sample), psychologists utilize a variety of sampling methods.

Generalisability means the extent to which their findings can be applied to the larger population of which their sample was a part.

³¹¹ Simkus, J. (2022, Jan 10). *Snowball Sampling: Definition, Method and Examples*. Simply Psychology. www.simplypsychology.org/snowball-sampling.html

Snowball sampling requires special approval by an Institutional Review Board (IRB) whereby the researchers must provide valid justification for using this method.

Researchers must also take precautions to protect the privacy of potential subjects, especially if the topic is sensitive or personal, such as studies of networks of drug users or prostitutes.

In addition, each respondent has the opportunity to participate or decline. Current participants in studies using this method do not receive any compensation for providing referrals, and study participants are not required to identify any names of other potential participants.

4.3.4.1. Types of snowball sampling

Linear Snowball Sampling

- Linear snowball sampling is dependent on a straight-line referral sequence, beginning with only one subject. This individual subject will provide one new referral who is then recruited into the sample group.
- This referral will provide another new referral, and this pattern continues until the ideal sample size is reached.

Exponential Non-Discriminative Snowball Sampling

- In exponential non-discriminative snowball sampling, the first subject recruited to the sample provides multiple referrals. Each new referral will then provide the researchers with more potential research subjects.
- This geometric chain sampling sequence continues until there are enough participants for the study.

Exponential Discriminative Snowball Sampling

- This type of snowball sampling is very similar to exponential non-discriminative snowball sampling in that each subject provides multiple referrals.
- However, in this case, only one subject is recruited from each referral. Researchers determine which referral to recruit based on the objectives and goals of the study.

4.3.4.2. Applications: When is it used

Snowball sampling is used when researchers have difficulty finding participants for their studies. This typically occurs in studies on hidden populations, such as criminals, drug dealers or sex workers, as these individuals tend to be difficult for researchers to access.

The snowball sampling method is beneficial because current participants are likely to know others who share similar characteristics that are relevant to the study.

Members of these hidden populations tend to be closely connected as they share interests or are involved in the same groups, and they can inform others about the benefits of the study and reassure them of confidentiality.

How to cluster sample?

1. First, researchers will form an initial sample by drafting any potential subjects from a population.
2. Even if only a couple subjects are found at first, researchers will ask those subjects to recruit other individuals for the study. They recruit subjects by encouraging them to come forward on their own. Study participants will only provide specific names of recruited individuals if there is no risk of embarrassment or a violation of privacy. Otherwise, study participants do not identify any names of other potential participants.
3. Current participants will continue to recruit others until the necessary sample size has been reached.

Advantages

Enables access to hidden populations

- Snowball sampling enables researchers to conduct studies when finding participants might otherwise be challenging. Concealed individuals, such as drug users or sex workers, are difficult for researchers to access, but snowball sampling helps researchers to connect to these hidden populations.

Avoids risk

- Snowball sampling requires the approval of an Institutional Review Board to ensure the study is conducted ethically. In addition, each respondent has the opportunity to participate or to decline participation.

Saves money and time

- Since current subjects are used to locate other participants, researchers will invest less money and time in planning and sampling.

Limitations

Difficult to determine sampling error

- Snowball sampling is a non-probability sampling method, so researchers are unable to calculate the sampling error.

Bias is possible

- Since current participants select other members for the sample, bias is likely. The initial participants will have a strong impact on the rest of the sample. In addition, an individual who is well known and sociable is more likely to be recruited than one who is more introverted.

Not always representative of greater population

Because researchers are not selecting the participants themselves, they have little control over the sample. Researchers will thus have minimal knowledge as to whether the sample is representative of the target population.

This method was specifically used to obtain information from married males who experienced GBV. The sample size targeted here was 50 respondents. The type of snowball sampling used was linear snowball sampling as the researcher started with only one respondent who was able to refer other respondents. This helped to collect information particularly for married men who suffered GBV by their wives.

4.4. Quantitative Research

Quantitative methods emphasize objective measurements and the statistical, mathematical, or numerical analysis of data collected through polls, questionnaires, and surveys, or by manipulating pre-existing statistical data using computational techniques. Quantitative research focuses on gathering numerical data and generalizing it across groups of people or to explain a particular phenomenon.

Questionnaires

Questionnaires often seem a logical and easy option as a way of collecting information from people. They are actually rather difficult to design and because of the frequency of their use in all contexts in the modern world, the response rate is nearly always going to be a problem (low) unless you have ways of making people complete them and hand them in on the spot (and this of course limits your sample, how long the questionnaire can be and the kinds of questions asked). As with interviews, you can decide to use closed or open questions, and can also offer respondents multiple choice questions from which to choose the statement which most nearly describes their response to a statement or item. Their layout is an art form in itself because in poorly laid out questionnaires respondents tend, for example, to repeat their ticking of boxes in the same pattern. If given a choice of response on a scale 1-5, they will usually opt for the middle point, and often tend to miss out subsections to questions. You need to take expert advice in setting up a questionnaire, ensure that all the information about the respondents which you need is included and filled in, and ensure that you actually get them returned. Expecting people to pay to return postal questionnaires is sheer folly, and drawing up a really lengthy questionnaire will also inhibit response rates. You will need to ensure that questions are clear, and that you have reliable ways of collecting and managing the data. Setting up a questionnaire that can be read by an optical mark reader is an excellent idea if you wish to collect large numbers of responses and analyse them statistically rather than reading each questionnaire and entering data manually.

It is useful to consult the range of full and excellent research books available. These will deal in much greater depth with the reasons for, processes of holding, and processes of analysing data from the variety of research methods available to you.

4.4.1. Strengths of Using Quantitative Methods

Quantitative researchers try to recognize and isolate specific variables contained within the study framework, seek correlation, relationships and causality, and attempt to control the environment in which the data is collected to avoid the risk of variables, other than the one being studied, accounting for the relationships identified.

The advantage of using qualitative methods is that they generate rich, detailed data that leave the participants' perspectives intact and provide multiple contexts for understanding the phenomenon under study. In this way, qualitative research can be used to vividly demonstrate phenomena or to conduct cross-case comparisons and analysis of individuals or groups.

Among the specific strengths of using qualitative methods to study social science research problems is the ability to:

- Obtain a more realistic view of the lived world that cannot be understood or experienced in numerical data and statistical analysis;
- Provide the researcher with the perspective of the participants of the study through immersion in a culture or situation and as a result of direct interaction with them;
- Allow the researcher to describe existing phenomena and current situations;
- Develop flexible ways to perform data collection, subsequent analysis, and interpretation of collected information;
- Yield results that can be helpful in pioneering new ways of understanding;
- Respond to changes that occur while conducting the study [e.g., extended fieldwork or observation] and offer the flexibility to shift the focus of the research as a result;
- Provide a holistic view of the phenomena under investigation;
- Respond to local situations, conditions, and needs of participants;
- Interact with the research subjects in their own language and on their own terms; and,

Create a descriptive capability based on primary and unstructured data.

4.4.2. Limitations of Using Quantitative Methods

Quantitative methods presume to have an objective approach to studying research problems, where data is controlled and measured, to address the accumulation of facts, and to determine the causes

of behavior. As a consequence, the results of quantitative research may be statistically significant but are often humanly insignificant.³¹²

Some specific limitations associated with using quantitative methods to study research problems in the social sciences include:

- Quantitative data is more efficient and able to test hypotheses, but may miss contextual detail;
- Uses a static and rigid approach and so employs an inflexible process of discovery;
- The development of standard questions by researchers can lead to "structural bias" and false representation, where the data actually reflects the view of the researcher instead of the participating subject;
- Results provide less detail on behavior, attitudes, and motivation;
- Researcher may collect a much narrower and sometimes superficial dataset;
- Results are limited as they provide numerical descriptions rather than detailed narrative and generally provide less elaborate accounts of human perception;
- The research is often carried out in an unnatural, artificial environment so that a level of control can be applied to the exercise. This level of control might not normally be in place in the real world thus yielding "laboratory results" as opposed to "real world results"; and,
- Preset answers will not necessarily reflect how people really feel about a subject and, in some cases, might just be the closest match to the preconceived hypothesis.³¹³

Quantitative tools used mainly in this study were questionnaires which were administered to members of the public. Quantitative methods were particularly important in this study

³¹² Black, Thomas R. *Doing Quantitative Research in the Social Sciences: An Integrated Approach to Research Design, Measurement and Statistics*. London: Sage, 1999; Gay, L. R. and Peter Airasain. *Educational Research: Competencies for Analysis and Applications*. 7th edition. Upper Saddle River, NJ: Merrill Prentice Hall, 2003; Hector, Anestine. *An Overview of Quantitative Research in Composition and TESOL*. Department of English, Indiana University of Pennsylvania; Hopkins, Will G. "Quantitative Research Design." *Sportscience* 4, 1 (2000); "A Strategy for Writing Up Research Results. The Structure, Format, Content, and Style of a Journal-Style Scientific Paper." Department of Biology. Bates College; Nenty, H. Johnson. "Writing a Quantitative Research Thesis." *International Journal of Educational Science* 1 (2009): 19-32; Ouyang, Ronghua (John). *Basic Inquiry of Quantitative Research*. Kennesaw State University.

³¹³ Chenail, Ronald J. *Introduction to Qualitative Research Design*. Nova Southeastern University; Heath, A. W. *The Proposal in Qualitative Research. The Qualitative Report* 3 (March 1997); Marshall, Catherine and Gretchen B. Rossman. *Designing Qualitative Research*. 3rd edition. Thousand Oaks, CA: Sage, 1999; Maxwell, Joseph A. "Designing a Qualitative Study." In *The SAGE Handbook of Applied Social Research Methods*. Leonard Bickman and Debra J. Rog, eds. 2nd ed. (Thousand Oaks, CA: Sage, 2009), p. 214-253; *Qualitative Research Methods*. Writing@CSU. Colorado State University; Yin, Robert K. *Qualitative Research from Start to Finish*. 2nd edition. New York: Guilford, 2015.

because there was need to gather statistics on the prevalence of GBVAM in reality. Reference was also made to prior studies on the subjects which were referring to figures in the form of graphs, pie charts and figures.

4.5. Research sample

A sample is a finite part of a statistical population whose properties are studied to gain information about the whole³¹⁴ . When dealing with people, it can be defined as a set of respondents (people) selected from a larger population for the purpose of a survey. Sampling is the process of selecting units (e.g., people, organizations) from a population of interest so that by studying the sample we may fairly generalize our results back to the population from which they were chosen.³¹⁵ In this study, the research sample will be based on the community. The sample size was hundred and it will be distributed as follows:

- One hundred and fifty traditional marriage counsellors
- One hundred and fifty Religious marriage counsellors
- One hundred Ministers of Religion and 200 church members drawn from different denominations
- Fifteen perpetrators from Lusaka Central Prison
- Ten perpetrators form Mukobeko Medium; and
- Ten perpetrators from Mukobeko Maximum Prison
- One hundred and fifty members of the Judiciary
- One hundred and fifty government officials
- One hundred lawyers
- Two hundred members of the public

It is assumed that the research sample to be conducted from these sections of society will give a clear indication of the position of sexual and reproductive rights in Zambia.

³¹⁴ Webster, 1985

³¹⁵ Copyright 2006, William M.K. Trochim, All Rights Reserved

4.5.1. Research Site

A research site is the place from which the research sampling is going to be done. The research sites were Solwezi in North-Western Province; Lusaka in Lusaka Province and Kabwe in Central Province.

4.5.1.1. Lusaka Province

4.5.1.2. Lusaka Province is one of the ten provinces of Zambia. Its capital is Lusaka, which is also the national capital. It is the smallest province in Zambia, with an area of 21,896 km². Lusaka is also Zambia's most populated and most densely populated province, with a population of 2,191,225 and density of 100 persons per km² as of 2010. It is the most urban province, with the most doctors and fewest malaria-related incidents. The province is bordered by Zimbabwe and Mozambique, and separated by the Lower Zambezi National Park.

The Lower Zambezi National Park, part of the Lunsemfwa River valley, the lower Luangwa Valley in the north-east and the Kafue Flats in the south-west are the major national parks and game areas in Lusaka Province. In Lusaka, the Nkhombalyanga festival is celebrated in Chongwe District by the Soli tribe during July, the Dantho festival is celebrated in Luangwa District by the Chikunda tribe during September, and the Chakwela Makumbi festival celebrated in Chongwe District by Soli tribe during September.

There are eight districts in the province. As of 2004, the literacy rate was 83%, the unemployment rate was 31% and the general unemployment rate for youth was 52% as of 2008. Kenneth Kaunda International Airport (in Chongwe District) and Lusaka City Airport (in Lusaka) are the two airports in the province. Lusaka Province is bordered along Zimbabwe along Lower Zambezi National Park in the south, Central Province in the north, Southern Province in the southwest and Eastern Province in the north east. The general topography of the province is characterized by uplifted plantation surfaces. The general elevation of the nation as a whole is tended towards West to East from the Kalahari Basin. The level of land falls from the upper Congo towards the Zambezi depression in the South forming a plateau.³¹⁶

Kafue River is a tributary of Zambezi River and it has huge valleys breaking the plateau. The province lies in the watershed between Congo DR and Zambezi river systems. The province lies in the frontier formed between the continental divide separating the Atlantic Ocean and the Indian

³¹⁶ "Geography of Zambia". Zambia Tourism Board. 2011. Retrieved 19 October 2016

Ocean, which traverses from DR Congo to the south of Tanzania. There are three major seasons: a cool dry season from April to August, a hot dry season from August to November and a warm wet season from November to April. The maximum heat and rainfall, both are experienced during October. The annual rainfall is less than 750 mm in the region.³¹⁷

4.5.1.3. Lusaka

Lusaka is the capital and largest city of Zambia. One of the fastest-developing cities in Southern Africa, Lusaka is located in the southern part of the central plateau at an elevation of about 1,279 metres (4,195 feet). Lusaka is the centre of both commerce and government in Zambia and connects to the country's four main highways heading north, south, east and west. Most of government offices are based at government house near the Kamwala trading area English is the official language of the city, but Nyanja and Bemba are also common. Lusaka has a population of 2,198,996. The British colonialists made it capital of Northern Rhodesia (now Zambia) in 1935 and the newly independent country declared the town their capital city at independence in 1964.

Some of the residential areas in Lusaka urban are :Avondale, Bauleni, Bonventure Makeni, Chainda, Chalala, Chawama, Chelstone, Chilenje, Chinika, Chipata Compound, Chudleigh, Emasdale, Garden Compound, Helen Kaunda, Ibex Hill, Kabanana Site and service, Kabulonga, Thornpark, Kaunda square 1 and 2. Others are: Kabwata, Kalingalinga, Kalundu, Kamwala, Kanyama, Libala, Longacres, Makeni, Mandevu, Matero, Mutendere, Ndeke Village, New Kasama, Ngwerere, Northmead, Nyumba Yanga, Olympia Park, Rhodes Park, Roma Township, Six Miles, and Woodlands. There are some shanty compounds which are advisable to visit with a local resident. Most shanty compounds are located on the fringes of the city.

4.5.2. North-Western Province is one of ten Provinces of Zambia. It covers an area of 125,826 km² (48,582 sq mi), has a population of 727,044 and a population density was 5.80 per square kilometre as of 2010. It is the most sparsely populated province in the country. The provincial capital is Solwezi. The literacy rate stood at 63 per cent against a national average of 70.2 per cent. The rural population constituted 77.45%, while the urban population was 22.55%. North-Western Province is bordered along Angola in the west, the Democratic Republic of

³¹⁷ "Geography of Zambia". Zambia Tourism Board. 2011. Retrieved 19 October 2016

Congo (DR Congo) in the north, Copperbelt Province in the east, Central in the south-east, and Western Province in the south-west.

Agriculture was the major profession and Sorghum was the major crop in the province with 1,038 metric tonnes, constituting 8.98% of the national output. The unemployment rate was 14 per cent and the general unemployment rate for youth stood at 31 per cent as of 2008. Zambezi Airport and Solwezi Airport are the only two airports in the province.

Busanga Swamps and plains in Kafue National Park, West Lunga National Park and Zambezi grasslands in the far west of the state are the major national parks in the Province. The Likumbi Iya Mize festival, a UNESCO world heritage ceremony celebrated in Zambezi District by Luvale tribe, popularly known as vakaChinyama during August. The chivweka ceremony is celebrated by the Luchazi people of Kabompo district the ceremony is held every July at senior chief Kalunga's palace in Chikenge the capital of the Luchazi people. Chivweka means making fire. Kufukwila festival celebrated in Solwezi District by Kaonde tribe during May, Insakwa Yaba Kaonde festival celebrated in Solwezi District by Kaonde tribe during May and Nsomo festival celebrated in Kasempa District by Kaonde tribe during June are the major festivals of the province.

North-Western Province is bordered along Angola in the west, DR Congo in the north, Copperbelt Province in the east, Central in the south-east and Western Province in the south-west. The general topography of the province is characterized by uplifted plantation surfaces. The general elevation of the nation as a whole is tended towards West to East from the Kalahari Basin. The level of land falls from the upper Congo towards the Zambezi depression in the South forming a plateau.³¹⁸

The province lies in the watershed between DR Congo and Zambezi river systems. The province along with some of the other provinces in the country lies in the frontier formed between the continental divide separating the Atlantic Ocean and the Indian Ocean, which traverses from DR Congo to the south of Tanzania. There are three major seasons: a cool dry season from April to August, a hot dry season from August to November and a warm wet season from November to April. The maximum heat is experienced during October, while the maximum rainfall is received

³¹⁸ *"Sub-national HDI - Area Database - Global Data Lab". Hdi.globaldatalab.org. Retrieved 2018-09-13.*

during December. The annual rainfall is more than 1,200 mm (47 in) in the region. The region has usually Savannah vegetation and small areas of dry evergreen forests.³¹⁹

4.5.2.1. Solwezi

Solwezi is a town in Zambia and the provincial capital of the mineral rich North-Western Province. Solwezi has approximately under 1 million inhabitants³²⁰ at an elevation of 1,235 m (4,052 ft) above sea level. Kaonde is the largest tribe represented in Solwezi, in addition to large numbers of Lunda and Luvale speaking people. The main industry of Solwezi District is copper mining at Kansanshi Mine (located about 10 km or 6 mi north) run by First Quantum Minerals. Kansanshi Mine exploits copper-gold ore. The mining site has intermittently been running since the early 20th century for copper and gold.³²¹ The adjacent Kalumbila District hosts Lumwana Mine (located about 65 km or 40 mi west) and Kalumbila Mine (located about 140 km or 87 mi west), run by Barrick Gold and First Quantum Minerals, respectively. The deposits at Lumwana were discovered in 1961, but no serious work was carried out there until Equinox Minerals Ltd became involved in 1999. Uranium is also mined in the Kalumbila District at the Lumwana mine. Five kilometres (3 mi) from the city centre lies the "Kifubwa Rock Stream Shelter" located next to the Kifubwa River, with inscriptions dating from the Paleolithic period.

4.5.3. Central Province

Central Province is one of Zambia's ten provinces. The provincial capital is Kabwe, which is the home of the Mulungushi Rock of Authority. Central Province has an area of 94,394 km (58,654 mi). It borders eight other provinces and has twelve districts. The total area of forest in the province is 9,095,566 ha (22,475,630 acres), and it has a national park and three game management areas.

³¹⁹ Williams, Geoffery J. (2003). "Physical and social geography of Zambia". Africa South of the Sahara 2004. Psychology Press. p. 1995. ISBN 9781857431834.

³²⁰ Zambia Central Statistical Office. "2010 Census Migration and Urbanization Report". Retrieved 26 May 2018.

³²¹ Kesselring, Rita (2017). "The electricity crisis in Zambia: Blackouts and social stratification in new mining towns" (PDF). Energy Research & Social Science. **30**: 94–102. doi:10.1016/j.erss.2017.06.015.

As of 2010, Central Province had a population of 1,307,111, comprising 10.05% of the total Zambian population. The literacy rate stood at 70.90% against a national average of 70.2%.³²² Bemba was the most spoken language with 31.80% speaking it, and Lala was the majority clan in the province, comprising 20.3% of population. Central Province contains 20.64% of the total area of cultivated land in Zambia and contributes 23.85% of the total agricultural production in the country, with wheat being the major crop.

The Ikubi Lya Loongo festival during July and Ichibwela Mushi festival during September are the major festivals celebrated in the province. Kafue National Park, the country's largest, is shared with Southern and North-Western Provinces, and other natural areas include Blue Lagoon National Park, Kasanka National Park, the Bangweulu Wetlands, South Luangwa National Park, the Lunsemfwa and Lukusashi river valleys and Lukanga Swamp.

4.5.3.1. Kabwe

Kabwe is the capital of the Zambian Central Province with a population estimated at 202,914 at the 2010 census. Named **Broken Hill** until 1966, it was founded when lead and zinc deposits were discovered in 1902. Kabwe also has a claim to being the birthplace of Zambian politics as it was an important political centre during the colonial period.³²³ It is an important transportation and mining centre. The name *Kabwe* or *Kabwe-Ka Mukuba* means 'ore' or 'smelting' but the European/Australian prospectors named it Broken Hill after a similar mine in Broken Hill, New South Wales, Australia.³²⁴ The mine was the largest in the country for around thirty years until it was overtaken in the early 1930s by larger copper mining complexes on the Copperbelt. Apart from lead and zinc it also produced silver, manganese and heavy metals such as cadmium, vanadium, and titanium in smaller quantities.³²⁵

In 1921 a human fossil, a skull, dubbed *Kabwe 1*, also "Broken Hill Man" or "Rhodesian Man" (classified as *Homo rhodesiensis* or *Homo heidelbergensis*) was found in the mine.

³²² Ibid

³²³The Times of Zambia online Archived 2006-10-12 at the Wayback Machine, website accessed 8 March 2007: "Kabwe: the nucleus of national politics" by Kelvin Kachingwe

³²⁴ Zamnet Online News: Archived 2007-10-23 at the [Wayback Machine](#) "Kabwe: From discovery to recovery" (Daily Mail), website accessed 7 March 2007

³²⁵ [Bruce Kapferer](#): "Strategy and Transaction in an African Factory", Manchester: Manchester University Press 1972

The mine, which occupies a 2.5 km² site 1 km south-west of the town centre, is closed but metals are still extracted from old tailings. A study by the Blacksmith Institute found Kabwe to be one of the ten most polluted places in the world due mostly to heavy metal (mostly zinc and lead) tailings making their way into the local water supply.³²⁶ A 2014 report indicates that children's blood lead levels continue to be elevated even though mining has stopped.³²⁷

4.6. Data collection

Data is collected from a variety of sources. The requirements may be communicated by analysts to custodians of data, such as information technology personnel within an organisation. The data may also be collected from sensors in the environment, such as traffic cameras, satellites, recording devices etc. It may also be obtained through interviews, downloads from online sources or reading documentation.³²⁸ Data initially obtained must be processed or organized for analysis. For instance, these may involve placing data into rows and columns in a table format (i.e. structural data) for further analysis, such as in a spreadsheet or statistical software.³²⁹ The study used both primary and secondary data. Primary data was collected from questionnaires; interviews; text books; statutes cases and observations, while secondary sources included journal articles; published and unpublished thesis, websites and newspapers.

4.6.1. Sample Size

The sample size was calculated by taking the population of 18,019, the total of population of Men who were victims of GBV in the 4-year period of the study.

(p) of any type of domestic violence in men of age group 21–49 years to be **14.86%** in Zambia, with a design effect of 1.5, and relative precision (d) at 9% with 95% confidence level. After this the formula $n = 1.5 * (z)^2 p (1 - p) / d^2$, was applied and the sample size was calculated to be 5,879. This included primary data sources as well secondary data sources from the period 2018 to 2021. The calculated sample size is 32% of the sample population of GBV Cases against Men and hence this can be postulated to a larger population; and is above the prevalence of 14.86%

³²⁶ [The Blacksmith Institute website](#) accessed 1 March 2007

³²⁷ J. Yabe et al., "Lead poisoning in children from townships in the vicinity of a lead–zinc mine in Kabwe, Zambia", *Chemosphere* 119 (January 2015), 941-947, doi:10.1016/j.chemosphere.2014.09.028

³²⁸ Judd, Charles and, McClelland, Gary (1989), *Data Analysis*. Harcourt Brace Jovanovich. ISBN 0-15-516765-0.

³²⁹ John Turkey-The Future of Data Analysis-July 1961

estimated for the year 2021. The population proportion of 14.86% could not be used in determining the sample size as it was estimated only for one year in 2021.

4.6.2. Secondary Data³³⁰

Secondary data is the data that has already been collected through primary sources and made readily available for researchers to use for their own research. It is a type of data that has already been collected in the past. A researcher may have collected the data for a particular project, then made it available to be used by another researcher. The data may also have been collected for general use with no specific research purpose like in the case of the national census.

The secondary data was collected by making reference to the required information on GBVAM. This data was collected online and some of it was collected physically through the library.

This data was analyzed both qualitatively and quantitatively, in line with the methodology employed in the study which provided in-depth information about the data. The advantages of using secondary data are ease of access; inexpensive; time saving; useful in longitudinal and comparative studies without having to wait for a couple of years to draw conclusions; it generates new insights- when re-evaluating data, especially through another person's lens or point of view, new things are uncovered. There might be a thing that wasn't discovered in the past by the primary data collected, that secondary data collection may reveal. Disadvantages are data quality, irrelevant data; and outdated information. However, safeguards were put in place to overcome challenges of secondary data, which made the data very used and viable for this study.

4.7. Data Analysis

Data analysis is a process of inspecting, cleansing, transforming, and modelling data with the goal of discovering useful information, suggesting conclusions, and supporting decision-making. Data analysis has the multiple facets and approaches, encompassing diverse techniques under a variety of names, in different business, science, and social science domains. Analysis

³³⁰ Secondary Data, FomPlus, March 2022, <https://www.formpl.us/blog/secondary-data>

refers to breaking a whole into its separate components for individual examination. Data analysis is a process for obtaining raw data and converting it into information useful for decision making by users. Data is collected and analysed to answer questions, test hypotheses or to disprove theories.³³¹ Statistician John Turkey defined data analysis in 1961 as:

‘Procedures for analysing data, techniques for interpreting the results of such procedures, ways of planning the gathering of data to make it more easier, more precise. or more accurate, and all the machinery and results of statistics which apply to analysing the data.

The data is necessary as inputs to the analysis, which is specified based upon the requirements of those directing the analysis or customers (who will use the finished product of the analysis). The general type of entity upon which the data will be collected is referred to as an experimental unit (e.g. a person or a population of people). Specific variables regarding population (e.g. age and income) may be specified and obtained. Data may be numerical or categorical.³³²

Data in this study was analyzed using Microsoft excel and SPSS.

4.7.1. SPSS³³³

SPSS (Statistical package for the social sciences) is the set of software programs that are combined together in a single package. The basic application of this program is to analyze scientific data related with the social science. This data can be used for market research, surveys, data mining, etc. SPSS is revolutionary software mainly used by research scientists which help them process critical data in simple steps. Working on data is a complex and time consuming process, but this software can easily handle and operate information with the help of some techniques. These techniques are used to analyze, transform, and produce a characteristic pattern between different data variables. In addition to it, the output can be obtained through graphical representation so that a user can easily

³³¹ O Neil, Cathy and Schutt, Rachel (2013), Doing Data Science. O’Reilley. ISBN 978-1-44935865-5.

³³² Ibid

³³³ **Jason Thomes:** The scholarship given to student is really helpful to student who want to grow in their life and. <http://www.instantassignmenthelp.com>

understand the result. Read below to understand the factors that are responsible in the process of data handling and its execution.

1. Data Transformation: This technique is used to convert the format of the data. After changing the data type, it integrates same type of data in one place and it becomes easy to manage it. You can insert the different kind of data into SPSS and it will change its structure as per the system specification and requirement. It means that even if you change the operating system, SPSS can still work on old data.

2. Regression Analysis: It is used to understand the relation between dependent and interdependent variables that are stored in a data file. It also explains how a change in the value of an interdependent variable can affect the dependent data. The primary need of regression analysis is to understand the type of relationship between different variables.

3. ANOVA (Analysis of variance): It is a statistical approach to compare events, groups or processes, and find out the difference between them. It can help you understand which method is more suitable for executing a task. By looking at the result, you can find the feasibility and effectiveness of the particular method.

4. MANOVA (Multivariate analysis of variance): This method is used to compare data of random variables whose value is unknown. MANOVA technique can also be used to analyze different types of population and what factors can affect their choices.

5. T-tests: It is used to understand the difference between two sample types, and researchers apply this method to find out the difference in the interest of two kinds of groups. This test can also understand if the produced output is meaningless or useful.

This software was developed in 1960, but later in 2009, IBM acquired it. They have made some significant changes in the programming of SPSS and now it can perform many types of research task in various fields. Due to this, the use of this software is extended to many industries and

organizations, such as marketing, health care, education, surveys, etc. Author's Bio: John is an academic writer, and has assisted many students by providing them SPSS assignment help. He has been working in the field of academic consultancy for a long time now and has a wonderful experience.

The researcher employed SPSS to analyse data because the reach falls under social sciences of which one of the most appropriate methods is this one. It was used in analyzing data based on findings in chapter of this research.

4.7.2. Microsoft Excel

Microsoft Excel is a spreadsheet developed by Microsoft for Windows, macOS, Android and iOS. It features calculation, graphing tools, pivot tables, and a macro programming language called Visual Basic for Applications. It has been a very widely applied spreadsheet for these platforms, especially since version 5 in 1993, and it has replaced Lotus 1-2-3 as the industry standard for spreadsheets. Excel forms part of the Microsoft Office suite of software.

Microsoft Excel has the basic features of all spreadsheets,³³⁴ using a grid of *cells* arranged in numbered *rows* and letter-named *columns* to organize data manipulations like arithmetic operations. It has a battery of supplied functions to answer statistical, engineering and financial needs. In addition, it can display data as line graphs, histograms and charts, and with a very limited three-dimensional graphical display. It allows sectioning of data to view its dependencies on various factors for different perspectives (using *pivot tables* and the *scenario manager*).³³⁵ It has a programming aspect, *Visual Basic for Applications*, allowing the user to employ a wide variety of numerical methods, for example, for solving differential equations of mathematical physics,³³⁶ and then reporting the results back to the spreadsheet. It also has a variety of interactive features allowing user interfaces that can completely hide the spreadsheet from the user, so the spreadsheet presents itself as a so-called *application*, or *decision support system* (DSS), via a custom-designed

³³⁴ Harvey, Greg (2006). *Excel 2007 For Dummies*. Wiley. ISBN 978-0-470-03737-9.

³³⁵ Harvey, Greg (2007). *Excel 2007 Workbook for Dummies* (2nd ed.). Wiley. p. 296 ff. ISBN 978-0-470-16937-7.

³³⁶ De Levie, Robert (2004). *Advanced Excel for scientific data analysis*. Oxford University Press. ISBN 978-0-19-515275-3.

user interface, for example, a stock analyzer,³³⁷ or in general, as a design tool that asks the user questions and provides answers and reports.³³⁸ In a more elaborate realization, an Excel application can automatically poll external databases and measuring instruments using an update schedule,³³⁹ analyze the results, make a Word report or PowerPoint slide show, and e-mail these presentations on a regular basis to a list of participants. Excel was not designed to be used as a database.

Microsoft allows for a number of optional command-line switches to control the manner in which Excel starts.³⁴⁰

Excel 2016 has 484 functions.³⁴¹ Of these, 360 existed prior to Excel 2010. Microsoft classifies these functions in 14 categories. Of the 484 current functions, 386 may be called from VBA as methods of the object "Worksheet Function"³⁴² and 44 have the same names as VBA functions.³⁴³

Microsoft Excel was used in this research to present findings, specifically in the form of diagrams namely graphs, pie charts and tables to present the information from data collection.

4.7.2.1. Barriers to effective analysis

Barriers to effective analysis may exist among the analysts performing the data analysis or among the audience. Distinguishing fact from opinion. Cognitive biases, and innumeracy are all challenges to sound data analysis.

Confusing fact and opinion-Effective analysis requires obtaining relevant factors to answer questions, support a conclusion or formal opinion or test hypothesis. Facts by definition are irrefutable, meaning that any person involved in the analysis should be able to agree upon them.

³³⁷ Şeref, Michelle M. H.; Ahuja, Ravindra K. & Winston, Wayne L. (2007). Developing spreadsheet-based decision support systems: using Excel and VBA. Dynamic Ideas. ISBN 978-0-9759146-5-6. Archived from the original on February 21, 2009. Retrieved April 7, 2010.

³³⁸ Some form of data acquisition hardware is required. See, for example, Austerlitz, Howard (2003). Data acquisition techniques using PCs (2nd ed.). Academic Press. p. 281 ff. ISBN 978-0-12-068377-2.

³³⁹ "Description of the startup switches for Excel". Microsoft Help and Support. Microsoft Support. May 7, 2007. Retrieved December 14, 2010. Microsoft Excel accepts a number of optional switches that you can use to control how the program starts. This article lists the switches and provides a description of each switch.

³⁴⁰ Ibid

³⁴¹ "Excel functions (alphabetical)". Microsoft. Retrieved November 4, 2018

³⁴² "WorksheetFunction Object (Excel)". Office VBA Reference. Microsoft. Retrieved November 4, 2018.

³⁴³ "Functions (Visual Basic for Applications)". Office VBA Reference. Microsoft. Retrieved November 4, 2018

Cognitive biases-there are a variety of cognitive biases that can adversely affect analyse. For example, a confirmation bias is the tendency to search for or interpret information in a way that confirms one's perceptions. An addition, individuals may discredit information that does not support their views.

Analysts may be trained specifically to be aware of these biases and how to overcome them. In his book Psychology of intelligence analysis, Ricahrds Heuer wrote that analysts should clearly delineate their assumptions and chains of inference and specify the degree and source of the uncertainty involved in the conclusions. He emphasized procedures to help surface and debate alternative points of view.³⁴⁴

4.7.2.2. Innumeracy

Effective analyst are generally adept with a variety of numerical techniques. However, audiences may not have such literacy with numbers of numeracy; they are said to be innumerate. Persons communicating the data may also be attempting to mislead or misinform, deliberately using bad numerical techniques.

4.8. Ethical Considerations

According to Bryman and Bell (2007)³⁴⁵ the following ten points represent the most important principles related to ethical considerations in dissertations:

1. Research participants should not be subjected to harm in any ways whatsoever.
2. Respect for the dignity of research participants should be prioritised.
3. Full consent should be obtained from the participants prior to the study.
4. The protection of the privacy of research participants has to be ensured.
5. Adequate level of confidentiality of the research data should be ensured.
6. Anonymity of individuals and organizations participating in the research has to be ensured.
7. Any deception or exaggeration about the aims and objectives of the research must be avoided.
8. Affiliations in any forms, sources of funding, as well as any possible conflicts of interests have to be declared.

³⁴⁴ Ibid

³⁴⁵ Bryman, A. & Bell, E. (2007) "Business Research Methods", 2nd edition. Oxford University Press.

9. Any type of communication in relation to the research should be done with honesty and transparency.
10. Any type of misleading information, as well as representation of primary data findings in a biased way must be avoided.

In applying the principles laid down above, all participants were not subjected to any harm in any way, in that whatever information was obtained was strictly confidential and respondents especially who filled in the questionnaires did not have to write their full names, but merely endorsed their initials on the questionnaires. The dignity of each participant was highly respected as they were not asked any questions to humiliate them or questions which they were not comfortable with responding to. The use of offensive, discriminatory, or other unacceptable language needs to be avoided in the formulation of Questionnaire/Interview/Focus group questions.

Voluntary participation of respondents in the research is important. Moreover, participants had rights to withdraw from the study at any stage if they wished to do so. For all people who participated in providing details during this research, consent was obtained including from victims and perpetrators; under observation as well it is only those respondents who agreed to be observed who were put under observation. Respondents participated on the basis of informed consent. The principle of informed consent involves researchers providing sufficient information and assurances about taking part to allow individuals to understand the implications of participation and to reach a fully informed, considered and freely given decision about whether or not to do so, without the exercise of any pressure or coercion.³⁴⁶ The protection of privacy was highly observed as well as each person is entitled to the right to privacy which must be tempered with at any cost other in cases where the permits so. All the information obtained was treated with confidentiality as no information was disclosed to anyone to put any respondent in ridicule but the objective of the research was meant for purely academic purposes.

³⁴⁶ Saunders, M., Lewis, P. & Thornhill, A. (2012) "Research Methods for Business Students" 6th edition, *Pearson Education Limited*.

In instances where the participants wished to remain anonymous that was equally observed throughout the research. Privacy and anonymity of respondents was of a paramount importance.

Issue of conflict of interest were taken into account and there was no conflict of interest to present any bias toward the findings of the research. All communication of this research was done honestly and transparently; the information was presented as it was obtained from various sources without any manipulation or alteration. Any misrepresentation or biased data was avoided at all costs to enhance reliability and credibility of the findings. Acknowledgement of works of other authors was done. Maintenance of the highest level of objectivity in discussions and analyses throughout the research. Further, a written letter was obtained from the University to enable the collection of data from several institutions such as correctional facilities.

4.9. Limitations of the Study

The study had a number of limitations, one of them being that the sample population could have been bigger however, due to time and financial constraints it was not possible to target a bigger population. The least gathering of information was not the easiest of things to do, because of the nature of the topic most people with valuable information would shun opening up. They were the main limitations but despite these limitations, some useful information was gathered. The other limitation was on data collection and data quality, as some of the information found was irrelevant/ and or outdated. Suffice to say that this was taken into account to ensure that the it does not affect the results of the study.

4.10. Conclusion

The chapter has provided an overview of the research methodologies and methods employed in the study. The research methodology involves the mixed research approach which is a combination of the qualitative and quantitative methods to enhance the collection of data, while the theoretical framework encompassed the feminist, biological and masculinity approached were unfolded. The chapter was based on general discussion of the research methods and methodologies to ensure that the objectives of the research are met after analyzing the data in Chapter Five.

CHAPTER FIVE

DATA ANALYSIS AND PRESENTATION

5.0. Introduction

Chapter Five presents and discusses the findings of this research. The chapter brings out some of the factors responsible for the ineffective enforcement of the Anti-Gender Based Violence Act of 2011. The samples of respondents were drawn from diverse backgrounds, differing in standards of education, age, marital and employment status. The respondents were mainly located in Lusaka; Kabwe and Solwezi. Perpetrators were easy to locate as they were inmates serving prison sentences at *Mukobeko Medium*, *and Mukobeko Maximum*; and Lusaka Central Correctional Services. Furthermore, stakeholders in the fight against GBV were also interviewed. A discussion of the findings is presented below:

5.1. Analysis of Data Collection Tools employed in the Research

The data collection methods consisted of both Primary and Secondary Data. Primary data collection methods included interviews; questionnaires; observation; desk research and snowball sampling. The secondary data collection methods were

5.1.1. Interviews were particularly helpful in the research as they were able to bring out a number of issues which the author intended to discover in the research objectives. The types of interviews used were mainly structured where questions were prepared prior to the interview; semi-structured which assisted in collected some of the information on issues which were pertinent in answering the research questions, but not envisaged by the author and unstructured which helped collect some helpful information though no prior questions were prepared. The data collected from interviews was very helpful and particularly contributed to the gathering of information on the causes for the ineffective enforcement of GBV laws from perpetrators and victims. The information obtained was quite reliable as it was coming directly from the targeted people. The response from interviews can be said to have at 100% satisfactory.

5.1.2. Observation was used as a tool particularly to find out a number of things concerning GBV which people choose not to share verbally, or open up about. The topic of the research

is one of the topics which most people contend that it is a taboo to talk about. The author took advantage of observation and observed a number of issues concerning the topic which did not want to be open about, but the information was very useful. Observation was used to collect information from mainly victims and perpetrators and this is the population that decided keeping quiet about issues GBVAM as it is against their beliefs. The author did this by visiting different households and interacting with different people particularly targeting victims and perpetrators, The observation was planned for as the author identified potential respondents to observe, The information obtained was very efficient and realized a very satisfactory level, possibly 100% accurate. This included friends and family.

5.1.3. Desk Research

Desk research was equally another important tool of research employed in this study. It involved external desk research as reference was made to various materials on the internet collected from other written works and some publications from government. This was very helpful to obtain information which the author could not have managed to obtain as individual but through the publication the researcher obtained useful information on government's position on GBVAM which could have been difficult to achieve as well obtaining information even from other jurisdiction and how they have dealt with issue of GBVAM. This information was equally and reliable in drawing conclusions from this research.

5.1.4. Questionnaires on the other hand were also used and a total of 500 questionnaires were administered and some respondents were filling in the information there and then; while Others asked for more time to fill them in. The total period that was taken in completing the process of administering and collecting the questionnaires was a period of one year. A number of respondents found it a bit difficult to understand exactly what they were required to respond to. Others found the questionnaire to be a bit complicated, yet the author tried as much as possible to simply it. This is a limitation on the use of the questionnaire. The other limitation being that out of 500 questionnaires administered only about 420 successfully responded. The questionnaires was also an important tool as it enabled the author to obtain information from a bigger number of people without necessarily having to schedule for any meetings as was the case with interviews. Useful information was obtained particularly from the public concerning what cause of GBV are; what is contributing to the rise of GBV cases; knowledge of the law on GBV; and what should be done to reduce

the cases of GBV. The information obtained through questionnaires was equally reliable except for the possibility that some respondents who insisted on keeping them for some time might have consulted other when answering the questionnaires. All in all the research tools were very helpful and reliable answer used as a mode of obtaining primary data for purposes of responding to the research questions.

The information collected from the above tools is presented below:

5.2. Causes of GBVAM

5.2.1. Perpetrators perspective of causes of GBVAM

A number of issues were raised as being responsible for the behavior that the perpetrators of GBVAM are portraying. One of the main issues which arose is that as society for some time now has been dominated by males; the outbreak of the feminist movements has gained ground in that women have begun to realize that they are able to do certain things which previously they could do. For example, traditionally speaking, a male child was always given priority over a female child. Due to women empowerment, women are now getting educated and becoming financially independent. This emancipation has been perceived differently by women depending on the feminist movement they are acquainted with. The effects are seen from some women losing respect for their husbands; ignoring family values; some resisting child bearing and submissiveness to their husbands as believed by radical feminist; sharing house chore with their partners; taking the leading role in a relationship etc. The effects of this are the ones which have resulted in GBVAM. Some of the findings are contained in the excerpt below:

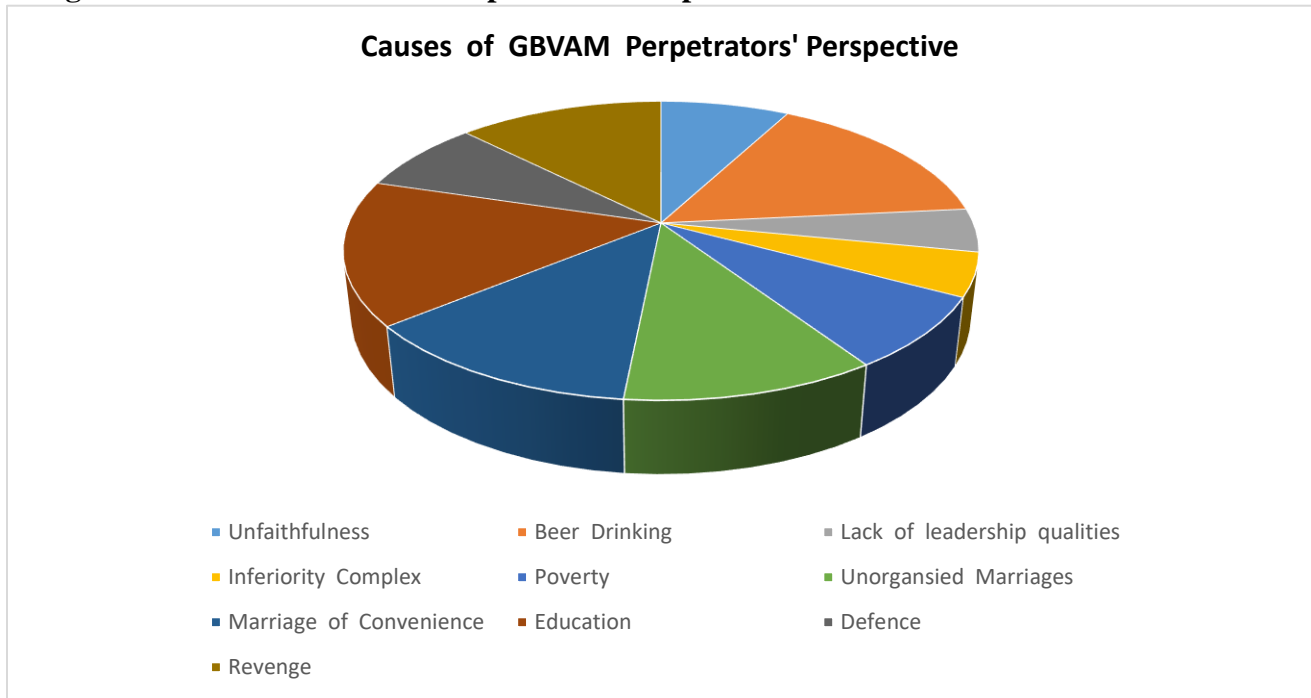
When asked as to what the causes of GBVAM are they responded that women are fighting for equal rights with men. Hence they feel that they want to be in control; gone are the days when women would just keep quiet when they the husband is talking. The other issue is that women no longer value marriages. Most of them confessed that they simply just want the status of being married and receive respect from society; not that marriage is necessarily important and that is why they are violent in especially when the man tries to correct them.

They also highlighted that men are mischievous, and the only way to get back at them is to act violent towards them.

“My husband and I were married for several years. At the time when we got married, I was merely a grade twelve graduate. He sponsored me back to school where I studied secretarial and completed successfully. My husband at the time made a number of investments by purchasing several houses. When he was about to purchase his the last property which was the fifth property; I heard a rumor that he was having an extra-marital affair. I decided to consult a few people who advised me to eliminate him so that I could remain with the property before it was too late. I bought poison, added it to his food and served him some food. He took the food and later left for the bar; when he arrived there he met his friends and they started chatting. He only had one beer and started vomiting. His colleagues were surprised and they rushed him to the hospital where he later died. Unfortunately, his relatives went to the root of the matter and discovered that I was the one behind his death.”

It is clear from the narrative given above, that women are ready to take to the center stage against men. They can do whatever it takes to break even with men. Education was highlighted as one of the issue that lead women to becoming violent against men. They are learning a lot of things form marriage counselors; from friends; and from stories are told around pertaining to the behavior of men. Women express the view of no longer looking at men as the heads of the house. Men have for some time now been unfaithful and women want to show the men that they are reacting to the men who start by being unfaithful and women are doing this by being violent against their partners. Another issues that popped up was that women sometimes were just suing violence as defense mechanism against their abusive husbands. Below is a summary of the main causes of GBVAM from a perpetrator’s perspective.

Figure 7: Causes of GVBAM Perpetrators Perspective



Source: Own Research

5.2.2. Causes GBVAM Stakeholder’s Perspective

5.2.2.1. Marriage Counsellors

From the marriage counsellor’s perspective one of the major issues that give rise to GBVAM is when the woman is a breadwinner. The woman mistreats the man and sometimes tells a lot of stories to her relatives and in the event that she dies, the GBV is then committed by the relatives of the man to victimize the woman. The other issue that causes problems is the financial issue. Women are mainly greedy such that they want to keep all the money that the man makes. Partly they think this may prevent him from being promiscuous. Most of the time even where the man is genuine they like asking the question. ‘Where are you going?’ Such questions are a potential cause of GBV depending on the answer given by the man, the a quarrel ensues, and eventually injuries result from a fight is likely to occur between the two.

The other issue alluded to was the issue of lust in the home. Where there is lust in home, it is likely to breakdown. Phones are also a problem, most couples have differed over phones. Once

the other partner begins to go through the phone of the other, such as text messages sent a lot of issues arise. Another issue is that of the background of both parties to a relationship. This has so much to do with how they conduct themselves in the marriage or relationship. Some might have been raised by single parents, some come from broken homes where they were experiencing violence and some from homes which were polygamous or homes where parents divorced while they were still young. All these backgrounds manifest later on their relationship, and are potential causes of how women may react towards men.

5.2.2.2. The Clergy

From the clergy's perspective what came out as the main form of GVBAM is emotional violence. Women mainly cause emotional violence to their male counter-parts especially in situations where they become educated and in certain cases get well-paying jobs. Men become insecure and eventually women become abusers of men where in certain cases some women have reached the extent of making their husbands even wash their underwear. One interviewee spoken to highlighted that the way out is to counsel the woman to assist her husband maybe by way of helping him also get educated or assist him with capital to start up a business. The other challenge can also be when men retire they tend to be stressed as their life is tied to their jobs and careers as opposed to women who can work anywhere. For example, the respondent dealt with a case where the man was not working and eventually developed some health complications which made him impotent. His wife was impregnated by another man of which he was aware but could not leave his wife because he was an elder in church and also dependent on his wife. It is common in Zambia to find that a number of men are fathering children who are not their own, but they suppress the issue to preserve the marriage. Little wonder why DNA tests were introduced. For a duly wed woman, there is a presumption of **LAW** (*viz*, the law takes cognizance) that the father of all her progeny (children) is her husband (save that the presumption is rebuttable).

This presumption, is in consonance with an old Latin maxim "*Mater semper certa est* - **The mother is always certain, while the father is not.**

It accords the husband to question the child's legitimacy by;

- ✓ Adducing evidence, to the court's satisfaction that he is impotent.

- ✓ Showing, to the satisfaction of the court that he was absent when the child was conceived
- ✓ Carrying out Deoxyribonucleic Acid (DNA or blood) Test.
- ✓ Questionable physical appearance, e.g. mulatto, *inter alia*

In the case of **Ah Chuck v Needham**,³⁴⁷ the child born to Mrs. Hedges had Mongoloid features. The issues in this case were whether the child was illegitimate, and whether the appellant Ah Chuck was the father of the child. Held-there was no proof that the husband did not have intercourse with his wife at the period of the conception, therefore even if it had been proven that the woman had committed adultery with the other man who was their grade boy, the husband was deemed to be the father of the child because certain issues were raised at the trial.

It is very common to find that most men shun divorce or leaving their abusive wives because they look at what society might say about them. It is also true to say that the life expectancy for men is 61.7 while for women is 67.7. Partly this is due to a number of reasons which are connected to GBVAM, which can be termed as the hidden truth. Some chronicle illnesses suffered by men are actually cultivated through domestic violence. This means that the death toll of men through GBVAM keeps rising without society necessarily realizing it.

The general advise given to couples is for them to get back to what the Bible says in Genesis 2:18 that ‘It is not good for the man to be alone, I will make him a helper suitable for him.’ This entails that there is no need for a man and a woman to fight for any reason but to supplement each other.

Men and women’s roles must be clearly defined so as to avoid the usurping of roles of one person by the other. In Ephesians 5:22 the Bible says, ‘Wives, submit to your husbands as to the Lord. For the husband is the head of the wife as Christ is the head of the Church, his body, he is the savior.’ If such roles were to be followed, the issue of gender based violence can be an issue of the past. Wives must also be reminded that they can as a helper, they

³⁴⁷ [1931] NZLR 559

may in certain circumstances assist where necessary as the Bible teaches in Proverbs 31 about the virtuous woman. If these teachings are followed orthodoxically, we can achieve a GBV free society.

5.2.2.3. NGOs

The NGOCC said GBV continues to be rampant. She appealed to Zambians from all walks of life to unite and fight GBV in all its forms. She said the ever increasing cases of GBV point to a deeper societal challenge and a breakdown in family values that will require everyone's effort to end GBV. It was clear that every citizen has a role to play in ensuring that this vice comes an end. While Zambia has enacted the Anti-Gender Based Violence Act of 2011, it is clear that this law alone is not enough to end the ever-escalating number of GBV cases. Sexual and Gender-Based Violence is fast becoming a national crisis. And the latest statistics evidence the sad realities. The NGOCC also remains disappointed over the high number of GBV being withdrawn from the courts of law. According to the Zambia Police Victim Support Unit, 3,857 cases were withdrawn from various Police Stations while 2, 272 are still under investigation. An appeal was made to all survivors of GBV to avoid withdrawing these cases so that they are prosecuted and perpetrators made to account. The ever-increasing number of Gender Based Violence cases as recorded by the Zambia Police is a concern-NGO.³⁴⁸

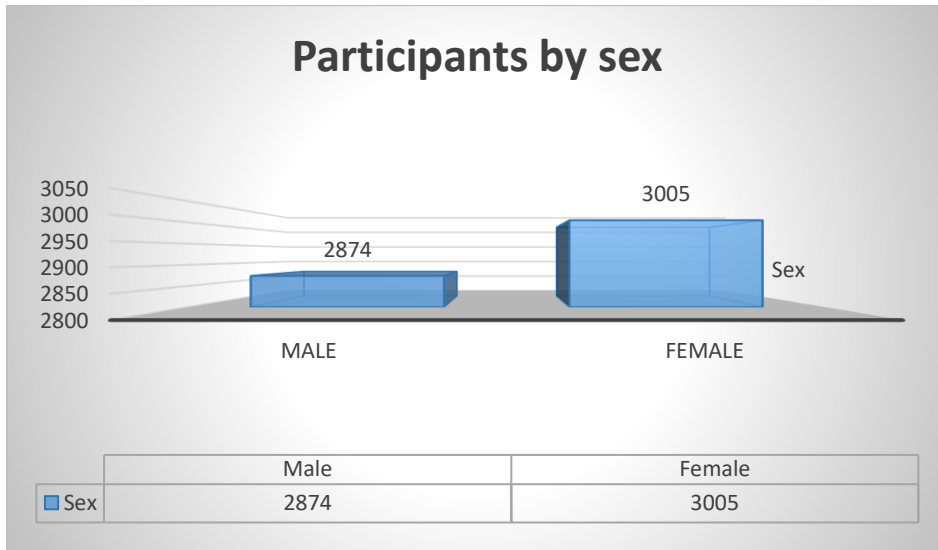
5.2.2.4. The General Public

Below is a compilation of some of the data collected from the respondents.

Social Demographic Characteristics of respondents

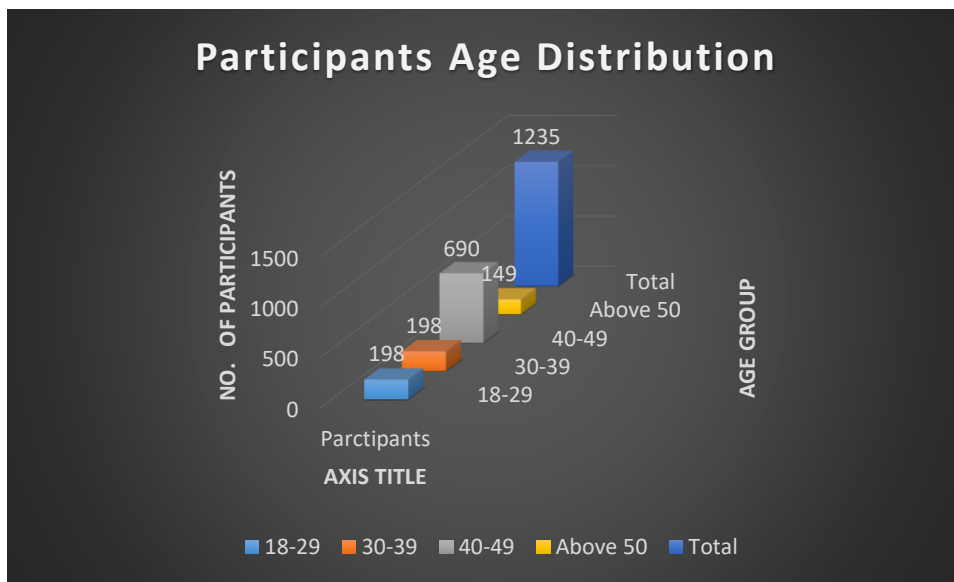
³⁴⁸ Chief Editor, November 8, 2019, Lusaka Times

Figure 8: Bar Chart: Participants Distribution by Sex

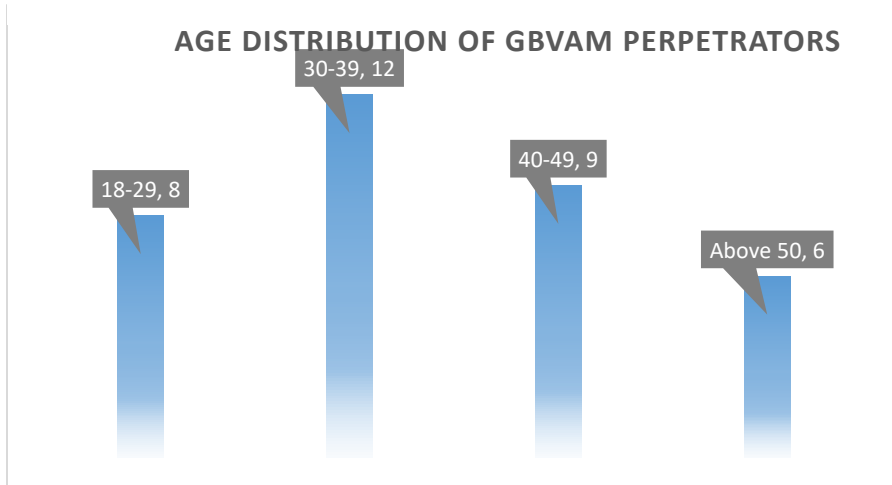


Source: Own research

Figure 9 Graph: clustered column: Participants' Age Distribution



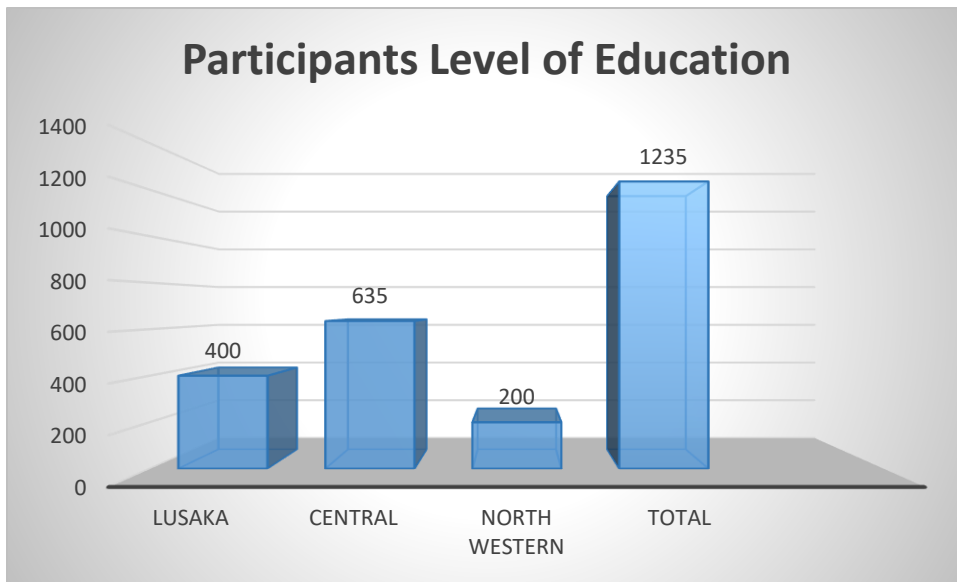
Age Distribution of GBVAM Perpetrators



Source: Own Research

Level of education of respondents

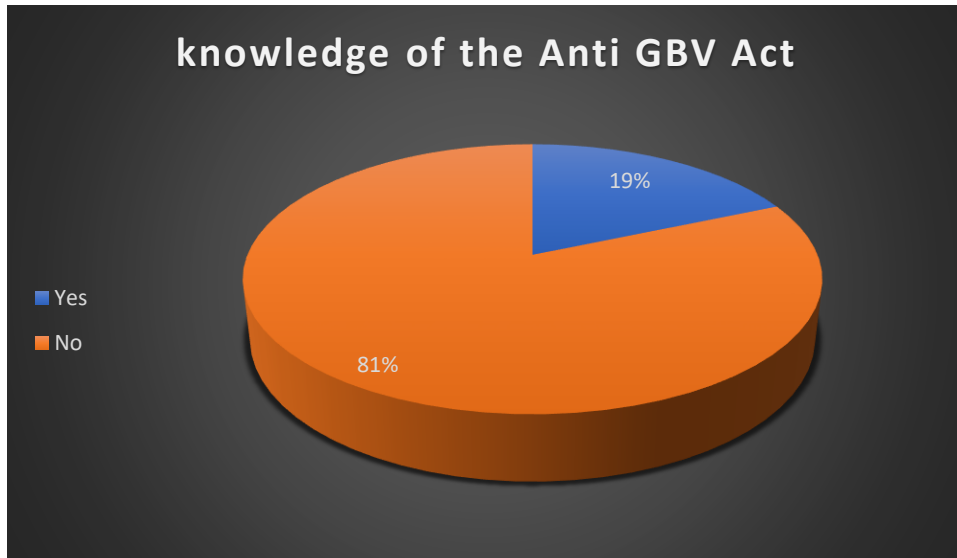
Figure 10: Graph (Bar chart): Respondent’s level of education



Source: Own Research

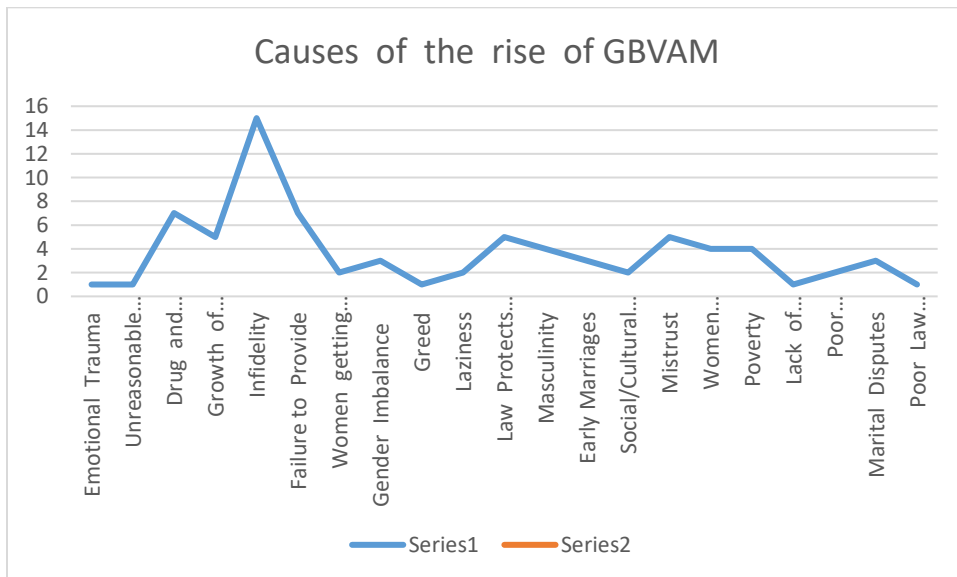
- When asked about the knowledge of the Act

Figure 11: Knowledge of the Act



Source: Own Research

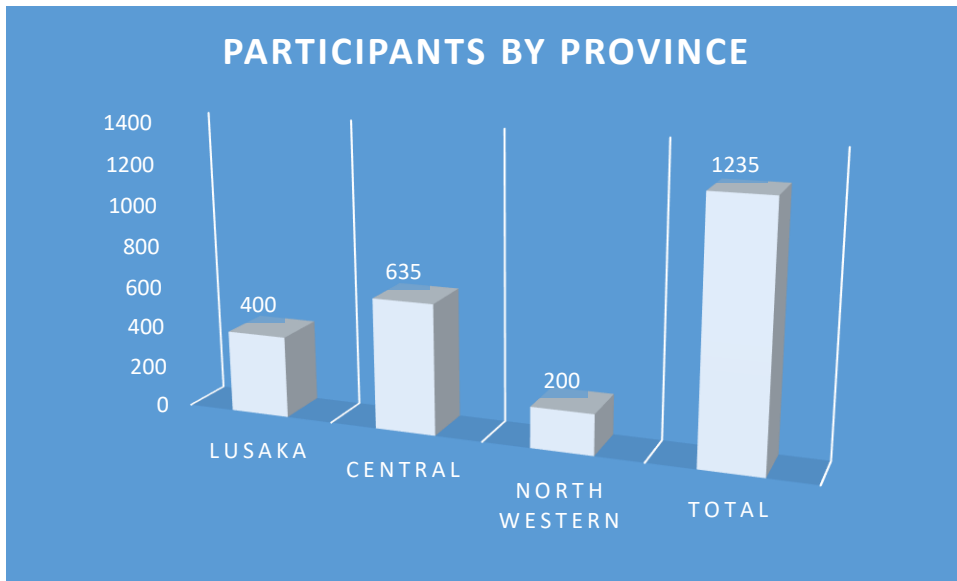
Figure 12: Causes of GBVAM



Source: Own Research

The respondents gave a number of varied responses of the rise of GBVAM, of which some of them are the cause that other groups already gave and hence discussed above, of course with infidelity and alcohol abuse being the most common cause. It must be noted that they were giving more than one cause.

Figure 13: Bar Chart: Distribution of Participants by Province

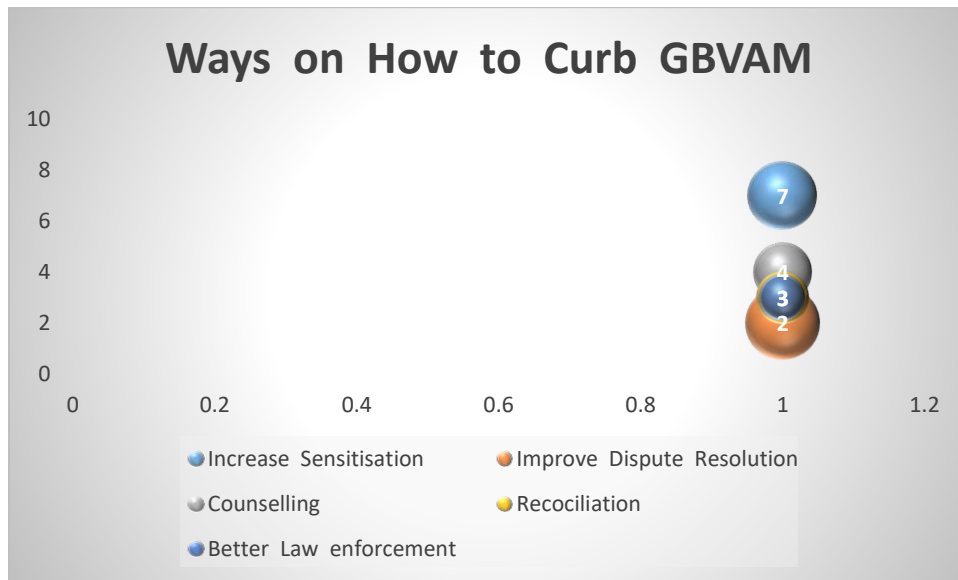


Source: Own Research

- **When asked ways on how to curb GBV**

Several suggestions were also made from the public as to what must be done to fight GBVAM; and presented below:

Figure 14: Ways of curbing GBVAM



Source: Own research

The above were the main findings of the research.

5.3. Conclusion

This chapter was aimed at presenting the findings of the research and highlighting some of the research tools that were used in the collection of data. The data was collected from perpetrators, victims, the general public, government officials, and stakeholders such as the church, and NGOs. The next chapter which will be Chapter Six will discuss the findings that have been presented in this chapter.

CHAPTER SIX

RESEARCH FINDINGS

6.0. Introduction

The essence of any research is to draw conclusion at the end of it all in order to respond to the issues raised beginning of the research as the hypothesis. This chapter therefore, is based on the main findings aimed at answering the question, “What leads to the ineffective enforcement of the Anti-Gender based Violence Act of 2011”?. A number of findings were made as already alluded to in the previous chapter. The discussion of the findings is hereunder.

6.1. Reasons for the Ineffective Enforcement of the Anti-Gender Based Violence Act of 2011 and Related Laws

It is important to this end to appreciate why the law has been used as a preferred mode of curbing gender based violence, of course alongside other disciplines in society. It is inevitable at this point to investigate further as why and how this law has/is being used to eliminate GBVAM. The law is a set rules and regulations that govern a particular group of people in a country, area or organization and which they must obey and abide by or face sanctions. The whole system of rules and regulations can be simply referred to as the Law.

Law can also be defined as the body of rules that is made in order to control and regulate the behavior of people. Laws must be obeyed whether people like it or not. And since people have no option when it comes to obeying the laws, it means that laws have to be good so that people don't feel the law is a burden.

6.1.1. Characteristics of a good law³⁴⁹

In order for a law to qualify as a good law, it must have the following characteristics:

- **The law must be in the interest of the people:** All good laws must be in the interest of the people whose lives and behavior they seek to control and regulate. Here, the law must be able to satisfy the needs of the people. Any law that is not in the interest of the people is not considered a good law.

³⁴⁹ Ibid

- **The law must not discriminate:** This means that the law must apply to everybody that falls under it in an equal manner. Nobody should be above a good law. A good law does not discriminate. In the eyes of a good law, everybody is equal. For example, a billionaire politician should be equal in the eyes of a good law just like a pauper. A good law is no respecter of a person's status or position in society.
- **A good law must be reasonable:** By being reasonable, a good law should not be one that is too harsh or rigid such that it is very difficult to obey. And sanctions associated with flouting or disobeying a good law should be reasonable or should equal to the gravity of the disobeyer's deeds or actions. This is what is meant by the statement 'a good law should be reasonable'.
- **A good law should be able to be enforced:** An unenforceable law cannot qualify to be a good law. Before any law can be said to be a good law, then it must have the capability of being enforced. When a person flouts a good law, the person should be able to be sanctioned appropriately in order to deter others from also breaking it.
- **A good law should be made known to the people who are going to be ruled by it:** All good laws are publicized in order that the people get to know it. Since ignorance of the law is no excuse, a good law must be made known to the general public so that the public is aware of that there is such a law in existence and the consequences of breaking the law.
- **Laws should not suppress the people:** Any law that seeks to suppress or intimidate the people is not a good law.

The above are the basic features of a good law. A law that is devoid of any of the features or characteristics above is not considered a good law.

The above are very important characteristics which can be used to bench mark the laws regulating GBVAM, for the purposes of this study. The main emphasis being on enforceability, of course this does not mean to undermine the other important characteristics.

Law enforcement is any system by which some members of government act in an organized manner to enforce the law by discovering, deterring, rehabilitating, or punishing people who

violate the rules and norms governing that society.³⁵⁰ Although the term encompasses entities such as courts and corrections, it is most frequently applied to those who directly engage in patrols or surveillance to dissuade and discover criminal activity, and those who investigate crimes and apprehend offenders,³⁵¹ a task typically carried out by the police, sheriff or another law enforcement organization. Although law enforcement may be most concerned with the prevention and punishment of crimes, organizations exist to discourage a wide variety of non-criminal violations of rules and norms, effected through the imposition of less severe consequences. There are also different units in different police departments, including “Undercover”, “Detective”, “CID”, “Gang Task Force”, “Drug Task Force”, and “Custody Enforcement” this varies from jurisdiction to jurisdiction.

Most law enforcement is conducted by some type of law enforcement agency, with the most typical agency fulfilling this role being the police. Social investment in enforcement through such organizations can be massive, both in terms of the resources invested in the activity, and in the number of people professionally engaged to perform those functions.³⁵²

Law enforcement agencies tend to be limited to operating within a specified jurisdiction. In some cases, jurisdiction may overlap in between organizations; for example, in the United States, each state has its own statewide law enforcement arms, but the Federal Bureau of Investigation is able to act against certain types of crimes occurring in any state. Various specialized segments of society may have their own internal law enforcement arrangements. For example, military organizations may have military police.

Ineffective enforcement simply means that despite having the legal and institutional framework in place to fight GBV, the aforementioned are not achieving their intended purpose and the GBVAM cases continue to rise. From the responses obtained via the various modes of data collection, the following reasons happened to be prominent indication as to why the enforcement of GBVAM Laws are ineffective.

³⁵⁰ New Law Journal - Volume 123, Part 1 - Page 358, 1974

³⁵¹ Kären M. Hess, Christine Hess Orthmann, *Introduction to Law Enforcement and Criminal Justice* (2008), p. 1.

³⁵² Ibid

6.2. Factors perpetuating the ineffective enforcement of the Anti-Gender Based Violence Act and related laws

6.2.1. Male Dominance in Heterosexual Relations

Data on sexual violence typically comes from the police, clinical settings, non-governmental organizations and survey research. The relationship between these sources and the global magnitude of the problem of sexual violence may be viewed as corresponding to an iceberg floating in water. In general, sexual violence has been a neglected area of research. The available data are scanty and fragmented. Police data, for instance, are often incomplete and limited. Many men do not report sexual violence to the police because they are ashamed, or fear being blamed, not believed or otherwise mistreated. In the case of marriage, norms protecting male dominance in heterosexual relations and males rights to use force have a direct influence on how people behave in marriage.³⁵³ Domestic violence is more prevalent where the social structure favours male power and the dominant ideology legitimates women's subordination. In Africa, domestic violence emerges from many of the same patterns of economic, political, legal, discrimination form worldwide. Legal systems tend to enforce patriarchal norms and provide only limited resources for presenting punishing violence. The everyday experience of domestic violence in Africa also reflects local realities and cultural contexts. The incidence of domestic violence varies across Africa, with research showing higher rates in Ghana, Senegal, South Africa, Tanzania, Uganda, Zimbabwe and lower rates in countries where it is considered unacceptable, such as Cote D'Ivoire , Djibouti, Eritrea, Gabon, Madagascar, Mauritania, Somalia, Swaziland, Togo and Zambia.

From the above information it is clear that certain teachings that women are taught from traditional counseling to submit to their husbands, and never to deny their husbands sex regardless of the circumstances; teaching that a woman is not supposed to get tired; and a man is also taught that a woman must not deny him sex, have resulted in a number of challenges whereby with the advent of feminism promoting sexual and reproductive rights which advocate for women having control over their own bodies. In the process of women trying to protect their rights, fights ensue from there between men and women in

³⁵³ A. Barnes, *The Handbook of Women, Psychology, and the Law*. Wiley Publishers: pp.357-8, 2005.

relationships. These fights in the recent past have resulted in a number of women emerging in defense and injuring their partners.

However, due to the common notion that it is a taboo for such issues to be revealed to the public. Since victims are not willing to report such cases due to the reaction that they might get from the police, it becomes very difficult to see to it that such offences are punished according to the law. The challenge being that when cases occur, they occur in private where the police and other law enforcement officers are not aware. If unreported, then the whole system of enforcing the Act collapses into frailty. One of the victims had the following to say:

“Traditionally I was taught that whatever a man tells a woman to do, she must do it because he is the head of the house,” he says. This may include “sex every day when she is not having her monthly period, having a child when a man needs to have one, and doing all the domestic work and growing food crops to feed the family. Actually, according to Tonga culture, it is the women who do the cultivating of the land, and not the man.”

Liswaniso Luyando was the victim of gender-based violence who survived after being shot by his former wife during a quarrel over food.

"I think even us men after being abused should come out and report these issues to police or other organizations dealing with gender violence," he said.

Alice Mwanza's brother was killed by his wife during a domestic quarrel and said that the experience has been traumatizing for the family.

"His children right now are suffering because there's no support," she said. "If the father is not there, the children cannot get well educated so we have a problem with this issue."

The executive director of the Zambia National Women's Lobby, an NGO that promotes gender equality in decision making. She described the recent killings as barbaric.

*"There's a need for counseling and guidance services to be heightened as traditional counseling encouraged women to stay in abusive marriages," she said. "If they [women] are in an abusive marriage, it's better to move, just move out."*³⁵⁴

6.2.2. Withdrawal and Failure to prosecute some cases leads to Ineffective enforcement of the Anti-Gender Based Violence Act and related Laws

Most stakeholders expressed concern over the number of GBV cases that are withdrawn. This is simply because GBV cases usually occur within the social context. In 2010, there was a case that made headlines involving the then Patriotic Front (PF) Kasama Central member of Parliament Geoffrey Mwamba's wife, Chama, who withdrew her assault case against her husband. NGOCC was disappointed with this move because the women movement expected the parliamentarian's wife to lead as an example. This followed Lusaka Magistrates Court's decision to stay the assault proceeding against Mr Mwamba and discharge the MP. The NGOCC further stated that this is more reason the women movement are pushing for the GBV legislation to deter violators of human rights. It was stated that GBV laws be amended which can deter withdrawal of certain cases as this was not the first time this woman was being abused.³⁵⁵

For example, during a study conducted in Solwezi of the North Western province of Zambia, like in many countries where a customary and the statutory legal system co-exist, the dual legal systems can conflict and influence the daily lives of Zambian people. It is evident that the justice seekers' preference is to use the customary system to resolve disputes. Customary beliefs, practices and norms are pivotal to the identity, values, relationships, obligations, rights and responsibilities of the communities in Zambia. In addition, the attributing factors such as accessibility, affordability, confidence and trust in the traditional chiefs, Indunas (traditional advisers) and village heads renders it a desired avenue to resolve disputes.

In a number of instances involving GBV cases, it is common to see victims of GBV withdrawing cases of GBV. It must be appreciated that most of these cases take place within social relationships. As a result of fear for breaking down these relationships, even in a

³⁵⁴ Ibid

³⁵⁵ Arrest GBM — NGOCC September 8, 2010 In "General News"

family set up, most people opt to have these cases resolved in the traditional courts, or by way of other alternative ways.

In Kasempa and Solwezi, the most favoured entry point to seek recourse and remedy for GBV offences continues to be the customary justice forum. This is because people understand and know that the results are quick, there is a greater likelihood of getting some compensation either in cash or livestock for the personal injury and mental anguish and finally, it is cheaper. The traditional arbiters of justice in the communities are the traditional leaders such as the village heads, the chiefs, and the Indunas. Depending on the type of GBV offence, they would typically call both parties (and their families) and adjudicate on the dispute. There may be punishments ordered for the perpetrator of violence in accordance with the customary practice.³⁵⁶ This inhibits the effective enforcement of the laws on GBVAM.

Secondly, a number of GBV cases usually end up in unsuccessful convictions. For example the case involving the woman from SDA which has been discussed in Chapter Two. The woman was acquitted due to lack of evidence to secure a successful conviction. Such acquittals are a deterrent to curbing GBVAM, which can be attributed to the lack of skills and resources for the officers to adequately carry out successful convictions. Furthermore, there has been a lack of political will in enforcement of GBV cases generally as well let alone GBVAM cases. For example Beatrice Mwala who ruthlessly murdered the lover of her husband was pardoned by the president after serving a few years of sentence from the death penalty slapped on her by the court; the same as Keith Mukata.³⁵⁷ This seems to send a wrong signal to society that GBV is condoned, yet it has very serious effects on society.

6.2.3. Patriarchy results in the ineffective enforcement of the Anti-Gender Based Violence Act and related laws

Society has hitherto being patriarchal in nature. Certain concepts such as a man being abused by a woman are unheard of. Hence this makes it very difficult for the law to be successfully enforced as the victims themselves are in denial. A man by nature is believed to be strong and can never be overpowered by a woman. From the findings however, it has been discovered that

³⁵⁶ Ibid

³⁵⁷ Ibid

violence against men by women is on the increase. Hence men do not easily come out when they fall prey to gender based violence. This is evident from the findings.

6.2.4. Lack of Awareness of the Laws leads to ineffective enforcement

Out of 100%, only 19% of the respondents displayed having knowledge of the law relating to GBV; while 81% were not aware of any law. Some of the challenges in addressing violence (particularly domestic violence) against men and children include men's reluctance to move out of an abusive relationship (even for the most educated and literate men) because the fear of leaving is greater than the fear of staying.³⁵⁸ Some men would not report cases of gender-based violence to relevant authorities for fear of their spouses being locked up, if it was their wives because economically they depend on the abuser and other men, children and the aged fail to take action against the abuser, because of economic attachment and loyalty to the abuser. Most men, especially the rural men lack information on legal systems that protect the victim, they believe those are family cases which are not to be reported to relevant authorities, such as the police and many far places, there are no police stations nor posts.

Cultures and traditions make it hard for men who are physically abused by their wives fear or feel shy to report for fear of being seen as weak men in society.

6.2.5. Legal challenges

Some of the legal challenges in GBV are:

- (i) The lack of incentives and conducive environment makes it difficult for the victim of GBV cases to report to authorities such as the police;³⁵⁹
- (ii) The interview should be conducted in a comfortable environment with absolute privacy from everyone, including wives, parents, children, friends, or any-one else personally associated with the victim. Without privacy the victim may be reluctant to discuss the details;
- (iii) There is a low conviction rate for crimes of violence, caused by a number of factors, some of which are; poor investigations, witness not willing to testify against the accused, cases withdrawn by complainants, est. (although the picture in Zambia has greatly improved in the past years);

³⁵⁸ United Nations office on drugs and crime, Violence against Women and Children. P. 11

³⁵⁹ United Nations office on drugs and crime, Violence against Women and Children. P. 11

- (iv) Victims lack confidence in criminal justice system, because they believe courts are corrupt and that cases take long to be disposed of;
- (v) Most victims of GBV have low level of legal literacy; they believe such cases are domestic, which should not be brought out in public; and Laws regarding divorce, child custody, maintenance and inheritance.

6.3. Government's Response to GBVAM

The government has so far made tremendous strides in trying to fight GBVAM as much as possible. The main the law is discussed hereunder:

In 1993, the UN drafted the Declaration on the Elimination of Violence against Women recognizing the urgent need for the universal application of human rights for women. This attitude was also reflected in the Anti-GBV Act of 2011. Although Zambia has made some progress in promoting gender equality, GBV continues to be a widespread problem that affects and impacts the daily lives of Zambians. Major improvement is still needed, as illustrated by Zambia's scores and ranking in a number of relevant indices, and more specifically by the development of Anti-GBV efforts. Therefore, the government has an obligation to address GBV including domestic violence and is responsible for protecting men and women's rights to personal freedom, dignity, life and physical integrity both in the private and public sphere. Zambia has undertaken a domestication process where the international commitments and ratifications have been enacted into domestic laws and provides for a legal framework that seek to end GBV and promote gender equality and equity. It is significant that the parliament enacted a law, which provides for the ratification and the domestication process of Zambia's international agreements and commitments.³⁶⁰

The Zambian Constitution is the supreme law of the land, which protects and emboldens fundamental rights and freedoms of all Zambian people. From 1990 to 2015, Zambia went through a number of constitutional reform process followed by a number of amendments. The most recent amendment to the constitution is the Constitution of Zambia Amendment Act No. 2 of 2016. Zambia has a dual legal system (customary and statutory) and all laws written and customary are subject to the provisions of the Constitution. The Criminal Procedure Code, Chapter 88 of the Law

³⁶⁰ The Ratification of International Agreements Act, 2016.

of Zambia, Chapter 87 of the Law of Zambia, the Penal Code (Amendment) No. 15 of 2005, the Anti- Human Trafficking Act No. 11 of 2008, the Marriage Act Chapter 50, Matrimonial Causes Act No. 2007, the Employment Act, Chapter 268 of the Laws of Zambia, the Anti-GBV Act No. 1, 2011 and the Gender Equity and Equality Act 2015, are some of the legislations that are enacted to address structural inequalities and signify that violence is unacceptable.

Apart from legislations, Zambia has also developed strategic national plans and policies to ensure gender-based violence is a priority concern. In 2000, Zambia adopted a National Gender Policy and key institutions and ministries have been either reorganized or newly established. In 2008, the Gender in Development Division developed a National Action Plan on gender-based violence for 2008-2013, and the Ministry of Gender and Child Development a Strategic Plan, for 2014-2016.

The reorganization of ministries has led to the Ministry of Gender tasked with coordinating and monitoring the National Gender Policy as well as the Anti-GBV Act. The Zambian Police Victim Support Unit (VSU) is mandated to handle all GBV cases and have VSU posts in police stations across the country. Legal aid is provided by the government and CSOs despite the absence of a comprehensive national legal aid policy to guide and regulate the provision of legal aid. In 2012, a committee of 15 members was established by the Minister of Justice at the request of the National Legal Aid Board for the development of a comprehensive national legal aid policy. A draft national legal aid policy was first completed in 2013, and was finally enacted with several changes including the formalization of paralegals in Zambia. It is hoped that with improved quality legal aid provision there would be enhanced access to justice, which is a crucial component for the implementation of gender sensitive laws such as the Anti-GBV Act. This will allow for the Act to have a positive impact on the lives of Zambian people.

The Anti-GBV Act law is considered as a progressive law and for the first time in Zambia, provides for a comprehensive framework for protection of GBV offences, and guidance on adequate recourse. After more than a decade of advocacy from Zambian civil society and collective action, the parliament passed the Anti-GBV Act in 2011, an effective legislation that provides protection and adequate recourse for survivors. Zambia is one of the only countries in SADC region to have a specific anti-gender-based violence law. The Act is in line with international legal frameworks and draws experience from global best practices. The Act is lauded for providing a holistic

approach to countering GBV, one that combines legal and non-legal support to effectively address GBV.³⁶¹

4.9.1 Filing and Dealing with complaints of Gender Based Violence under the Anti-Gender Based Violence Act 2011

Sections 4-9: A police officer or any other information leading to the commission of the offence may assist the victim in obtaining support which may be in the form of information pertaining to the offence committed; advise the victim to obtain shelter, a medical report, legal services or counselling as well as how to lodge a complaint against GBV.

A police officer is expected to respond promptly and offer protection to the victim or even to the person reporting where necessary. The police officer is supposed to interview the parties, record the complaint, ensure the victim is safe and assist the victim to preserve evidence.

A police officer may without warrant arrest a person where the police officer has reasonable grounds to believe that the person may interfere with the progress of the case, family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of gender-based violence.

Section 10: A victim may in a prescribed manner apply for a protection order to prevent a respondent or an associated respondent from carrying out a threat of gender based violence against the victim.

Section 24: The Minister responsible for social welfare shall— (a) from money appropriated by Parliament for that purpose, establish and operate shelters for victims; and (b) ensure an appropriate spread of such shelters throughout Zambia.

Section 25: A shelter for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.

³⁶¹ Jeni Klugman, violence **REPORT** from UN Economic Commission for Africa Published on **25 Nov 2017** —View Original Lusaka, Zambia, 25 November 2017 (ECA) –

Section 31: A committee shall be established to deal with all issues related to GBV and monitor all activities of all institutions on matters connected to GBV. Their functions are at national level and they should make recommendations on guidelines on disbursement of funds.

Section 32: This section provides for the fund which is financed by voluntary contributions from any person and such monies as Parliament may approve.

Section 35: The provisions of the Subordinate Courts Act apply with respect to the service of process of any document issued pursuant to this Act and for which the service is required. In the event that the act committed is criminal in nature the process to be undertaken is the criminal procedure as found under the Zambian Criminal Justice System.

6.4. The Effectiveness of the Prosecution of GBV Cases in Zambia

The general effect of the prosecution of GBV cases is that it acts as a social control, it deters would be offenders from committing GBV offences. Convicts are corrected; many come out of the correction centers as better citizens, having learnt many ways of being a better citizen in the community. Even the mere physical visibility of the police in the community is a powerful deterrence to GBV, hence the need to have more Community Police Posts. It also has negative effects on the family where a bread winner is given a custodial sentence upon being found guilty of a gender-based violence. The education, accommodation, clothing, food and health of the family become a problem, as well as family unity breaks. Some come out of prison as hard core criminals, having mixed and learnt bad activities in correction centers.

6.5. Challenges of Implementing the GBV Act

As much as government may be hailed for endeavoring to address issues of GBV; there still remain a number of challenges in implementing the Act as well as other strategies aimed at addressing issues of GBV, which includes GVBAM. The shortcomings include the following: parliament needs to adopt gender responsive budgeting; establishment of shelters have been slow; lack of clarity at the provincial and district levels on the roles of MGCD and MCDSW on the modalities of establishing of shelters; management and administration of the Anti-GBV

Fund; and terms of reference on coordination and creation of Gender Task Force in districts. Indicators to measure the progress of the Act are yet to be developed.

Duty bearers and service providers are aware of the passing of the law, but do not have the know-how to apply it in their work with GBV survivors. The duty bearers (such as the VSU and Magistrates) and the public are not aware of the significant value of the protection and occupation orders under the Act to stop GBV. There is little knowledge of the step-by step application process to procure these orders. The definitions in the Act conflict with provisions in other laws, notably the Criminal Procedure Code.³⁶² For instance, after the constitutional amendments, the upper age of the child is set as 18 years¹² of age and the Anti-GBV Act defines a child as under 16 years of age. The age of the child is being discussed in the consultations on the Child Code Bill. If enacted, the age of the child will be the one determined by the Child Code Bill and the Constitution, and this will prevail over other existing legislations and customary practice.³⁶³ Further, under the Anti-GBV Act, marital rape is an offence whereas the Penal Code does not recognize marital rape. The Act does not work in isolation and has to be enquired into and prosecuted in conjunction with the Penal Code Chapter 87 and Chapter 88 of the Laws of Zambia and the Criminal Procedure Code. Therefore, there is an urgent need to reconcile existing laws and provisions that are not aligned or conflict with the provisions of the Anti-GBV Act.

6.5.1. The Challenges in the Prosecution of Gender-Based Violence Offences

There are many evidential and other challenges in prosecuting GBV cases, some of which are:

(1) When a child below the age of fourteen is required to give evidence in court, he or she is required to undergo a test, i.e. *voir dire*. It becomes a big problem when a child victim faces the perpetrator, some children become mute. Child witnesses sometimes find it difficult to testify in an open court, that is, in cases where the accused is a person above 18 years, where the court does not sit as a juvenile court. Though in some cases the magistrate may ask the audience to leave the court room and only the family members and the accused to remain in the court room. Child victims of sexual offences sometimes find it difficult to explain the act of sexual intercourse in court, it could be that they feel to be insulting in front of elderly people, or they may be just shy and sometimes it is the fear of the assailant.

³⁶² Cap 88 of the Laws of Zambia

³⁶³ Ibid

(2) The other problem is on victims of sexual abuse who are of age but below 16, and if the accused is a boyfriend, it becomes difficult to open up because they are protecting their interest. The rules of evidence, such as the requirement of corroborative evidence in sexual-related offences, though of great importance in the interest of justice have an effect on the prosecution.

In a case of defilement of child, some magistrates strictly ask for the production of medical records as proof of age, such as the birth certificate or under five cards, when some children may have been born at home or parents or guardians may have lost the records. In sexual offences, medical evidence is required to confirm the commission of the offence, but due to religious beliefs some churches do not allow their members to be medically examined, hence the case would lack expert evidence. The need for corroboration in sexual offences is required in many areas, namely:

- (i) The commission of the offence,
- (ii) The identification of the offender,
- (iii) The victim of sexual violence's evidence must be supported by other independent evidence,
- (iv) A child witness must be supported by other independent evidence, and
- (v) Witnesses with a possible interest to serve should also be corroborated by other independent witnesses, (e.g. evidence of mother and daughter.)

Complainants like withdrawing cases, especial cases of spouse battery. In some cases, there are false complaints, parents would cheat of the age of child, on cases of defilement of child even on the commission of offence, and people they would sometimes want to use the courts to settle their differences. In defended cases lawyers would in most cases ask for adjournments, hence delaying justice and eventually defeat justice. Most of sexual offences are poorly investigated. Investigators do not exhaust their investigations.

The recent November 2019 preference of a *Nolle Prosequi* on the Chifubu PF Member of Parliament on a charge related to Gender-Based Violence (GBV) because the victim-wife decided not to continue testifying against her husband as they had reportedly reconciled, is an affront to justice and is an atrocity. This must be a teachable moment to stop newspaper pontifications by many stake-holders and reform the Law of Evidence to contribute to the solutions towards the reduction of GBV. GBV Includes defilement. The tragedy about the case in issue is that the

withdrawal of the charge is not because there was a recantation which would have raised the issue of credibility and therefore provided room for reasonable doubt and therefore a not-guilty verdict. Here there was no doubt that the Chifubu MP battered his wife and she had already testified to that effect. There were medical reports. She simply didn't want to continue the prosecution because of the reconciliation.

In Zambia the law of evidence and the practice seems to be that once a witness refuses to testify, the charges are withdrawn. Indeed witnesses are centrally required to prove or disprove a case under our adversarial system. In GBV cases, the victim or parent in defilement cases, controls the weight of the prosecution, despite the existence of the important rule of evidence that in spousal GBV, a wife or husband is a competent and compellable witness against the other. In none-spousal cases, a spouse is competent but not compellable against the other.

Marriage is the foundation of society as it constitutes the primary cell and building block of all other relations in society. Marriage occupies a sacred pillar. If a spouse testifies against a spouse, a scriptural law would be violated: " what God has put together, let no man separate" (put asunder). Over the centuries though, exceptions to this declaration have been made: you can testify against your spouse if they assault you or defilement is involved. You are competent and compellable. This protects this sacred relationship from collapsing due to assaultive conduct of one spouse against the other. A spouse needs protection from the other. Of course not all societies afford this protection. In the Common Law world inherited from Britain, spouses deserve protection from each other concerning GBV and defilement. It is difficult to stem the tide of GBV and defilement when prosecution is dependent on the whims of the victim or parent. Something drastic has to be done to protect the victims both from themselves and the other spouse. It is in the public interest. It is a societal interest.³⁶⁴

³⁶⁴Dr. Munyonzwe Hamalengwa, Stop Pontificating about GBV: Reform the Law of Evidence, November 2019, Senior Lecturer Zambian Open University. Hamalengwa@zaou.ac.zm

6.5.2. Other Challenges in Implementation of the Anti-Gender-Based Violence Act 2011 in Zambia³⁶⁵

Also, as a result of the 2016 amendments to the Zambian Constitution, the new Family Court Division at the High Court was established, but there was no easily available information about how and if this establishment will influence the future functioning of the fast-track courts. The fast-track and user-friendly courts to fight cases of gender-based violence were launched on 22 January 2016 in Kabwe, Central Province and on 11 March 2016 in Lusaka, the capital city of Zambia, by the Chief Justice of Zambia, Irene Mambilima.³⁶⁶ According to the United Nations Development Program (UNDP), which co-financed the project with the Government of Zambia and some other actors – among them Sweden³⁶⁷ – this is a pioneering project in Southern Africa.³⁶⁸ It is a part of the Joint Programme on Gender-Based Violence between the Republic of Zambia and the United Nations (UN) that started in March 2012 and finished in December 2017.³⁶⁹ The main goal of the programme was to 'contribute to the reduction of gender-based violence in Zambia'.³⁷⁰ According to the Zambian Government, the courts were established in order to 'increase access to justice for victims and alleged perpetrators alike by dealing with cases speedily' as well as 'reduce the time alleged perpetrators are detained before their cases are heard'. As many of the victims are children, the courts are meant to be child-friendly and 'allow protection for victims from intimidation and from facing alleged perpetrators'.³⁷¹ In addition, the GBV cases should be speed up and 'concluded within the shortest possible time without compromising

³⁶⁵ A case study on pursuing strategic advocacy actions for the effective implementation of the Anti-Gender-Based Violence Act by examining the level of its operationalization in two districts, ASF 2017

³⁶⁶ Zambia Law Development Commission, ZLDC launches Anti Gender Based Fast Track and User Friendly pilot courts, 2016, <http://www.zldc.org.zm/wp-content/uploads/2016/11/ZLDC-launches-Anti-Gender-basedViolence-Fast-Track-and-User-Friendly-Pilot-Courts.pdf>, (accessed in October 2016).

³⁶⁷ United Nations Development Programme, Zambia Launches Second Fast Track Court to Expedite Gender Based Violence Cases, 2016, <http://www.zm.undp.org/content/zambia/en/home/presscenter/articles/2016/03/11/zambia-launchessecond-fast-track-court-to-expedite-gender-based-violence-cases-.html>, (accessed in October 2016).

³⁶⁸ Ibid

³⁶⁹ Government of the Republic of Zambia (GRZ) – United Nations (UN) Joint Programme on Gender-Based Violence, Programme Document, Lusaka, July 2012.

³⁷⁰ Ibid, p. 7. 21UNDP, Zambia Launches Second Fast Track Court, *supra* note 17.

³⁷¹ p. 15. 25 26 27 UN Handbook for Legislation on Violence against Women, New York, United Nations, p. 19, available from <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

justice³⁷², i.e. the right to fair trial for the accused person must be ensured and the previously long detention times shortened.

One of the reasons to this still low number is – according to many – the high failure rate at the Zambia Institute of Advanced Legal Education, the only Zambian institute for postgraduate legal studies.³⁷³

Three workshops – in Kitwe, Kabwe, and Lusaka – were conducted with stakeholders from all across the country.³⁷⁴ The areas discussed were 'user friendly concept, fast tracking cases and time frames, procedure for the conduct of cases, sentencing and conduct of courts officials and withdrawal of cases and appeals'.

According to statistics provided by the senior registrar of the Kabwe fast-track court since the opening of the court until the end of 2016, one civil case and fifty-eight criminal cases were received.³⁷⁵ In 2017, as of this writing, eleven criminal GBV cases and no civil cases. The only civil case of 2016 was withdrawn, and therefore, no protection orders or occupation orders were granted by the court since its opening. This is due to the lack of motivation on the side of the victims, according to a magistrate of the Kabwe court. In the statistics, the following criminal offences are counted as gender-based violence: defilement, assault o.a.b.h. , assault on a child, grievous bodily harm, indecent assault on a child, indecent assault on a female, unnatural offence, attempted rape, rape, incest by male, and unlawful wounding.

These words from an interview with a prosecutor sum up the general attitude the interviewed practising lawyers showed about the functioning of the GBV courts so far. When asked about the overall impact of the courts so far, most of the interviewees sounded either positive or very positive. They always mentioned challenges but often simultaneously talked about feeling a sense of urgency in these cases and trying to act in accordance with that feeling. Many spoke about

³⁷² Report on the establishing fast-track and user-friendly courts to deal with sexual and gender-based violence cases in Zambia, Lusaka, Zambia Law Development Commission, September 2014.

³⁷³ See 'Government to take action on the low passing rate at ZIALE – Lubinda', Lusaka Times, 26 January 2016, <https://www.lusakatimes.com/2017/01/26/government-take-action-lowpassing-rate-ziale-lubinda/>, (accessed 17 March 2017). See also: Shezongo-Macmillan, supra note 9, p. 76 ff.

³⁷⁴ Interview with Mrs Mandy Manda, National Legal Aid Clinic for Women, Executive Director, 20 October 2016; Interview with Mr Gilbert Mwanza, Zambia Law Development Commission, Senior Research Officer, 17 February 2017.

³⁷⁵ Statistics for the civil cases were obtained from the Civil Registry of the court on 25 January 2017.

'teething problems', 'impediments', or 'challenges' that are natural for every new project.³⁷⁶ In addition, the interviewed often pointed out that the two courts are still pilot projects and should be viewed as such. One of the interviewed, lawyer of the NLACW, confirmed this impression: 'For those that have come forward and, you know, have been willing to have the cases prosecuted, we have seen tremendous improvement. We would just want to encourage the judiciary to open up the courts in other districts.' NLACW sees the development very positively as, from their experience, 'matters have been concluded expeditiously in terms of justice delivery, the cases have been disposed of between thirty days to maybe ninety days to be concluded as opposed to the normal procedure, which would range may be from twelve months to years.' This has, according to her, also encouraged the survivors 'that have come forward and have been willing to have the cases prosecuted'. NLACW greatly appreciates this improvement.³⁷⁷

On the other hand, there is a limit to the speediness, especially regarding the rights of the accused, which perhaps have been somewhat forgotten on the way.³⁷⁸ She added, 'The fast-track court is not only the building. It should be a mental picture as well.'³⁷⁹ One magistrate summed up the impressions and thoughts of many other interviewees about the functioning of the courts by getting right to the point: 'It is a good thing. Especially if the [AGBV] Act can be amended.' Several of the interviewed lawyers – both from NGOs and the magistrates at the courts – expressed a view that the fast-tracking of the civil procedure functioned well, mostly thanks to the clear time frames. 'It's a process that has been fast-tracked by the Rules.'³⁸⁰ The existence of the rules, in combination with the ground set by the AGBV Act, creates a clear procedural frame that is easily followed. Therefore, according to one interviewee, there is no need for a specialized court in this area, as every court must apply the procedure when handling the GBV cases. This is also directly expressed in Section 40(a) of the AGBV Act, which says, 'any court under this Act'.

The AGBV Act refers to the Criminal Procedure Code and the Penal Code, but these codes have not been amended for the purposes of fast-tracking as of now. Because of these reasons, several of the interviewed magistrates called their activity within the fast-track courts' criminal proceedings

³⁷⁶ Interview with Simon Mulenga Kapilima, *supra* note 10

³⁷⁷ *Ibid*

³⁷⁸ Interview with a programme coordinator, *supra* note 135

³⁷⁹ *Ibid*

³⁸⁰ Interview with a lawyer, WLSA, name withheld, 28 October 2016. 33 The existence of the rules, in combination with the ground set by the AGBV Act, creates a clear procedural frame that is easily followed.

'judicial activism'. All the magistrates that were heard for the purposes of this study described a similar situation: there is a stamp of urgency put on the GBV cases, but at the same time, 'there is a lacuna in the law that even criminal cases that come to your court, you must attach some sense of urgency to them, but it's not in the law but they attach a sense of urgency to those cases on account of the GBV.'

According to the representatives for NLACW and WLSA, the procedure runs smoothly and the time frames are respected. As the executive director of National Legal Aid Clinic of Women, said, this procedure 'has encouraged the survivors of beating or GBV to report cases because they know they'll receive a hearing in good time, in a reasonable time'.³⁸¹ On the other hand, it is important to point out that the specific conditions in Lusaka – an urban area – must be taken into account. Both interviews were conducted in Lusaka. In Kabwe, a semirural area, the reality appears somewhat different.³⁸² Criminal cases as mentioned above, there are no special rules for handling criminal GBV cases, and the AGBV Act refers to the Criminal Procedure Code and the Penal Code for handling of (criminal) cases of gender-based violence.³⁸³ It is not possible for the author to decide whether this consequence of the establishment was intended or not because of different messages given by different preparatory papers³⁸⁴ as well as different views given by the interviewees. Generally, it appears that the magistrates at the courts would like to see amendments to the Criminal Penal Code and the Criminal Procedure Code that would harmonize these statutes with the AGBV Act and make it possible, when handling a criminal GBV case, to move from the field of judicial activism into the area of regular judicial work regulated by Zambian statutory law.³⁸⁵

On the other hand, another lawyer from ZLDC pointed out that 'the concept of fast tracking is not the issue of time frames' but 'the issue of a speedy and justified procedure'. Justice must not be

³⁸¹Interview with Mandy Manda,

³⁸² This was also pointed out by an interviewed magistrate in Kabwe,

³⁸³ The Anti-Gender-Based Violence Act (No. 1 of 2011), Section 2 (1).

³⁸⁴ While Working paper 1 talks about the need to amend the Criminal Penal Code, there is no mention of such measure in the Report. Compare Working paper 1, supra note 144, p. 24 (under 'Issues for further consideration') and Report on the establishing, supra note 23, p. 45 f. (under 'Recommendations. 5.1 Procedure').

³⁸⁵ Interview with magistrates, supra notes 2, 13 et 198. 41 criminal proceedings. Some of the interviewees pointed out that this could bring more problems than positives into the well-established criminal penal procedure. One interviewed magistrate stated that the missing sentencing competences for magistrates influence the process in a negative way. If all the cases could be completed at the subordinate courts instead of having to go to the High Court for sentencing, the handling would win a lot of time.

rushed, as the rights of the accused must be taken into account as well, but it is rather an issue of 'not delaying the process unreasonably because]we are not talking about rushing justice, but we are talking about removal of the delay in the justice'. Nevertheless, the objective of quick and effective disposal of the criminal GBV cases has not been accomplished satisfactorily yet.³⁸⁶ According to most of the interviewees, at least some changes in the form of amendments to the Criminal Procedure Code and Criminal Penal Code must be made if this objective is to be attained on a legal basis, not only on the basis of judicial activism. Article 18 of the Constitution of Zambia provides for the securing of protection of law, including the right to a fair hearing and the right to be presumed innocent until proven guilty. In the proposed Bill of Rights that was about to be made part of the Constitution but did not pass the referendum in August 2016, this right was included under Article 32(1): 'A person has the right to access justice.'³⁸⁷ Article 118(2) of the valid Constitution prescribes principles of the courts.³⁸⁸

It is important that this access is effective, not only theoretical. Under this objective, the establishment of the courts means a structural reform that helps victims who live within the coverage area of Lusaka and Kabwe to improve their practical access to justice. Another structural reform was made operational in 2016 when, according to information provided by a prosecutor from NPA, a Witness Management Fund started to function in order 'to ensure that witnesses are provided for' in terms of travel, lodging, and food expenses. Establishment of a similar fund for witnesses was also among recommendations made by ZLDC. It helps in securing the witnesses and speeds up the whole court process when some unnecessary adjournments can be saved. On the other hand, victims of criminal GBV cases who live in remote areas still have limited access to justice.³⁸⁹

Most of the interviewed magistrates talked about a need for clearer guidelines. As one magistrate formulated it, 'If it's in black and white, it's easy.'³⁹⁰ According to the same magistrate, the only

³⁸⁶ Interview with Gilbert Mwanza, *supra* note 93.

³⁸⁷ The Referendum Act. (Law, Volume 2, Cap 14) (No. 35 of 2016). Available from <https://www.elections.org.zm/media/the-referendum-question-mobileversion.pdf>, (accessed 4 April 2017). 42 shall be guided, among them 'a) justice shall be done to all, without discrimination; (b) justice shall not be delayed'. In Cappelletti and Garth's definition, 'access to justice' means that the system must be equally accessible to all and lead to results that are individually and socially just.

³⁸⁸ *Ibid*

³⁸⁹ Criminal Procedure Code Act. Chapter 88 of the Laws of Zambia, Sections 149-156.

³⁹⁰ Interview with a magistrate (1), *supra* n

kind of information they got before the opening of the fast-track court in Lusaka was 'the Act and the Rules and you read them'.³⁹¹ With guidelines for criminal proceedings at the fast-track courts still missing, there is space left not only for judicial activism, but also for arbitrary actions that should be avoided when the judicial authority is to be 'exercised in a just manner and such exercise shall promote accountability'.³⁹² The interviewees also wished for instructions and more hands-on training for handling criminal GBV cases, including technical training on how to handle the new equipment.³⁹³ It is, therefore, obvious that a lot of work is still to be done for this objective to be accomplished, especially on the criminal side.

One of the interviewed magistrates talked specifically about the Anti-Gender-Based Violence Act: *'I felt it was done in a hurry, and for that reason, we are missing out on many aspects of fast-tracking GBV-cases.'*³⁹⁴ The 'lacunas in law', as one of the interviewed magistrates called them, were known by both the legislators and other legal stakeholders involved in the process, but the author can only guess that there was a reliance on the long-planned amendments of the Criminal Penal Code and the Criminal Procedure Code being carried through in time. The problems that the magistrates are dealing with on a regular basis are among others³⁹⁵

On the structural and logistical level, there is an apparent lack of courtrooms. Both fast-track courts have been given one courtroom each. In Lusaka, two courtrooms were planned originally, but the plans did not work out. In addition, the rooms are shared by two or three magistrates each, which makes it even more difficult when a GBV case comes up and the ambition is to fast-track it. As one interviewed put it, 'infrastructure is a challenge'.³⁹⁶ Because of the limited space and a big caseload, especially at Lusaka Magistrate Courts, the GBV cases are currently handled in different rooms.³⁹⁷ Some of the interviewed used the Lusaka-based Traffic Offences Fast-Track Court as an example of a specialized court with a well-organized infrastructure – an own courtroom at the Civic Centre, own magistrates and specific dedication to certain issues.³⁹⁸ Additionally, questions

³⁹¹ Ibid

³⁹² Ibid

³⁹³ Interview with a magistrate

³⁹⁴ Interview with a magistrate(2)

³⁹⁵ The author makes no claims on being able to catch all the challenges faced by the magistrates at the fast-track courts. Only those discussed and/or observed are taken up in this study.

³⁹⁶ Interview with a magistrate (2), supra note

³⁹⁷ Ibid

³⁹⁸ Interview with a defence lawyer, LAB, name withheld, 30 January 2017; Interview with Simon Mulenga Kapilima, supra note 10

of staff establishment in the judiciary arise in connection to the task of fast-tracking the GBV cases. In the opinion of an interviewed lawyer, the judiciary must allocate magistrates for these matters specifically. It has been shown earlier in this study that the allocation has taken place but is not sufficient capacity-wise.³⁹⁹

On this level also, the need for stronger technical support as well as technical training of the magistrates assigned to the GBV cases was not planned for.⁴⁰⁰ During an unplanned meeting with a person from the IT division of the Zambian judiciary, it was revealed that there is no clear division of maintenance competences between the distributor of the equipment and the courts' own IT staff.⁴⁰¹ On the procedural level, besides the special equipment, the most discussed question in the interviews was whether there is a need for the Anti-Gender-Based Violence Court Rules for criminal proceedings. Nevertheless, it seems obvious that there is a need to establish clearer procedures and guidelines for use by criminal fast-track courts, which obviously was one of the specific objectives of the whole project. The challenges that the magistrates face on the procedural side do not only relate to the issues of fast-tracking (the potential need of time frames) but also the user-friendliness of the courts.

The user-friendly concept of the courts, which includes special witness rooms and the use of audio and video recordings for hearing the victim or other witnesses and providing for communication between the courtroom and the witness room, is not only a logistic challenge. Right now, this arrangement also prolongs the procedure – and not only when the equipment does not function.⁴⁰² Furthermore, with missing guidelines, it is not clear how – or up to what age – a child witness should receive the special child witness treatment. The author has observed cases of defilement and indecent assault with 3- and 8-year-old in which the court came down from the podium in order to hear the witness. This approach was also confirmed in the interview with Simon

³⁹⁹ Interview with a lawyer, supra note 219. See also supra note 226 about the issue of staff establishment. 48 move to a room with unreliable equipment and risk prolonging the hearing instead of making it fast-track and user-friendly. This impression was also confirmed in interviews with several magistrates

⁴⁰⁰ Juridiska institutionen Examensarbete vårterminen 2017 The Establishment of Fast-Track and UserFriendly Courts in Kabwe and Lusaka to Fight Gender-Based Violence Cases Ambitions, development, and practice (Minor Field Study) Elena Lakso Tesáková Handledare: Filippo Valguarnera Examinator: Mikael Baaz

⁴⁰¹ Ibid

⁴⁰² Juridiska institutionen Examensarbete vårterminen 2017 The Establishment of Fast-Track and UserFriendly Courts in Kabwe and Lusaka to Fight Gender-Based Violence Cases Ambitions, development, and practice (Minor Field Study) Elena Lakso Tesáková Handledare: Filippo Valguarnera Examinator: Mikael Baaz

Mulenga Kapilima of the Ministry of Gender 'the new courts should take into account all the challenges and difficulties that would have been faced by these two'.⁴⁰³

It has long been a matter of discussion whether Article 23(4) d, e, and f of the Zambian Constitution, which allows for exceptions mostly regarding matters related to marriage, should be removed.⁴⁰⁴ The existence of this exception for customary law in the Zambian Constitution has also been discussed and criticized in international organizations of which Zambia is a part, e.g. the UNCSW.⁴⁰⁵ It should be of great interest to examine if and how this duality in legal matters regarding family law shows in the functioning of the courts.

The issues raised above must be overlooked but taken into account to make GBV laws more efficacious.

6.7. Why GBVAM is of Concern

All forms of GBV affecting the world of work both reflect and reinforce social, economic, and political gender inequalities, with unequal outcomes in labor markets and for national economies. According to an ILO (2011) report, “gender-based violence not only causes pain and suffering but also devastates families, undermines workplace productivity, diminishes national competitiveness, and stalls development.” A significant proportion of women/men workers participating in any economic growth project are likely to have experienced one or more forms of GBV in their lives, in and beyond the world of work. GBV does not only originate or recur in the home, rather it is perpetuated across all systems in which social norms ascribe what is considered correct behavior at home, at work, in the community or elsewhere. There are generally many accounts of men not reporting violence for fear of stigma and worsening violence perpetrated against them in the home or community. Shame, fear of ostracization, isolation, and social norms of blaming the victim,

⁴⁰³ Ibid

⁴⁰⁴ GRZ – UN Joint Programme, supra note 19, p. 6. 320 At the 57th session of the United Nations Commission on the Status of Women (UNCSW), 4–15 March 2013, Zambia’s representative talked in its statement, among others, about the 'engagement of traditional leaders as custodians of tradition and agents of change in addressing issues relating to early marriages'.

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compound the effects of GBV and contribute to under-reporting, inadequate statistics, and a lack of needed psychological, medical and legal response services for GBV survivors.

Factors related to globalization; the rise of insecure, flexible, and temporary forms of labor; deepening economic inequalities; food insecurity; health and political crises; and conflict—all escalate risks and prevalence of GBV across many contexts. Also in recent decades, the rise in the number of single female-headed households and increasing feminization of poverty leave many women-headed households among the poorest of the poor.⁴⁰⁶ Increased poverty for single female household heads, combined with a lack of adequate labor protections, heighten their risks of GBV, lost wages, and health problems while further depleting economic assets. Single female-headed households often have great caregiving burdens to juggle along with being the primary breadwinner. Further, where there are small children, the ill, or the elderly with no earnings, having a single and lesser-paid household head increases risks of economic collapse of the entire household. Taken together, a range of factors heighten risks and costs of GBV among economically, socially, and politically marginalized groups, with domestic VAW being most persistently widespread across low-, middle-, and high-income countries and all cultures. In low- and middle-income countries, women's economic empowerment has had mixed effects on their risks of GBV.

Both Women and Men Experience GBV Women and girls are the most at risk and most affected by GBV. Consequently, the terms “violence against women” and “gender-based violence” are often used interchangeably. But boys and men can also experience GBV, as can sexual and gender minorities. Regardless of the target, GBV is rooted in structural inequalities between men and women and is characterized by the use and abuse of physical, emotional, or financial power and control.⁴⁰⁷ **Costs of domestic and workplace-related GBV** In addition to pain and suffering caused by such violence, direct financial costs include those resulting from victims' absenteeism and turnover, illness and accidents, disability or even death. Indirect costs include the victims' decreased functionality and performance, quality of work, and timely production. In the case of an organization or company, violence at work can include destruction of property; the impact of violence can also negatively affect motivation and commitment among staff, loyalty to the

⁴⁰⁶ Chant 2007

⁴⁰⁷ 2012. United States Strategy to Prevent and Respond to Gender-based Violence Globally. Washington, DC.

enterprise, working climate, its public image, and even openness to innovation and knowledge building.⁴⁰⁸

Some of the effects of GBV are:

(a) Acts of GBV whether in the home or community instill fear and insecurity in persons, especially women and children. The fear of violence and other forms of harassment are a permanent constraint on the abilities of the victims, particularly women and children. This further limits their individual development and affects the victim's ability to contribute towards national development. They suffer depression.

(b) Victims of GBV, e.g. assault occasioning actual bodily harm, sustain body injuries during the act of such physical violence and some of which sustain serious injuries and make them live in pain thereby making them fail to continue with their day to day activities to develop their homes. Pain, physical injuries and fear are some of the effects of GBV. Domestic violence, for example, causes injuries which make the home a place of fear rather than a place of comfort and security.

(c) GBV causes injuries which call for medical expenses, victims of violence sometimes suffer serious injuries which see them being admitted to hospital and this brings poverty to the family, since that attracts medical expenses, money which was supposed to be used for food, school fees, clothing etc, is used for medical fees. Marriages are dissolved by the courts on grounds of gender-based violence; a move which causes suffering to children of the marriage, their upbringing becomes a problem. In some cases, where the perpetrator of GBV is arrested and detained, either at the police cell or at remand prison, family members abandon the works to visit him or her in cells, and taking him food, cigarettes etc, thereby, bring down development in the family.

(d) The national resources in the health sector are exhausted on victims of GBV instead of being used for fighting diseases. The police, courts, the social welfare and the hospital staff spend a lot of time on GBV quarries through counseling the victims, buying food and providing shelter for victims and prosecuting the offenders, when they could be dealing with other criminals and other desperate cases instead.

⁴⁰⁸ Di Martino, V. 2002. "Violence at the workplace: The global response," Africa Newsletter on Occupational Health and Safety, Issue 12, p. 5, cited in Gender-based violence in the world of work: overview and selected bibliography. ILO. 2011.

(e) GBV also brings about sexual transmitted diseases through unprotected sex, because when one is raped she cannot solicit for safer sex. It does as well promote streetism, children desert their parents and choose to stay in the street at the expense of their homes. GBV is also a source of early and unwanted pregnancies. Young girls are forced into marriage and get pregnant when they are still young and not red for child bearing.

GBV is both a crime and a violation of human rights. It is therefore, the responsibility of the government to take the necessary measure in addressing the challenges raised so far. Further, from the reading, one outstanding issue is that initially the time when the laws on GBV were being developed, the framers only encapsulated the rights of women as a vulnerable group of society that needed the protection of the law. However, it turns out that this phenomenon is not only affecting women, but as also extended to men. This requires careful thinking and planning as the laws seem to be pro-female. The entire system is female including the background. We are now trying to include a group of people who were initially not envisaged to in future also to become victims, but perpetrators. The issue that remains to be answered is how the so called perpetrators are going find protection under the law which was formulated to tame them. As clearly discussed, a good law must be discriminatory; it must be known by people; enforceable. Without doubt our current laws do not meet the criteria of a good law as postulated above.

6.8. Conclusion

Social norms and attitudes that perpetuate gendered disparity and violence. It is widely understood that the reality of GBV is that it is the cause and consequence of gender power imbalance and structural inequality. This makes it difficult for men and children to report and pursue prosecution of GBV related offences and fully benefit from the protection provided there under. Almost all tribes in Zambia identify men as providers and protectors of the family and women having a supplementary role, which largely centers on taking care of the family. The bible was quoted often to validate this social construction of family. The onus of safeguarding the dignity and respect of the family is very much on the woman. This relegates women into a domain that perpetuates male dominance, continually justifying discrimination and inequality. This is typically demonstrated in the predominant practice of traditional marriage counselling where women are taught to obey and please their husbands unconditionally.

Although the Penal Code Chapter 87 of the Laws of Zambia does not provide for effective protection against violence in domestic relationship, the Anti-GBV Act is clearer cut in providing for measures that encourage survivors of domestic violence to report. The study however shows that as long as one gender exerts control and dominance in a relationship which is legitimized by the society, culture and religion, then it will be difficult for the survivor as well as the community to recognize, acknowledge and report physical, sexual or psychological and emotional abuse and seek recourse under the Act. In terms of consequences, physical injuries, emotional problems financial difficulties and HIV/AIDS are the negative outcomes of female-induced violence. Therefore, there is need for the government to educate society about the plight of male victims of female violence.

CHAPTER SEVEN

DISCUSSION OF PRESENTATION OF RESULTS

7.0. Introduction

Gender based violence is viewed to be a violation of human rights. Human rights are the entitlements that every human being acquires at birth by virtue of being born human. Human rights are inalienable, meaning no one has the right to take them away for whatever reason except in the event that the law so provides and it can be justified in a democratic country like Zambia. After having discussed the major findings in the previous chapter, this chapter will discuss gender based violence in the context of human rights protection. Further, reference will be made to a few jurisdictions from around the world and how they have dealt with issues of GBVAM; which will enrich the recommendations to be made in the final chapter of the research; it is also imperative to learn from what other jurisdictions are doing to curb gender based violence against men.

Although it is worth mentioning here that most of the literature on gender based violence is biased towards women. As such, the researcher found it very difficult to gather this information, but however, from what was gathered, a clear picture can be drawn from the what is obtaining on this important, yet trivialized subject.

While it is true that human rights violations are committed against men as well as women, their impact clearly differs depending on the sex of the victim. This means that such violence is directly related to the unequal distribution of power and to the asymmetrical relationships that exist between men and women in our society, which perpetuate the devaluation of women and their subordination to men. Gender-based violence can take many forms and, depending on the type of relationship that is its context and the type of power being exerted, this crime may therefore fall into any of the following categories: rape and incest, sexual harassment at work or at school, sexual violence against men detainees or prisoners, acts of violence against displaced men, trafficking in men and domestic violence. In recent years it has led to the establishment of new institutions and the adoption of legislative amendments that have served as a focal point for collective action by countries around the world. The lack of the necessary statistical data to provide an accurate picture of this phenomenon constitutes an obstacle to a fuller understanding of the issues associated with

gender-based violence. Although clearly it occurs much more frequently than is indicated by official records, studies on the subject suggest that the problem is actually one of epidemic proportions. Most of the data cited in this chapter have been drawn from research papers and documents prepared by non-governmental organizations and international bodies that have studied the subject in recent years. The proposals presented here are based on the indivisible nature of human rights, on the obligation of the State to protect and uphold those rights, and on the conviction that respect for human rights is also an essential condition for the development of our countries and the full citizenship of all their inhabitants. A case is also made for the necessity of analysing the subject of human rights and gender-based violence from a perspective that holds out the possibility of cultural changes of a structural nature that will entail respect for human rights and will call into question the inevitability of violence as an element in gender relations.⁴⁰⁹

Human rights, defined here as a group of ethical principles having a legal dimension, arise out of the need of each and every individual to enjoy the conditions essential for a decent life. These rights have been structured through a long process of change over the last two centuries. Although it is impossible to establish a linear historical sequence in the identification of these rights, an analysis of the history of debates on the question in international bodies shows that civil and political rights may be regarded as corresponding to the "first generation" of human rights; social, economic and cultural rights to the "second generation", and the right to peace, development and a healthy environment to the "third generation", while the rights of peoples represent a "fourth generation". In recent years, as part of this evolution, a concept of human rights has been developing that calls into question the universal validity of and rocentrism and of the model of Western man. This has led to an awareness of the need to have regard for the specific characteristics of individuals, whether in terms of gender, ethnic origin, age or any other trait. The recognition of this heterogeneity does not lead to the fragmentation or atomization of the human condition; on the contrary, it contributes to a true universalization of individuals and human rights based on the principle of pluralism and respect for differences and diversity. At this time, it is imperative to analyse the question of human rights and gender based violence against men from a perspective that offers the possibility of cultural change. To do so, it must be borne in mind that

⁴⁰⁹Unidad, 1997, Gender-based violence: a human rights issue: UN Symbol Editorial ECL

this issue is directly related to the unequal distribution of power in society and that radical changes are therefore needed in this area.

7.1. Evolution of the Issue of Gender Based Violence

It must be mentioned at this point that gender based violence initially, is an issue that was thought of only affecting women. Therefore, the background mainly makes reference to how gender based violence was developed bearing in mind that the only victims are women. Over the past few decades, gender-based violence has increasingly come to be recognized as a serious problem at the international level, not only for women but also for the attainment of equality, development and peace.⁴¹⁰ The issue has also become a priority for women's organizations in the region and a subject for feminist thought during the United Nations Decade for Women: Equality, Development and Peace,⁴¹¹ and in recent years Governments in the region have also begun to devote attention to the issue.⁴¹² Although in 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women,⁴¹³ which incorporated women into the sphere of human rights, that instrument did no more than to touch on the problem of violence against women. One of its defects is precisely the lack of a clear definition of gender-based violence. Specific concern for this problem began to manifest itself in 1980, when the World Conference of the United Nations Decade for Women: Equality, Development and Peace, held in Copenhagen, adopted the resolution on "Battered women and violence in the family". Likewise, paragraph 288 of the Nairobi Forward-looking Strategies for the Advancement of Women,⁴¹⁴ issued by the Third World Conference, calls for specific measures to deal with violence against women. Since that time, the United Nations has organized meetings of groups of experts on violence against women and has taken steps to bring the issue to the attention of the Commission on the Status of Women, the Economic and Social

⁴¹⁰(United Nations, 1986a)

⁴¹¹ (1976-1985)

⁴¹² Introduction, Introduction to in rejecting rights, Cambridge, pp 1-8 Etienne margareth, (1995), Addressing Gender based violence in an international context, Harvard women's law Journal vol 18, pp139-149

⁴¹³ The Essentials of Human Rights, London, Hodder & Stoughton, pp178-180 Nussbaum, M. (2005) Women's Bodies: Violence, Security, capabilities: Journal of Human Development, vol. 6 no. 2, pp. 167-183

⁴¹⁴ (1985)

Council, the Division for the Advancement of Women, the United Nations Statistical Office and the Committee on Crime Prevention and Control.

In 1989, the Committee for the Elimination of Discrimination against Women recommended that member States report on violence against women and the measures adopted at the governmental level to eradicate it. At the Expert Group Meeting on Violence against Women held in 1991, it was determined that the existing instruments did not give due consideration to gender-based violence and that a specific definition of this crime was lacking. In the opinion of the group, the absence of a clear definition hindered the effective application of international human rights regulations aimed at solving this problem.⁴¹⁵ Accordingly, the expert group produced a draft declaration on the elimination of violence. In the early stages, actions taken within the framework of the women's movement by non-governmental organizations were carried out independently of State institutions, but in 1990 the two groups began to collaborate on projects and programmes in this area.⁴¹⁶ Women's groups in the region have carried out a variety of activities to promote respect for women's human rights. This process intensified during the preparations for the United Nations World Conference on Human rights, held in Vienna in June 1993. At that Conference, the women's movement proposed that the Universal Declaration of Human Rights include specific references to gender-based violence and that the Declaration be reformulated from the gender perspective, which is not limited to the situation of women but rather encompasses all of society.

In November 1993, the forty-eighth session of the United Nations General Assembly established that post. Given the nature, magnitude and seriousness of gender based violence in our societies, this Declaration is the result of a consensus as to the need to define such violence clearly with a view to the adoption of modifications or the addition of new provisions in the legislation of the States that signed the Convention on the Elimination of All forms of Discrimination against Women.⁴¹⁷

Article 1 defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including

⁴¹⁵ (United Nations, 1991a, b, and c).

⁴¹⁶ Ibid

⁴¹⁷ Nieves Rico, (1997) Gender Based Violence: A human Rights Issue, Women and Development unit: Save the Children Report (2004) Gender-Based Violence, Care & Protection of Children in Emergencies, Save the Children Federation, Inc.

threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".

Article 2 states that "violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs".⁴¹⁸

Gender-based violence as a human rights violation Women enjoy the same rights and freedoms as men, and autonomy, under the terms of the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Elimination of All Forms of Discrimination against Women.

From the above information, it is clear that since time immemorial, gender based violence was perceived as mainly affecting women and children only. From the perspective discussed above, it equally clear that most of the legislation passed was meant to deal with gender based violence relating to women. This is true, looking at what was discussed in the literature review, that since time immemorial this phenomenon is seen as mainly affecting women and children. Secondly, the information provided here on the forms of GBV co-incide with the forms that were discussed in the literature reviewed as including sexual violence, physical violence, and psychological violence. The causes equally being the same as some are perpetuated by bad cultural practices such as male dominance of society, polygamy *inter alia* which have already been highlighted in chapter Two. The author, therefore agrees with the information provided for under forms of gender based violence and the causes. However,

⁴¹⁸ (United Nations, 1994)

the only issue overlooked here is the fact that men have also fallen prey to being victims of gender based violence. The international community up to now has not yet incorporated this aspect into the existing legal framework on GBV.

7.2. The Usefulness of Human Rights framework in addressing Gender Based Violence

Gender-based violence in conflict settings violates the fundamental human rights of women and it is therefore regarded as human rights issue to be addressed by human rights instruments and treaties. Gender based violence may be described as that violence infringed on persons or groups of individuals on a core basis of being a male or female. The United Nations Declaration on the Elimination of Violence against Women⁴¹⁹ defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.”⁴²⁰ This violence may occur both in public and private spheres. It is that act that is directed to a woman because she is born a woman and such violence affects her disproportionately.

In this case, not all acts of gender based violence affect women only but also male are victims of gender based violence in certain circumstances. Women are affected differently due to their gender division of labor, roles and responsibilities.⁴²¹ Gender-based violence in war affected communities can be noticed in different ways for example forced prostitution, forced marriage, rape, torture, trafficking, custodial violence, forced displacement, enforced abortion among others.⁴²²

The fight against women's violence was acknowledged by the United Nations (UN) Declaration on the Elimination of Violence against Women in 1993.⁴²³ In 1995, the Beijing Declaration and Platform for Action agreed to the UN World Conference on Women. The platform insisted that violence against women inclusive of gender based violence needed a punishable action as a crime under the law (legal redress). This would be followed by measures to end violence against women

⁴¹⁹ (1994)

⁴²⁰ (Nussbaum, 2005)

⁴²¹ (Save the Children Report, 2004).

⁴²² (Muzarana et al, 2005, pp.4)

⁴²³ (Rico, 1997)

on the basis of racial grounds, sex, honor crimes, rape in times of war and among other crimes committed against women.

The International Criminal Court (ICC) i.e. the Rome Statute⁴²⁴ classified “rape, sexual slavery, forced pregnancy and enforced prostitution” as war crimes committed against humanity. Therefore the perpetrators would be brought before the law to answer cases of infringements on women's fundamental rights. Rape has been used as a weapon of war and not just as “violent male opportunity”. Examples of countries where there has been massive rape as one example of gender based violence in times of war include Democratic Republic of Congo (DRC) Sudan, Uganda, Sierra Leone, Bosnia, Kosovo to mention but a few. A recent case of Thomas Lubanga, a former Rebel Leader in the Democratic Republic of Congo who is on ICC trial charges that include crimes of sexual slavery and inhuman treatment is a good example.⁴²⁵

According to suplveda, etal,⁴²⁶ the most power and “greatest potential violator of human rights” is the state plus those who hold positions of power in public entities such a peace keeping forces. Although there are improvements in the rule of law that have been strengthened in international conventions such as Article 14 of International Covenant on Civil and Political Rights,⁴²⁷ gender based violence in the political and legal dimensions remains characterized by a clear separation between the public and private spheres and it worsens women's rights when war takes place. The women especially become the most disadvantaged group and are denied their enjoyment of human rights since their lives are not settled and face forced displacement.

7.2.1. Analyzing International Human Rights Instruments

Under the conditionality of the Universal Declaration of Human Rights, Convention on the Elimination of All Forms of Discrimination against Women, Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International humanitarian law, International criminal law, International Convention against Torture and Other Cruel -Inhuman or

⁴²⁴ (1998)

⁴²⁵ (ICC press release, 8/ 12/2009).

⁴²⁶ (2004, pp.33)

⁴²⁷ (ICCPR)

Degrading Treatment or Punishment, women are mandated to have equal rights and freedom as men.

The International human rights law is one of the international instruments that addresses gender based violence. However it has got some loopholes in addressing this issue. According to Johnston, R.L.,⁴²⁸ the International human rights instruments such as International Human Rights law defines and emphasizes torture as only “torture by public officials and leaves out violence suffered by women and women in their homes. In most war areas where there is family breakdown and massive violation of human rights, torture of women/men includes sexual violence, physical torture, abduction by fighting forces etcetera.

The convention on the Elimination of All Forms of Discrimination against Women (CEDAW) came into existence in 1979 to assure that women enjoy equal rights in both public and private spheres.

Article 3: addresses human rights and fundamental freedoms for women. The convention encompasses cultural, social, economic and political rights to bring forth full development and progression of women with a focus on equality principle.

The women's rights include education, employment, health care, voting among others. State parties that agreed to the convention committed to fight violence directed towards women by making sure that legal and social protection measures are put in place.

The Committee urges all states that are party to the convention to report on the progress made on combating violence against women inclusive of gender based violence in war situations. This also brings to an understanding that state parties can be held accountable if they fail to implement appropriate measures to prevent women from gender based violations as regards the treaty agreements.

Although CEDAW shows a clear concern about gender based violence including trafficking and forced prostitution (Article 6), there is more generality as regards reporting of women's rights. In

⁴²⁸ (2006)

addition CEDAW describes the concept of discrimination against women in a broad manner and leaves out “discrimination” in spite of the actors, perpetrators, persons, and organizations.

Again the International humanitarian law as one of the international human rights instruments is applicable in situations of armed conflict and war. “It can be called be called the law of armed conflict or the law of war”.⁴²⁹ The central objective is to prevent human suffering in times of war and protect persons that are not participating in hostilities. Additional protocol 1, Article (76) focuses on sexual violence where women are to be given respect and be protected from injustices such as rape, forced prostitution and any other forms of violence and indecent assaults.

However in war circumstances there is a “breach” of this international humanitarian law and most women are found in un-protective conditions thus falling victims of gender based violence especially rape. “On few occasions, the United nations is likely to apply a resolution which will eventually reach the military leaders who ordered rape as part of war strategy but only reach the low commanding soldiers committing rapes of which they will never face trial.”⁴³⁰

The year 1998 brought the formation of International Criminal Court and came into force in 2001. The Rome Statute of the ICC identified rape as war crime against humanity. Rape was classified to include “forced pregnancy, enforced sterilization, sexual slavery, enforced prostitution and any other form of aggravated sexual violence (Article 7). In addition the statute focuses on:

“A fair representation of female and male judges” i.e. Judges consist of equal gender representation to take legal action on gender crimes committed on women.”

Also the formation of o International Criminal Tribunals such as International Criminal Tribunal for the Former Yugoslavia⁴³¹ challenges sexual violence, sexual slavery and torture as crimes and likewise the International Criminal Tribunal for Rwanda adjudicated rape as a crime committed during genocide in 1994. This shows that rape in times of war is a grave offence and with the

⁴²⁹ (ICRC, 2005)

⁴³⁰ (Etienne, 1995, pp 141)

⁴³¹ (1996)

intervention of legal mechanisms, women's human rights violations inclusive of gender based violence are made more understandable and visible in the public sphere.

Human rights instruments were considered to be the most effective in dealing with issues of gender based violence . This includes punishment at law and other measure to end violence against women, which has been extended to international crimes prosecuted by the ICC. This move is welcome, except that no regard has been given to the possibility that even men can also be victims. This is true from the literature review that gender based violence angst men is largely trivialized, yet the effects suffered by men are the same as women. Further, the findings clearly showed that people do not even knowledge of any laws that provide for GBV in Zambia. Although such a law is there its enforceability is practically impossible due to several reasons such as ignorance by people; cultural impediments; complicated procedures; lack of laws which is clear even an international law level that GBV laws mainly protect women; the cost involved also may be huge in order to effect a successful conviction.

7.3. Strengths and Weaknesses of the Human Rights Framework

The human rights framework has been very instrumental in making women experiences and concerns very visible and also revealing the unequal power relations in societal structures that are core to causing oppression and violence against women. One technique to know the effectiveness of human rights paradigm could be the way in which the international human rights law influences country national policies and legislation which may be useful in determining the strength and limitations of the human rights framework.

Among the strengths is that human rights framework has recognized gender based violent experiences that women have encountered. This has been one way in which women's rights abuses have been officially recognized and effective laws have been drafted and put into action to deal with issues of gender based violence. For example rape in times of war has been moved from being an individual problem to a human right crime under the conditions of some international human rights instruments. This is very true as in a country like Zambia, this saw the enactment of the Anti-Gender based Violence Act of 2011.

One of the greatest limitations of human rights framework is that the implementation process of the human rights is left entirely in the hands of the states and its political will although “originally the idea of basic rights originated from the need to protect individuals against state power”.⁴³² Most efforts on human rights accusations are blamed on state violence and suppression of actors in the political and public arena. And there are fewer efforts put to women human rights violations in times of war even within the domestic household and therefore administering justice to women becomes a challenging catastrophe to national justice systems. Equally since gender based violence against men takes place in isolated places, it equally becomes very difficult to deal with such issues. States may not be able to do the implementation since gender based violence (violence against women) is considered as a lesser priority as opposed to poverty, peace stability among others.

Secondly the Human rights framework has challenged the violation of women rights in both the public and private sphere with the influence of the International law. At the national level, the government carries the responsibility of implementation. This has also helped individuals and societies to look beyond and analyze the structural gender inequalities that exist in the society showing that gender based violence is not something that is natural but also exists in the political social, economic and political arenas.

The other strength has been to challenge the traditional ideas of what human rights entails to include (scope of human rights). For example the concepts of humanity and the gay- lesbian rights are absolutely facing human rights violations even when Article 17(1) and (2) of ICCPR “obliges governments to protect individuals against unlawful interference with their privacy”.⁴³³ It should be noted that the human rights framework has brought forward educative debates of minority groups but due to racism, traditional beliefs, homophobia and sexism; homosexuality has remained a challenge to global human rights framework. Bedi,⁴³⁴ shows how the state has practiced rights inequality- “considering the argument of sexual freedom, the conventional also accounts that prohibiting sex improperly discriminates on the basis of sex or sexual orientation. A law mandating

⁴³² (Sepulveda et al, 2004, pp.6)

⁴³³ Ibid

⁴³⁴ Ibid

racial segregation is problematic as it evokes race or discriminates against an identity group. It violates one's right to equal treatment.”⁴³⁵

Therefore as human rights activists, there is a need to be reminded to use the framework and put in mind that there is failure to incorporate multicultural experiences of gays, lesbians, trans-genders indigenous people other minority groups. In this case human rights framework remains unequally practiced. The human rights framework has opened wide doors for women to participate in political spaces and legal structures. Instances include defining theories that place women at the centre of freedom to speak about discrimination, violence and women rights. Long ago before the women's movement came into force, gender based violence and other women human rights violations were not considered in the political sphere but now women feminists have combined efforts in a global voice with the help of international law to fight injustices such as rape, women trafficking and sexual violent assaults.

However the limitation to this is that the principle of universality has not been widely and equally practiced by political governments and is only understood and used by elites who are likely to make human rights a monopoly. The relative achievements of human rights “depends on the functionality of the country's legal system, the country's judicial and political openness and country's cultural context”.⁴³⁶ This is possible because elites hold powers and resources in the government. Therefore this calls for an effective analysis of the concept of universality and its implications in the human rights framework.

The human rights framework has therefore been a great advantage in bringing to light gender based violent actions through the facilitation of political engagements with governments, lobbying, advocacy and mobilizations through the global technologies and networks and documentation of human rights interest stories of gender based violence in times of war. The issue of gender based violence has moved from being invisible to being embraced in the human right programmes by state parties, human rights organizations and individuals. The framework has also driven demand of concrete accountability borne by the governments.

⁴³⁵ (Bedi, 2009, pp.2).

⁴³⁶ (Fortman, 2006)

The human rights system in Zambia has scored some success in terms of promotion and protection of human rights is concerned. As already alluded to the Zambian government has responded to issues of gender based violence using the human rights framework. The enactment of the Anti-Gender Based Violence Act of 2011 is a step by the Zambian government which shows political to end GBV in future.

7.4. Government's Response to GBVAM

The government has so far made tremendous strides in trying to fight GBVAM as much as possible. In 1993, the UN drafted the Declaration on the Elimination of Violence against Women recognizing the urgent need for the universal application of human rights for women. This attitude was also reflected in the Anti-GBV Act of 2011. Although Zambia has made some progress in promoting gender equality, GBV continues to be a widespread problem that affects and impacts the daily lives of Zambians. Major improvement is still needed, as illustrated by Zambia's scores and ranking in a number of relevant indices, and more specifically by the development of Anti-GBV efforts. Therefore, the government has an obligation to address GBV including domestic violence and is responsible for protecting men and women's rights to personal freedom, dignity, life and physical integrity both in the private and public sphere. Zambia has undertaken a domestication process where the international commitments and ratifications have been enacted into domestic laws and provides for a legal framework that seek to end GBV and promote gender equality and equity. It is significant that the parliament enacted a law, which provides for the ratification and the domestication process of Zambia's international agreements and commitments.⁴³⁷

The Zambian Constitution is the supreme law of the land, which protects and emboldens fundamental rights and freedoms of all Zambian people. From 1990 to 2015, Zambia went through a number of constitutional reform process followed by a number of amendments. The most recent amendment to the constitution is the Constitution of Zambia Amendment Act No. 2 of 2016. Zambia has a dual legal system (customary and statutory) and all laws written and customary are subject to the provisions of the Constitution. The Criminal Procedure Code, Chapter 88 of the Law of Zambia, Chapter 87 of the Law of Zambia, the Penal Code (Amendment) No. 15 of 2005, the

⁴³⁷ The Ratification of International Agreements Act, 2016.

Anti- Human Trafficking Act No. 11 of 2008, the Marriage Act Chapter 50, Matrimonial Causes Act No. 2007, the Legitimacy Act Chapter 52 of the Laws of Zambia, the Affiliation and Maintenance Act, Chapter 64 of the Laws of Zambia, the Employment Act, Chapter 268 of the Laws of Zambia, the Anti-GBV Act No. 1, 2011 and the Gender Equity and Equality Act 2015, Chapter 53 - the Juvenile Justice Act are some of the legislations that are enacted to address structural inequalities and signify that violence is unacceptable.

Apart from legislations, Zambia has also developed strategic national plans and policies to ensure gender-based violence is a priority concern. In 2000, Zambia adopted a National Gender Policy and key institutions and ministries have been either reorganized or newly established. In 2008, the Gender in Development Division developed a National Action Plan on gender-based violence for 2008-2013, and the Ministry of Gender and Child Development a Strategic Plan, for 2014-2016.

The reorganization of ministries has led to the Ministry of Gender tasked with coordinating and monitoring the National Gender Policy as well as the Anti-GBV Act. The Zambian Police Victim Support Unit (VSU) is mandated to handle all GBV cases and have VSU posts in police stations across the country. Legal aid is provided by the government and CSOs despite the absence of a comprehensive national legal aid policy to guide and regulate the provision of legal aid. In 2012, a committee of 15 members was established by the Minister of Justice at the request of the National Legal Aid Board for the development of a comprehensive national legal aid policy. A draft national legal aid policy was first completed in 2013, and was finally enacted with several changes including the formalization of paralegals in Zambia. It is hoped that with improved quality legal aid provision there would be enhanced access to justice, which is a crucial component for the implementation of gender sensitive laws such as the Anti-GBV Act. This will allow for the Act to have a positive impact on the lives of Zambian people.

The Anti-GBV Act law is considered as a progressive law and for the first time in Zambia, provides for a comprehensive framework for protection of GBV offences, and guidance on adequate recourse. After more than a decade of advocacy from Zambian civil society and collective action, the parliament passed the Anti-GBV Act in 2011, an effective legislation that provides protection and adequate recourse for survivors. Zambia is one of the only countries in SADC region to have a specific anti-gender-based violence law. The Act is in line with international legal frameworks and draws experience from global best practices. The Act is lauded for providing a holistic

approach to countering GBV, one that combines legal and non-legal support to effectively address GBV.⁴³⁸

An example of how Zambia has dealt with human rights violations is found in the case of **Sarah Longwe v Intercontinental Hotels**,⁴³⁹ the first discrimination case. This case study takes a personal look at legal action taken against a Zambian hotel in Lusaka during the period 1984–1992 to stop their discrimination against women in access to the hotel. The hotel in question was the Hotel Inter-Continental in Lusaka, which – like other expensive hotels in the country – had a well-known policy of preventing ‘unaccompanied women’ from entering the hotel, or otherwise from certain parts of the hotel (especially the bar).

The Incident

In the late afternoon of 4 February 1984 I went, with my husband Roy Clarke, to the Inter-Continental Hotel in Lusaka, Zambia, to collect two of my children from a children’s birthday party which had been held within the hotel. I got out of the car at the main hotel entrance, while my husband drove with our toddler to wait in the hotel car park while I went into the hotel to fetch our two daughters. Although aware of the ‘no unaccompanied women’ rule which was part of the policy of surveillance over women’s access to hotel spaces in the evenings, I had not expected this rule to be operating in the afternoon, and during daylight hours. In this I was wrong. As I tried to enter through the main entrance, the security guard addressed me, saying “Where are you going, madam?” to which I replied “I’m going into the hotel.” He immediately said “You can’t go in, you are unaccompanied.” I was shocked and replied “Rubbish”, and walked past him. The security guard then grabbed my arm from behind, pulling me back. Being a fit young woman with some training in karate, I threw him off, which caused the security guard’s hat to fall to the ground, whereupon he instinctively stooped down to pick it up. I took advantage of the guard’s distraction and ran into the hotel. The security guard, who had followed me into the hotel, shouted and other hotel personnel came onto the scene. The duty manager was called, and I attempted to lay a complaint concerning the treatment I had received.

⁴³⁸ Jeni Klugman, violence **REPORT** from UN Economic Commission for Africa Published on **25 Nov 2017** —View Original Lusaka, Zambia, 25 November 2017 (ECA) –

⁴³⁹ High Court of Zambia, Novemebr 4, 1992

However, instead of any attempt at redress from the duty manager, I was informed that I had transgressed the hotel regulation that a woman could enter the hotel only if accompanied by a man. All this took so long that I sent my daughters to go and fetch their father, who then came to find out what had happened. Upon his appearing upon the scene, I instructed him to go at once to the nearby police station and return with the police. This is because, by then, the hotel duty manager had admitted that the security guard had transgressed hotel instructions because he was not supposed to physically accost “unaccompanied women.” Roy duly returned with four policemen, one of whom appeared to be an inspector, and the other three appeared to be constables. I explained my experience to the police, and laid a complaint against the security guard for physical assault, and against the hotel for refusing access to the hotel without reasonable grounds. However, the police treated me as the offender. Despite my account of having been (literally) manhandled by the security guard being fully and enthusiastically corroborated by the security guard himself, the police warned me to immediately leave the hotel premises. When I told the police I would be lodging a complaint about their attitude, the police inspector in charge told me that I could report to anybody their refusal to accept the complaint of assault. They further warned me that if I did not immediately “shut up” and stop “making a nuisance of yourself,” they would lock me up in the cells for the night.

In the face of the police threat, I asked each of the policemen to provide their name, rank and number (their numbers were not displayed on their uniforms). One junior officer (a constable) gave his name and number grudgingly, but the others refused to do so. At this stage I chose to leave the premises of the hotel, for fear of the safety of my unborn child (I was four months pregnant at the time).

On 23 March 1987, more than three years after the complaint was made, the Investigator General wrote to me giving a ruling in my favor. He stated that the Ministry of Tourism had agreed with the Investigator General that it was wrong for hotels ‘to discriminate against women in this wholesale manner’. According to his letter, the Investigator General had advised the Ministry of Tourism to advise the Hotels Board to advise the hotels that they should not discriminate in this

way. It may be noted that the Investigator General did not think to extend his advice to the police, that they should in future ensure that their actions on such issues should be guided by laws made in parliament rather than laws made by hotels. I did not feel any sense of victory about this outcome. Although I was subsequently given a copy of the policy position and directions given by the Ministry of Tourism to the Hotels Board, there remained the question of whether the Board ever formulated new regulations and gave these to all hotels. And if the Hotels Board did ever make a ruling on the matter, did the hotels ever take any notice of it? It looked rather as if the ruling by the Investigator General had no force, and no means of enforcement. I did not attempt to celebrate or publicize the outcome, because it seemed to be little more than a piece of deliberately ineffective lip-service. And sure enough, as time went on, it became clear that hotel discrimination against women continued to follow the same pattern as previously, as is evidenced by the second similar instance of discrimination which I experienced, and which is recounted below

Inadequacies in the Law

The different treatment in court of the Longwe petition, as against the MwanzaMulenga petition, of course leads the reader to the trite observation that the law may receive very different interpretation in different courts. A main difference in the judgments may be put down to the different ideological orientations of the judges concerned, where the (late) Musumali was known as a liberal judge with a special interest in human rights cases, whereas the (late) Chitengi was of the opposite persuasion (to put the matter as politely as possible). One limitation in the constitutional protection against discrimination on grounds of sex in Article 23 is that this protection is qualified by exceptions from protection in the areas of marriage law, personal law, inheritance law and customary law. These qualifications were not cited in either of the cases reported above, although perhaps smarter lawyers might have made use of them. As is discussed below at Section 4.2 of this Case Study, the Chief of Security's claim, in the Longwe case, that "all unaccompanied women are prostitutes" is typical of the traditional patriarchal perspective. It should be noted that the favorable judgment in Longwe's case followed in large part from her lawyer's success in establishing that the hotel is a public place, over the respondent's lawyer's claim that it was a private establishment. This was in the context where the constitutional protection is given only in public places, institutions or facilities. By the same token, therefore,

there is no law to protect women from discrimination in private places, such as the home, or private clubs.

In addition, the (somewhat partial) protection against gender discrimination provided in the constitution is couched in very general terms, so that it is quite difficult to prove that gender discrimination has actually happened in practice. What is clearly needed is anti-discrimination legislation which defines gender discrimination not only in general terms, but clearly outlaws its various different forms in different sectors and situations, in private and in public, and in known problem areas. Also, as is discussed below at Section 4.3, there is the difficulty in mounting a test case, which also has limitations as a means towards changing behaviour.

I challenged this discriminatory practice as a Zambian citizen, during the period 1984 to 1992, when I finally obtained a High Court order that such practice was unlawful and in contravention of the human rights provisions of the constitution, and that such practice must be “scrapped forthwith”¹ I begin by looking at my first brush with the hotel’s discriminatory practice, the subsequent raising of a complaint with the Investigator General (the Zambian equivalent of an ombuds), and the unsatisfactory outcome of this action. I then go on to consider a second similar incident, which caused me to petition to the High Court. This is followed by an account of the court case, the judgment and the events which followed. The final sections look at some of the issues arising from this case, and its wider implications for legal action as a means towards women obtaining their right to equal treatment under the law. This is a well-documented case, and the titles of almost all of the documents referred to are listed; what makes this study different from others is that I write autobiographically, not in any spirit of self-congratulation, but in the acknowledgement that the work of this case was an intimate part of my own life, and my family’s life, for eight years. The realities of challenging the law, as a feminist activist, include the personal experience of coming up against a wall of resistance and opposition. While it is possible to manage this and to strategize against the psychological and political impact of this opposition, there is need to recognize the multiplicity of roles, such as litigant, petitioner and witness, which an African feminist must assume when daring to enter into the field of legal activism.

This section lists human rights conventions and declarations that obligate countries that have ratified these conventions to treat violence against women as a human rights violation and to incorporate international standards into their domestic legislations. Also included in this section are strategy frameworks and policy documents that address VAW.

The Influence of Customary Law and Tradition

Here we need to look a bit more closely at the answer from the Hotel Chief of Security, in the Longwe case, where he claimed that all unaccompanied women are prostitutes. Although this answer may seem ridiculous from a Western point of view, is understandable from a traditional Zambian patriarchal point of view, where women are supposed to be under the supervision of a husband or other supervising male relative. Therefore, from this point of view, an unaccompanied woman entering a hotel without a supervising male is self-evidently out of control, and may be presumed to be a prostitute/sex worker. This perception also tallies with the opinion of the Chairperson of the Women's League (quoted in Section 2.2.3 of this Case Study) who was quoted in the newspaper as congratulating the hotel for excluding 'unaccompanied' women, since these women are "home-breakers." Very similarly, we here see 'unaccompanied' treated as a sign of immorality. We further see the opinion that such women are not being properly supervised. We are implicitly being told that unaccompanied women should be controlled by the appropriate supervising male; such women are considered to be out of control. Equally implicit is the Chairperson's discriminatory attitude that there is no objection to the presence of "unaccompanied" men in the hotel who are the presumed target of the "unaccompanied" women! Here it has to be borne in mind that Zambia has a dual legal system, although statutory law takes precedence over the (unwritten and uncoded) customary law. Most Zambian citizens' experience of the law is in local courts where matters of personal law, marriage law, divorce and minor infractions are settled under customary law. Under customary law a woman is generally treated as a minor, under the control of a male husband, father or other male relative. In customary law, adultery is an offence, but in a polygamous system it is an offence committed by women against their husbands. A man can only be held to have committed adultery if he sleeps with another man's wife. A daughter, even below the legal age under statutory law, may be given away to a man in marriage without her consent, and for payment in cattle or cash (known as lobola). A man who

impregnates an unmarried girl can settle the matter by paying “damages” to her parents. Although modern urban Zambia may ostensibly be governed mainly by statutory law, many of the mores which govern social and institutional behaviour arise from customary law. This influence of customary law is particularly relevant in the area of gender relations. Thus the social relations in the workplace and other institutions may perhaps be mainly understood in terms of modern and rather Western patterns of organization and behaviour, but the pattern of gender relations is often better understood as a reflection of the traditional domestic pattern of gender relations.

The Need for Better Mobilisation of the Women’s Movement

Despite some limited support from women’s organisations in Zambia, my campaign against the Inter-Continental Hotel was mostly a lonely struggle. However, a lawyer to represent me in court was provided by the *Women’s Legal Aid Clinic* of the Women’s Rights Committee of the Law Association of Zambia, and in this way the case was supported by Zambia’s women lawyers, who in 1991 established the *Women’s Legal Aid Clinic*. The importance and place of a test case in furthering women’s rights is apparently not well understood amongst women’s organisation, and there seemed to be a common perception that this was “Sara Longwe’s Case” rather than a Women’s Rights Case. For example the newsletter of a regional women’s legal research association persistently referred to “Sara’s Longwe’s Case”, and saw no need to become involved as an organisation; instead individual members were invited to “give Sara their support.”

When the same women’s legal research organisation was holding a regional workshop in Lusaka at the same time as the first court hearing (30th July, 1992), the workshop did not adjourn to attend the court hearing. Instead, the members attendance at a so-called ‘women’s rights workshop’ prevented them from attending a High Court session of a women’s rights test case brought by one of their own members! This provides a sad but graphic example of the extent to which the women’s movement was a talking shop rather than an activist organization! Only six or seven interested members of the local Zambian women’s movement attended each of the two court hearing. This lack of solidarity was in contrast to the support and assistance from the international sisterhood: IWRAW employed lawyers in the United States of America to dig up relevant case material to supply to my lawyer. After the judgment a journalist from *Ms Magazine* telephoned me from New York to get the story, and IWRAW’s publication *Women’s Watch*

reported the case and commented on its importance. To understand this lack of local enthusiasm, even amongst women who are (ostensibly) working in the area of women's rights, one has to understand the extent to which women live in a very oppressive patriarchal culture, to which professional women must conform if they are to advance within the system. There may be very real career penalties against women who in any way publicly identify with feminist principles, or challenge institutionalized male domination.

Analysis of the Case

In retrospect, there were some very positive outcomes from this case. My persistence did finally carry the day, and a woman was able to use a court to overcome the patriarchal establishment, therefore ending a blatantly discriminatory behaviour which was clearly against the law. Not only did this come as a shock to the hotel, but changed the behaviour of all hotels, albeit with the occasional aberration here and there. From a publicity point of view, it made the front page of the newspapers, and provided a confidence builder for the growing local women's movement—even if this movement hadn't shown much enthusiasm at the time! It was also a shock to the patriarchal establishment, that a woman could use the court to prevent a common form of discrimination which was widely not regarded as such, but instead regarded as a quiet "normal" or "traditional" way of treating women. It has to be admitted that this case was never selected by the women's movement as a focus for legal action. Instead it was thrust upon me, in the form of an outrageous personal indignity against which I felt I had to take up arms, on behalf of myself but also on behalf of all women who suffer such treatment. It is only as women recognize such indignities for what they are, an assault upon all women, that we can work together to take collective action and properly call ourselves a women's movement. Looking back at this "hotel case," it becomes clear that a well-planned legal challenge to discrimination would do better to focus on an instance of discrimination which is more obviously a general obstacle to all women's advancement, which women can therefore more easily recognize and mobilize around, and which is more difficult for the patriarchal establishment to defend. A good test case needs to be selected to focus on all of these strategic advantages. But despite its general lack of these strategic advantages, the case nonetheless reveals the potential for using the courts as a weapon for women to obtain their rights under existing law. But such court strategies need to be

married to legislative strategies for extending women's rights in law, including the introduction of anti-discriminatory laws which ban specific forms of discriminatory behaviour.

In June 2019 the Minister of Justice introduced into the National Assembly the Constitution of Zambia (Amendment) Bill No. 10 (generally referred to as Bill 10) intended to extensively amend the Constitution. The Bill had been criticized by many stakeholders as it is seen as an attempt to enhance executive powers and undermine constitutionalism. In August 2019, the Law Association of Zambia and Chapter One Foundation Limited commenced action in the Constitutional Court challenging the constitutionality of the Bill. The petitioners argued that the manner in which the Bill sought to introduce amendments violated fundamental tenets that protect the substance and integrity of the Constitution. It is important to bear in mind that the petitioners did not challenge the power of Parliament to amend the Constitution, at least not directly. The focus of the petition was on constitutional safeguards for ensuring that arbitrary amendment of the Constitution was forestalled. Holding: The Constitutional Court dismissed the petition. It arrived at its conclusion mainly on the basis of Article 128(3) of the Constitution, which states: Subject to Article 28, a person who alleges that— (a) an Act of Parliament or statutory instrument; (b) an action, measure or decision taken under law; or (c) an act, omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.

Based on this provision, the Constitutional Court held that it lacked jurisdiction to review Bills as it only had jurisdiction to review Acts of Parliament. The Court reasoned that the provision only refers to Acts and not Bills. The Constitutional Court further indicated that its position was also based on the drafting history of the Constitution in the country, whereby the express provision clothing the court with jurisdiction to review Bills was deleted from the draft Constitution and never made it into law. Significance Albie Sachs, the celebrated retired judge of the South African Constitutional Court, while delivering a lecture, once asserted that every judgment he wrote was a lie. By this, he meant that the formality of every judgment masks the underlying considerations that birthed it; that is, the final format of the judgment belies the manner in which it has been given life. There is a manner in which his claim could also be true, in that every judgment has underlying reasons but the reasons may not be convincing or compelling. A judgment that is thinly reasoned or justified does not do justice to the plenitude of law and is difficult to appreciate.

The moral force of a judgment is reason. Justice Professor Otieno-Odeke of the Kenyan Supreme Court has argued that a judgment is of value on the strength of the articulation of reasons: “reason is the soul and spirit of a good judgment.” We argue in this opinion that both the interpretive approach taken by the court and the determination of the merits of the case are incorrect as the reasons given by the court for the decision cannot withstand critical scrutiny. But before commenting on these two issues, we would like, in passing, to comment on the depth of the judgment. In terms of depth, the abridged judgment generally mirrors the style of other Constitutional Court judgments. As a nascent Court, the Constitutional Court ought in its judgments, to dedicate more space to the articulation of constitutional principles, giving flesh to the bare bones of the Constitution and clearing a path for internalization of constitutional norms. The Court can only demonstrate this through the depth of the analysis of issues and articulation of the law and unabashedly demonstrating enduring commitment to constitutionalism. Sadly, this does not reflect in the judgments of the Constitutional Court. An average judgment by the Constitutional Court is largely about recounting the facts and arguments or submissions of the Justice Professor Otieno-Odek, ‘Election Technology Law and The Concept of “Did the Irregularity Affect the Result of the Election?”’

The case of **Doctors for Life International v The Speaker of the National Assembly and Others**,⁴⁴⁰ is also instructive on how the Constitutional Court could have adjudicated the matter. In this matter, the Court had to determine if it had power to nullify a Bill which had not yet become law and also, assuming the Court had no such power, if it could provide declaratory relief where the legislature disregarded constitutional obligations in drafting a Bill, although not yet law. With regard to the first issue, the Court held that it is more appropriate to review an Act of Parliament and not a Bill in order to respect the principle of separation of powers and to avoid prescribing to Parliament how it should perform its role. However, with regard to how Parliament exercised that power in the legislative process, the Court took the view that the Constitution binds all entities and organs of the state. Therefore, if the legislature or executive, in the legislative process, violated constitutional norms, the Court could intervene to enforce constitutional obligations.

But under our constitutional democracy, the Constitution is the supreme law. It is binding on all branches of government and no less on Parliament. When it exercises its legislative authority, Parliament must act in accordance with, and within the limits of, the Constitution, and the

⁴⁴⁰ Sambo, Pamela T. and Kaaba, O'Brien (2020)

supremacy of the Constitution requires that the obligations imposed by it must be fulfilled. Courts are required by the Constitution to ensure that all branches of government act within the law and fulfil their constitutional obligations. This Court has been given the responsibility of being the ultimate guardian of the Constitution and its values. However, in the Zambian context, there are provisions of the Constitution that suggest that the Court can intervene with the legislative process if what is intended could lead to the violation of basic norms of the Constitution. Article 2 of the Constitution, for example, empowers every citizen to prevent violation of the Constitution. It states: “Every person has the right and duty to— (a) defend this Constitution; and (b) resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution.”⁴⁴¹

Despite all these developments, from the findings it is very clear that the laws are still not effective enough due to reasons that have elucidated in the previous chapter. There is need therefore to reform the current regime of the framework backing up GBV. Chapter Two of this study highlighted the major institutions involved in the fight against GBV which include state institutions, non-governmental organizations and some international institutions. Hitherto, the level of GBV is on the rise. The main reasons given from the respondents had more to do with social factors such as infidelity being the main reason, lack of proper communication between couples, early marriages, polygamy, unemployment, poverty etc. Most of these factors hinge on human rights. This entails that the government must put in more effort in curbing GBV and further must shift its main emphasis as regards to GBV for women and children only.

Human Rights framework however still faces two -three important aspects such as impunity and implementation means. This needs to be incorporated in the framework especially by institutions working for peace, social justice and development of marginalized groups i.e women and girls whose rights are not respected and protect in times of war. Despite all the resources that have been injected to expose human rights violations, gender based violence continue to be exposed than

⁴⁴¹ Sambo, Pamela T. and Kaaba, O'Brien (2020) "Law Association of Zambia and Chapter One Foundation Limited v Attorney General 2019/CCZ/0013/0014," SAIPAR Case Review: Vol. 3 : Iss. 1 , Article 6. Available at: <https://scholarship.law.cornell.edu/scr/vol3/iss1/6> in the case of Law Association of Zambia and Chapter One Foundation Limited v Attorney General 2019/CCZ//0014.

being prohibited. Wars continue to be perpetuated and the culture of violence against women evolves from time to time (examples include violence in Goma, Sudan, Democratic republic of Congo). It's through the human rights framework that gender based violence can be analyzed if political and social justice is to be administered.

Therefore the question remains that how can we be able to use the human rights framework to unleash injustices in the social, cultural, economic and political arenas and uphold those rights that are already realized to have a transformed- equal social justice system?

Lastly the human rights discourse has been strengthened by UN language of human rights in regards to combating gender based violence. The gender concept is widely used in most UN documents. Those UN agencies that have not yet incorporated gender have given mandate to national government ministries and human rights organization to carry out the responsibility of giving exposure to women rights. But what actually does this human rights “strong and compelling language mean to world's poor?”⁴⁴² where there is a continuous war culture of women's violence. The limitation remains in the budgetary and lack of resource allocations to effectively carry out the tasks of reducing and eradicating gender based violence.

Conclusively, it can be said that the human rights framework has done great in making sure that gender based violence in conflict areas moves from being an individual problem to making it more visible as a massive social problem. Gender based violence like sexual abuse, rape used as a weapon of war which were hidden and quieted in the private sphere have all been brought to discussion through the human rights instruments at local, national and international heights. This calls for a time to work together and end the revolving cycle of gender based violence through effective implementation of the human rights instruments.

Gender based violence in conflict affected areas/ war can only come to an end if human rights are respected, protected and fulfilled. Therefore as human rights activists we have to analyze the cultural, social, economic and political relations within societies in order to address the issue of gender based violence. Thus human rights framework need to be used to advance the successes of women human rights in the social–cultural, political and economic facets with a special focus on

⁴⁴² (Fortman, 2006)

violence against women in war torn areas. Gender-based violence undermines the health, dignity, security and autonomy of its victims, yet it remains shrouded in a culture of silence. Victims of violence can suffer sexual and reproductive health consequences, including forced and unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV, and even death.

UNFPA is one of the UN's lead agencies working to further gender equality and women's empowerment, and to address the physical and emotional consequences of gender-based violence. UNFPA's programmes offer psychosocial assistance, medical treatment and rape kits to survivors, and promote the right of all women and girls to live free of violence and abuse.

After having looked at the international human rights framework and gender based violence, at this point a few examples will be drawn from the United Kingdom; India and south Africa on how they are dealing with the issue of gender based violence against men.

7.5. Gender Based Violence against Men in the United Kingdom⁴⁴³

The Home Office recently pledged to go further in helping men and boys who are victims of crimes such as domestic abuse and sexual violence. The government published its first cross-government position statement on male victims of crimes, which sets out the scale of abuse against men and the specific vulnerabilities they face.

The Male Victims Position Statement sets out 12 specific commitments to better enable male victims and survivors to come forward and receive the support they need and bring perpetrators to justice. These include:

- providing £500,000 to specialist organizations that support male victims and survivors of domestic abuse
- awarding a specialist LGBT domestic abuse organization that supports LGBT victims and survivors with £500,000

⁴⁴³ Published 7 March 2019 From: Home and Victoria Atkins MP

- providing £24 million over the next three years for services providing advice and counselling to all victims of sexual violence, including men and boys

According to research by the Male Survivors Partnership some men can take over 31 years to disclose their ordeals. The statement notes that attitudes around masculinity can mean male victims take a long time to report these experiences. Minister for Crime, Safeguarding and Vulnerabilities, Victoria Atkins said:

“Men can, and do, suffer from crimes such as domestic and sexual abuse. It is a horrendous experience that often goes unrecognised and it is heartbreaking some men feel they cannot report their experiences because of societal views around masculinity. As a government we are determined to bring these horrific crimes to light and support victims and survivors, regardless of gender.”

Duncan Craig, CEO of Survivors Manchester said:

“I’m so pleased to see the government’s position statement on boys and men affected by crimes classed as Violence against Women and Girls (VAWG). As a professional working with male survivors of sexual violence and a survivor myself, this statement sends a clear message to boys and men that the government sees you and they are taking what happened to you seriously, that kind of recognition is priceless and will positively add to men’s healing.”

“On behalf of the Male Survivors Partnership, we welcome the government’s position statement on boys and men affected by VAWG crimes. This historic step forward gives male victims and survivors the overt recognition they deserve and enables us and service providers across the UK a national point of reference.”

These measures are on top of commitments made to all victims of gender-based violence as part of the Violence against Women and Girls Strategy refresh.

There is a lesson that Zambia can learn from the United Kingdom’s stance on gender based violence. The UK government has recognised the need to encompass rights of both men and women with regards to GBV. The deliberate move made to encourage male victims of GBV to open up and share their ordeals is very good; further setting aside of some funds is great step in the right direction for victims of GBV. Since there are so many forms of GBV, sometimes the victim requires counseling which can only work if resources are available. From the literature reviewed and the findings done so far, despite their being a fund under the GBV Act, it is not fully operational so as to take care of victims of GBV. The Zambian government also is yet to put in place measures that will encourage male

victims to open up. Hence, Zambia can be said to be lagging behind as compared to what the UK has done. It is only hoped that perhaps such efforts can be emulated. The other key thing is placing GBVAM on an equal footing as GBVAW; this is yet to be achieved in Zambia.

7.6. Gender Based Violence against Men in India⁴⁴⁴

A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India. Gender-based violence has been recognized as a global public health and human rights problem that leads to high rates of morbidity, mortality, depression, substance dependence, suicide, and posttraumatic stress disorder.⁴⁴⁵ India has been a male-dominant society from ages, and it is hard to believe that male can be a victim and female a perpetrator.⁴⁴⁶ Domestic violence against men in India is not recognized by the law as well.⁴⁴⁷ However, contrary to common belief, there are a growing number of men who are at the receiving end of harassment and face psychological and physical abuse by women.⁴⁴⁸

As there are scarce research data available, therefore, this study was carried out:

1. To find out the prevalence, characteristics, and reasons of violence against males
2. To determine the socio-demographic correlates of violence.

The study was funded by ICMR and was completed over a period of 1 year (2012–2013).

This was a community-based, cross-sectional study, and the rural household was taken as study unit. All the study participants were married men, aged 21–49 years. Minimum legal age of marriage in India is 21 years for boys. Married men older than 49 years were excluded to minimize

⁴⁴⁴ Jagbir Singh Malik and Anuradha Nadda, World Health Organization. The Third Milestones of a Global Campaign for Violence Prevention Report. Geneva: World Health Organization; 2007. [Last accessed on 2018 May 11]. Available from: http://www.who.int/violenceprevention/events/17_07_2007/en/ [Google Scholar]

⁴⁴⁵ Campbell JC. Health consequences of intimate partner violence. *Lancet*. 2002;359:1331–

⁴⁴⁶ Sawant ST. Place of the woman in Indian society: A brief review. *J Hum Soc Sci*. 2016;21:21–

⁴⁴⁷ The Protection of Women from Domestic Violence Act, 2005. [Last accessed on 2018 May 11]. Available from: <https://www.indiankanoon.org/doc/542601/>

⁴⁴⁸ Domestic Violence against Men. San Francisco: [Last updated on 2018 Jun 06; Last accessed on 2018 May 11]. Available from: https://www.en.wikipedia.org/wiki/Domestic_violence_against_men . [Google Scholar]

the recall bias and to avoid the heightened sensitivity about the discussion of sexual matters in this older age group. The sample size was calculated by taking the prevalence (p) of any type of domestic violence in married males of age group 21–49 years to be 33%, design effect 1.5, and relative precision (d) 11% at 95% confidence level.⁴⁴⁹ By applying formula, $n = 1.5 * (z)^2 p (1 - p) / d^2$, the sample size was calculated to be 967. Final sample size considered for the study was 1000 males.

The total prevalence of gender-based violence was found to be 524 (52.4%) among males.

Perpetrator of violence Ever experienced In last 12 months

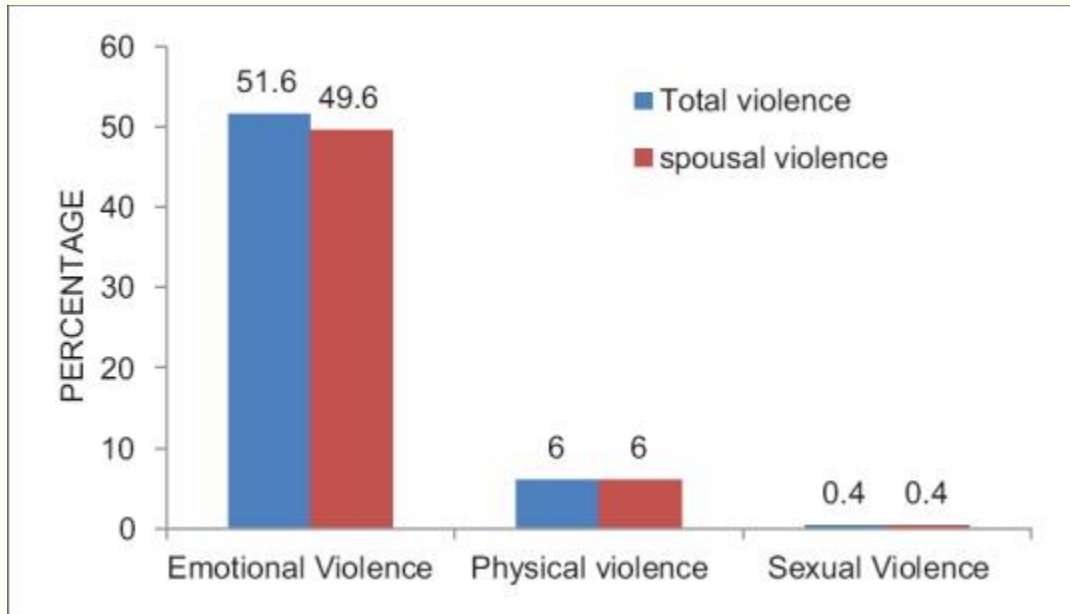
Any female	524 (52.4)	105 (10.5)
Spouse	515 (51.5)	85 (8.5)
Female other than spouse	42 (4.2)	5 (0.5)

***Multiple responses**

The majority (51.6%) of the subjects experienced emotional violence followed by physical (6%), then sexual violence (0.4%) by any female. The overall prevalence of emotional, physical, and sexual spousal violence is shown in Figure 13.

⁴⁴⁹ Sarkar S, Dsouza R, Dasgupta A. Domestic Violence against Men – A Study Report by Save Family Foundation. New Delhi, India: Save Family Foundation; 2007. [Last accessed on 2018 May 12]. Available from: <https://www.ipc498a.files.wordpress.com/2007/10/domestic-violence-against-men.pdf> . [Google Scholar]

Figure 14: GBVAM statistics in India



Source: A Study Report by Family Foundation of India

Looking at the forms of violence, they were highlighted in chapter two and they are the same which have been referred to from this survey done in India. The literature reviewed clearly pointed out that women's violence against men is quite different from men's violence against women. From the findings here, emotional violence accounted for the highest percentage, then followed by physical violence. This is true in Zambia as most women have become promiscuous, women may not necessarily beat their husbands, but by their conduct torture their partners psychologically though in most cases men are in denial. This is evident from the high rates of divorce in the country. For example, The Lusaka High Court granted former Zambian Ambassador to Italy, Frank Mutubila divorce from his wife, Evelyn. In this matter, Mr. Mutubila had asked the court to dissolve his marriage on account of his wife, Evelyn's alleged unreasonable behaviour. Mr Mutubila said while he served as Ambassador in Italy, the respondent did not play her role as a wife of an envoy, as she was usually away pursuing her studies. She denied being disrespectful and uncaring to Mutubila and that if anything, it was him who had been verbally and physically abusing her. When they moved to Italy, they sought medical assistance which revealed that he had low sperm count and it was agreed by the couple that they explore the option of vitro fertilization or artificial insemination. In July 2014 while on vacation in Zambia,

Evelyn brought up the issue of having a child and Mutubila told her to do as she pleased. She alleged that Mutubila's family threatened to find him a younger wife who could bear him twins adding that he often stayed away from their matrimonial home opting to stay in a hotel.

He also said while in Holland, his wife notified him that she was pregnant after undergoing In Vitro Fertilisation -IVF- procedure, which he however disowned because he was not consulted by his wife over the procedure. Mr Mutubila also told the court that he doubted if his wife conceived using the IVF procedure, as it could not be done without his consent. It was alleged that his wife was impregnated by a gym trainer. But in his judgment, Judge, Mwiinde Siavwapa observed that the differences between Mr Mutubila and his wife were irreconcilable, adding that their marriage had broken down irretrievably. Judge Siavwapa said he was satisfied that no right thinking person, who knows what Evelyn did would expect Mr Mutubila to continue living with her.

The duo has no children of their own and agreed to parting ways. High Court Judge Mwiinde Siavwapa dissolved the marriage on account that it had broken down irretrievably.

She had told the court that prior to the couple moving to Italy, it was agreed that they would make further attempts to have children because they had no child of their own and that she would pursue her PhD studies while developing their properties in Zambia. Evelyn had asked the Lusaka High Court to grant her maintenance pending suit and thereafter periodical payments secured provision and lump-sum for herself. The marriage has been formally dissolved. This is a common story for most Zambian families today, and it is disheartening to see such developments in the country in the wake of protection women's rights. Could it be that there is an over emphasis on the protection of women's rights?

Secondly, physical violence is equally prevalent as women in some cases use force for self-defence and other reasons against their partners which may result in the death of their partner. Therefore the findings from India and what is obtaining in Zambia are the same. Of course, sexual violence being the list although also prevalent in Zambia they are quite minimal and an example of a 45 year old women of Ndola who defiled a thirteen year old boy has already been given.

Type of violence among male and perpetrator of the violence

Out of 60 males, 25 (2.5%) experienced physical violence in the last 12 months. The most common form of physical violence was slapping (98.3%) and the least common was beaten by weapon (3.3%). Only in one-tenth cases (seven males), physical assaults were severe. In all cases, spouse was responsible for the physical violence.

Among victims of emotional violence, 85% were criticized, 29.7% were insulted in front of others, and 3.5% were threatened or hurt. Out of 516 victims, 20 (3.9%) experienced it in last 12 months.

Out of 1000 respondents, only four (0.4%) had experienced sexual violence, out of which only one respondent experienced it in the last 12 months. Only one female physically forced her spouse to have sexual intercourse and three physically forced to perform any sexual act with her against his will.

From the findings here it is clear that most men experience verbal violence, which is also very common here in Zambia. This is quite rampant in most households where women use abusive language against their spouses/partners albeit their partners tend to ignore it. This is what may in certain cases compel their partners to find extra affairs which in turn cause more conflict between the couple. Once they fail to resolve their differences, hence violence ensues.

Unemployment of the husband at the time of violence was the major reason (60.1%) for violence followed by arguing/not listening to each other (23%) and addiction of perpetrator (4.3%). Uncontrolled anger, ego problem, etc., accounted for rest of the cases.

The problem of alcohol was another cause that many respondents pointed out as some of the major cause of GBV here in Zambia; lack of proper communication skills and uncontrolled anger. This is the same as what is found in India. It tallies with what was discussed in the literature reviewed as well as the findings.

The prevalence of gender-based violence/domestic violence in the present study (52.4%) was less as found by Sarkar *et al.* (India) where 98% men had suffered domestic violence. This could be due to the difference in methodology and sample selection, and more so, only six males were interviewed from Haryana. For later study, nonrandomized 1650 husbands mainly from upper middle class and middle class were interviewed between the ages of 15 and 49 years from all over

India using a schedule adapted from WHO multicountry study on husband's health and domestic violence, which contains 14 items for emotional and 8 items for economic violence. In the present study, economic violence was not measured and only two items for emotional violence were taken.⁴⁵⁰ Estimated numbers of incidents of domestic violence in England and Wales during 2012–2013 reported that 4.4% of men had experienced domestic abuse in the last year which is much lower than present study (10.5%); this might be because former estimates are based on people reporting actions against them perceived as crimes.⁴⁵¹ Hence, crime estimates are likely to significantly underestimate the real picture of domestic violence and mainly represent physical violence.

The prevalence of spouse/intimate partner violence (51.5%) in the present study was found to be higher than data collected for domestic violence under partner abuse state of knowledge project (PASK) from the U.S., Canada, and the U.K. (19.3%).⁴⁵² This might be because of different methodology and the wider range of participants (students, married, and unmarried participants); however, in the present study, only married male between ages 21–45 years included. The literature reviewed by Shuler (CA, United States) revealed that 1.3 men per 1000 were victims of intimate partner violence each year.⁴⁵³ Incidence is higher than the present study (8.2%) due to the fact that present study was community-based and while literature review cited included all type of studies (community-based, hospital-based, from police record, etc.). The change in developing India can also be not denied.

The trend of different form of violence in the present study is almost similar to the PASK (80% emotional abuse and 0.2% sexual violence) but different from that reported by Sarkar *et al.*, in which physical violence (25.2%) was more common than emotional (22.2%) and sexual violence (17.7%).⁴⁵⁴ This might be due to the different methodology for considering violence. Tjaden and

⁴⁵⁰ Ibid

⁴⁵¹ Government Statistics on Domestic Violence. Estimated Prevalence of Domestic Violence- England and Wales 1995-2011. Dewar Research. 2014. Feb, [Last accessed on 2018 May 11]. Available from: <http://www.dewar4research.org/DOCS/websiteGovtStatsonDV1995-2013.pdf> .

⁴⁵² Hamel J. Facts and statistics on domestic violence at-a-glance. DV Research. [Last accessed on 2018 May 11]. Available from: <https://www.domesticviolenceresearch.org/domestic-violence-facts-and-statistics-at-a-glance/>

⁴⁵³ Shuler AS. Male victims of intimate partner violence in the United States: An examination of the review of literature through the critical theoretical perspective. *Int J Crim Justice Sci.* 2010; 5:163–73.

⁴⁵⁴ Ibid

Thoennes (U.S. Department of Justice) reported ever physical intimate partner violence in 7.4% and 0.9% in the previous 12 months.⁴⁵⁵ These results are almost similar to our study (6% and 2.5%). Lövestad and Krantz (Sweden) did a cross-sectional population-based study using random sampling in which 173 men and 251 women of age 18–65 were interviewed using conflict tactics scale. In this study, the incidence of physical violence was much higher (11%) than the present study (0.9%).⁴⁵⁶ NFHS-3 and Nadda *et al.* (Haryana) found much higher physical violence 35% and 26.9%, respectively, against women this reflecting that Indian women are much less physically aggressive than Indian men. Gender symmetry does not exist in India for physical violence.⁴⁵⁷

Sarkar *et al.* found slapping was the most common (98.3%) form of physical violence similar to the present study.⁴⁵⁸ In contrast to PASK where about one-third of physical assaults were severe, in the present study, in only one-tenth (6 males), physical assaults were severe.⁴⁵⁹ This might be because Indian women use physical violence very rarely and chances of physical violence because of self-defense and out of fear cannot be ruled out. In half cases (46%), physical violence was bidirectional and initiated by the husband, similar to Daniel *et al.*⁴⁶⁰

Unemployment (60.1%) or less family income (<1000 rps) and addiction of the perpetrator (4.3%) were also found to be major and statistically significant reason for gender-based violence; these results are similar to given by PASK and Nadda *et al.* (Haryana).⁴⁶¹ Arguing and not listening to each other (22.7%) was also the common reason for male abuse similar to PASK and Corry *et al.*⁴⁶²

⁴⁵⁵Tjaden P, Thoennes N. Full Report of the Prevalence, Incidence, and Consequences of Violence against Women. Washington, DC: National Institute of Justice; 2000. [Last accessed on 2018 May 11]. Available from: <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf> .

⁴⁵⁶ Lövestad S, Krantz G. Men's and women's exposure and perpetration of partner violence: An epidemiological study from Sweden. *BMC Public Health*. 2012; 12:945.

⁴⁵⁷Nadda A, Malik JS, Rohilla R, Chahal S, Chayal V, Arora V, et al. Study of domestic violence among currently married females of Haryana, India. *Indian J Psychol Med*. 2018;40:534–9

⁴⁵⁸ Ibid

⁴⁵⁹ Hamel J. Facts and statistics on domestic violence at-a-glance. DV Research. [Last accessed on 2018 May 11]. Available from: <https://www.domesticviolenceresearch.org/domestic-violence-facts-and-statistics-at-a-glance/>

⁴⁶⁰ Whitaker DJ, Haileyesus T, Swahn M, Saltzman LS. Differences in frequency of violence and reported injury between relationships with reciprocal and nonreciprocal intimate partner violence. *Am J Public Health*. 2007; 97:941–7.

⁴⁶¹ Nadda A, Malik JS, Bhardwaj AA, Khan ZA, Arora V, Gupta S, et al. Reciprocate and nonreciprocate spousal violence: A cross-sectional study in Haryana, India. *J Family Med Prim Care*. 2019; 8:120–4.

⁴⁶² Corry CE, Fiebert MS, Pizzey E. Controlling Domestic Violence against Men. Colorado: United States of America; 2002. [Last accessed on 2018 May 11]. Available from: http://www.familytx.org/research/Control_DV_against_men.pdf .

Victims educated up to middle class and living in a nuclear family setup were significantly at higher risk than others for violence. This might be because, in India, joint family act as a cushion in case unemployment of any member and uncontrolled anger. It was found that earning spouse with education up to graduation significantly increased risk of bidirectional physical violence, thus consolidating the fact suggested by Kumar that, when woman becomes aware of her rights and economically independent, she tries to change the power dynamics.⁴⁶³ The present study shows gender-based violence is beyond the boundaries of caste and socioeconomic status of men.

Domestic violence act in India is for women only. The present study shows that men are also the victims of violence at the hand of women. Hence, necessary amendments in favor of men experiencing domestic violence should also be incorporated.

From the information gathered from India as regards GBVAM, it is undoubted that from the literature reviewed. GBVAM has been treated with less seriousness as compared to GBVAM. This has also been confirmed in the findings where most people look at as a taboo for a man to be said to have been abused by a woman. Equally the domestic of laws of India have not formally provide for GBVAM. This is true with Zambia as well where the focus has mainly being on women. A number of respondents confirmed that there is need to enact a law that will also protect men against GBV. The effects also highlighted in this study from India confirm the same effects that were discussed under literature review which include, morbidity, mortality, depression, substance dependence, suicide, and posttraumatic stress disorder.

7.8. Gender Based Violence against Men in South Africa⁴⁶⁴

The rape and murder of University of Cape Town student Uyinene Mrwetyana has resulted in renewed calls to urgently address violence against women. But there is a silence about the

⁴⁶³Kumar A. Domestic violence against men in India: A perspective. *J Hum Behav Soc Environ.* 2012; 22:290–6.

⁴⁶⁴David Bruce, 19 Sep 2019:David Bruce is an independent researcher specializing in crime and criminal justice: Ignore male victims at society's peril

victimisation of men. Men are overwhelmingly the perpetrators of violence. But they are also the victims of it. Patterns of violence affecting women and men are quite different. Men constitute a large proportion of victims of homicide and other types of violence where weapons are used to inflict serious injury. Official figures are that men, including male children, account for 85% of victims of murder, upwards of 80% of victims of attempted murder, and more than 70% of victims of assault with grievous bodily harm.

Women and teenage girls are the overwhelming majority of victims of sexual violence. Figures on rape released by the South African Police Service indicate that 90% of victims over the age of 10 are female. Girls and women in the 10 to 19 age category account for 21% of these victims. In violence experienced by women the perpetrators are also, more frequently than with men, current or former intimate partners. Of killings of women, roughly 50% are carried out by intimate partners. Killings of men by their intimate partners make up a very small percentage of male homicide — and these murders are often a response by women to physical or other abuse.

Domestic violence, which is generally recorded as common assault in crime statistics, is a major part of the violence that women face. Police data on assault, read with National Victims of Crime Survey data on reporting rates, suggest that men may suffer higher rates of assault than women do. Men are a large majority of victims of serious assaults, which are recorded by police as assault with intent to inflict grievous bodily harm. On the other hand, women may suffer from higher levels of repeat assault victimisation, though data on this is lacking. Much violence against women is not reported to police, but the same applies to violence against men. Women and men face high levels of violence. But, to some degree, they live in different worlds in respect of the risks that they face. Men experience high levels of violence, much of it from people outside the family and their closest relationships. In contrast, a high proportion of the violence women face is from the inner circle of men that they have close relationships with. Moreover, when men experience violence it is frequently because they have chosen to resist or physically defend themselves against a male aggressor. In the vast majority of robberies, for instance, physical injury can be averted by co-operating with the perpetrator, regardless of whether the victim is a man or a woman.

The reality for victims of sexual violence, most of whom are women, is completely different. As with robbery, if they are targeted and resist, they increase the risk of other physical injury or death. But co-operation with the attacker involves submitting to extreme bodily violation, even if it reduces the risk of other physical injury. Sexual violence also carries with it the risk of sexually transmitted disease, including HIV. The relative physical strength or dangerousness of the two people involved is a key factor in understanding the dynamics of potentially violent confrontations. Men are not only on average more familiar with how to be violent, but are also on average physically stronger than women. Men who are violent against women generally take advantage of this. In respect of violence by men against other men, there is not only reliance on physical strength and knowledge of the repertoires of violence, but a greater reliance on weapons. Many violent situations where both parties are male are disputes that escalated in intensity. The distinction between “victim” and “perpetrator” may be blurred. The person who comes to be defined as the perpetrator may ultimately be the one who gets the upper hand in the confrontation.

Men also tend to be more afraid of violence from other men than from women. Robbers may anticipate that they are more likely to face violent resistance if the victim is male, and even that the victim will be armed. If the victim is male, this increases the likelihood that the robbers will resort to physical violence at any sign of resistance. There are significant differences in the patterns of violence but it is reasonable to say that men suffer as much from violence as women do. The focus by gender activists on violence against women originated in a context in which violence against women was largely ignored, excused and normalised.

One of their achievements has been to secure recognition for violence against women as a government priority. This is reflected in the tendency to characterise violence in South Africa as primarily a problem of violence against women. More should certainly be done to address violence against women. But a single-minded focus on violence against women, even though there are also high levels of male victimisation, appears to suggest that violence against men is more acceptable. Many government measures to address violence are focused on violence against women. The key obstacle to them are implementation failure that cut across government. Failures in providing justice affect men just as much as they affect women. Considering levels of violence against women and children, these problems should be regarded as a crisis that requires urgent attention.

But the same applies to levels of violence against men. Violence against men is worthy of attention in its own right. But it is also worth asking if violence against women can be addressed without addressing that against men. Focusing exclusively on violence against women may be self-defeating even for those primarily concerned with the situation facing women. Violence is sometimes identified as a product of toxic masculinity. But this masculinity is, in part, produced by men becoming habituated to violence through violence from other men. There is a need for strengthening measures that are targeted at violence against women. But this must be part of a society wide approach to addressing violence.

This article examines experiences of men who are victims of gender-based violence where women are perpetrators. There are masculinity expectations that if a man is in pain, he is not allowed to show his agony or cry in public, as suggested in the Sepedi proverb *Monna ke nku o llela teng*. These expectations make it difficult for male victims of domestic violence to report the abuse. Gender-based violence has to do with the abuse that is suffered by partners who are in relationships. This violence includes, but is not limited to physical, sexual, psychological, economic harm, and includes actions such as threats and coercion. Men usually do not speak out about their experiences due to the stigma attached to them being victims of female-perpetrated domestic abuse, as this study has shown. This article is based on the study of men who reported their experiences of abuse at the hands of their partners. The study was conducted in Vuwani within the Makhado Local Municipality, Vhembe District in the Limpopo Province, South Africa. The data showed that male victims of domestic violence are reluctant to speak out about their ordeal due to fear of being ridiculed by significant others in the society, such as their family members, peers and police officials.⁴⁶⁵

Domestic violence is a global phenomenon without national, economic, religious, geographic and cultural boundaries. It has negative consequences for social welfare, children, families and the

⁴⁶⁵ Gender-based Violence against Men: A Muted Reality Tsoaledi D. Thobejane <http://orcid.org/0000-0002-7060-1165> University of Venda, South Africa daniel.thobejane@univen.ac.za Lobelo D. Mogorosi <http://orcid.org/0000-0003-1309-2357> University of Venda, South Africa Lobelo.mogorosi@univen.ac.za Ntshengedzeni V. Luthada <http://orcid.org/0000-0002-4171-6262> University of Venda, South Africa luthadav@gmail.com © **Publisher: UNISA Press****Persistent Link** : <https://hdl.handle.net/10520/EJC-1191d4e0d4> **DOI** : 10.25159/1016-8427/4304

community at large. In an study conducted earlier on gender-based violence on men, Thobejane⁴⁶⁶ found that violence committed by women against their male partners had been largely ignored for several reasons— one of the reasons being the stereotypes that is fuelled by the perception that a man is strong, while women are perceived as submissive, weak and obedient. Therefore, men are the most likely victims of domestic violence. This article seeks to fill this gap within the discourse on gender-based violence, unattended by other researchers who focused on violence from the perspective of women. To date, although there is growing evidence showing that there is increasing violence against men, perpetrated by women, the focus has been on violence against women.

Therefore, it is crucial to note that domestic violence affects both women and men. Thus, for equality to be achieved, we need to focus on their issues collectively without any bias. This article also alludes to regional and international protocols on gender violence such as the Convention on the Elimination of All Forms of Discrimination, Beijing Platform for Action, SADC Gender Protocol and the South African Constitution that seem to pay less attention to gender-based violence issues that focus on men as victims. The trajectory of this article will take the following form: Discourse on domestic violence, why is little being said and done about gender-based violence against men, feminist theories and domestic violence. Discourse on Domestic/Gender-based Violence Domestic violence involves a range of intentional actions such as sexual, psychological, emotional and verbal abuse. Other forms of man battering include: slapping; pouring hot water while the victim is asleep, and in areas mostly hidden by clothes; chopping men's genitals; verbal insults; insulting the partner in front of children; slashing; pouring petrol over men and setting them on fire. In addition whipping, throwing chairs, benches, stools, using utensils to attack the partner, as well as other objects in the house, especially after serious disagreement with the man.⁴⁶⁷

When a spouse or an intimate partner uses physical violence to control the behaviour of his or her partner, she or he is committing domestic violence.⁴⁶⁸ Domestic violence is not just restricted to spouses or those in cohabitation but can also be directed against children by their parents. It can occur between relatives within the household or against the elderly, where it is perpetrated by their children or grandchildren. It is important to note that the term domestic violence suggests that both

⁴⁶⁶ (2012)

⁴⁶⁷ (Gathogo 2012)

⁴⁶⁸ (Thobejane 2012)

men and women suffer disproportionately from different forms of domestic violence by their partners.⁴⁶⁹ Feminist scholars have argued that knowledge-based mainly on women abuse represents a skewed perception of reality.⁴⁷⁰ Other scholars emphasise that the best way to correct this is to also look at men's daily experiences.⁴⁷¹ Usually when the word “abuse” is mentioned, what comes to one’s mind is that the victim of the abuse is either a woman or a child. It rarely or never at all occurs that people would think that the victim of abuse could also be a man.⁴⁷² There is stereotypical thinking towards domestic violence, which nonetheless, is understandable, as most of the victims are historically known to be women.⁴⁷³

This article seeks to present the other reality within this discourse in the sense that it interrogates domestic violence where victims are men and perpetrators are women, who are these men’s partners. The Beijing Declaration for Action,⁴⁷⁴ referred to as the Fourth World Conference on Women in Beijing, identified 12 areas of concern, which required urgent attention to achieve gender equality. Violence against women is the most critical area of focus within these instruments and little has been done to address forms of men abuse. The Beijing Platform (emanating from the declaration of 1995) called for an explication of the causes and effects of, and strategies to prevent gender-based violence, but the focus was more on violence against women and children. It further denotes that the absence of adequate gender-disaggregated data and statistics on the incidence of violence makes the elaboration of programmes and monitoring of changes difficult. Lack of documentation and research on domestic violence, sexual harassment and violence against women and girls in private and in public, including the workplace, impedes determinations to design specific intervention strategies.⁴⁷⁵

The Beijing Platform for Action⁴⁷⁶ focused much on violence within conflict-ridden refugee settings rather than domestic violence issues that also affect men. Evidence in Kosovo, located in South-eastern Europe, shows that the establishment of the Pristina-based Centre in 1993 and the

⁴⁶⁹ WCC Publication. Fanon, F.1983. *The Wretched of the Earth*. Harmondsworth: Penguin. Hill-Collins, P. H. 2000. *Black Feminist Thought*. 2nd edition. New York: Routledge. Hooks, B. 2006.

⁴⁷⁰(Collins 2000; Mohanty 2003)

⁴⁷¹ (Leonard 2003)

⁴⁷² (Thobejane 2012)

⁴⁷³ (Linnegar and McGillivray 1998)

⁴⁷⁴ (1995)

⁴⁷⁵ (Linnegar and McGillivray 1998)

⁴⁷⁶ (1995)

United Nations Development Fund for Women (UNIFEM) meant that the protection of women and children has been a major priority, while neglecting men as victims of domestic violence.⁴⁷⁷ Walby and Mayhill's⁴⁷⁸ analysis of a British Crime Survey found that men made up about 40 per cent of domestic violence victims each year. Between 2006 and 2007 men made up 43 per cent of all those who had suffered partner abuse in the previous year. This number rose to 45.5 per cent between 2007 and 2008, but fell to 37.7 per cent (37.7%) between 2008 and 2009. More than one in four women (28%) and around one in six men (16%) had experienced domestic abuse since the age of 16.

These figures are equivalent to an estimated 4.5 million female victims of domestic abuse and 2.6 million male victims. In addition, Walby and Myhill⁴⁷⁹ maintain that almost six per cent (6%) of women and four per cent (4%) of men reported that they experienced domestic abuse in the past year, equivalent to an estimated one million female victims of domestic abuse and 600,000 male victims in Britain. The experiences of South Africans show that in relation to all places of occurrences of assault, married individuals are most likely to be victims in their own homes (37, 5%) than elsewhere. Spouses or lovers tend to be the major perpetrators of such incidents (43, 8%). Of importance, anger towards a family member or person was the main motive for such an assault at home.⁴⁸⁰ The literature demonstrates that violence against men has been on the increase in recent times in some parts of Africa. For instance, Anyuor⁴⁸¹ gives an example of a survey, conducted in Nyanza, Kenya by Maendeo ya Wanaume⁴⁸² in 2012, where cases of men abuse rose to 160 000 from 460 000 in 2009. The increase in the incidences of male battering by women in Kenya seems to increase with alcohol dependence among younger males, aged between 25 and 34. Many males in this age group stated that they consumed illicit brews in the hours before noon, which generally are considered the most productive hours of the day. This behaviour prompts their partners to be abusive towards them, out of frustration and despair.⁴⁸³

⁴⁷⁷ (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003).

⁴⁷⁸ (2011, 502–522)

⁴⁷⁹ (2011)

⁴⁸⁰ (Statistic South Africa 2016, 14–17)

⁴⁸¹ (2012)

⁴⁸² (Progress for Men)

⁴⁸³ (Anyuor 2012)

Again, as more of such men fall back into the vicious cycle of drinking and unemployment, women are forced to replace them as heads of families and as care providers. The end-result is that such men fail to fulfil their roles of providing for their families. Like in most societies and settings, such men, who are dependent on their women, are also likely to be economically, physically and even psychologically abused. Gathogo⁴⁸⁴ argues that domestic violence against men manifests in different ways. Sometimes it begins with insults directed at the man, in front of his children, who sometimes take sides with their mother, particularly when they are first incited against their father. In such scenarios, children of teenage age may even gang up against their father and participate in the corporeal attacks. This may come after their mother first picks up a quarrel with their father. A case in point is that cited by Gathogo,⁴⁸⁵ who gave an example of a woman who found her husband having sex with their house worker (helper). She started beating them up using any object available in the house, including unsharpened objects, until they both bled profusely. Considering that the culture does not allow an African man to scream, if he is ever beaten by a woman or a child, the man suffered in silent and was eventually battered to death, while the screaming helper broke the door and escaped.

Why is Little Being Said about Gender-based Violence against Men? Domestic violence is a daily occurrence and women are reportedly the victims, largely because they are more likely to report it, while men do not do so, owing to the patriarchal nature of most societies. It is generally accepted that there is an underreporting of domestic violence in general, in cases where men are victims and women and other men are perpetrators. Men may also be reluctant/unwilling to talk about being victimised, considering that this is irreconcilable with their masculinity, particularly in societies where men are discouraged from talking about their emotions. However, that does not mean that men are not victims of domestic violence in their private domains. Female-to-male domestic violence is a catastrophe that has always existed, but has never been given the attention it deserves, like domestic violence perpetrated against women. In the same vein, violence against men has been trivialised as it is influenced by social and gender stereotypes that define men as heads of households, who are supposed to be strong defenders of families and other dependents and breadwinners as well. Proponents of the feminist theory argue that domestic violence has to do largely with gender and power inequality in opposite-sex relationships. The theory focuses on the

⁴⁸⁴ (2012, 447–470)

⁴⁸⁵ (2012)

societal messages that sanction the male's use of violence and aggression throughout life, and the prescribed gender roles that dictate how men and women should behave in intimate relationships.⁴⁸⁶

The theory ascribes the root causes of intimate violence as the outcome of a society that condones aggressive behaviour perpetrated by men, while socialising women not to be violent. Feminist theorists, however, also acknowledge that women can be violent in their relationships with men, but at times do not see the issue of women abusing men as really a serious social problem. To them, therefore, it does not deserve the same amount of attention or support as compared to the issue of violence against women.⁴⁸⁷ Statistics on male abuse are under-documented due to massive under-reporting of such cases, which according to Anyuor,⁴⁸⁸ is due largely to cultural norms, the age-long practice of patriarchy, and the adage that says "Men do not cry." In South Africa, such cultural norms are evident in language expressions. For instance, in Tshivenda, a Language largely spoken in the Vhembe District of Limpopo, South Africa, the following are said to be some cultural norms regarding men: Ndi munna nge a ambara vhurukhu ("He is a man only by the trouser he is wearing"). Ndi muthu nge a shaya mutshila ("He is a human being only because he lacks a tail") Meaning that a person behaves like an animal. Almost all languages in South Africa have adages that support hegemonic masculinities. The Sepedi language, also largely spoken in Limpopo has adages such as: Monna ke nawa o a naba ("A man is entitled to have as many wives as it pleases him"). Monna ke nku o llela teng ("Men don't cry").

As postulated on the topic of this study. This adage derives from the common knowledge by shepherds in most villages, that a sheep, (nku) when slaughtered, does not make a lot of noise. It dies bravely, unlike other animals such as goats, which face their fate bellowing and kicking. A man should therefore, be like a sheep when he faces challenges. He should never cry or show some signs of "weakness." Monna ke selepe o wa adimišanwa ("A man is allowed to have concubines")⁴⁸⁹ The treatment accorded to survivors of rape, whether male or female by the community may also be similar. In some communities, female victims of sexual violence are

⁴⁸⁶ Pence and Paymar 1993)

⁴⁸⁷ (Kwaramba 2000, 200)

⁴⁸⁸ (2012)

⁴⁸⁹ Domestic Violence: A Substantive and Methodological Research Review. Accessed February 6, 2016. <http://www.xyonline.net/downloads/malevictims.pdf>. Leonard, J. 2003.

shunned and considered outcasts. So too are male victims of sexual violence. The added dimension that some women face of being shunned by their families does not seem to be present in the case of male victims, possibly because, in many societies, it is the male that is considered the head of the household. Another way in which male victims of sexual violence may feel emasculated is through the process of homosexualisation. When reference is made to masculinity, the dominant construct is that of heterosexual masculinity. It is the heterosexual male that is a symbol of power. It is the heterosexual male that fills or at least filled the ranks of the armed forces.

This may explain why often times, male victims of sexual assault do not only remain silent but actively deny being sexually abused. As Kimmel⁴⁹⁰ argues, hegemonic masculinity is a form of masculinity that dominates other forms of masculinities. This kind of masculinity is binding and has created a defined boundary of what it means to be a real man. If one starts tracing the issue, one will notice that domestic violence against men is not new. Many women have been perpetrating abuse against their partners behind closed doors; and had most of the time, gotten away with it. Such men may be labelled double victims of abuse, because not only are they victims in their domestic space, but also risk being ridiculed and not being treated with dignity in the event they should seek assistance. Moreover, the law is more likely to rule in favour of a woman than a man. This problem is compounded by the fact that many cases go unreported; and as a result, many men remain silent about the abuse they endure in the hands of their abusive partners.

Discussion and Analysis of Data During the face-to-face interviews, participants were asked a number of questions that sought to inquire about their experiences of abuse by women, factors they attributed to their abuse, as well as fear to publicise their abuse.

The first question posed sought to establish whether participants had experienced any form of abuse in a marriage or intimate relationship in the past 12 months before this study was conducted. Researchers, in this case, wished to capture the complexity of the answer to this question. To do this end, the question posed was: have you experienced any form of abuse in your marriage or an intimate partner relationship? All participants answered in the affirmative. However, they elaborated differently but similarly in some instances.⁴⁹¹ Among the six, two mentioned that they

⁴⁹⁰ (2002)

⁴⁹¹ Male Victims of Domestic Violence: A Substantive and Methodological Research Review. Accessed February 6, 2016. <http://www.xyonline.net/downloads/malevictims.pdf>. Leonard, J. 2003. "The Hidden Victims of Domestic

did experience emotional, psychological and sexual abuse at the hands of their partners or spouses. Dakalo, aged 28, indicated that his wife used to insult him and used vulgar words in the presence of their children when talking to him. He ascribed his wife's disrespectful behaviour to the fact that she was more educated than him and held an influential position at work. Straus⁴⁹² refers to this as some form of psychological aggression and behaviour that is demeaning, belittling, or that undermines the selfworth of one's partner.

Muratho, aged 36, revealed that his wife was flirting with other men. He discovered that through her WhatsApp conversations that she was actually cheating on him. Muratho further said the following: I'm being abused by my wife of 8 years with whom I have two sons. We are still married but there is no intimacy between the two of us. The third respondent, Tshililo aged 35, revealed that his partner was too demanding. When asked what he thought the reason could be, he said that it is because she was from a rich family. With his meagre salary, he could not satisfy all her needs. He further said: She also dictates terms on how we should spend my salary. I am often without money during the course of the month because she shall have spent it on clothes and on entertainment. Masenyani, aged 27, who had separated from his wife, was paying maintenance for his child. However, he said that since their ordeal he was not allowed to see the child, in spite of the fact that the court gave him the permission to. In his words, he said: I think I am a victim of domestic violence because I am being denied access to seeing my child since we separated seven months ago. We separated because she was too demanding. She thought that by reporting me for maintenance, she would get more money from me through the maintenance courts. I am paying for everything including school fees, medical costs, transport costs, clothes and pocket money for school. But I'm denied access to my daughter while she is currently staying with her new boyfriend.

Ranwedzi, aged (35, said the following during the interview: I broke up with my girlfriend because she was very violent. When angry, she would throw missiles at me. She also threatened to pour boiling water on me when I am asleep. This is where I drew the line and decided enough was

Violence." Paper presented at the XIth International Symposium on Victimology, 13–18 July, Stellenbosch South Africa. Linnegar, J.,

⁴⁹² (1990, 49–73)

enough.⁴⁹³ Mmbudzeni, aged 36, said his wife stalked him all the time. She was so jealous that she did not believe that he was not cheating on her. Crenshaw⁴⁹⁴ defines stalking as a course of conduct directed at a communication, or verbal, written, or implied threats, or a combination thereof, which would cause any reasonable person to fear. Stalking behaviour may include spying on someone, standing outside their home or workplace, making unwanted phone calls, or vandalising their property. Mmbudzeni experienced all of the above. Mmbudzeni characterised stalking as follows: She always wanted to know what I was doing, where I'm going, what friends I'm with, and what time I'm coming back home. If she can't get in touch with me, she'll call a hundred times by using different names and sit outside the house to wait and see what kind of a car is bringing me home. The poor guy will then get a scolding for bringing me home late. One of the questions that were asked of participants was: Do men report to relevant authorities when battered by women? Five of the six participants answered with a "No." Asked why they did not report the abuse they cited, among others reasons, the following: religious leaders' advise couples to seek the face of God rather than "wash their dirty linen" in public; the parents' fear of embarrassment; male ego, close friends who prefer to downplay the magnitude of the problem; fear of being laughed at; concerns about the taboo, as well as the anathema or abomination associated with the cultural dictates of African societies.

These men also fear the effects of divorce, especially where the man relies on the "rich" woman for his daily upkeep; as well as the embarrassment that goes with being labelled a "weak man". Below are some of the responses given by the participants: Dakalo, in emphasising how well educated his wife was, further said the following: I do not want to be a laughing stock of my male peers. Also, I don't want my manhood to be undermined by them. Muratho expressed his fear that his wife might leave him. He said that he suspected that his wife was getting material acquisitions from other men, and this made him feel embarrassed and impotent. Tshililo further said that he was feeling "small" and feared to be the laughing stock among family and peers. He had a sense that the wife's family did not think he was worthy to have married their daughter. He felt like a "nobody" to his in-laws. He also feared that if he could seek the solution he might be ridiculed and

⁴⁹³ "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Colour." *Stanford Law Review* 43 (6): 1241–99. Creswell, J. W. 2014. *Research Design, Qualitative, Quantitative and Mixed Methods Approaches*. 4th Edition. Thousand Oaks, CA Sage. <https://doi.org/10.2307/1229039>. Gathogo, J. 2012.

⁴⁹⁴(1991, 124)

rejected by the same in-laws.⁴⁹⁵ The reluctance to report the abuse to the relevant authorities is further compounded by the fact that in most communities in Africa, it is an abomination to see a man crying after being beaten by a woman. In such scenarios, a “crying man” would lose prestige due to the cultural barriers and stigma attached to crying. Others feel guilty for not taking responsibility for the welfare of their families; hence they keep quiet when they are battered. There are other several reasons why abused men continue to suffer through cycles of violence. The main three reasons have to do with “deserting” their children, financial dependence, and the expectation from relatives and friends to make the relationship work. Several men in this study expressed concerns about their children’s wellbeing in the event that they have to leave an abusive relationship. They may feel like they would be doing more harm to their children if they broke up with their mothers. This is backed by feminist epistemologies and ideologies that foreground their theories on the historically-evolved system of patriarchy that has tried to diminish men to emotionless animals, while women are seen as too emotional and conscientious.⁴⁹⁶

Hegemonic masculinities can transcend the constructs of gender, and if not well monitored or fought against, can unleash a violent culture in our societies. It is in this vein that this article alludes to the study of men who reported their abuse at the hands of their partners, as against the practice where studies are usually conducted in the context where women are victims. The data analysis showed that domestic violence against men by women is not a new phenomenon in our society, yet it is rarely spoken about. Male victims of domestic violence are reluctant to come to terms with their predicament due to fear of being ridiculed by the society, peers and police officials. It is evident that men too can be victims of domestic violence. However, their plight is not made prominent as that of women victims, because of the cultural adage such as *Monna ke nku o llela teng* (“A strong man must suffer in silence”) During marches against gender oppression and for an egalitarian society, the plight of those men who suffer at the hands of their partners ought to be considered.

⁴⁹⁵ Sepulveda, M. et al. (eds), 2004, *Human Rights Reference Hand Book*, Ciudad Colon (Costa Rica), University for Peace, Definitions and Classifications, pp. 3-17

⁴⁹⁶ (see Hill-Collins 2000; Hooks 2006; Maqubela 2013; Mohanty 2003; Thobejane 2012)

South Africa's president Monday condemned the high rate of violence in the country against women and children, calling it a great shame on the nation.

"It goes against our African values and everything we stand for as a people. We grew up being taught that as men and boys, we must respect women and protect children," Cyril Ramaphosa said at the launch of the 16 Days of Activism for No Violence Against Women and Children campaign held in Limpopo province.

He said some men in the country had lost their way by attacking women and girls, yet while growing up, they were taught to never raise a hand against a woman.

"Our communities are in the grip of violence against those we are supposed to protect," he said.

"As I stand before you, I invoke the memories of the many women and girls in this province and throughout the country who have suffered from the brutality of men," he said, mentioning some of the incidents where women and young girls were brutalized.

He recalled 6-year-old Boitumelo Matsekoleng from Serageng village, who was buried last month after a man raped her and left her for dead.

"We remember 59-year-old Mama Mphephu Sophie Vukeya, a grandmother from Muswana village, who was attacked while collecting firewood and died in hospital in June after being raped and beaten."

According to annual crime statistics released in September by the South African police, over 40,000 rapes were recorded in 2018 -- roughly one every 15 minutes. Statistics also showed that eight women were murdered in the country every day.

Ramaphosa said the cowardly criminals attacking women and children have absolutely no regard for the sanctity of human life.

"They do not discriminate. The young are attacked, as are the elderly. Boys are raped and abused as well as girls."

The president said the country was uniting under the theme: "Enough is Enough" because it has truly had enough.

He outlined some of the plans put up by the government to curb the attacks, which included reducing gender-based violence case backlogs at forensic laboratories. Ramaphosa also said they will develop a tracking mechanism of the cases that will be rolled out in January next year.

He said the government was also establishing national and provincial 24-hour call centers that would deal with complaints against the police and legal officers who handle matters of gender-based violence, among other measures.

*“We will not be defeated by this scourge. We will turn the tide. Let us move together, a nation resolute and above all united, to end gender-based violence and femicide forever,” he added.*⁴⁹⁷

From what has been gathered about GBV in south Africa , the forms, causes and effects of CGBV in South Africa are basically the same as what was discussed in Chapter Two as well as some of the findings already discussed. Though south Africa has gone a step further to introduce new modes of collecting evidence by introducing laboratories to help with investigations. Further, South is also seeks to embrace the fact that men can also be victims of GBV.

It is clear from the reading above that gender based violence has since time immemorial being inclined towards women. Of course making reference to the human rights system, women belong to a group of individuals who are considered to be vulnerable, therefore require the protection of the law. So far from the information gathered from the international human rights framework and how different jurisdictions have responded to the issue of gender based violence as a violation of human rights, is no different from what is happening in Zambia. Hitherto, Zambia has ratified several of the human rights documents that have been discussed so far although some of them may not have been ratified. This information is available in Chapter Two.

Zambia has responded to the international calls to protect human rights regardless of the gender of the individuals involved. It must also be appreciated that more emphasis has been put in trying to promote women’s rights for obvious reasons, simply because of the patriarchal nature of our society, it was never envisaged that at one time men can also fall prey to gender based violence due several reasons which may also include our cultural beliefs. Therefore, the government may lag behind in terms of protecting men against this vice. The main causes of GBVAM men discussed above so far being unemployment of men; empowerment of women; failure of men to come out in the open to report these cases; poor enforcement mechanisms; unproductive cultural beliefs and infidelity being singled out as the deadly cause of GBVAM. The effects are also the same in that they may not only affect and individual

⁴⁹⁷ Hassan Isilow South Africa’s president condemns gender-based violence, 26.11.19, Anadolu Agency.

but the effects may extend as far as affection the economies of the country's worst hit by GBVAM. All these issues have already been discussed in sufficient detail in the previous chapter.

The main difference between Zambia and these other countries, could be perhaps be the response to GBVAM, as cab be seen from India that GBVAM is an issue that should be ignored as statistics are very high. Secondly, fighting for gender equality in terms of promoting women's rights may not help much. Looking at what South Africa has decided to undertake to curb GBVAM, it is high time that our government showed political will in dealing with issue once and for all.

7.9. Analysis of Findings in line with Research Questions and Theoretical Framework

The research sought to address a number of research questions which included causes GBVAM; the legislative framework for GBVAM and the ineffective enforcement of the Anti-Gender Based Violence Act of 2011 and related laws. The causes of gender based violence have satisfactorily been identified as well as discussed and presented in Chapters Six and Seven which in summary are infidelity; alcohol and drug abuse; poverty; masculinity; growth of feminism; bad cultural practices; anger; poor communication among couples; women usurping the role of bread winner; and male dominance of hetero-sexual relations as the main ones. It has also been discussed there is a legislative framework in place to fight GBVAM which is the Act of 2011 and other laws that have been highlighted in Chapter Two. However, it was further discovered that the law is biased towards protecting women as the main victims of GBV and not men. This is one of the contributing factors as to why the laws on GBVAM are ineffective. Many factors have been discovered as contributing to this ineffective enforcement. These factors include, legal challenges, lack of knowledge of the Acts on GBV, complex procedures in implementation; social and cultural barriers.

The challenges in enforcement of GBV laws are also cemented by several practices observed in society. The theoretical framework was thus designed in such a manner so as to expose the real reason behind the negative enforcement of Anti-GBV laws. The theoretical framework, being feminism which accounted for the reasons why women feel more empowered are able to fight back. The feminist theories aim at liberating women who have for a long time

suffered in the hands of men, however, if such theories are blown out of proportion this is what is now culminating in women becoming perpetrators of violence. On the other hand masculinity and patriarchy, have seen the vulnerability of women in society which actually led to the establishment of feminist movements. Due to masculinity women have been termed to becoming wild as a result are no longer as vulnerable and harmless as society perceives them to be. On the other hand biological versus social theories helped in understanding the reasons why men are stronger than women, also it serves the purpose to account for why women practice GBV in different forms as compared to men e.g. women are more culpable in perpetration of verbal and emotional violence towards their partners, while physical in most cases they may use objects is self defence, this is due to the fact that men are stronger than women. On the social aspect, it has been believed that men are breadwinners, but the turnaround of events of some women becoming more educated and supporting households has equally resulted in GBVAM against men who are financially dependent on women. Hence the theoretical framework, emancipated the reasons why GBVAM is the way it is currently. Thus it can be said that the research objectives were met and research questions adequately answered.

It must be appreciated however, that the research had a number of weaknesses in that there was need to interview more victims of GBVAM, but unfortunately even if they are there it is not easy for them to consent to be interviewed and give out the relevant information. It is hoped that in future researches this aspect will be adequately tackled; the other weakness of the research was that the population was only limited to three provinces. It would have been more exciting if information was to capture from a wider perspective. However, this was tenable due to a number for limitations on mobility and finances already alluded to in Chapter Four of the study.

7.10. Conclusion

While it is true that human rights violations are committed against men as well as women, their impact clearly differs depending on the sex of the victim. This means that such violence is directly related to the unequal distribution of power and to the asymmetrical relationships that exist

between men and women in our society, which perpetuate the devaluation of women and their subordination to men. Gender-based violence can take many forms and, depending on the type of relationship that is its context and the type of power being exerted, this crime may therefore fall into any of the following categories: rape and incest, sexual harassment at work or at school, sexual violence against men detainees or prisoners, acts of violence against displaced men, trafficking in men and domestic violence. In recent years it has led to the establishment of new institutions and the adoption of legislative amendments that have served as a focal point for collective action by countries around the world. The lack of the necessary statistical data to provide an accurate picture of this phenomenon constitutes an obstacle to a fuller understanding of the issues associated with gender-based violence.

CHAPTER EIGHT

RECOMMENDATIONS AND CONCLUSION

8.0. Introduction

Gender based violence is a big problem not only in Zambia but globally, and efforts are being made by stakeholders to try to control the problem. Zambia has laws protecting women, children, persons with disabilities and the aged, including men from all forms of Gender-based violence under a number of her statutes. Gender Based Violence (GBV) can include physical, sexual, psychological, or other forms of violence. Gender Based Violence (GBV) against men is largely invisible, unrecognized and trivialized. As compared to GBV against women, society chooses not to believe that GBV can be initiated by women. A limitless amount of literature on GBV against women shows that it has been an endemic problem that is as a result of various factors. The common forms of violence found are physical, verbal, sexual and psychological. These are mainly caused by infidelity on the part of men, suspected male impotence, children from other marriages, violence as retaliation and alcohol abuse.

In terms of consequences, physical injuries, emotional problems, financial difficulties and HIV/AIDS are the negative outcomes of female-induced violence. Therefore, there is need for the government to educate society about the plight of male victims of female violence. Male victims choose not to report incidents of physical abuse because they perceive it to be a private matter or an incident that is too minor to warrant police involvement. The cultural norms that require men to present a strong image means abused men are less likely to verbalize fear of any kind which keeps them from reporting physical abuse. The various forms of physical abuse share many risk factors in both men and women. Some are psychological and behavioral characteristics such as poor behavioral control, low self-esteem, disorders in personality and conduct. Others are due to experiences, such as lack of emotional bonding and support. Abuse of drugs and alcohol is frequently associated with interpersonal violence, and poverty as well as income disparities and gender inequality stand out as important community and societal factors.

In the past women have been victims of domestic violence, at home and away from home. This has resulted in deaths of both women and girls. In view of the above, several pieces of legislation both domestic and international have been enacted to promote and protect women's rights. Hitherto, the efforts being made by the international community may not have achieved their objectives as women have now joined their male counter parts in perpetrating violence, which in some cases is fatal, resulting in death. This is not only a violation of human rights, but also

a criminal offence. Several reasons have been advanced as to what may be the probable cause of such unfortunate occurrences.

Considering the recent situations, it is evident that one of the major causes of domestic violence is the failure by married couples to know how to handle their differences; it may also extend to unmarried couples that are intimately involved. Parties to such relationships resort to violence in circumstances where their expectations are not met. Many couples do not have conflict management skills at all. So, they resort to fists of fury. There is also generally, a lack of support from social structures, and women also have learnt to hit back. It is still not yet known how this vice can be curbed, though inevitably the law will be one of the important instruments to be employed.

The last two hundred years have witnessed a substantial, historically, unprecedented expansion of women's rights both economic and political. In almost all the industrialized countries, women were previously treated as the property of their husbands and those not married of their fathers, with very few legal rights to possessing the same political rights and most of the same economic rights as men.⁴⁹⁸ Enhancing the participation of women in democratic transitions remains a major challenge in many African states. This is closely linked to the notion that females are now reacting to the previous state of affairs, and thus becoming violent against their male counterparts. This chapter discussed some of the causes, forms and effects of women's violence against men, and in certain instances pointing out the actual case of GBV against men. The literature review is seen as a synthesis of relevant previous studies and theoretical positions that frames empirical studies. The legal framework supporting GBV has also been explored, the successive chapters will unfold more information on the subject.

Gender based violence has been the subject of many academic writings and comments. In this regard, an attempt to review the available literature on the system is a formidable task which cannot be achieved in this study. The literature review is seen as a synthesis of relevant previous studies and theoretical positions that frames empirical studies. It is premised as such in the current study so as to gain insight regarding the dynamics of research done in the subject of female violence against men. It is also done in order to identify common methods and theoretical frameworks that

⁴⁹⁸ The Global Gender Gap Report, 2007

have been previously used in similar studies. It will be noted from the outset that most of the studies reported here were done in the western countries. This is due to the dearth of regional and Zambian literature on the topic, the more reason why this study is relevant. The literature review was organized in such a way that it addresses the fundamental issues raised in the research questions and objectives such as the forms, causes, and consequences of female domestic violence against men. Several data sources were consulted to enrich this literature review and these include books (both paper and electronic), journal articles and a few unpublished theses and dissertations.

The research methodology involved the mixed research approach which is a combination of the qualitative and quantitative methods to enhance the collection of data, while the theoretical framework encompassed the feminist, biological and masculinity approached were unfolded. The chapter was based on general discussion of the research methods and methodologies to ensure that the objectives of the research are met after analyzing the data. Four Social norms and attitudes that perpetuate gendered disparity and violence. It is widely understood that the reality of GBV is that it is the cause and consequence of gender power imbalance and structural inequality. This makes it difficult for men and children to report and pursue prosecution of GBV related offences and fully benefit from the protection provided there under. Almost all tribes in Zambia identify men as providers and protectors of the family and women having a supplementary role, which largely centers on taking care of the family. The bible was quoted often to validate this social construction of family. The onus of safeguarding the dignity and respect of the family is very much on the woman. This relegates women into a domain that perpetuates male dominance, continually justifying discrimination and inequality. This is typically demonstrated in the predominant practice of traditional marriage counselling where women are taught to obey and please their husbands unconditionally.

Although the Penal Code Chapter 87 of the Laws of Zambia does not provide for effective protection against violence in domestic relationship, the Anti-GBV Act is clearer cut in providing for measures that encourage survivors of domestic violence to report. The study however shows that as long as one gender exerts control and dominance in a relationship which is legitimized by the society, culture and religion, then it will be difficult for the survivor as well as the community to recognize, acknowledge and report physical, sexual or psychological and emotional abuse and

seek recourse under the Act. In terms of consequences, physical injuries, emotional problems financial difficulties and HIV/AIDS are the negative outcomes of female-induced violence. Therefore, there is need for the government to educate society about the plight of male victims of female violence.

While it is true that human rights violations are committed against men as well as women, their impact clearly differs depending on the sex of the victim. This means that such violence is directly related to the unequal distribution of power and to the asymmetrical relationships that exist between men and women in our society, which perpetuate the devaluation of women and their subordination to men. Gender-based violence can take many forms and, depending on the type of relationship that is its context and the type of power being exerted, this crime may therefore fall into any of the following categories: rape and incest, sexual harassment at work or at school, sexual violence against men detainees or prisoners, acts of violence against displaced men, trafficking in men and domestic violence. In recent years it has led to the establishment of new institutions and the adoption of legislative amendments that have served as a focal point for collective action by countries around the world. The lack of the necessary statistical data to provide an accurate picture of this phenomenon constitutes an obstacle to a fuller understanding of the issues associated with gender-based violence.

8.1. Why the law has failed to eradicate GBVAM

In as far as conscious raising is concerned as a proposed strategy in the fight against GBVAM, Allot⁴⁹⁹ acknowledged that the probability of the message successfully getting through and being acted upon is increased if the signal is reinforced. The essential elements of implanting legal information in the context of on-going programs hinges on the expectation that the intermediary will be able to disseminate the information in the course of their work. Where intermediaries are used as law transmitters, inertia on their part can be a potential factor in rendering a law ineffective. Education and persuasion are important in bringing about change and therefore, for best results communication approaches are unlikely to succeed in getting people to internalize new laws and

⁴⁹⁹ (1980:38)

change their behaviors where that is the underlying intention behind the message being disseminated.

Identifying the precise relationship between criminal prohibitions and social norms is a complicated if not impossible task. Some believe that criminal laws do and should merely reflect prevailing norms. Others adhere to law reforms as potential to change culture by eliminating or modifying existing laws, like those that reflect unfair hierarchies, or enacting new laws to transform values through negative incentives. The idea is that if many people refrain from engaging in certain conduct because they fear police power, overtime that conduct will become taboo and refraining from doing it will be part of society's culture. In addition, criminal Law has the expressive potential to shape social views by positively declaring a practice unacceptable. The effectiveness of the law at shaping norms, however, may depend upon how much the particular law deviates from current social practice. The use of police power to force people to abandon accepted norms may be seen as illegitimate and thus produce backlash. Such laws may also be subject to non- enforcement.

Theorists Dan Kahan suggests that, given the reality of 'sticky norms,' criminal law should 'gently nudge' rather than 'shove through' new norms. Thus criminal prohibitions should be only slightly more progressive than prevailing norms, such that police power will tip the cultural scale. According to this view, radical reforms too far from the status quo are doomed to fail and may even strengthen the disfavoured norms. On the other hand, reforms that are too modest or conform too closely to the status quo may end up reinforcing rather than changing the dominant culture.⁵⁰⁰

Applying the law against husbands/lovers who batter has failed to change the situation because criminal enforcement in these areas punishes men for expressing images of male masculinity for which men are socialized and acknowledged. The challenge for feminism is how to stop the cycle of violence.⁵⁰¹ Tsanga,⁵⁰² observes that; in examining the potential of law reform in contributing to changes in women's lives on the continent, an entry point is the acknowledgement that different bodies of law underlie Africa's legal development. These include received western laws, customary laws and religious laws. From a law reform perspective, the existence of these multiple

⁵⁰⁰ (Gruber, 2009:626-628)

⁵⁰¹ (Bbuku-Chuulu et al, 2001:45)

⁵⁰² (2011b:202)

sources of law essentially means that the reformer is not starting from a clean slate. From the outset, this legal landscape may pose difficulties for law reform in terms of the likelihood of resistance such as when legislative reforms grounded in received laws encounter competing legal norms embedded in any society. Given that customary law is most preserved in many countries in matters of personal law, substantive equality for women may be slow in coming due to cultural resistance and protectionism. This may be especially so where reformed laws have not effectively tapped into existing legal forms that people are already familiar with but have sought to replace them. Faundez⁵⁰³ has opined that other key issues also arise when it comes to law reform, for example: the question of priorities, who is behind the reform, the speed with which the reform is undertaken, or whether the reform is preceded by a careful needs assessment.

The law on gender based violence in its' current form is more than sufficient to curb the vice as it is too punitive in form and substance ranging from 15 years to 35 years or more with hard labour. Some of the perpetrators' sampled serving custodial sentences are too advanced in age and assuming they are not pardoned by the President, they will never ever be rejoined with their friends and beloved ones, but to die whilst in incarceration. Having said that, gender based violence cases continue to be on the upsurge. This is a clear manifestation of the fact that the law in as much as it is punitive enough to deter would be offenders, not much has so far been achieved to acceptable levels, in terms of reduction, going by available statistics. The reason being that the law is not an end in curbing gender based violence cases in Zambia, but needs to be complimented by social and religious factors. In which case the church and traditional leaders have a leading role in educating congregants and subjects respectively on the need to live on a mutual understanding that human beings irrespective of their sex, are there to complement one another and gone are the days when women were considered inferior to men. That being the case, it is unclear to what extent the law needs to be reformed in order to reduce GBVAM in whatever form to acceptable levels.

Konayuma⁵⁰⁴ observes that long custodial sentences in gender based violence offences has seemingly been frowned upon by offenders as the number of offenders keeps on growing every day, meaning that lives of partners remain at risk. Given the prevailing situation in Zambia, the only alternative is to stiffen punishment further so that those who entertain the idea of committing

⁵⁰³ (2000:30-48)

⁵⁰⁴ (2015:10)

the offence may quit when they see how others will suffer when they are punished. It is too harsh a punishment, but desperate times should call for desperate measures, and castration for example for sexual violence is one such measure, as offenders will remain maimed for life, and this will always be a stark reminder of the harm they inflicted on their partners.

In disagreement with Konyauma,⁵⁰⁵ castration of perpetrators of sexual violence may not be a good solution in curbing GBVAM in the form of sexual violence, bearing in mind that although their conduct is unacceptable, it would be quiet inhuman to castrate them, in any case at what stage should the offender be castrated, as the offender is entitled to appeal against both conviction and sentence way up the Supreme Court from the subordinate court? However, it appears Konyauma⁵⁰⁶ is merely suggesting that the law through long term custodial sentences has failed to curb GBVAM in the form of sexual violence to the satisfaction of the general public, taking into account the fact that sexual and physical violence cases against men are ever on the increase, whereby calling for stringent measures to curb GBVAM in terms of castrating perpetrators.

Invariably, the law seemingly is influenced in its' application on both men and women by expected gendered roles of either sex. As by way of example, in the *Zambian PC*, the requirements of rape mainly point to rape committed by males against females and not vice versa. The law has somehow turned a blind eye to the fact that men also can be victims of sexual violence perpetrated by women. These are the ideal law reforms that society should advocate for as means of reducing sexual violence against men irrespective of who is involved as a perpetrator.

Prison sentences to a large extent in Zambia, do not reform inmates but somehow turn them into hardcore criminals irrespective of the nature of crime they committed. In the case of gender based violence offenders, research has proved that not much is achieved through a custodial sentence. That goes therefore to show that GBVAM is more of a social than a legal problem.

Furthermore, in as much as Zambia is a signatory to a number of international human rights instruments like CEDAW, the State does to some extent violate rights defined in such international human rights instruments meant to protect both women and men, as the same to a large extent are not domesticated. Therefore, failure to domesticate a good number of international human rights, is one such example, on the other hand, in as much as some of the international instruments may

⁵⁰⁵ (2015)

⁵⁰⁶ Ibid

be domesticated, there is no proper enforcement mechanism in place such as is the case with the Anti-Gender Based Violence Act of 2011.

From the researchers' standpoint; GBVAM is ever on the increase as feminist theories and the law over the years have failed to mitigate how best GBVAM in whatever form could be eradicated, apart from focusing on gender imbalances in patriarchal societies as a basis of GBVAM. Liberal feminism is rooted in the belief that women, as well as men are rights bearing autonomous human beings. Rationality, individual choice, equal rights and equal opportunity are central concepts for liberal political theory. Liberal feminism building on these concepts argues that women are just as rational as men and that women should have equal opportunity with men to exercise their rights to make rational-self-interested choices (Freeman, 2008:1312). In as much as there has been so much public outcry by women movements' world over championing for women's rights. In Zambia, as women are being liberated and the issue of their abuse is resolved; this has been met with an unfortunate commission offences by women against their partners with impunity. The cases continue to escalate an indication that stiff punitive criminal sanctions and international human rights instruments have failed to address gender based violence.

The predatory-masculine theory is premised on the assumption that although imprisonment is an important preventive measure of GBVAM, it does not alter patterns of behavior as many perpetrators do not think of consequences when they are offending, resulting into GBVAM cases escalating, ultimately defeating the essence of punitive measures in place sanctioned by criminal law to deter would be offenders.

It has been observed from the findings made that a number of physical violence cases end up being murder cases. This spousal homicide can be attributed to several reasons why women could have chosen such violent means of dealing with issues. This could be due to poor negotiating skills on the part of women. Naturally women are emotional, they may sometimes be unable to contain their emotions they may end up doing some things which they may regret later on.

Legal theories have attempted through stiff punitive measures to eradicate GBVAM, but in vain, as annual GBVAM statistics in the form of physical and sexual violence are ever on the increase, with low successfully prosecuted cases. The underlying factor under the 'theory' is that GBVAM can be eradicated to acceptable levels, not necessarily through stiff punitive measures, currently

in place, which have failed to curb the vice but to a large extent through a process of ‘changing’ the mind-set of both girls (who may be potential future perpetrators GBVAM) and also grown up women through reformed initiations into adulthood by educating the girls being transformed into adulthood that some traditional and cultural practices such as early marriages may bring them into direct conflict with the law.

8.2. Distribution of reported cases in Zambia by province in the 3rd quarter 2019 as compared to 3rd quarter 2018

2019		2018		
Province	Reported	Arrests	Reported	Arrests
Lusaka	1,994	995	3,038	1,301
Copper belt	2,113	948	2,637	1,245
Eastern	1,582	888	922	581
Southern	1,578	694	1,422	653
N/Western	1,068	463	1,348	529
Central	989	687	1,254	692
Luapula	925	445	1,014	482
Western	565	374	508	342
Northern	540	328	382	211
Muchinga	441	337	476	314
Total	11,795	6,159	13,001	6,350

Source: Zambia Police

The above crime statistics encompass crimes committed both by men and women. From the total number of offences committed, there is an increase in arrests, and this entails that even crimes that women commit have been captured. There is equally an increase in the arrest of women who have committed the crime of physical violence against their spouses which in certain cases has culminated in the death of their spouses.

8.3. Conclusions from findings

Major Causes of the Ineffective Enforcement of the Anti-Gender Based violence Act of 2011 and Related Laws:

As already discussed in sufficient detail in Chapter Four the major causes are:

- Male Dominance in Heterosexual Relations
- Withdrawal and Failure to prosecute some cases leads to Ineffective enforcement of the Anti-Gender Based Violence Act and related Laws
- Patriarchy results in the ineffective enforcement of the Anti-Gender Based Violence Act and related laws
- Legal challenges

8.4. Suggested Future Studies

This thesis calls for and indeed opens up doors for future research on GBVAM in Zambia, as evident from the available literature that very few writers have directed their minds to writing on it as it is still a new occurrence. The researcher was of the view that future studies should contribute to scholarship on GBVAM in Zambia by embarking on the following equally important topics:

1) It is suggested that future research investigates whether GBVAM is imminent among males married to women who are career women. Such investigation should further elaborate if women who are financially stable but not necessarily career women are prone to commit gender based violence against their partners, if so to what extent?

2) The researcher also calls for further investigation of the relationship between poverty and GBVAM beyond what was established in this study. Such a study in addition to what has already been covered in this study, should investigate the extent of poverty invariably making men susceptible to GBVAM resulting into physical violence and also analyse other forms of violence men endure due to poverty.

3) In as much as the Law prohibits any married person from having an extra-marital affair, it has been observed in this study that the rate of married women having extra marital affairs

is on the increase as opposed to a few years ago. Hence, the researcher calls for a further investigation on what propels married women into indulging in such illicit affairs when the law clearly stipulates the obligations they owe to their husbands under civil law. Perhaps such an investigation may bring out the reason responsible for this and probably suggest how the law can be used to ameliorate it, as is very evident that emotional violence is on the most common forms of GBVAM being suffered by men, though not reported.

4) This study indicated that though GBVAM cases in the form of sexual GBV attracts long custodial sentences, the law has failed to address the ever increasing cases of GBVAM, therefore it is imperative that another study should take up this issue in order to establish the extent to which the law has failed to curb GBVAM, not covered in this study.

5) Lastly by no means the least, it will help theory and practice in Zambia to fully investigate why men as victims of physical violence may not report their abusive partners; if they do report abusive partners to the CJS, they subsequently withdraw the complaint against the perpetrator. Although the study postulated why some victims often withdrew complaints against abusive partners at the police station and in the court room, an empirical study entirely devoted to this topic will be quite essential, taking into account the fact that cases of GBVAM, in the form of physical violence are ever on the increase in Zambia, with less successfully prosecuted cases.

8.5. Recommendations

Gender Based Violence is a critical matter that borders on the safety and wellbeing of people. The following therefore, are the recommendations:

The Government Must reform the Law on Gender-Based Violence

Reforms to the Anti-gender Based Violence Act of 2011: The implementation of the Anti GBV Act be amplified by government and other stakeholders so that the provisions contained therein can benefit the people of Zambia. The established Anti GBV Committee assumes its responsibility of effectively coordinating a national response to GBV. Adequate resources be allocated for the establishment of the Anti GBV fund and efficient operation of law enforcement agencies to enable them effectively respond to GBV cases as stipulated in the Anti GBV Act.

The Anti-Gender Based Violence Act and its simplified version be translated into local languages and be disseminated to the general public country wide through intensified awareness and sensitization programmes.

Large-scale public awareness and sensitisation of the full scope of the Act; a more effective coordination of stakeholders to deliver comprehensive, integrated, survivor-centered services and strengthened actors at every level. Men, especially those in leadership and high profile positions should speak out and strongly condemn vices of gender based violence and also demonstrate this by visibly serving as role models and ambassadors within their communities on GBV issues. Anti-Gender Based Violence Campaigns should not be seen as a confrontational, but rather a collaboration of efforts by all members of society. Use of the power of the media to convey these important messages; such as stopping child marriages, assault, battery, rape, defilement of child, incest; making the public aware about the consequences of violence against men including use of social media such as face book and twitter. The civil society organizations, police and other government ministries and departments should do more sensitization work. The Police should be proactive to prevent GBV than reactive.

Further, the law to prohibit withdrawals and granting of bond/bail in GBVAM cases. It is recommended that amendments be made to the Penal Code (PC), Chapter 87 of the Laws of Zambia and to the Criminal Procedure Code (CPC), Chapter 88 of the Laws of Zambia prohibiting the withdrawal of GBVAM cases in the form of physical and sexual violence at the police station and indeed in the court room. Furthermore, the amendment should include non-granting of bond and bail at the police station or in the court room, respectively, to an accused person facing a charge of GBVAM in the form of physical or sexual violence, in a bid to send a message to would be offenders that GBVAM is a serious matter that one should avoid by all means.

From the findings, there are a lot of physical violence cases in the form of Assault O.A.B.H being committed by women against their partners with impunity knowing too well that the victim will not endeavour to report them to the police and when reported, victims to a large extent end up withdrawing criminal complaints in the form of physical violence at the police station or in the event that the perpetrator is charged to court, the victim withdraws in the court room, whereby sending back the perpetrator into society to commit more GBVAM cases against the same victim. This in the long run renders the law less effective in protecting men from GBVAM perpetrated by

women. Once amendments to the PC and CPC have been made, there should be a lot of sensitization programs both in the print and electronic media in local languages highlighting the fact that once a GBVAM case is reported to the CJS, the matter can never ever be withdrawn, as the State is obliged to protect men from GBV. To render the amendment to the PC and CPC more effective, stakeholders in the fight against GBV should have *locus standi* (sufficient interest) in GBVAM cases, whereby if they identify a victim undergoing GBV, in as much as the victim does not report to the CJS, as the perpetrator may be the victim's breadwinner or indeed for some other reasons such as poverty on the part of the victim, obviously fearing that if the perpetrator is incarcerated, then the victim will have to endure abject poverty.

With the above measures in place, GBVAM cases especially those in the form of physical violence will reduce drastically as perpetrators will be fully made aware of the fact that if they are reported to the CJS by the victim, no amount of influence from family members on the victim will suffice to have the matter withdrawn either at the police station or in the court room, whereby perpetrators will ultimately avoid committing GBVAM cases knowing very well that once the matter enters police records, the case cannot be withdrawn unless the police upon investigations establishes that it is a frivolous allegation against a perpetrator.

The rules and practices of evidence in Zambia can be reformed to protect victims of GBV and defilement in the following manner. The prosecution still has the biggest role to decide to continue the case even in the absence of the victim. They can also decide to drop the case. What is important here is that the victim does not dictate the trajectory of the case once the matter has been reported to the police as is generally the case in Zambia. In Canada, the following evidence can be used by the prosecution even if the victim recants or refuses to testify under the threat of "public mischief" or "perjury": (1) the initial 911 call by the victim or anybody else. These emergency calls are automatically recorded at the dispatch station and a transcript of this call is always available as well as the actual audio/voice recording. Usually the voice tells the state of the victim's distress. The voice can easily be identified as that of the victim and you can tell he/she is not faking it. She has just been assaulted by the husband. Occasionally he has been assaulted by the wife. The police would also have investigated the case and could give evidence of their investigation by reading their notebooks as part of the narration of what they did and not to the truth of the contents of the notes. Many victims have previously reported GBV only to recant or refuse to testify and ending

up either being killed or living under inhuman life conditions for the rest of their lives, which conditions also affect the children. To deal with the larger problem of GBV, Canada decided to act drastically over the decades to come up with reforms in rules of evidence and practice, partly identified above. The reforms did not come by themselves. They were brought about starting in the 1980s by victim support movements, feminist movements and advocates and activists, by the infusion of female lawyers and judges from lower courts right up to the Supreme Court of Canada and by academic writers and publicists. I remember doing a course entitled "Constitutional Litigation" taught by the world's leading feminist named Catherine McKinnon where the entire course dealt with drafting constitutional litigation motions on numerous topics to be presented to the legislators. There was also a group called "Legal Education and Action Fund" (LEAF) whose function was to litigate systemic issues affecting women. This group fundamentally altered the Law of Evidence in Canada and has impacted on women's equality rights in Canada. Perhaps Zambia can also take a similar approach in a bid to eradicate GBVAM.

The Government Must Empower Traditional Leaders

Empowering traditional leaders to curb GBVAM cases in respective chiefdoms. GBVAM in Zambia is a major problem and not easy to resolve, whereby chiefs have been identified as an important resource that can contribute to resolving the vice through provisions of leadership, taking into account the fact that their Royal Highnesses are custodians of culture, customs and traditions, in this case best advocates for the eradication of GBVAM in their respective chiefdoms, by championing the fight against GBVAM in Zambia as is the case with Chief Chikanta of Kalomo district and indeed many other chiefs elsewhere in the country. It is assumed that with the respect which traditional leaders enjoy from their subjects compared to the political leadership, most perpetrators would be uncomfortable to be summoned from time to time by a traditional ruler to answer charges of physical violence against their partners, as being summoned at a police station is considered a routine normal thing.

Therefore, an individual due to the respect accorded to traditional rulers by subjects would ultimately avoid engaging in physical violence against a spouse, rather than risk being summoned and reprimanded by a chief. With the divine respect enjoyed by chiefs in their chiefdoms, through traditional courts adjudicated by chiefs, they can impose fines, naming and shaming of perpetrators. It is therefore recommended that traditional rulers who by the context of this study

are stakeholders in the fight against GBVAM, be brought on board by the government in curbing GBVAM. Bearing in mind the dualistic nature of the Zambian legal system, the study clearly shows that quite a number of cultural practices have greatly contributed to the scourge of GBV; in the same way since culture is greatly respected by both educated and uneducated, it must be used to curb the vice of GBV by doing away with bad cultural practices sponsoring GBVAM. Further, the House of Chiefs should present quarterly reports to government on the number of GBVAM cases dealt with by chiefs in respective chiefdoms and government should evaluate if the involvement of chiefs in the fight against GBV is yielding positive results and if so to what extent? Also culture to be used to overcome the notion that a man cannot be abused by a woman, this is what is killing a lot of men silently, but we cannot afford to continue losing men in such a manner.

Dissemination of GBV Information

Develop, publish and disseminate simplified versions of the Anti-GBV Act for all the relevant stakeholders, including the traditional authorities and the public. Provide clear cut dissemination plan. Further, a train of trainers' course must be conducted by experts on 'gender studies' to instructors at the three police training institutions in order to equip instructors with training skills on how the law and society affect men and police response to cases of GBVAM. With such knowledge, instructors will be in a position to adequately train recruits and in-service course participants on how to effectively deal with cases of GBVAW regardless of the relationship between the victim and the perpetrator. Inclusion of GBV against women and children in school curriculum and formal education processes must not be dispensed with to increase awareness on this subject and prevent future complications stemming from the same.

The Government Must consider Alternative Measures to Address GBVAM

GBV is not an issue which is in the exclusive domain of the law, other methods, though not legal can be incorporated to fight GBVAM as it has been seem from the reading that the law has not efficaciously stopped this vice from continuance.

Punishment is a response of the criminal law, on behalf of society, to a defendant's wrongful behaviour. It indicates, by punitive means, that the defendant has done something wrong. The punitive sanctions imposed by the court are a proof that the defendant did something prohibited

by the criminal law. In this sense, it can be said that legal punishment, in contradiction to arbitrary punishment, is one of the important functions of the criminal law. Nevertheless, debates on the issue relating to punishment and its desirability remain on the agenda of criminal law scholars and the debates are likely to continue considering that punishment as an institution of the criminal law has not succeeded in bringing about tangible results in terms of crime reduction.⁵⁰⁷ As the law has not effectively reduced GBVAM through stiff punitive measures in place, other tangible measures have to be put in place in a bid to mitigate the ever escalating number of reported and non-reported GBVAM cases in Zambia. The other critical need is to rally more stakeholders such as the Church, corporate bodies, individuals and survivors of GBV to this noble campaign.⁵⁰⁸ Protocols on mediation must be established as well insure that the police and service providers have a clear interpretation of the Anti-GBV Act, considering that mediation and other ADR is not a replacement for criminal investigation and prosecution of SGBV offences, and that cases have to be referred to the appropriate forum.

All stakeholders Must Support victims of GBVAM more

Male victims of emotional abuse should also:

- Leave the relationship, if possible
- Tell others about the abuse
- Keep evidence of abuse for possible legal actions
- Not retaliate

It can be hard to tell someone that they have been abused for several reasons. For many male survivors, stereotypes about masculinity can also make it hard to disclose to friends, family, or the community. Men and boys also may face challenges believing that it is possible for them to be victims of sexual violence, especially if it is perpetrated by a woman. Below are a few suggestions on how society can support a man or boy who discloses that he has experienced GBV.

- **Listen.** Many people in crisis feel as though no one understands them and that they are not taken seriously. Show them they matter by giving your undivided attention. It is hard

⁵⁰⁷ (Kulusika, 2006:795-796)

⁵⁰⁸ Emelda Mwitwa, Gender Focus, Zambia Daily Mail, December 27, 2018

for many survivors to disclose assault or abuse, especially if they fear not being believed because of stereotypes about masculinity.

- **Validate their feelings.** Avoid making overly positive statements like “It will get better” or trying to manage their emotions, like “Snap out of it” or “You shouldn’t feel so bad.” Make statements like “I believe you” or “That sounds like a really hard thing to go through.”
- **Express concern.** Tell them in a direct way that you care about them by saying something like “I care about you” or “I am here for you.”
- **Do not ask about details of the assault.** Even if you are curious about what happened and feel that you want to fully understand it, avoid asking for details of how the assault occurred. However, if a survivor chooses to share those details with you, try your best to listen in a supportive and non-judgmental way.
- **Provide appropriate resources.** There may be other aspects in men’s lives that could limit their ability to access resources and services after experiencing sexual assault or abuse. Be sensitive to these worries, and when supporting a survivor try your best to suggest resources you feel will be most helpful.

The Government Must Reform the Zambian Human Rights System

Gender based violence is actually a violation of human rights. Alternatively, the human rights avenue can be used as an avenue to address these issues, but only if our current system undergoes robust reforms. Enforceability of human rights is very important it is the only way through which observance of human rights can be guaranteed otherwise the issue of human rights will be a mere story. There is need for the government to entrench the ESC Rights by including them in the Bill of Rights of the Constitution. It is noted that the Draft Constitution made provisions for the ESCR under clauses 33 to 90. The provisions were progressive as they put mechanisms for checking implementation of ESCR. Clause 33(7) provided for the President to report annually to Parliament on the progress made to realise ESCR.

Unfortunately, the referendum of August 11 2016 failed, as such our Bill of Rights remains in its old form. There is need to have economic, social and cultural rights (ESC) entrenched in the Constitution. While it is appreciated that the civil and political rights are contained under the

Bill of Rights, this could only make sense if economic, social and cultural rights were also included. Absence of these rights in the Bill of Rights entails that the lack of protection of these rights by the government cannot be challenged because they are contained under the directive principles of state policy under which the government has stated that they will provide for these rights as far as resources may allow it. In short they are non-justiciable. Having them in under the Bill of Rights would compel the government to ensure that resources for such rights were provided for.

There is need therefore, for the government to hold a referendum to amend the Bill of Rights like other provisions have been amended. Justifiability of these rights is something that cannot be dispensed with. The Government should make gender rights justiciable and provide for the mechanism for quick adjudication under a separate court such the constitutional court. Yet the courts was already established but its jurisdiction is subject to article 28 of the High Court of Zambia as a result of the failed referendum. Cases of GBVAM would have been speedily dealt with if the Constitutional Court was fully operational. For example, in the South African case of **Treatment Against Action v. Ministry of Health**,⁵⁰⁹ this was an appeal directed at reversing orders made in a high court against government because of perceived shortcomings in its response to an aspect of the HIV/AIDS challenge. The court found that government had not reasonably addressed the need to reduce the risk of HIV-positive mothers transmitting the disease to their babies at birth. More specifically the finding was that government had acted unreasonably in (a) refusing to make an antiretroviral drug called nevirapine available in the public health sector where the attending doctor considered it medically indicated and (b) not setting out a timeframe for a national programme to prevent mother-to-child transmission of HIV. The declared that Sections 27(1) and (2) of the Constitution require the government to devise and implement within its available resources a comprehensive and co-ordinated programme to realise progressively the rights of pregnant women and their new-born children to have access to health services to combat mother-to-child transmission of HIV.

Horizontal application of human rights should be abolished and replaced with the vertical application under which even individuals can be held accountable for abusing the rights of

⁵⁰⁹ Case CCT 8/02

others; meaning men can take action against their abusive partners. Countries such as South Africa should be emulated by including private individuals as potential abusers of human rights. This can also help in fighting GBVAM as punishment under Criminal Law which is the main resource for perpetrators of GBVAM has not proven to be as effective as expected.

International human rights law is the body of international law designed to promote and protect human rights at the international, regional and domestic levels. As a form of international law, international human rights law is primarily made up of treaties, and customary international law. Other international human rights instruments while not legally binding contribute to the implementation, understanding and development of international human rights law.⁵¹⁰ In primitive societies, organisation was based on communalism.⁵¹¹ The emergence of states saw the organisation and distribution of power based on law. With this came the growth of “rights” and evolving notions of what they constitute, and eventually the development of “human rights” law.⁵¹² The emergence of states saw the organisation and distribution of power based on law. The State is a bearer of duties in respect of individual persons, who depend on it for the protection of their rights; and are entitled to claim against it for violations of these rights.

More funding for GBV Required

More funds are required to improve the current system of GBV cases. In terms of the laws, funds are needed to reform the laws; then there must be a clear cut difference between cases handled under GBV, those can be resolved through other methods and those need to be resolved through criminal law. The rules of the court need to be redefined; more training is needed as well infrastructure required for court rooms as well as shelters for victims. Of course not forgetting the perpetrators. All these reforms that need to make the system more efficacious to improve enforceability all require huge funding, let alone when it comes to GBVAM.

8.6. Conclusion

⁵¹⁰ Provost, René (2002). International human rights and humanitarian law. Cambridge, UK: Cambridge University Press. p. 8.

⁵¹¹ Ayittey G. Africa Betrayed (New York: Transnational Publishers Inc., 1992) 82.

⁵¹² De Souza E.F. The Portuguese Colonialism in Africa: The End of an Era: The Effects of Portuguese Colonialism on Education, Science, Culture and Information (Paris: UNESCO Press, 1974).

The Anti-GBV Act without a doubt is a positive step towards sending a signal in Zambia that any form of violence based on gender is not acceptable and constitutes a criminal offence. The Act provides an unprecedented avenue for survivors to seek recourse under the law by making provisions for holistic services. Based on the findings above, and given that the objective of the study is having a greater understanding of the level of implementation of the Anti-GBV Act, and the gaps, barriers and opportunities that exist in the districts, advocacy issues are identified that will influence the implementation of the Anti-GBV Act. This final chapter of the study provides for recommendations on focus areas for advocacy. Considering the practices and perceptions identified in the field, as well as the barriers that prevent the achievement of the full intent of the Anti-GBV Act, it is necessary to have a broad, holistic approach to push forward for actions that not only challenge the structures and set notions about GBV, but also offer solutions, resources and technical expertise to implement various aspects of the Anti-GBV Act.

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Appendices

Appendix 1

Table of Findings from 200 Respondents (members of the public)

No.	Initials	Sex	Age	Education	Causes	Knowledge of the Act	Comments
1.	S.S	M	18-29	Other	Financial reliance on men; emotional trauma.	YES	More education needed, especially that it is a crime.

2.	L.N	M	18-29	Degree	Cruel and unreasonable behaviour by men; Drug and alcohol abuse.	YES	Stiffen punishment and find better ways of resolving disputes.
3.	J.K	M	18-29	Other	Ongoing feminist movements; women's emotions trauma.	YES	Women must stop the abuse.
4.	A.B	M	18-29	Certificate	Multiple Relationships.	NO	Women are now drinking heavily. Attention must also be given to GBVAM.
5.	M.C	F	18-29	Certificate	Suspicion and jealous	NO	Encourage strong family ties.
6.	M.R	M	30-39	Degree	Misunderstanding	NO	Awareness to be increased.
7.	F.G	M	30-39	Degree	Unemployment, Alcohol abuse. Lack of proper enforcement of the law.	NO	
8.	C.K	M	18-29	Diploma	Failure to provide by men. Women taking laws into their own hands.	NO	Awareness to be increased.
9.	M	M	40-49	Diploma	Greed, laziness, infidelity. Law is biased towards women, it does not protect men.	NO	They should come up with the law to protect men.
10.	R	F	50 and Above	Certificate	Moving without a purpose.	NO	Come up with the law that protects men as well because they are the head of the house.
11.	D	M	50 and Above	Diploma	Greed, Laziness, Cheating, Alcohol Abuse.	NO	A law to protect men is needed.
12.	A	F	18-29	Diploma	Men do not want to give wives money.	NO	A law to protect men must be enacted.

					There is no law that protects men.		
13.	K.C	M	30-39	Certificate	Women becoming breadwinners. Men are shy to come out as victims of GBV.	YES	They should start reporting these cases. Sensitization through TVs, Radios, Workshops, Schools, Talks.
14.	T.D	F	18-29	Degree	Pre-conceived ideas that men are stronger than women. Forced or early marriages. Adultery, Insecurity.	NO	Perpetrators must be counselled, physical examination of the mental stability of perpetrators.
15.	B.M	M	18-29	Degree	Social and Cultural Structures. Power imbalances. People told to resolve these issues as a family.	NO	Both men and women be involved. More awareness needed.
16.	W.K	F	18-29	Degree	Mistrust/Forced or Early Marriages.	NO	Stiffen punishment; Counselling; taking perpetrators to rehabilitation centers.
17.	R.M	F	18-29	Other	Poverty, Prostitution, Discrimination, Financial Problems. Poor enforcement, women feel they can mistreat men because the law protects.	NO	Men should also be protected. GBVAM must be brought out in the open.
18.	P.K.M	M	18-29	Degree	Patriarchy; Cheating of men is acceptable and not of women.	NO	More research on GVV against men; Improve communication or

							Divorce here necessary.
19.	C.M	50 and Above	M	Masters' and Above	Pervasive Cultural Stereotypes and Beliefs; Empowerment of women and disrespect of women of manhood.	YES	Reconciliation and Rehabilitation.
20.	K.C	30-39	M	Certificate	Empowerment of Women.	NO	More efforts form law enforcers.
21.	S.Z	30-39	M	Degree	It's a silent crisis. Men have been neglected in the name of empowering women.	NO	Same sensitization as that of GBVAW.
22.	A.S	40-49	F	Degree	Men disrespect women. Women are more independent now.	NO	Counselling should be advised.
23.	H.M	18-29	F	Degree	Infidelity; Women are losing respect for husbands.	NO	Same attention to be given to men as women.
24.	I.M	18-29	F	Degree	Infidelity, disagreement, poverty, lack of trust, lack of dispute resolution.	YES	Dialogue must be encouraged.
25.	A.B	18-29	M	Degree	Men are stronger than women,	YES	Police to be educated on proper law enforcement.
26.	B.M	18-29	M	Degree	High expectation of a man to provide for the family, growth of feminism, women ought not to submit to men.	NO	Women to be punished just like men.

27.	G.S	30-39	M	Certificate	Lack of proper law enforcement and awareness of the laws, alcohol abuse by men and household irresponsibility by men.	YES	Criminal procedure to be adhered and counselling must be encouraged.
28.	T.Z	30-39	M	Masters and Above	Promiscuity among men, failure to provide and drunkenness. Feminism, Communication breakdown. Lack of trust. They think it's a solution to marital disputes.	YES	Communication to be encouraged, Reconciliation and imprisonment if necessary. Robust awareness be made.
29.	MZ	40-49	F	Degree	Unemployment	NO	Men's rights to be treated the same as women's rights.
30.	M.K	30-39	F	Masters' and Above	Because men don't speak out as they are ashamed.	YES	Men's rights to be advocated for.
31.	M.B	50 and Above	F	Masters' and Above	Alcohol abuse Men not supporting their families Cheating by men	YES	Perpetrators must be prosecuted/counselled.
32.	C.U	40-49	M	Certificate	Women earning more than a man Law enforcers don't treat these cases with the seriousness they deserve.	NO	If people fail to resolve their issues, they may opt for divorce.
33.	S.G	30-39	F	Certificate	Joblessness of a man	NO	Women to be taught how to treat

					-When a man is not educated -When a woman is providing in a home. -Women have become drunkards.		men and look after their marriages and homes -Men to be protected as much as women are protected.
34.	R.M, PM,M M,SM,L B,LL,M B,MB,L M.,OP, PP,KU, LLM,TS ,ME 10	18-29	M	Other	-Lack of proper conflict resolution -Poor communication -Infidelity in marriages and relationships.	YES	Punishment to be stiffened.
35.	C.H,	30-39	M	Masters and Above	-Poverty -Unfaithfulness -Unemployment -Shrinking economy -Lack of sensitization -Women empowerment	NO	-Punishment to be increased to 15 years imprisonment. -They should divorce if they fail to resolve issues.
36.	RNM,N H, KG,MS, MB 5	18-29	F	Certificate	Laziness, Unemployment, Drunkardness, Illiteracy, Low paying jobs, Prostitution	NO	Punished
37.	BB	18-29	F	Certificate	Unemployment	NO	Men should respect GBV Cases
38.	MEM	18-29	M	Certificate	Patriarchy	NO	GBVAM and GBVAW should be treated the same
39.	MC,MC ,KB,KP, SP,PP 5	18-29	M	Certificate	Masculinity	NO	Both males and females should be treated alike
40.	DC,CC, MK,M M,KK,F	30-39	M	Other	Men's dependence on women	NO	Retributive justice

	M,GB, HU,NB, DT,KC 10						
41.	ND DS,JT,R T,AK,JC ,HK,CH, PL,MS 10	40-49	M	Certificate	Unbelief that a man can be a victim; Under-reporting	NO	The law to provide adequately for GBVAM as it does for GBVAM
42.	RM	50 and Above	M	Degree	Undefined relationships, trust issues	NO	The same punishment for GBVAW
43.	RN, PL,HK,K H,BM,J M,CC,S P,MK,P P 30	50 and Above	M	Masters	Marital disputes	YES	Educate the public and amend the law and rules of the courts
44.	RK, ,MB,CK ,MM,M N,ML,N M 10	40-49	F	Other	Unfaithfulness	YES	More sensitization needed
45.	MR, FK,JC,O P,AC,M K,VC,R M,GM, SN 10	30-39	M	Other	Lack of reporting; wives love money; wives have a lot of beef; the issue of besties	NO its too bulky	Perpetrators to be sentenced to life imprisonment
46.	TM, AA,AS, BC,TN. RT.MM .NS.N M,WR 20	40-49	M	Certificate	Lack of money, lack of work, lack of sex	NO	Educate men to speak out
47.	M.M.C B.BB, IK,LM,J T,MM, ZK (7)	18-29	M	Degree	I don't have enough knowledge on the matter; GBVAM is not	NO	Not sure

					taken seriously as GBVAW		
48.	MK,DC, JK,MU, JC.LM (5)	18-29	F	Certificate	Unemployment, laziness, cheating	NO	They should be disciplined
49.	VM,VN ,CS,LN, OS 10	30-39	F	Degree	I don't know	NO	I don't know
50.	MM,ZB ,MA.P O,OR,D M,BM, GF 30	40-49	F	Degree	Cheating, quarrels, differences in relationships, masculinity	YES	Stiffen punishment, allow couples to reconcile and educate the public.
							Total: 200

Appendix 2

List of Perpetrators Interviewed

Findings

-Male dominance of heterosexual relationships

-women empowerment (feminism)

-Masculinisation

Age	Location	Identity	Sex	Province	Number
18-55	Mukobeko Medium	Withheld	Females	Central	10
18-83	Mukobeko Maximum	Withheld	Females	Central	10
18-60	Lusaka Central Prison	Withheld	Females	Lusaka	15
					Total: 35

Appendix 3

List of Stakeholders Interviewed

Findings

Marriage Counsellors

-Women becoming breadwinners

-Financial Issues

-Jealousy

-Polygamy

-Lust

The Clergy

-Emotional control problems

-Financial challenges

NGOs

-Breakdown of family values

-Inadequacy of the law

-Withdrawal of GBV cases

-Lack of reporting of GBV cases

-Lack of knowledge of the Act

-Legal challenges

-Lack of infrastructure

-Weak enforcement mechanisms

-Lack of skill by officers

Institution	Initial	Profession	Location	Sex	Province	No
NLACW	M.S.S; K.N, J.	Lawyers	Lusaka	F and M	Lusaka	3
WLSA	R.B	Lawyer	Lusaka	F	Lusaka	1
ZLDC	L.M	Lawyer	Kabwe	M	Central Province	1
Judiciary	M.Z., M.B + OTHERS	Magistrates	Solwezi	F & M	North-Western	15
Judiciary	P.M, L.T + OTHERS	Judges	Lusaka	M	Lusaka	15
Judiciary	M.M	Magistrate	Lusaka	F	Lusaka	1
Ministry of Justice	D.M, S.M, F.C,ZB.PM.AC	Office bearers	Lusaka	M	Lusaka	5
Home Affairs	H.C,AD,JT,RT,MN	National Prosecution Authority	Solwezi	F	North-Western	5
Home Affairs	J.Z,RE,TL,BB,SP	National prosecution Authority	Kabwe, Lusaka, Solwezi	M	Central Province	5
Zambia Correctional Service	FM,TM,LB,EF,BF	Officers	Lusaka, Kabwe	M & F	Lusaka and Central Province	5

Church	M.M, H.K	Pastors from SDA and UCZ Churches	Lusaka	M	Lusaka	2
Church	F.M	Wells of Life	Solwezi	F	North-Western	1
Church	R.M	Miracle Life Church	Lusaka	M	Lusaka	1
Church	Members	Shalom Embassy	Kabwe	F	Central Province	30
Alangizi	M.M, M.K,DV,SB,VM,C H,LH,MI,TO,MK	Traditional counsellors	Lusaka	F	Lusaka	10
Nkongu	F.M, M.H	Traditional Counsellors	Solwezi	F	North-Western	5
Shibukombe	M.H	Traditional Counsellor	Lusaka	M	Lusaka	5
YWCA	T.K, J.S	Marriage Counsellors	Lusaka	F	Lusaka	3
Church	F.M, M.K + OTHERS	Marriage Consellers	Solwezi	M	North-Western	10
Youth Group	SEVERAL	Peer Counsellor	Kabwe	F	Central Province	30
Lawyers	LT,NK,MP, TM,CM,RN,AND OTHERS	Lawyers drawn from private practice, in-house counsel and	Lusaka Kabwe. Solwezi and Kabwe	Male and Female		30

		academia ns				
Local Court Magistrates	SEVERAL		Lusaka, Solwezi, Kabwe	Male 15 Female 5		30
Judges	SEVERAL		Lusaka, Kabwe	Male and Female		10
					Total	212

Appendix 4
ASF Survey

FGDs Number of Participants		In-depth interview of GBV survivors		KIIs Number of Participants		Study site
Male	Female	Male	Female	Male	Female	
11	13		5	5	1	Kasempa
10	13			5	4	Solwezi
				4	9	Lusaka (CSOs and institutions)
21	26		5	14	14	Total 80

1	Customary systems is the first entry point and the most preferred The most favoured entry point to seek recourse and remedy for GBV offences continues to be the customary justice forum. This is because people understand and know that the results are quick, there is a greater likelihood of getting some compensation either in cash or livestock for the personal injury and mental anguish and finally, it is cheaper.
2.	It is widely understood that the reality of GBV is that it is the cause and consequence of gender power imbalance and structural inequality. This makes it difficult for women, men and children to report and pursue prosecution of GBV related offences and fully benefit from the protection provided there under.

3.	Decision-making rests with the man, family and the community. Women typically have little decision-making power over their lives and have little or no control over choices that impact their lives. Almost all women participants in the FGDs mentioned that the decision-making on the number of children solely rests with the man.
4.	Perceptions of gender-based violence: There were differing views on what constituted GBV. When pointed to the fact that the Anti-GBV Act is clear that a single act of violence or abuse constitutes an offence, participants in the FGD with men in Kasempa disagreed saying the “degree” of violence should be key in considering whether or not the offence is GBV. They considered ordinary slapping, hitting and pinching should not be classified as GBV.
5.	Generating meaningful dialogue around the Anti-GBV Act: Almost all respondents interviewed and participants of FGDs identified that there needs to be more efforts in reaching out to the community and opening entry points for sensitisation through dialogue on GBV issues and the Anti-GBV Act.
6.	Preference to counselling and mediation intervention: In cases of domestic violence, women prefer counselling and mediation of what they consider a marital dispute even if there is violence. Their primary interests are to reform their husband, to make the violence stop and to live in peace and dignity as a family unit.
7.	Court processes: There is low public confidence to pursue cases of GBV in the courts. The long drawn and expensive court processes frustrate survivors. Access to courts for the survivors and witnesses who live in remote areas is problematic. In Kasempa Magistrate’s Court, on average, it takes about six months to adjudicate GBV cases. It could take longer if there are delays in serving summons, securing witness testimonies and evidence.
8.	Collection of evidence: Standards in methodical collection of evidence is key to successful investigation and trial of GBV related offences. It is one of the important duties of the law enforcement, the judiciary, health care providers and other service providers. Some of the lapses that were identified to collecting evidence are delays in collecting physical evidence, safeguarding evidence, poor evidence preservation, inability to follow guidelines and protocols when handling evidence, poor lab infrastructure and lack of services offering specialised expertise in collection of evidence which is not just forensic or physical evidence.

Appendix 5

GBV Study

Wives	65
Husbands	25
	Total: 100

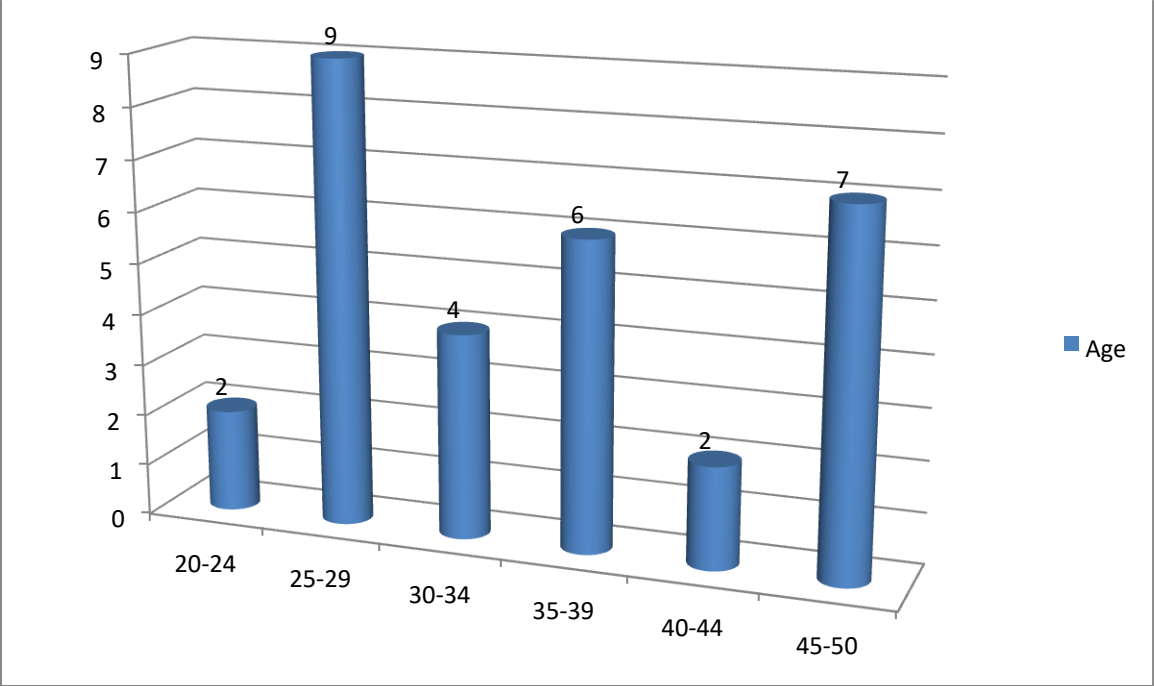
Summary of Findings

Causes of GBVAM	Forms of GBVAM	Factors contributing to GBVAM
The study revealed that women violence towards men was caused by: poor	Physical, verbal, sexual and psychological.	hunger, war and conflicts, socialization, gender roles defined by social norms, men’s masculinity and attitudes, tradition and cultural practices,

<p>financial support, infidelity, beer drinking, non-involvement in household chores, suspicions and jealousy, husband late coming and dependence of husbands on their wives (lacking source of income).</p>	<p>These were mainly caused by infidelity on the part of men, suspected male impotence, children from other marriages, violence as retaliation and alcohol abuse.</p>	<p>intimate relation (sexuality issues), economic dependence, traditional norms, religions and customary attitudes, abuse of alcohol and drugs, etc.</p>
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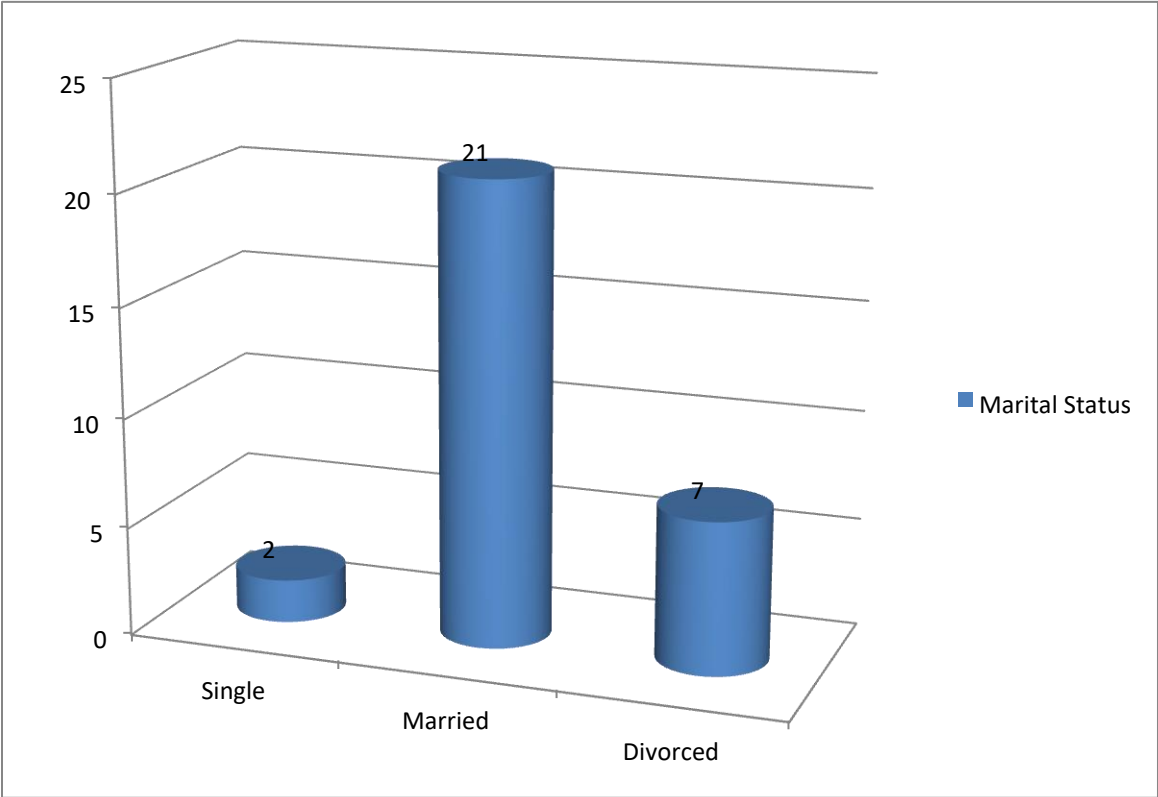
Appendix 6

Number of Participants According to their Ages



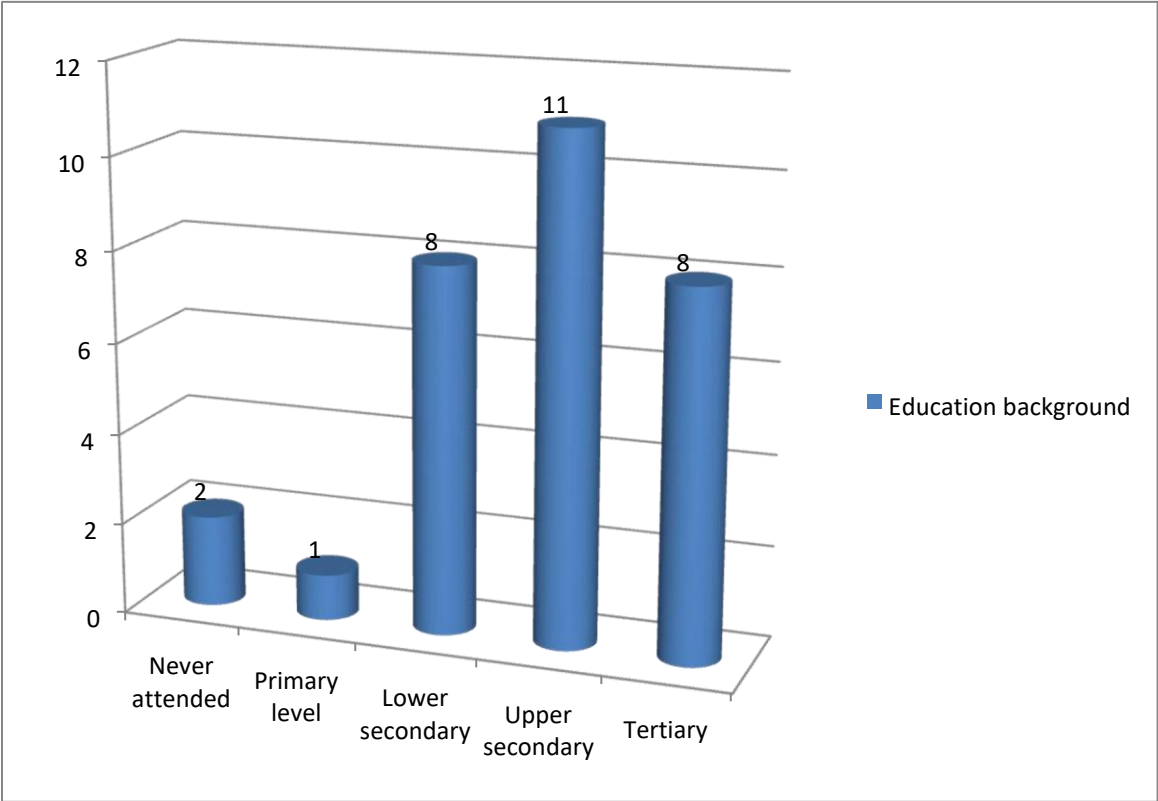
Source: Field data

Figure 4.2: Marital Status of Male Respondents



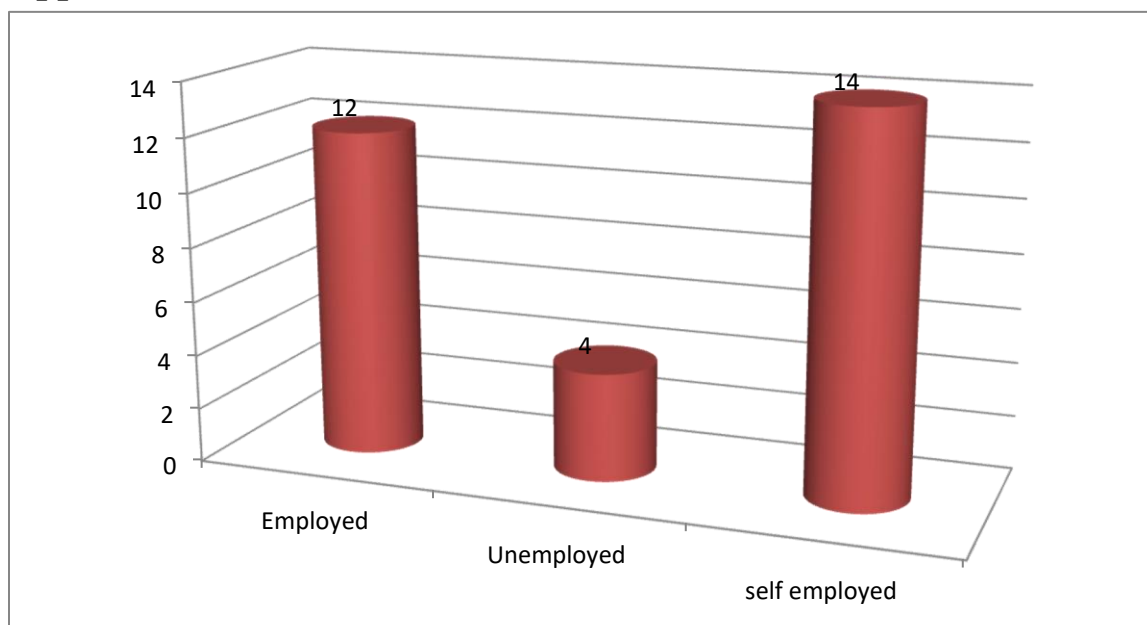
Source: Field data

Appendix 7: Education Level of the Participants



Source: Field data

Appendix 8: Occupational Status of Participants



Source: Field data

Forms of Female Domestic Violence	Place of Abuse	Location	Causes of GBVAM	Effects of GBVAM
Physical Assault against Men	Homes	Chongwe, Lusaka	Perceived Infidelity	Physical injury
Verbal Abuse against Men	Homes	Chilanga, Lusaka	Infertility or Lack of Children in Marriage	Lack of economic power
Psychological Abuse against Men	Home	Lusaka	Failure to Provide for the Family; Alcohol Abuse	Depressions, isolation, despair
Sexual Violence against Men	Home	Lusaka	Children from Other Marriages; Low levels of reporting	Low-self esteem
		Lusaka	Violence as a way of Retaliation to Male-dominance	HIV/AIDS
				Total: 34

Appendix 9

S/N	Respondent (s)	Sex	Method	Location
1.	11 prisoners	F	In- depth interviews	Kabwe & Lusaka Female prisons.
2.	6-police officers	M	In-depth interviews/Focus group discussion.	Zambia Police College and selected police stations in Lusaka urban.
3.	4- magistrates	F	In- depth interview	In chambers at the Magistrates Court complex, Lusaka
4.	1- law lecturer	M	In- depth interview	Cavendish University, Lusaka
5.	2- lawyers	M & F	In- depth interview	In chambers
6.	3- pastors	M	In- depth interviews	In their respective churches
7.	Senior Research officer	F	In- depth interview	In her office, Zambia Law Development Commission.
8.	4-women cultural gatekeepers (<i>alagizi</i>)	F	Focus group discussion	At one of their residences.
9.	2-village headmen	M	In-depth interviews	Villages, south of Lusaka.
10.	2- teachers	F & M	In-depth interviews	Lilayi Basic School
11.	Judge (retired)	M	In- depth interview.	Zambian Open University.
12.	YWCA Executive Director.	F	In- depth interview.	YWCA Head Office.
13.	A psychologist	M	In- depth interview	University of Zambia (UNZA).
TOTAL		Thirty nine (39) Respondents		

Summary of Findings

Causes of GBVAM	Type of GBVAM	Causes of GBVAM
Society does not expect Women to react violently in response to their abusive Partners	Physical	Cultural Practices
Men are the Instigators of intimate Partner Violence resulting in their being killed by their abused Wives	Spousal assault	Self Control problems
The 'baula' (slow anger) reaction Causes Women to kill their abusive Partners at a time when they are not provoked	Emotional	Provocation
Legal Challenges of the AGBV Act of 2011	Sexual Violence	Abusive relationships

Appendix 10

Men's Experiences of Gender Based Violence in Selected Compounds of Lusaka Urban:

December 2022 Kaliso Kalimaposo UNZA

The study sample consisted of forty-six (46) participants, thirty four (34) of whom were men from both Garden and Matero Compounds, four (4) representatives from the Zambia Police Victim Support Unit and eight (8) Church leaders. Purposive and convenient sampling techniques were used. The findings of the study revealed that among the forms of Gender Based Violence perpetrated against men were emotional abuse, sexual abuse, physical assault, financial abuse and verbal abuse. Other factors that led to Gender Based Violence against men were failure of a man to provide for family needs especially after change of economic status, alcohol abuse, retaliation to past mistreatment of wives by husbands, adultery and psychological disorders

Effects of Gender Based Violence Among Couples: A case of Shapande Coumpound In Choma District (Conference ID: CFP/132/2017) Author:Felix Chibesa

50 respondents

Demographic Data of the Participants The participants of the research were Male's 50.98% and 49.01 % females. The age ranges of the participants who participated in the research are 15-25 years 16%, 26-35 years 29%, 36-45years 31% and 46 and above 24%. The participants 90% were married, while 4% divorce and 6% single but had partners. The participants had been in marriage for various years, 32% above 11years, other 0-5years in marriage 52% and 6-10years 16% of them. The respondents had the following number of children 1-2 children 62%, 3-5 children 28% and 6-10 children 10% The education levels of the participants 12% were university graduates, 33.33% were college graduates, 52.94% secondary school level and 1.96%. This indicates that 98% of the participants had been to school and only. The causes of gender based violence amongst couples in Shapande Compound. The research established that Gender Based violence among couples exist of which 42% is caused because of Drug Abuse, mistrust and lack of communication leads to 30% of GBV among couples, unfaithfulness 36%, lack of strong penalties for GBV perpetrators 4%, lack of education 8% and dependence on spouse leads to 6% of GBV among couples

Domestic Violence against Men in Intimate Relationship: An Experience Learned from Men in Zambia: Janet Mundando & Fay Gadsen & Thankian Kusanthan, 2016. "Domestic Violence against Men in Intimate Relationship: An Experience Learned from Men in Zambia," Journal of Education and Literature, Research Academy of Social Sciences, vol. 4(2), pages 50-60.

80 respondents

The study drew its sample from fifty-nine (59) wives and twenty-one (21) husbands, The study revealed that women's violence towards men was caused by: poor financial support, infidelity, beer drinking, non-involvement in household chores, suspicions and jealousy, husband's late coming and dependence of husbands on their wives (lacking source of income).

Factors contributing to physical Gender Based Violence reported at Ndola Central Hospital, Ndola, Zambia: A case control study 145 Z. Ngonga Copperbelt University, School of Medicine, P.O. Box 71191, Ndola, Zambia.

Out of the 479 patients who participated in the study, 93(52%) reported to have experienced GBV physical assault regardless of age. More females 67(68.4%) experienced GBV physical assault than males 26(32.1%). More than 2/3 of those who reported alcohol drinking 51(69.9%) experienced GBV-physical assault. and only 40(40.0%) among those who did not report the outcome. Those from high density 82(56.9%) reported having experienced more GBV physical assault compared to 5(23.8%) of those from low density areas.

Project: Women, Work and Violence in Zambia: 2023 GENDER FOCUS

The research generated a data set of 47 qualitative interviews with different socio-economic groupings of women alongside 10 men. It offers an in-depth and complex understanding of the different intersections between violence, employment, education, and social class.

Addressing School Related Gender Based Violence in Zambia: A Scoping Study Jenny Parkes, Jo Heslop, Freya Johnson Ross, Rosie Westerveld, William Nicholas, Elaine Unterhalter UCL Institute of Education, London, UK March 2017

Of the 1819 respondents (aged 13-24), 891 were female and 928 male. Preliminary results show that of the 13-17 year olds, 17% of girls and 6% of boys had experienced some form of sexual violence in the past 12 months, including unwanted sexual touching, unwanted attempted sex and forced or coerced sex. Nearly a quarter of girls who had had sex said that their first experience was unwanted (7% for boys). Meanwhile no girls who experienced sexual violence below aged 18 received support services (Together for Girls, 2014). 28% of girls and boys (13-17 years) experienced physical violence in past 12 months: for girls 14% by relatives, 12% by adults in the community (including teacher), 8% by a peer and 4% by an intimate partner. Only 9% of girls and 2% of boys received services (Together for Girls, 2014).

Baseline Study: Stamping Out and Preventing Gender Based Violence (STOP GBV) in Zambia: Fiona Samuels, Phillimon Ndubani, David Walker and Joseph Simbaya March 2015

A total of 2,053 people participated in the baseline community survey, 58.5% of whom were female. The mean age was 31.85 years. Most respondents had received some form of formal education (96.3%). The highest (55%) proportion of respondents were in a monogamous marriage and cohabiting accounted for the lowest (0.1%). When asked about who was the main decision-maker in their household, 58% of respondents said that decisions were made by a woman and a man while 25% said the main decision-maker was a man and 17% said that it was a woman. In terms of occupation, the majority (41.1%) had no formal employment, about 21% were farmers, 15% were labourers and 23% were involved in business.

Attitudes of young people towards female perpetrated gender-based violence against men in Zambia: Lisulo Monde, OsloMet - Oslo Metropolitan University, 2019.

This study explored the attitudes of Zambian youths toward female perpetrated Gender Based Violence (GBV) against men. Given the paucity of studies on female perpetrated GBV against men, this study aimed to fill that gap by exploring attitudes of people towards female perpetrated GBV against men, including, causes, effects, as well as reporting patterns. Using a mixed methods design, a total of 283 participants Theories of Feminism, Intersectionality and Blaming the Victim were used to help derive deeper understanding and explanation to the attitudes uncovered in the study. The study shows that female perpetrated GBV against men in Zambia is a phenomenon receiving increasing attention in the country and is caused by various factors. The study also shows that society's attitudes generally seem to be changing, moving towards more acknowledgement of the problem; that female perpetrated GBV against men does exist. However, society also seems to have high tolerance for female perpetrated GBV against men as the male victims are usually labelled as weak or as having done something to deserve the abuse at the hands of a female. Cultural norms about marriage coupled by stereotypes that men are supposed to be stronger than women seem to be ranked high among the reasons why people are reluctant to believe a man that has been abused. This causes the men not to want to report that they have been abused to the police or to family and friends. The study calls for increased sensitization to highlight the fact that GBV against men does exist and is just as destructive to men and society as a whole as GBV against women is. There is also need to harmonize culture and education of women's/human rights to counteract the perception that women's empowerment is contributing to female perpetrated GBV against men in Zambia.

Appendix 11



UNIVERSITY
of
LUSAKA

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Website: www.unilus.ac.zm

All correspondence should be addressed to the Vice Chancellor

13th April, 2022

TO WHOM IT MAY CONCERN

Dear Sir/Madam,

RE: GENDER BASED VIOLENCE IN ZAMBIA: THE INEFFECTIVE ENFORCEMENT OF ANTI-GENDER BASED VIOLENCE ACT OF 2011 AND RELATED LAWS

This letter serves to introduce **KAFWILU KAMENJI CHINAMBU**, Identity Number **PHDL1712606** as a bona fide student of the University of Lusaka pursuing Doctor of Philosophy in Law.

KAFWILU KAMENJI CHINAMBU is required to submit a Dissertation as part of the requirements for the award of a Doctor of Philosophy in Law Studies and therefore seeks to collect data from your institution. Her Dissertation title is stated above. The data will be used solely for Academic purposes and a copy of the final document can be availed to you upon request.

Any assistance given to her will be greatly appreciated.

Sincerely,

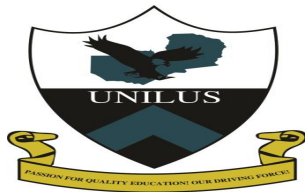
Mwamba Chanda (Mr.)

DEPUTY REGISTRAR

Passion for Quality Education! Our Driving Force

Appendix 12

Questionnaire



UNIVERSITY
OF
LUSAKA

SCHOOL OF POSTGRADUATE STUDIES

QUESTIONNAIRE ON THE EXTENT OF GENDER BASED VIOLENCE ON MEN IN ZAMBIA

Dear Respondents,

I am student at the University of Lusaka pursuing my Doctorate Degree in Human Rights Law. The objective of the Questionnaire is to gather information or data on the ineffectiveness of the laws on Gender Based violence Against Men in Zambia. You are expected to provide genuine, and reliable information with respect to the impact of the ineffective implementation of these laws on society.

PART I: General Information

Please initial below:

Instructions: Please tick the appropriate option.

1. **Age:** A.18-29 B.30-39 C.40-49 D.50 and Above
2. **Sex:** A. Male B. Female
3. **Educational Background:** A. Certificate B. Diploma C. Degree D. Masters' or Above E. Other

PART II: Research Data

Please answer the following Questions:

1. What do you know about Gender Based Violence Against Men?

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2. In your opinion, which factors are responsible for Gender Based Violence Against Men?

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3. Do you have knowledge of any Laws relating to Gender Based Violence Against Men? If yes, which Laws in particular.

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4. What do you think should be done to perpetrators of Gender Based Violence Against Men?

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5. Why do you think there is a rise in cases of Gender Based Violence Against Men?

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6. What is your advice to perpetrators of Gender Based Violence Against Men?

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7. Do you think law enforcers are doing enough to curb Gender Based Violence Against Men? If not, what is your advise to them?

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

8. This part requires YES or NO answers.

- (a) Have you ever been a victim of GBVAM?.....
- (b) Have you ever been a culprit of GBVAM?.....
- (c) Have you ever reported a case of GBVAM?.....
- (d) Have you ever helped to prevent GBVAM cases from occurring?.....

9. How would you describe the Zambian policy on GBV? Tick the correct option.

- Good
- Very Good
- Satisfactory
- Poor

10. Do you think there is a possibility of curbing GBV in this country?

Definitely, Yes

Yes

Maybe

No

THANK YOU FOR YOUR TIME AND CORPORATION.

