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Women and Children's Rights in Zambia: A Case Study of the Chisungu Initiation Ceremony in the Bemba Community

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A Research report submitted to the Faculty of Humanities. University of the Witwatersrand in partial fulfillment for the degree of Master of Arts

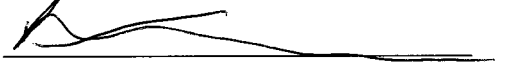
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Declaration

I declare that this thesis is my own unaided work. It is submitted for the degree of Masters of Arts in Human Rights and Democratization Studies, in the department of Sociology, in the Graduate School for Humanities and Social Sciences, of the University of the Witwatersrand, Johannesburg. It has not been admitted before to any other degree or examination in any other university.

Adagbi Tebuho Mwanamwambwa



November 2005

Abstract

This thesis deals with the conflict between international human rights norms relating to women and children's rights, and customary practices at a local level. This conflict is examined in the context of the Chisungu Initiation Ceremony practiced by the Bemba community in Northern Zambia. It further examines the various strategies employed by the Zambian Government, and Ngo's in utilizing human rights standards in efforts to counter customary practices that entrench women and children's subordination.

The thesis deals with critiques of the Universalist Paradigm of international human rights law, and contrasts it with Cultural Relativist perspectives. The report, specifically, highlights critiques of the Universalist bias of international human rights norms as compared to the more community based notions of rights and duties in traditional communities such as the Bemba. Of particular interest is the thesis analysis and assessment of various counter-hegemonic strategies in attempting to inculcate awareness of women and children's rights amongst members of the Bemba Community.

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CHAPTER ONE

INTRODUCTION

Over the last few decades, the notion of promoting human rights has become a global industry in the contemporary geopolitical order, where the advent of globalization has allowed the discourse of human rights to develop and maintain a multiple array of networks. State actors, non-governmental organizations, and civil society, are continuously calling for the need to respect human rights, the rule of law, and democracy. Against this background, it is critical for social scientists, to analyze conceptions of human rights at a deeper level, within the context of societal power structures and struggles. Specifically, we must look at the origins, functions, and objectives of human rights, within the context of power and more precisely, we must study the relationship between human rights and power since power is a critical force that shapes the social organization of society.

Within the framework of power and human rights, the protection of women and children's rights is critical as women and children are vulnerable to an array of human rights abuses, stemming from their marginalized status within patriarchal societies; where power structures promote male dominance and female subordination. It is because of these power imbalances that the international community has established international standards to govern the administration of women and children's rights by incorporating benchmarks within statutory legal frameworks.

Zambia is one country that has ratified such international instruments, specifically the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW.) Both conventions are

currently applied at the policy and legal level, to ensure that women and children's rights are mainstreamed within all sectors of society. However, debate rages about the actual effectiveness of international instruments in protecting human rights at the local level. Human rights scholars argue that international instruments are incongruous with local culture, and at times conflict with and disrupt cultural patterns and the social organization of society.

For example, Makau Mutua (1993) questions the validity of a universal standard for the administration of human rights, describing universalist human rights as imperialist and westernized and wholly incongruous with indigenous conceptions of rights. He argues that indigenous rights are more community based, and are thus diametrically opposed to a westernized and individualist conception. These questions prompt other scholars like Richard Wilson (1997) to call for a multicultural conception of human rights and for a more culturally friendly standard to ensure that westernized notions are harmonized with local conceptions.

With all these disputes raging around the reliability and applicability of international human rights models, I was compelled to carry out a study to ascertain whether there was an indigenous notion of human rights, which did clash with formal international human rights standards in Zambia. Specifically, I formulated a study to investigate notions of women and children's rights as perceived by the Bemba community to see whether these perceptions are at odds with international models of women and children's rights. I aimed to achieve this by analyzing the Chisungu Initiation Ceremony, a Bemba Rite de Passage for young Bemba girls. The Chisungu Ceremony is seen as one of the main frameworks through which women's and girl children's rights are constricted and limited and it is purported that the Chisungu is a

disempowering process for young girls, and promotes their subordination. This study evaluates this argument by examining how traditional culture in Zambia promotes or subjugates women and girl children, by using the Chisungu Ceremony as a framework of analysis of the wider culture and institutional frameworks. It is within this context that I present my main research question below.

1.1 Research Question

The central question that this study focused on is:
What is the role of the Chisungu Initiation Ceremony in gender power relations in the Bemba Community, and what Bemba notions of women and children's rights exist in the community, and are these notions at odds with the localized international human rights framework in Zambia?

To answer this question, the following components were addressed:

1.2 Components

- An investigation of the Bemba community and its social organization.
- An inquiry into the Bemba notions of women and children's rights by analyzing the role of the Chisungu Initiation Ceremony to ascertain how and to what extent, it administers rights and empowers or subordinates girls.
- An investigation of the formal institutional human rights framework in Zambia with regards to women and children.
- An in depth analysis of counter hegemonic strategies employed by international institutions, social movements, and civil society organizations to determine how these strategies contest and challenge hegemonic patriarchy as a means of promoting women's and children's rights in Zambia.

1.3 Rationale

No studies have been undertaken on the tensions between traditional notions of women and girl children's rights in Zambia and formal institutional paradigms within a patriarchal framework. This study seeks to fill the academic gap, by examining levels of tension and contestation between "culturally relative" notions of women and girl children's rights and locally appropriated international models of women and children's rights in Zambia- - using the Chisungu as a tool and framework for analysis. A study that unearths this contestation and debate is necessary and unique, as no study so far, has bridged the universalism-relativist divide in researching human rights and children's rights in Zambia.

The justification for such a study is founded on the need to examine the argument of cultural relativists like Makau Mutua (Mutua: 1993) who contend that not all cultures fall into the system of personal/individual rights as promoted by most local institutions but that certain rights may also be claimed on behalf of communities. The cultural relativists contend that rights and rules are encoded in particular traditional frameworks within specific social settings "where the term 'culture' demonstrates as an empirical matter that the world contains an impressive diversity in views about right and wrong, which is linked to the diverse underlying culture, and to the relativists, these instruments and their pretension to universality may suggest nothing so strongly as arrogance or cultural imperialism"(Mutua: 1993.)

Donnelly in Wilson (1997) counters Mutua by mentioning that universalism is the most ideal framework for the protection of individual rights where the assumption is carried that each individual possesses absolute, and inalienable rights, and that human rights discourse must defend the dignity of the individual over and above the community and society at large.

Mutua (1993) argues against universalism by mentioning that scholars have emerged out of colonial struggles to challenge universalist models and to find alternative justifications of human rights. He argues that universalism emphasizes western value systems such as individualism- protecting the dignity of the person, and preserving

the equality and rationality of individuals while non-western cultures emphasize communitarian principals, which are diametrically opposed to this universalist model. Subsequently, he claims that promoting universalism is merely an imperialist agenda to dominate the world using a universalist seal of human rights to conquer non-western cultures.

These arguments justify the rationale for such a study, where I sought to ascertain whether these tension and contestations between tradition, culture and international law were raging in Zambian society. It was obvious that the establishment and encoding of universal standards of human rights implemented according to local institutional frameworks may be at odds with cultural paradigms. It is in light of these arguments about the universality and relativity of human rights that I sought to investigate these arguments in Zambia. Zambian human rights models specifically the CRC and CEDAW are grounded in international law, which is a universalist paradigm.

This study will contribute to the fine-tuning of child protection programmes, by ensuring that civil society models are more in line with cultural practices on the ground. A better understanding of the ways in which traditional culture defines rights will enable human rights advocacy in Zambia, to stress the cultural relevance, as well as the legal obligation, of universal human rights in various cultural contexts. The acknowledgment of specific cultural contexts will act to enhance the implementation of human rights in a way that will take into consideration, the various cultural differences within specific environments.

CHAPTER TWO

METHODOLOGY

2.1 Qualitative Research Methods

Graham (2000) says that the essence of the qualitative researcher is to capture modes of interpretation of every day phenomena by observing and describing the actions, norms, values, and perspectives of the subjects that are being studied. Otherwise stated, qualitative research is based on the proper understanding or interpretation of people's words and actions, which are related to the wider context in which they live. The researcher's role is to capture these acts by interpreting and understanding the social situation that is to be examined.

My study was based on observing, studying and collecting, and analyzing data of a qualitative and participatory nature. This specific methodology is what I used to describe and interpret the findings in the Bemba community on the Chisungu Ceremony and its administration of women and children's rights. I employed a humanist, open ended, and unstructured methodology to obtain data on the extent of the subordination of women and children in the Bemba community. To begin with, I commenced with a documentary study.

2.2 Documentary Study

Raymond Lee (1993) mentions how the use of documents referred to as "any written materials that can be used as a source of information about a mode of inquiry such as health statistics, documents collected by social agencies, newspaper reports"(Lee, 1993.) are an important component of social research. Lee adds, "Textual communicative practices are a vital way in which organizations constitute reality and

the forms of knowledge appropriate to it"(Lee, 1993.) With this framework in mind, I collected policy documents on the formal human rights framework in Zambia from the Ministry of Sport, Youth and Child Development and UNICEF baring in mind that these texts were constructed to represent a particular kind of meaning formulated within a specific social setting and as such, one must bear in mind the subjective agenda within the data and should analyze this information critically and objectively. When I analyzed these documents, I observed a distinct agenda to promote international law as the governing framework within Zambia, specifically the Convention on the Rights of the Child (CRC) and the Convention Against the Elimination of all forms of Discrimination of Women (CEDAW), which are promoted as the main building blocks for protecting the rights of women and children in Zambia. I also studied the constitution, which forms the basis for the interpretation of international law. After this, I commenced with the second part of my research, which was conducting in depth interviews with civil society and government.

2.3 In Depth Interviews

Raymond Lee (1993) states how the in-depth interview is used for transmitting knowledge between two subjects and as such, researchers should view in depth interviews as a serious process of obtaining and constructing knowledge. Meaning is elicited by asking questions and assembled by receiving answers within a framework of communication. I felt that the in- depth interviews were highly useful in obtaining information about the status of women and children's rights in Zambia. I created and developed a coherent narrative based on the raw and original data that I obtained from the open ended, in depth interviewing process.

Most importantly, I unearthed the deep-rooted conflicts and contestations around the area of women and children's rights in Zambia. I used a participatory, open-ended process, where I was able to pose specific questions to my key informants if a new topic emerged, and where necessary probe deeper on issues that required further clarification. Contrary to my concerns, I faced no major obstacles in obtaining and accessing information. Most key informants were open to share their views relating to women and children's rights in Zambia, and the Chisungu Initiation ceremony in particular. All my activities worked according to plan, and I managed to secure over 5 interviews within the first week of my arrival in Lusaka, Zambia.

2.4 The Interviewees

Specifically, I held long discussions with the Women in Law in Southern Africa (WILSA) Regional Director, Mrs. L. MacMillan. WILSA is an action oriented research organisation in seven countries of Southern Africa and conducts activist research intended to inform and influence action being taken to improve women's legal position, and which incorporates action into the research by educating women about their legal rights, providing legal advice, questioning and challenging the law as well as instigating campaigns for changes in the law in the course of research. Mrs. MacMillan was helpful by answering all the questions posed to her and by providing me with information on the contestation embedded within the legal human rights framework in Zambia. She also exposed the conflict and contestation between government and civil society in Zambia.

Additionally, I held interviews with Women and Law and Development in Africa (WILDAF) director, Mrs. E. Lubasi. She mentioned that WILDAF's major goal is to promote the effective use of legal strategies by women in Africa for self and

community development. At the national level, WILDAF facilitates communication on women's rights among network members to learn from one another. It also helps to build capacity of members to be able to conduct legal rights education in their communities. Lubasi was helpful in unearthing how international models, specifically the Convention on the Rights of the Child and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), are domesticated within the Zambian legal system and also provided useful information on the lack of sensitivity of the Zambian constitution towards gender; and how this has a negative impact on improving women and children's rights in Zambia.

The Third Non Governmental Organization (NGO) interviewed was the Women for Change (WFC) Movement who are actively involved in promoting women and children's rights in Zambia. Women for Change have carried out a number of awareness raising activities on children's rights in general and in particular, on the importance of the girl child specifically her education. In this regard, WFC actively participates in community sensitization workshops on the Convention on the Rights of the Child (CRC) and disseminates it to community members. WFC also promotes women's rights, specifically advocating for policies and practices that are gender sensitive, just, and effectively respond to the plight of the poor. Women for Change were quite vocal about how patriarchy undermines the Zambian family, citing how women and children are marginalized because of patriarchy, but they did support the Chisungu Ceremony stating it was a useful ceremony that required modification. They mentioned how traditional leaders are responding to sensitization campaigns, and are now recognizing human rights in specific social contexts.

I spoke with an anonymous source at the National Coordinating Committee (NGOCC.) The NGOCC is the umbrella body for women NGO's in Zambia, and was established as a non-profit and non- partisan organization. It was formed in July 1985, after the third world conference on Women to review and appraise the United Nations Decade for Women held in Nairobi, Kenya. The aim of NGOCC is to create a gender sensitive and responsive society where women realize and utilize their full cultural, social, economic, and political potential.

The last civil society group that I interviewed was the Children in Need Network (Chin.) Chin is a network of NGOs working to develop strategies and guidelines to address the needs and problems of children. Their main goal is to strengthen the capacity of community groups in need, by providing training, advocacy, counseling, and educational guidelines on how to improve the lives of women and children in Zambia. Beston Banda, the coordinator at CHIN gave important insight on the status of women and children in Zambia.

I secured my final interview with the Deputy Director of the Ministry of Sport, Youth and Child Development, Mr. Lackson Chibamba, who described how government was fighting against sexist practices in the community in line with the Convention of the Rights of the Child (CRC) and the Convention against the Discrimination of Women (CEDAW.) After my interviews, I proceeded to the Copperbelt Province to hold focus group discussions with duty bearers in the field.

I spoke informally with Mr. G.N. Fernandez the Child Protection Section head of United Nations Children's Fund (UNICEF) who was helpful in establishing the formal human rights framework in Zambia.

2.5 The Research Site

Specifically, the research was conducted in two districts in the Copperbelt Province, namely Kitwe Rural and Kalulushi. The first group that I interviewed resided in Kitwe Rural. Specifically, they were called the Alangizi Women Association Group. The Alangizi are a group of traditional marriage counsellors involved in teaching initiation ceremonies to young girls in the peri-urban and rural communities. Their aim is to maintain tradition and culture, by promoting cultural values through out Zambia.

The second group interviewed was the Kitwe Rural Women's Group, who are involved in promoting women's rights in the Copperbelt Province. Specifically, they promote women and children's rights by advocating against sexist practices in the Bemba community through training and community sensitization campaigns. The third and fourth group interviewed were a group of women from the Lufwanyama Training Site in Kalulushi District, who were not involved in human rights activities. I felt it was important to obtain their opinions on initiation ceremonies, to ascertain their "unadulterated" cultural beliefs on women and children's rights, and the Chisungu Ceremony in particular. The fifth and final group interviewed were the Lufwanyama children's group from the Lufwanyama Primary School in Kalulushi District. This was a group of boys and girls aged 8-12 from whom I obtained views and opinions on initiation ceremonies and women and children's rights.

For this aspect of the study, I employed pure participatory research by conducting focus group discussions at community level to obtain information from duty bearers on how traditional notions of women and children's rights are conceptualized and formulated through the Chisungu Initiation Ceremony. Focus groups are a qualitative

research tool, which allows the facilitator to follow a predetermined interview guide to direct a discussion among twelve people with the purpose of collecting in-depth qualitative information about the group's perceptions, attitudes, and experiences. Participants should be typical of the intended population.

Otherwise known as the ground up approach, I adopted a strategy, which involved asking the community about indigenous concept of human rights, and women and children's rights in particular. While conducting the focus groups, I ensured that the terminologies I obtained were Bemba based and not formulated around western notions and a western paradigmatic framework. I resolved that participants must speak in the traditional language called Bemba. Since I am a native English speaker, I at times felt that the interviewing process was cumbersome as I employed a translator who helped me conduct the discussions by interpreting back and forth between Bemba and English. I observed that substantial amounts of data was lost through this process as I was not able to probe deeply enough because of language barriers. This meant that I received mechanical and one-answer responses, which I expanded upon through the translator, which was at times frustrating for me, and the translator. The result was the focus group discussions at times lacked flow, and was highly disjointed. Despite these obstacles, the respondents enjoyed the process and were greatly honored to receive a guest researcher, as this was the first time these groups had been exposed to academic research. In conclusion, I found that employing a qualitative and open-ended approach proved highly effective, as it allowed me as the researcher, to adjust as I progressed. It is within the context of the research preparations that I have established a theoretical framework in the following chapter.

CHAPTER 3

THE THEORETICAL FRAMEWORK

3.1 Power and Society

Power shapes the social organization of communities where power structures also create imbalances and reinforce hegemonic practices. Subsequently, the aim of sociologists is to fight these power inequities and emancipate the subordinated and marginalized classes. In fighting power, sociologists adopt two approaches; namely, a Structuralist view (where power is a dominant hegemonic force), or a Foucauldian notion (where power is interspersed throughout the micro sites, and within the capillaries of state practice.) This thesis takes a Foucauldian notion of fighting power at the micro sites where a Foucauldian notion views power imbalances as interwoven within all aspects of society. Michel Foucault, the founder of the concept, mentions this:

> Power is exercised through a net-like organization. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always the elements of its articulation... rather, the state is carried by discourses produced at much more 'local' levels (McNay, 1997:38)

Alan Hunt (1993:5) argues that this interspersed notion of power allows for grappling and challenging dominant hegemonic forces at several levels, without climbing up and bringing down a colossal force. This notion of challenging power at more local levels is relevant for this thesis, as it is evidenced that civil society and government are fighting patriarchal imbalances within the micro sites, at community level. To

understand how this is achieved, it is necessary to first define the concept of patriarchy.

3.2 Patriarchy Defined

Davidson and Gordson (1987:78) define patriarchy as a family, government, or society controlled by senior men or patriarchs who are the male heads of a group. Fathers and brothers are the most important members in a family, and men have higher status in all aspects of life; men lead and women and children follow; men make the decisions, while women obey instructions from men. Jeff Hearn (1987:36) adds that customs such as subservience reinforce the belief that women are men's property, and that the husband is the head of the household and in charge of all decision-making processes both social and economic. Unfortunately these patriarchal notions have been entrenched by tradition and culture. Customs and beliefs discriminate against women and children, who find themselves disadvantaged by sexist traditional practices.

Hearn (1987: 40) argues that within the context of male domination, one discovers that patriarchal societies impose expectations on the behavior of the members of society. He adds that these expectations are linked to the gender identities of those individuals as prescriptions regarding gender roles are played out in power relations. Men hold more powerful positions in society because of their superior position. Hearn (1987: 40) adds that consent to this male superiority is secured through a variety of means: gender indoctrination, educational deprivation, the denial of women of knowledge of their history, and by discrimination in access to economic resources and political power. He contends that such activities sustain power relations that give men advantages and privileges over women where the social organization of family and

society is designed to maintain the social control over women and children. He adds that the family is the cornerstone of the system for legitimizing social hierarchy. In a study of the family in Zambia, Beasily (1997: 119) asserts that men have this ability to exercise control over others and to pursue aspirations of supremacy. Therefore, it is the goal of radical sociologists to challenge and dismantle power and patriarchy, by demanding for a new state of human rights, by employing counter hegemonic strategies that will break down dominant hegemonic practices. To understand how counter hegemonic strategies dismantle hegemony, it is important to understand the concept of hegemony from a Gramcian/Hunt perspective.

Hegemony and Counter hegemony

Alan Hunt's (1993:4) analysis of hegemony and counter hegemony describes how power relations within a hegemonic discourse is resultant in the subordinate group accepting the dominant group's control through a process of spontaneous consent given by the subordinate group and to the general direction imposed on social life by the dominant fundamental group. More specifically Hunt says:

> A number of quite distinctive mechanisms are involved in the process whereby incorporative hegemony installs the presence of subordinate interests within the dominant hegemony. First, a successful hegemony needs to incorporate values and norms that contribute to securing the minimum standards of social life...the process by which, as a result of actual struggle or apprehension of it, a dominant bloc engages in a more or less self conscious compromise to incorporate some elements of the subordinate group (1993:4)

This is true in patriarchal societies where the dominant group's control through a process of 'spontaneous consent' given by the subordinate group and to the general direction imposed on social life by the dominant fundamental group, is clearly seen where women and children, especially girl children, give their express consent to processes of subordination. To fight this hegemonic patriarchal order, the key is to

employ a range of counter hegemonic strategies that challenge the dominant patriarchal hegemony.

Hunt (1993:4) explains this counter hegemonic struggle:

> A conception of counter hegemony...has to start from that which exists, which involves starting from where people are. Such a conception of counter hegemony requires the reworking or refashioning of the elements that are constitutive of the prevailing hegemony...It is not a question of introducing from scratch a scientific form of thought into everyone's individual life, but of renovating and making critical an already existing activity...one step is to supplement that which is already in place...opening up the silences (1993:4.)

Hunt (1993:4) explains how the most significant stage in the construction of counter hegemony, comes about by building on the elements of the hegemonic discourses and by introducing elements which transcend that discourse. His notion of fighting power where people are at can affect counter hegemonic shifts in power relations within the capillaries or subtle elements of state practice, resulting in the dying away or exhaustion of elements once dominant and securing real social change. Hunt elaborates on how to achieve counter hegemony, and a reconstituted power shift in the dominant hegemony, (in this case patriarchal power imbalances) by challenging subordination at the micro level, which can effect a constituent alteration within the elements of cultural practice. The key is to employ a range of rights based strategies. Rights based strategies are human rights approaches employed to fight power at the micro level. These include the employment of rights language, litigation, and cause lawyering. The first strategy, employment of rights language, is explained in the following section.

3.3 Human Rights and Counter hegemonic Strategies

Hunt (1993:9) argues that employing rights language is an effective counter hegemonic strategy where the use of "rights rhetoric" results in the legitimization of the claim, giving it authority, and potency, which can affect a reconstituted hegemony. In other words, rights rhetoric extends and legitimizes demands because more agents identify with the language of rights. The language of rights invokes credibility, because the use of specific phrases triggers a psychosocial reaction in the listener. The recipient automatically processes the claim and identifies with the right as his right as much as everyone else's because the specific language has universal appeal, and induces mass mobilization around the issue in question. In the end, the claims become part of the everyday life as subordinate groups awaken to their agency through the language of rights. So we see how language as claims qualifies as a counter-hegemonic strategy where rights language and its ability to legitimize invokes a collective consciousness around the issue of challenging the prevailing hegemony. The women's movement is a prime of example of how their employment of rights language: "women must have equal rights" serves as a universal claim that is identifiable to all where people identify with the rhetoric of women's rights. In addition to rights language however, social scientists also employ litigation as another counter hegemonic strategy that battles against dominant hegemonic practices.

McCann (1994:279) asserts that while critics condemn litigation as a manifestation of the dominant hegemony, where "Myth of Rights" arguments assert that institutionalized litigation cannot challenge power relations because law sustains hegemony, McCann's empirical research reveals that litigation is effective in challenging state power and giving impetus to equality:

> Legal norms significantly shaped the terrain of struggle ...[where] litigation and other legal tactics provide movement activists [with] an important resource for advancing their cause...activists derives substantial power from legal tactics despite only limited judicial support (McCann: 1994:283.)

McCann (1994:283) contends that litigation provides an ideal counter-hegemonic framework because rights activists can use legal platforms as a way to mobilize grass roots support in skillful movement building activities that successfully challenge discrimination and marginalization. He concludes that contrary to the "myth of rights" which has lowered expectations of the courts, it is proven that litigation provides human rights claims with a powerful discourse to challenge societal relations through the process of mobilization. Legal mobilization has given considerable impetus, through its radiating effects, and these effects build up a movement, while generating support for new rights claims. Like litigation, cause lawyering is another effective rights based strategy that challenges power inequities at community level.

Sarat and Sheingold (Sheingold, 1994:1) argue that cause lawyering is a unique mode of litigation, which challenges power from an ideological political point of view. While conventional lawyers see law as objective, value free, and detached, cause lawyers define law as a socially constructed system interlocked within societal power frameworks. Cause lawyers see lawyering as a means of challenging and transforming these societal relations, specifically the oppressive elements.

They embrace a Foucauldian notion of challenging power, at the micro sites as Sarat and Sheingold argue: "These micosites present less daunting targets for cause lawyers where "high impact" frontal assault on state power is replaced with empowering of individuals and groups at the micro level (1994:8.)" At this juncture, it is important to draw the distinction between cause lawyering and litigation as defined in this thesis. Litigation is defined as the act of employing legal tactics by a social movement, while

cause lawyering is an ideology held by the lawyers themselves, where they fight for rights from a distinct standpoint. These ideological standpoints vary according to the mode of cause lawyering, where some cause lawyers are individual client lawyers who merely take on litigation piecemeal, while others are impact lawyers, who see litigation as a means of transforming society. Client voice lawyers prefer to speak through the voice of their clients, while mobilization lawyers marshal groups to fight hegemony. Taking the argument further, cause lawyers are essentially social scientists who challenge power from the very core of its manifestations.

Specifically, Lucy White (1988:750) asserts that cause lawyers challenge power at the dimension of exclusion where individuals are marginalized by institutionalized discriminatory practices, and these changes require long-term counter hegemonic shifts at the level of ideology and belief systems. The focus is on the social processes through which subordinated groups construct their experience and give it meaning, seen by how subordinated groups are socialized into practices of the dominant hegemony. At this level, individuals receive and interpret information that molds their perceptions. This is called the "Engineering of Consent" where they imbibe notions without questioning their legitimacy. So for example, the group accepts a belief promoted by the dominant class that they are poor and useless, inferior or marginalized. White (1988:750) mentions that these beliefs lead to feelings of self-depreciation and individuals become more alienated from society as a result of this reinforced, negative, self-image. White (1988:751) asserts that through dialogue with subordinated communities, lawyers can help in gradually liberating their consciousness by effecting psychological shifts that transform consciousness from a

state of mental disempowerment to emancipation and agency. This is achieved by using participatory lawyering techniques with subordinated communities.

It is apparent that Zambian civil society groups are implementing such counter hegemonic strategies where they are employing a range of rights based approaches, such as advocacy, language legitimating, litigation and grass roots mobilization. The most important strategy they use is legal mobilization by disseminating information on the CRC and educating communities on their legal rights. Specifically, they use international law as a framework for fighting and instituting new rights claims in society. However, in examining these approaches of challenging patriarchy by invoking international law as rights claims for women and children in Zambia, I have looked at the tensions and contestations surrounding their formal institutional notions of "rights" which may be contra to traditional notions of "rights" meaning that institutional notions promoted by civil society may be at variance with traditional Bemba notions. It is in this vein, that I have examined these tensions and contestations through a cultural relativist / universalist debate.

3.4 Cultural Relativism and Universalism

The debate between cultural relativism and universalism is a hotly contested area. For example, cultural relativists "believe that all practices are equally valid and that truth itself is relative, depending on the situation and environment of an individual" (Wilson, 1997:3.) However, Wilson contends that cultural relativism is dangerous as it prevents us from "judging the moral status of other cultures in cases where that seems appropriate." He asserts that it also "renders people powerless to judge these cultures where it is absolutely necessary where faced with a culture that sees ethnic

cleansing as morally acceptable, it seems appropriate to condemn that society as morally abhorrent." Wilson (1997:4) criticizes cultural relativists for their misrepresentation of culture as monolithic, "undynamic", and stagnant where such premises ignores the diversity of different societies and negate the multifaceted and multifaceted inner dynamics of primitive societies which are in continuous flux. He asserts that such statistic contentions are an outdated form of anthropology and he calls for a universalist paradigm in place of a culturally relative model. Donnelly in Wilson (1997:6) also calls for a universalist theory of human rights based on a philosophy that sees individual rights as paramount in the protection and promotion of rights. Donnelly sees each individual as possessing personal and inalienable rights that must be safeguarded and enforced by international instruments.

However, Mutua (1993) challenges the universalists by asserting that the fundamental flaw of universalism lies in the philosophical premise that shapes the global standards for human rights. He comments that these standards are based on the Universal Declaration of Human Rights, which calls for safe guarding, "the dignity of the individual", "individual freedom" and "democracy" and that these principles are overtly, and are based on natural rights theory, a philosophical paradigm that promotes the rights of the individual as a primary goal in society. Mutua (1993) claims that the individualist notion is in conflict with communitarian conceptions, of non-western cultures. He argues:

> It is a shameless presumption ... to purport, a common standard for all peoples and all nations ...an example are the... unremitting emphasis on the individual as the center of the moral universe. This idea has deep roots in philosophy and culture. Many non-European cultures, including African cultures, do not give the individual primacy over the community. (Mutua, 2002.)

Mutua (1993) contends that this westernization of human rights discourse is especially troubling for non-scholars who have begun questioning the legitimacy of these so-called international norms. This is because other cultures face difficulties relating to and conforming to the premise of the declarations and protocols. They may hold Confucian, Hindu, or Buddhist beliefs, which are diametrically opposed to a value system on human rights and civil liberties specifically. Inevitably, tensions arise and the quest for universalisation collapses. It is of little surprise therefore, that a counter-hegemonic discourse is challenging this Euro centric conception, in an attempt to create a new multicultural notion of human rights that encompasses various philosophical belief systems and ideologies. (Mutua, 1993)

This introduces pluralists like Santos (1997:18) who states that universalist ideologies have been shaped and created by imperialism, the slave trade, colonialism, modernization, and consumerism. He asserts that universalist arguments have often ignored the diversity of the third world, which has provoked academics to find alternative paradigms to human rights. The result is a considerable body of literature on such subjects such as "Human Rights in Hindu Civilization", "Human Rights in Islam" for example.

Santos (1997) avers that these conflicting arguments have created sufficient ambiguity in the theory of human rights, but until recently precious little has been done to give a meaningful direction to the debate. He mentions that instead of limiting human rights to suit a given culture, why not draw on traditional cultural values to reinforce the application and relevance of universal human rights where there is an increased need to emphasize the common, core values shared by all cultures: "the value of life, social order and protection from arbitrary rule where in the cultural relativist model, a

community is the basic social unit, and concepts such as individualism, freedom of choice, and equality are absent" (Santos, 1997.)

Abdullah Ahmed An-Naim in Steiner and Alston (2000:242) supports Santos' claims by revealing that the growing influence of cultural relativism, multiculturalism, and postmodernism is slowly undermining universalism, where there is a realization that universal human rights norms simply do not conform to the extreme diversity of cultural and religious practices found around the world. He argues that universal rights should be modified to conform to local cultural and religious norms, where "there are questions about the theoretical validity and intellectual coherence of universalism where they argue that universalism in its current state is not the ideal solution, and is used by many states to negate the validity of more 'traditional' systems of law" Steiner and Alston (2000:242.)

For example, writers like Mutua and Santos call for a multicultural and pluralist conception of human rights where divergent belief systems and points of view are embraced (Santos, 1997.) Various opinions are agreed upon at a point of convergence, where people come to a compromise grounded in mutual respect on certain broad based norms, without necessarily having a deep mutual understanding or congruence with each others' backgrounds. Each ideology may seem strange to the other, but all recognize and value practical and applicable norms that are legally binding and culturally friendly. This is best summarized by Cassesse (1996:11) who says: "In a world as divided and fragmented, as the international community today, the existence of a set of general standards, however diversely understood and applied, in itself constitutes an important factor for unification" (1996:11.)

For my study, I have examined this universalist/relativist debate surrounding women and children's rights. I have sought to ascertain levels of contestation between two different notions of women and children's rights in the Bemba community where it is obvious that counter hegemonic strategies employed by civil society are in contestation with community paradigms. It is within this framework that I introduce the Bemba people and the Chisungu Initiation Ceremony.

3.5 The Bemba People

Richards (1932: 25) mentions that in pre colonial times the Bemba were a unified group scattered across the Northern Province of Zambia. The Bemba comprised of a centralized state under the Paramount Chief Chitimukulu who was responsible for administering the rule of law to his subjects. The chief and his subjects resided from a matrilineal clan, which formed part of the matrilineal belt of Africa. However, Richards (1932:25) adds that the Bemba are also bilateral where a Bemba man may reside with his matrilineal clan but is still a member of a bilaterally based group. With these bilateral underpinnings, there is still a much stronger emphasis on the matrilineal side, where the ideology and a system of chief tenancy are based on the matrilineal dogma of decent.

However according to Moore and Vaughn (1990:148) this social organization of society has been disturbed by the advent of colonialism where several African communities including the Bemba have undergone processes of transformation where the modern economy has greatly impacted on traditional life. They acknowledge how "detribalization" has brought considerable alterations to the lives of the Bemba people as manifested in the " very fabric of life including food, dress, transport, work, and

time itself"(1990:148.) They mention how these transformations have impacted on cultural practices like the Chisungu Initiation Ceremony.

3.6 Definitions and Express Meaning of Chisungu

Richards (1932:52) states that the Chisungu Initiation Ceremony is practiced when a girl receives her first period. Through the symbolism of menstruation, the aim of the ceremony is to transform a young girl into a woman through a ritual process comprising of sacred dances and songs that alter the mind set of the young girl during the initiation process. Lafontaine (1986:132) mentions how the ceremony "bridges the connection between sexual and social maturity, where menstruation means the arrival of adulthood regardless of age status, where a young girl is obligated to assume adult roles such as marriage and other responsibilities designated to adults"(1986.)

He mentions how in some areas, the Chisungu is preliminary to a marriage ceremony however, in other locations, like the one studied; specific expectations of marriage are filtered into the ceremony, although the marriage ceremony and the initiation ceremony are separate rituals. According to Richards, the Chisungu is a puberty rite de passage for girls and is essentially a female initiation ceremony that initiates a young girl into womanhood where menstruation is a sign that a girl has now attained adult status by menstruating.

Richards (1932:115) describes how the puberty ritual socializes young girls into specific gender roles, which binds them to undertake specific duties that define their woman hood within the organizational structure of the Bemba system. This socialization is achieved by "imposing ordeals of maturity in which elders, parents,

and age-mates exact suffering in return for new privileges of the initiate, such as ancestral secrets relating to how to conduct a marriage within a household, and what dutiful roles are to be performed to keep a matrimonial home harmonious (1932:115.)"

3.7 Ancestral Significance of Chisungu

Richards (1932:124) states how "Chisungu emphasizes the magical powers associated with sex, which is linked with feelings of guilt and anxiety expressed in the taboos, clustered around marriage, childbirth, and the rearing of children"(1932:124.) Richard says that "feelings of guilt are so deeply entrenched in the ritual ceremonies that people dread the effects of magical spells, when they commit acts, which are considered taboo, or against Bemba culture" (1932:124.) These ancestral beliefs are infused within marriage where subjects believe that their safety is derived from the ceremony. Lafontaine (1986:138) mentions how for example, the concept of fertility (fibi) and child bearing is inextricably linked as acts that please the ancestors and the blessings or curses administered by ancestors according to how a woman or girl conducts her marriage where illnesses and injury are said to be inflicted on a party by for example, breaking marriage contracts, or by general bad conduct as an expression of righteous indignation by the ancestors, where bad deeds will 'come back' to haunt the family who has indulged in wrong doing.

Richards (1986:125) asserts that ancestry within Chisungu also includes "the showing of sacred objects mimes, song, and tests of the novices where the two ritual cycles are linked by their dependence on notions of purity, the maintenance of which is the responsibility of women, passed on in the Chisungu." It is in line with the overview

of the Chisungu initiation ceremony that I present the findings of my research study on Chisungu, patriarchy, and human rights in the following fourth chapter. The following fourth chapter describes how the Chisungu Initiation Ceremony subordinates women and children and suppresses their rights. It also demonstrates that Chisungu is the main framework through which human rights are created and administered. It is interesting to note that my findings conform to the literature as I have discovered that two notions of rights exist in the Bemba community namely a universalist notion (international law) and a traditional notion of rights created by culture and customary law. There is a clash between these two systems, which also conforms to the previous theoretical framework. These findings are described in the fourth chapter.

CHAPTER FOUR

CHISUNGU CEREMONY AND THE ADMINISTRATION OF RIGHTS

4.1 Introduction

In the last two decades, Zambia has ratified international conventions and is party to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All forms of Discrimination Against Women, (CEDAW.) Both conventions are applied at community level, to ensure that women and children's rights are mainstreamed within all sectors of society. Within the context of the theoretical framework, I discovered disagreement between two value systems in the Bemba community. Specifically, two notions of rights claims exist, namely a universalist notion (as promoted by international law) and a culturally relativist notion as created and supported by Bemba culture. I discovered that these two systems have created deep divisions between the Bemba themselves where some women's groups support universalism while others detest universalist paradigms and prefer culturally relative principles. This chapter details this contestation against the background of the Chisungu ceremony, which I observed in Kitwe rural.

4.2 The Chisungu Ceremony

To observe the Chisungu ceremony, I arrived at the research site, where the community expressed their gratitude for having received a researcher. The community offered their blessings and completed preparations for the Chisungu Ceremony.

Within two hours, I witnessed the commencement of the ceremony, where women gathered around and the initiate was presented to the waiting crowd. The Alangazi women's group in Kitwe rural performed the Mini ceremony. Specifically, I observed the ceremony to deduce the express meaning of Chisungu. It was my goal to ascertain the socialization process of young Bemba girls, which would provide me with a framework to analyze the Bemba culture within the context of women and children's rights.

Mrs. E. Tembo, known as the Nachimbusa, was the main planner of the ceremony. She is known as the backbone of the Chisungu in Kitwe Rural, and is respected for her specialized expertise on Chisungu. Respondents informed me that she was an excellent tutor as reiterated by one respondent:

> Mrs. Tembo is very good at teaching our young girls how to become proud women; she is well respected in the community, and has brought up many girls to be respectable adults...she is greatly respected by all of us in this community. Mrs. Tembo role as Nachimbusa is to prepare her for adulthood, were she teaches the girl all the things that are important in her household, we teach her how to keep her home traditionally, as we have done for many years"[1]

The initiate was called the Nachisungu and this specific Nachisungu was fifteen years old, and had not been offered marriage or betrothed prior to the ceremony. It is clear that one impact of modernization is how school has taken precedence over early marriages, even though these practices are still widespread.[2]

My first observation of the ceremony was its liveliness where the ceremony was punctuated with spontaneous signing and dancing, accompanied by a special 3-tone drumbeat. I was informed that this drumbeat is characteristic of Chisungu ceremonies

[1] Focus Group Discussion held at Kitwe Rural. 23/9/2004.

[2] Vigorous campaigns by government and UNICEF have lead to the successful eradication of early marriages in the Bemba Community were children are barred from leaving school to attend initiation ceremonies. Meetings held with Government Official at the Ministry of Youth, Sport and Child Development. 16/9/04 confirmed these statements.

in Copperbelt and Northern Province and that spontaneous singing and dancing sessions are also characteristic of Chisungu. The songs and dances convey distinct cultural messages, and are the main framework through which children are taught attitudes, motivations, and behaviors deemed appropriate for their future positions as wives and mothers. We then proceeded to the first act of the ceremony.

The first proceeding comprised of the Nachisungu entering the room and sitting on the floor. The Nachisungu was commanded to remain silent and look towards the floor as a sign of respect for the Nachimbusa, the women elders and ancestors. The Nachimbusa informed me that historically, the girl was brought into a hut through a process called ukuingishya abanacisungu (entry into the hut) but with the advent of modernization, "entering the hut" was no longer a necessary component of the ceremony.

Suddenly, the Nachimbusa sang in a 3 tone voice, *Tuingile Shyani Tuinglie mipembe Nga Bakolwe* (We are going in as through a tunnel into a dark place.) The interpretation was given as removing the girl from the outside world and taking her to a secret place, where the ceremony could be taught away from "prying men."

The Nachimbusa informed me that men were not permitted to attend the ceremony or witness these teachings, as the Chisungu ceremony was viewed as "woman's territory", where it was an insult to the ancestors for a man to attend the ceremony. Subsequently, the Nachimbusa produced a series of leaves and branches and placed them around the initiate. She mentioned that the leaves signified a Musuku tree, a tree that represents fertility, sexual reproduction, and reproductive powers. She claimed

that this fertility was linked to sustaining the community where women were expected to bear children for future generations.

With the end of this explanation, the characteristic Chisungu rhythm broke out, and the women performed a series of vigorous sexual dances, which involved significant hip twisting. With the initiate seated, the Nachimbusa began yelling orders at the initiate who was looking face down, and as she yelled, the initiate lay on her back and began twisting her hips. When I asked about the express meaning of this particular dance, they informed me that this dance taught the young initiate about how to " receive her future husband sexually", where the hip twisting signified "Pleasing a man in bed" as reiterated by the Nachimbusa:

> In this part of Chisungu, the woman is taught how to be sexually there at any point in time, as men should be sexually satisfied. This is our culture, where we teach the girl never to say no to a man, because these days, there are some cheeky women. They must always say yes as he has the right over her body, if not, he will go and find a girlfriend at his office.[3]

The Nachimbusa added that teachings on the marriage relationship coined the 'secret things of the house' were once shrouded in secrecy where initiates swore allegiance to the teachings and were afraid to expose teachings, but all has changed with the advent of modernization, where most secrets of Chisungu are now exposed to the world and the element of secrecy and mystery has been lost. She mentioned that previously, it would have been virtually impossible to obtain information on Chisungu, but in today's world, Chisungu was accessible to every one.

With this comment, we proceeded to the second section of the ceremony, which entailed presenting the initiate with a pestle and mortar where the Nachimbusa yelled

[3] Focus Group Discussions held at Kitwe Rural Market. See note 1 Supra.

at her to pound quickly. The Nachimbusa then broke out into a song coined the cooking song which went as follows: *Kabende Kandi Kamekelo (My little Mortar I will show it off)* The interpretation was a demand that a married woman must cook quickly and must not keep a man waiting for food. The Nachimbusa elaborated:

> We teach the girls that she must cook for her husband and serve him at any time, and when he walks in the room, you must sit down to show respect to your husband and kneel when talking to him. We teach them that when a man is talking to you, you are not supposed to stand as it shows that you have no respect, you must answer when asked only. [4]

The next session consisted of the initiate crawling backwards and forwards on her hands and knees. As she crawled around the room, the women elders sang again and again "Mark one step forward and don't come back." They literally yelled these songs to the initiate. In interpretation, the Nachimbusa mentioned that this specific act was meant to teach the initiate how to be obedient to her husband where subservience and obedience, was a sign of respect in the community. Once the initiate entered into a marriage contract, she was obliged to remain in this arrangement. She said that sustaining marriage was critical for maintaining order and tradition in the community, hence the women were taught to endure all aspects of marriage even if men became "unbearable." She reiterated that in extreme circumstances, women were allowed to protest to elders if the marriage was abusive and dysfunctional.

The next performance involved the Nachimbusa ordering the initiate to get down on her knees and mimic the act of washing the floor. She was then given a bowl of water, and was told to pour water on the hands of the village elders as they ululated joyously. When I queried about the symbolism of this specific performance, the Nachimbusa

[4] See note 3 Supra.

informed me that this represented respect for men and specifically, honoring the husband by washing his hands. In other words, an initiate was taught how to please her husband by giving him the honor as the head of the household. The Beer dance followed this performance.

The next section was called the Beer Dance, where the initiate was led outside to the grassy patio. The Nachimbusa commanded the initiate to dig a hole in the earth and as she dug the hole, the Nachimbusa took a bottle of beer and poured it into the newly dug hole. She then placed grass in the hole and commanded the initiate who was now on all fours to drink from the hole. When I queried about the significance of these gestures, I was informed that this act demonstrated how the initiate was expected to fulfill her duties of pleasing her husband. The elders informed me that brewing beer signified respect for men in the community, and the grass symbolized the husband's ownership of his wife.

From these brief deductions, I realize that Chisungu teaches young girls how to internalize attitudes of gender and sexual identity through processes of indoctrination and enculturation. It is clear that Foucault's notion of the body as the point where power relations are manifest in concrete forms was apparent in the Chisungu; where I observed gender based socialization processes of attitudes and behaviors, rights and responsibilities which were socially aligned to the girl's physical sex. Her socialization included learning the significance of her social responsibilities through enactments within the Chisungu where these enactments socialize girls into accepting male superiority where they are coached on how to satisfy the desires of a man as the supreme head of the household. It is apparent that power relationships in the Bemba community are designed to keep women subordinated, and the fact that the body and

menstruation is used as a framework for reinforcing patriarchal hegemony, ties in well with Foucault's (McNay, 1997:49) argument about patriarchy and the body:

> The body, is rather to be thought of as the point of intersection, as the interface between the biological and the social, that is to say between the socio-political field of the microphysics of power...where sex is a cultural construct that is produced with the aim of social regulation and the control of [women] sexuality...[where] sex is the most speculative, most ideal, and most internal element in a deployment of organized (McNay, 1997:49.)

The Chisungu uses the anatomy as a framework for imbibing and reinforcing power imbalances in marriage and in the community, where dances are designed to implant feelings of submissiveness and inferiority within initiates. These dances are a form of social control, where girls internalize their secondary status by learning gestures that are inextricably linked to psychosocial processes. This assertion was confirmed by focus group discussions held with girls aged 10-12 who expressed feelings of inferiority after undergoing the ceremony:

> After the initiation ceremony, we feel inferior, because our rights are reduced and we become submissive to men. Our rights become reduced by the ceremony and it has a direct impact on the way we relate to boys, after the ceremony, we are not free; we develop fear for boys, because they teach us to fear. [5]

The research exposed that not only does Chisungu reduce girls' rights but it also imbibes subservience and subordination and teaches girls how to defer to men. Some respondents complained that Chisungu taught them how to accept abuse from men. A brave girl of ten commented that it was their right to be beaten because maybe they deserved it:

> We feel very comfortable because when a woman does something wrong, the man has the right to punish them, which include beating. Beating is a man's right.[6]

Another respondent added:

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[5] Focus Group Discussions with children held at Lufwanyama Rural Health Center. 24/9/04.
[6] See note 5 Supra.

They teach us girls that we are not supposed to walk quickly, or move fast where men are seated, where men are gathered, you are not supposed to look straight at where they are, or look into their faces or they will think you are a prostitute. So you must move slowly, slowly, and to talk to them politely.[7]

Another girl child complained:

We girls, when you are busy and a man demands that you do a specific job, you are not allowed to say no, or you will be reported to your parents and if you say no in the house, when a man wants all these demands, you are sent back to be retaught the Chisungu again. They will claim that you have not been taught properly and even if you are married with kids, you will be dragged back through the process. They think that maybe you have not been taught properly, that you have no respect for your husband. [8]

These statements were in contrast to women elders, who failed to discern how specific aspects of the teachings, reinforced processes of subordination and some denied outright, that Chisungu disempowers women. The women elders insisted that Chisungu empowers women in the Bemba community:

The ceremony empowers women it gives them pride, it is a source of pride and culture, it is a process that brings pride and power to a girl and to the family as a whole, because the family discovers that the girls becomes of age, and this is a blessing from the ancestors. It does not make them weak, but it makes them strong. Chisungu is part of culture and it should not change, where we believe that the Chisungu gives us amaka-na-Ifilumba (power and pride.)[9]

Other respondents reiterated that the Chisungu process, gives girls power over their bodies and over their life, because the celebration of the first menstrual cycle confirmed her womanhood and the fact that the community has accepted her. Other points in defense of Chisungu were arguments like "Chisungu is critical for keeping virginity" and "Chisungu promoted women's rights" because the teachings brought pride to the family.

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[7] See note 6 Supra.
[8] See note 7 supra.
[9] Focus Group Discussions held with Women's at Lufwanyama Training Site in Kalulushi District. 24/9/04

This illustrates Alan Hunt's (1993: 4) analysis of hegemony and his description of how power relations within a hegemonic discourse is resultant in the subordinate group accepting the dominant group's control through a process of spontaneous consent imposed on social life by the dominant fundamental group. This assertion reigns true in the Bemba case study where some women accept spontaneously their inferior status, where they feel that their secondary position is natural and normal, and where they defend their subordination with statements like "this is culture" and "we are not suppressed".

So, when Antonio Gramci (in Hunt, 1993:9) mentions how subordinated groups "accept subordination as 'common sense' and 'natural'" this order was proven in the Bemba case study where women felt it was natural and normal to be beaten and dominated as part of daily life. So when Hunt (1993:6) says that "distinctive mechanisms involved in the process whereby incorporative hegemony installs the presence of subordinate interests within the dominant hegemony incorporated as values and norms that contribute to securing the minimum standards" this was also found true in my case study where the interests of Bemba women are accounted for within the patriarchal framework, where Bemba culture gives women power to air their views within the framework of initiation ceremonies and gives women elder's authority to train young girls on acceptable patriarchal standards. Therefore, while women and girl children are marginalized and suppressed, they give their express consent to processes of subordination, by accepting attitudes, motivations, and behaviors that reinforce their inferiority.

From these interviews, it is apparent that one cannot waiver from the teachings of Chisungu as Chisungu is viewed as crucial in sustaining the social organization of

society, where respondents confirmed that Chisungu is one of the key actors in maintaining tribal traditions. Richards (1932: 58) confirms this view by arguing that the ceremony's reference point is not in creating new norms and traditions but in maintaining what has existed historically, where the rites are reenacted in more or less, exact repetition. The songs and dances are encoded with value and meaning that transfer knowledge on gender roles that must be accepted by each generation. This has serious implications for the administration of human rights in the Bemba community.

4.3 Chisungu and Human Rights

Within the context of Chisungu, I investigated whether Bemba notions of human rights existed in the community, to ascertain how and if Chisungu shaped indigenous conceptions of human rights. I discovered that the Chisungu ceremony is a central actor in shaping and maintaining the administration of rights to the girl child in the Bemba Community, where girl children are taught to accept subordination as part of their initiation into womanhood. Subsequently, Chisungu administers a specific set of gendered rights, which are embedded within a broader framework of human rights. In other words, the rights of girl children and women are a mere sub set of a series of rights that are administered and managed by the community. Furthermore, the findings revealed that the Bemba notion of rights is broader and more community based than the universalist notions of human rights promoted by the state and civil society.

Munalula (1997:65) mentions how traditional notions of rights are based on morality and mutual respect, reciprocity and investment in the community. Munalula emphasizes how traditional notions of rights are sanctioned and sustained by

customary law, which takes precedence over statutory law and allows rights to be enjoyed in a communitarian manner, rather than on an individual or confrontational basis. My research confirms these assertions as I discovered that the Bemba community defines human rights from a community standpoint. For example, human rights in Bemba are called Nsambu defined as helping the village, the community, elders, and exercising individual rights by caring for others or supporting other people as one respondent mentioned:

> My Nsambu means respect, dignity, its all about respect. Nsambu is life, and the community's life...it is life and respect, and respect is defined as life, where if we don't have Nsambu, you can die shortly, where when you don't respect, it brings danger to the community because where there is no respect, there is no life. [10]

Even the children interviewed shared a community-based conception of human rights where they argued:

> The rights of the community come first. The rights of the community are more important, and in terms of the rights that children have, it is not only the responsibility of the individual parent to provide these rights. Even a neighbor or another elderly person can intervene. For example, if you don't go to school, and don't have an education, the community elders will query why you have not gone to school. The elders in the community take care of the children. As they are concerned that who will take care of us, if you are not educated. It is like one family. [11]

From these definitions, it is apparent that traditional notions of human rights are diametrically opposed to international law as promoted by civil society and government, and it became obvious that contestation exists between a universalist, international law notion and a relativist traditional notion. Munaluala (1997:65) asserts that this conflict between the two systems of law is attributed to a clash in value systems where the promotion of individual rights is at odds with a community-based conception. This is demonstrable with the statement: "We do not believe in

[10] Focus Group Discussions held with Alangizi Women's Association Group 23/09/04
[11] See note 5 Supra.

individual rights, we don't possess rights for ourselves that is taboo, the rights are given to us by the chief."[12]

Further analysis reveals that the traditional customary law system through which rights are administered follows an explicit hierarchy. Specifically, the rights of the paramount chief supersedes his subjects as he is the moral authority in the village as one respondent asserts:

> The sole decision maker in the community is the chief. The final say is with the chief and this is law. No one can by pass the chief, and if anyone needs to voice an opinion, all queries go through the chief. The persons, subjects tell the chief and he speaks. His subjects cannot by pass, and mind you the subjects are men.[13]

This hierarchal notion raises an interesting point, namely, that the Bemba community views rights as both communitarian and hierarchical, where status and rights are inextricably linked. The most supreme authority the chief possesses the most extensive set of rights, while the weakest subjects, women and girl children, possess the least claims to rights and equality. In line with this hierarchal notion, Abdullah Ahmed Al-Naim (in Steiner and Alston, 2000: 225) argues that international law simply does not conform to the extreme diversity of cultural practices found around the world. This assertion holds true in this case study, where a traditional system of rights is not based on individual enforcement as is promoted by universalist international law. Subsequently, when An Naim (Steiner and Alston, 2000: 225) questions the theoretical validity and intellectual coherence of universalism by asking whether universal models can simply negate the validity of more 'traditional' systems of law, he speaks to this research study; where I discovered deep resentment towards universalism for its alleged invasion and destruction of culture.

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[12] See note 10 Supra.
[13] Focus Group Discussion held with the Kitwe Rural Women's Group, Kitwe Rural, 23/9/04

According to specific women, international law and the CRC coined "Musungu Law of the churches" is blamed for most ills in the community as one respondent revealed:

> Musungu law from the churches is destroying culture where that law is not right, when they say tradition is false, this is destroying the family and community, churches and Musungu law have destroyed culture and this is very dangerous and there is a problem. Because traditional law versus Musungu law we prefer customary law and we feel that Musungu law does not work. Musungu law has brought many conflicts on this planet. People have lost their souls because the more we don't believe in tradition the more we have diseases like too po po (tumors) and Musungu law is killing customary law, and people on the streets in the towns don't know what's killing them they are taking culture from London and it is killing people. The Musungu law has transformed the household these days and is bringing stroke, blood pressure, we call this Inchila (death).[14]

These deeply held convictions have lead several women to argue in support of customary law, over international law. Their commitment to customary law is absolute, where they perceive international law as destroying culture, by its bringing strange practices into the Bemba community.

These comments bring us to Mutua's (2002) arguments against international law where he asserts that the fundamental flaw lies in the philosophical premise that shapes the global standards for human rights which are based on safe guarding, "the dignity of the individual", "individual freedom" and "democracy" and that these principles are overtly western, and are based on natural rights theory, a philosophical paradigm that clashes with traditional premises.

> Human Rights are part of the cultural package of the West, complete with an idiom of expression, a system of government, and certain basic assumptions about the individual and his relationship to society. The spread of the liberal constitution with its normative assumptions and the political struggle it implies- makes human rights an integral part of the conception of modern society and its ubiquitous domination of the globe (Mutua, 2002.)

Al Naim (in Steiner and Alston, 2000: 238) supports Mutua' assertion by commenting:

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[14] See Note 10 Supra.

The selfish and self-regarding man has no name or reputation in the community. An individualist is looked upon with suspicion and is given a nickname of mwebongia, one who works for himself and is likely to end up as a wizard in the Gikuyu, there is no really individual affair for everything has a moral and social reference where a duty based social order seems inherently less subject to universalisation with respect to duties imposed on individuals than a rights based social order with respect to the rights attributed to individuals (Steiner and Alston, 2000: 238.)

Mutua's (1993) and Al Naim's (2000) argument rings true in this Bemba case study where the elderly women reiterate that individuals must subordinate themselves to the community, because their obligations to each other supercedes individual rights and entitlements. Within the context of these relativist arguments, it is important to note that these relativist notions serve to perpetuate sexism and the continued subordination of women and girl children to the dominant hegemony. Arguments by Stammers (1999:985) are relevant at this juncture, where he mentions that some specific rights claims are designed to subordinate marginalized groups. This is true in this case study where Chisungu creates and administers rights, that keep women and girl children marginalized and oppressed. Chisungu administers these rights to sustain women's invisibility.

For example, the Bemba women interviewed acknowledged that no formal definition of women's rights exists in the Bemba language, but they were given specific rights, as created and framed by Chisungu and administered within the institution of marriage. They mentioned that their specific rights were centered on domestic obligations and duties, such as "taking care of the house, cooking, cleaning, and obeying the husband." Ironically, most respondents in this group seemed content with their obligations, and defined these as "positive duties and obligations of a woman."

4.4 Children's Rights

In line with their culturally relative ideals, The Alangizi Women's Group argued that children have no rights in the Bemba community and should have no rights because in Bemba culture, children have no say, they have no voice. They insisted that children should not possess individual rights, as empowerment will lead to wild behavior and loose morals. Several respondents commented emphatically:

These should not be allowed in a household as they affect upbringing where human rights currently promoted by international law are not "all that good." If a child disobeys or displeases his or her parents, it is not the decision of the Ngos to discipline children or to give them rights.[15]

You can't say hey these are children and they need their rights, then we are not leading our children into any good. It promotes carelessness in children and as children; these concepts are wrong and are against culture and against our law. That is not human rights where children should not listen to parents. The child should follow whatever the parents say. The children should understand that what my mum or dad is telling me is absolute. These NGOs are creating indiscipline because there is too much independence children are becoming unruly and we don't want our children to end up in these ways. [16]

The Alangizi argued that customary law allows that a child can and should be beaten at will, and can be "sent at any awkward hour." They asserted that these were the rights of elders over children. The Alangizi reiterated that a child must agree to all instructions, and elders can threaten to starve children who resist elders. A respondent commented:

A child can be beaten for saying he is tired. In that way, you can find that children are intimidated when an elderly person makes a mistake, you are not there to argue, and you accept that mistake without questioning because you are a junior. The elders come up with the decisions and choices, and transmit this to the child. You cannot argue with anyone in the village when you are called the child of that village. You have no say. [17]

[15] See note 14 Supra.
[16] See note 15 Supra.
[17] See note 16 Supra.

Other Alangizi mentioned that when a child is summoned, that child must kneel down in demonstration of respect. They insisted that a child must not retaliate against elders, as this act of disobedience is coined Munchinchi - - an insult to the elders. They reiterated that speech, tone, and body language are critical in specific codes of conduct and must be adhered to. For example, if a child observes elders seated, he must express humility and kneel down before proceeding. If elders are engaged in a conversation, the child is forbidden to interrupt as one respondent asserts:

> Children cannot speak up they must be humble. If they do, then they have insulted the country. And when a child speaks up the people begin to condemn the parents and they carry a curse around and if the children want to marry, they say, don't marry in that house they are cheeky children. [18]

The Alangizi mentioned how the administration of rights is even more complicated for children because of the distinct hierarchy between the rights of girls and boys, where research revealed that boys rights come first, and boys are accorded more respect in the household, where culture teaches the family that the boy is superior both physically and biologically and so is the natural head of the household. The Bemba are taught that since a man pays Lobola (bridal price) and takes care of the "issues" the man is automatically given a higher status and wider set of rights. One elderly woman said:

> "Men are automatically in control and in charge and therefore superior and they have more rights." [19]

The Alangizi reiterated that differences in treatment between boys and girls transcend age, where a boy is superior to his older sister and mother, and so her rights are more restricted and are inferior to his rights in the household.

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[18] See note 17 supra.
[19] See note 18 Supra

In analysis, these examples of impediments to promoting women and girl children's rights is rooted in the social organization of power in the Bemba community, where rights are linked to sustaining the hegemonic status of men. Power in the community is rooted in customary law where rights are gendered, and where their administration is subject to age, and status. These regulations are all centered on the power structures that sustain male control where for example, a young boy has a higher set of rights in comparison to his mother, because of his higher status as a male. This demonstrates that all rights claims, are created around patriarchy as the central actor, and I agree with Wilson (1997:9) who contends that while recognizing the legitimate claims of self-determination and cultural relativism, we must be vigilant in recognition of repressive regimes whose practices suppress people in the guise of culture. His sentiments are in line with my findings where I observed that not all groups accepted their subordination where some groups fought against cultural relativism and longed for their emancipation. I discovered that the notion of a singular culture where all indigenous peoples were in agreement is a romanticized ideal, a creation of theoretical mythology. On the contrary, I found several nuances within a cultural framework revealing that culture is dynamic and changeable as Wilson contends. More precisely, I found that while the cultural relativists repressed women and children and made them invisible in the Bemba community, other groups protested against their subordinate status, and yearned for a higher claim of rights.

The Kitwe Rural Women's Group held a diametrically opposite view to the staunch cultural relativists of the Alangazi group. These women expressed their frustration at men's higher status and resented their wider set of rights. They lamented at how men were not accountable to the family's needs yet the family was obliged to cater to all

the man's interests as the household head. They argued that these divisions of rights had a negative impact on the household and community because men lived without restrictions. On the contrary, women are confined to the home.

They decried how men abuse their privileges by "doing whatever they feels like, and all misdeeds are deemed normal in a community[20]" while women are punished for the slightest transgression. They assert that women are in limbo, as they accept unwittingly, their position as subordinate agents. Their comments tie in well with Stammers (1999:986) who argues that human rights are enmeshed in relations and structures of power in particular socio-historical contexts and constructed in real social and political struggles. This is true for the Bemba, where their rights and entitlements are enmeshed within the capillaries of hegemonic patriarchy where rights are framed to maintain male dominance and patriarchy as confirmed by a series of respondents:

A woman has no rights and no say before a man and a child cannot advise a parent because he or she is a child. A wife cannot advise a husband because she is a wife who is under her husband. She is under her husband and you find that no woman can say anything before her husband whatever the man says, the women and children must follow if he says go out at once, they must obey, everyone must run this is not fair.[21]

Another respondent added:

Well in the community, these rights are not in our favor, they are really low so some rights are accepting adultery as Wuchinda waume tabone Ulenganda, (meaning tolerate all from a man politely) so a man can go sleeping all over the show but even if you know you pretend nothing is affecting you, and if you question him, you are granted a divorce right there. Men can divorce you for any small thing like not sweeping the house, while a woman is taught how to tolerate all indiscretions committed by a man. The rights between men and women are completely imbalanced.[22]

While a fourth comment went as follows:

[20] Interview held at Kitwe Rural 23/9/04
[21] See note 20 supra.
[22] See note 21 supra.

Tradition argues that the rights of women are inferior and traditionally a woman must submit to her husband you cannot pick and choose submission because men have power over women and you don't know what to do. If you insist on using a condom, there are problems. If you try to voice out, there are problems, so we are really dominated by men and we have to given in as our duty. These are our rights. So women's rights are very low. Like in the village, women have more work.[23]

A fifth respondent mentioned:
There is also a tradition that argues that a woman cannot determine the number of children a woman can have. A man determines this. Once she tries to query or complain over her health, then the man will tell her to shut up and to say to her it is her duty to follow his commands. If she goes for family planning and the men discover this, they are beaten up...also in these set ups, women are treated like a worker and she must ensure that she pleases him in all ways. There are instances when she does all the work and in terms of economic activity, a woman is not allowed to get a single coin from those activities. Even if she is the breadwinner. So a woman is considered, more or less like a slave.[24]

Subsequently, when Burston Weston (Steiner and Alston, 2000: 228) argues against cultural relativists' ability to protect human dignity, we see his contentions proven in the Bemba context where culturally relative notions suppress women and children's rights to the point where more enlightened sections of the community yearn for international law. This shows that despite the criticisms against international law, a universal system is required that protects and promotes women and children's rights, through a formal legal system. The impact on the Kitwe women demonstrates that international law is effective in fighting against hegemony. However, there are weaknesses within international law where it antagonizes certain sectors of the community. Subsequently, the following chapter describes how civil society and the Zambian government are implementing international law and other "counter hegemonic strategies" which are aimed at fighting patriarchal hegemony in the Bemba community. Specifically, civil society and government are fighting patriarchy through a formal human rights framework. However, the chapter reveals the deep-rooted contestation between government and civil society within this formal human

[23] See note 22 Supra.
[24] See note 23 Supra.

rights framework, which is undermining the administration of human rights in the Bemba Community. This is described forthwith.

CHAPTER 5

THE FORMAL HUMAN RIGHTS FRAMEWORK: CONTESTATION BETWEEN GOVERNMENT AND CIVIL SOCIETY

5.1 Introduction

The Formal human rights framework in Zambia is governed by international conventions specifically, the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All forms of Discrimination Against Women, (CEDAW.) Both conventions are applied at community level, to ensure that women and children's rights are mainstreamed within all sectors of society. The Zambian Constitution is another formal framework that establishes the protection of women and children through its Bill of Rights. I investigated this formal human rights framework to ascertain what protective measures exist to shield women and children from sexist practices as evidenced in the previous chapter. Since it is clear that the Bemba community is deeply patriarchal, and that women and girl children's rights are highly constrained, I sought to investigate whether the formal human rights movement was aware of these sexist practices, and if so, what type of rights based approaches they were employing to transform the Bemba Community and to fight for a better claim of human rights.

I discovered that civil society and government are aware of sexist practices in the Bemba community, and that they are fighting patriarchy by employing not only international law, but also other rights based approaches that challenge patriarchal hegemony. Furthermore, I observed that within the formal framework, there is deep-rooted contestation between the women's movement and the Zambian government. On one hand, the government claims that women and children's rights are improving while civil society counter argues, asserting that the status of women and children's

rights are stagnant because of serious loopholes in the Bill of Rights. This research shows that there is truth to both sides of the argument, where there is proof of government's effectiveness in improving the status of women and children in Zambia. A case in point is the government's successful banning of early marriages in the Bemba community. However, civil society is also justified in pressuring government to strengthen the formal human rights framework by calling for the amendment of the Bill of Rights specifically Article 23 clause c. Essentially, Article 23 allows two systems of law to operate concurrently, specifically a universalist and a culturally relativist system. In other words, the constitution permits statutory law, to function in congruence with traditional law, other wise known as customary law. Communities and cultures in Zambia are free to establish their own legal norms and value systems, as approved by the constitution. These traditional norms are in most cases sexist, and these sexist laws govern and control women and girl children. The fact that the Zambian constitution permits customary law is highly problematic as it undermines the clear administration of human rights in Zambia. More specifically, the act of permitting sexism to function within the constitution sanctions the oppression of women and girl children by Chisungu and other traditional practices. This has caused conflict between civil society and government. These findings are outlined below, within the context of the formal human rights framework in Zambia.

5.2 The formal human rights framework: The Zambian Constitution

The Zambian constitution (Wildaf, 2004:18) was inherited from British Colonial rule when Northern Rhodesia became the Republic of Zambia. In October 1990 the Zambian constitution was amended under the Mvunga Commission to facilitate for democratization in Zambia. The constitution was amended again under the

Mwanakatwe Commission of Inquiry of 1996, who was tasked with redrafting specific articles. These amendments introduced bills such as the prevention of presidents from serving more than two terms. In March 2003 (Roadmap, 2003:2) a third Constitutional Review process commenced under the Mungomba Constitutional Review Commission. This specific authority is tasked with receiving public submissions and submitting them to government. The review process is currently underway. Like the constitution, the Zambian Bill of Rights (Roadmap, 2003:2) within the constitution has also undergone changes. Specifically the Bill of Rights was amended in 1991 to incorporate articles and clauses that protect children's rights but subsequent commissions in 1996 and 2003 did not amend the Bill of Rights on account of financial impediments, where a national referendum is too costly for a third world country like Zambia. In light of these assertions, specific articles that protect women and children are described in the following section.

5.2.1 Articles that protect women and Children: The Bill of Rights

Article 11 of the Constitution (The Zambian Constitution, Bill of Rights: 8) states that:

Every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this part, to each and all of the following, namely:

a) Freedom of conscience expression, assembly, movement and association.
b) Protection of young persons from exploitation.
c) Life, liberty, security of the person and the protection of the law.
d) Protection of young persons from exploitation.
e) Protection of the privacy of his home and other property and from deprivation of property without compensation.

These articles protect women and children in principle where it is clear that culture suppresses freedom of expression as evidenced in the Bemba community. Chisungu

silences women and children, and these constitutional provisions aim to protect such marginalized groups from acts of discrimination and exploitation.

Additionally, Article 13 of the Constitution (The Zambian Constitution, Bill of Rights: 9) stipulates that:

No person shall be deprived of his personal liberty except as may be authorized by law in any of the following cases:

a) Execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted.
b) In execution of an order of a court of record punishing him for contempt of that court.
c) In execution of an order of a court made to secure the fulfillment of any obligation imposed on him by law.
d) For the purpose of bringing him before a court in execution of an order of a court.
e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia.
f) Under an order of a court or with consent of his parent or guardian for his education.
g) For the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia.

This specific article protects the freedom of association and assembly of Zambians. This is relevant for women and children, as it is evidenced that one of the key ways culture suppresses women and girl children is by limiting and restricting their social space. It is purported that women and girls must remain in the home and should be confined to the kitchen as promoted by Chisungu. This article protects women in principle, from such traditional acts of oppression.

Furthermore, Article 14 (The Zambian Constitution, Bill of Rights: 9) on the Protection from Slavery and Forced Labor articulates that:

a) No person shall be held in slavery or servitude.
b) No person shall be required to perform forced labor.

c) The expression forced labor does not include any labor required in consequence of a sentence or order of a court.
d) Labor required of any person while he is lawfully detained that though not required on consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene for the maintenance of the place at which he is detained;—
e) Any labor required of a member of a disciplined force in pursuance of his duties as such, or, in the case of a person who has conscientious objections to service as a member of a naval, military, or air force, any labor that person is required by law to perform in place of such service.
f) Any labor required during any period when the Republic is at war or as result of that other emergency or calamity, for the purpose of dealing with that situation or;
g) Any labor reasonably required as part of reasonable and normal civic obligation.

This article establishes a framework for protecting women and children from all forms of oppression and slavery as the previous chapter demonstrates that cultural practices degrade and enslave women and children. Specifically, Chisungu promotes subordination and subservience to a dominant male regime, which undermines the freedoms of women. The Zambian constitution serves to prevent such practices by applying this article.

Subsequently, Article 15 (The Zambian Constitution, Bill of Rights: 10) mentions that:

a) No person shall be subjected to torture or to inhuman or degrading punishment.

Article 15 maintains the dignity of women and children, by protecting them from abuse and degradation stemming from their inferior status in patriarchal societies. This article is critical for protecting women and children, as it is apparent that traditional practices like Chisungu enculturate women and children into processes of degradation, torture, and punishment.

Finally, Article 23 (The Zambian Constitution, Bill of Rights: 11) states that:

a) A law shall not make any provision that is discriminatory either of itself or in its effect.
b) 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. In this Article discriminatory means affording different treatment to different persons attribute wholly or mainly to their respective descriptions, by race, sex, tribe, marital status, political opinion, color or creed.
c) It shall not apply to any law so far as that law makes provisions for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.

Article 23-clause (c) (Wildaf, 2004:18) presents the biggest hurdle for the women's movement and for the protection of women and girl children in the Bemba Community. The women's movement are the main advocates against sexism and patriarchy at community level. They argue that Article 23 allows discriminatory customary law and personal laws such as those related to marriage, divorce, burial and devolution of property to run parallel to statutory law. Subject to interpretation, Article 23 clause (c) permits discrimination against women, depending on which personal or customary laws apply to them because customary law is based on sexist paradigms, which suppress women and children. It is in light of these assertions, that I now present the formal human rights framework for the protection of children in Zambia.

5.3 The Formal Human Rights Framework: Children

According to Gabriel Fernandez of UNICEF, the Convention on the Rights of the Child (CRC) was signed by Zambia in September 1990 and ratified in December 1991, and in the ten ensuing years since ratification, some of the national laws and policies have been brought in line with the principles of the Convention.[25] This

[25] In depth interview held at Unicef Offices in Lusaka, Zambia on 17/9/04

assertion is confirmed by the State Sanctioned First Periodic Report on the Implementation of the UN Convention on the Rights of the Child. In the report, Zambia has taken several general measures to operationalise the CRC, and to domesticate and implement the CRC. Specifically, the constitution encompasses a Bill of Rights that protects a number of fundamental rights and freedoms of the child, and in addition to the constitutional and legislative protection, there are national policies aimed at improving the welfare and quality of children in Zambia. These policies are supported with constitutional provisions for child protection as outlined below:

a) Definition of a child

The Zambian Constitution (GRZ, 2002:29) does not provide for a definition of a child, but article 6(1) of the constitution states that a person who has attained the age of 21 years is considered an adult. The CRC however describes a child as under the age of 18.

b) Sexual consent and children

The periodic report (GRZ, 2002:18) mentions how there is no express provision for the age of consent, however, section 138 of the Penal Code, Chapter 87, prohibits defilement of girls below age 16 years. Based on this law, it is assumed that the minimum age for sexual consent is 16 years. By imposing age restrictions on all Zambians, children are protected from child abuse and sexual exploitation as sanctioned by Chisungu, which encourages early marriages and early sex.

c) The Policy framework: Children

The report (GRZ, 2002:40) mentions how the National Child Policy, National Youth Policy, and National Programme of Action form core guidelines for implementing

child protection programmes. These frameworks were developed to promote child welfare in the country, and have been adopted to provide guidelines for improving the welfare and quality of life of children. The report says that in addition to the existence of these over arching policies, individual government ministries have formulated sector policies that have child welfare implications.

5.4 Counter hegemony, State Practice, and Chisungu

It is within the formal framework that government has taken a strong stand against the arbitrary practice of initiation ceremonies; citing the way in which initiation ceremonies violate children's and specifically girl children's rights as a point of reference for government implementing measures to regulate and control the administration of initiation ceremonies. This is asserted by Mr. L. Chibamba, Deputy Director of the Ministry of Sport Youth and Child Development who speaks about the national drive to transform initiation ceremonies:

> While we respect initiation ceremonies as these assist in passing on knowledge from one generation to the next, and we must acknowledge that Zambia exists with these traditions, thus initiation ceremonies are an important framework through which tradition is transmitted, we are also mindful that there are harmful and sexist practices within the ceremonies, and government has an official policy in line with the Convention on the Rights of the Child and the CEDAW to eradicate these practices which are not in the best interest of women and children. For example, practices that support early marriage are in contra to our laws and national policy framework, hence as a matter of state practice, we are working hand in hand with NGO's, UNICEF and traditional leaders in promoting strategies that end early marriages, and the subordination of women and girls in the Bemba Community.[26]

In relation to Chisungu, government is aware that patriarchy is deeply imbedded within society, and that ceremonies like Chisungu are inherently sexist where culturally, Bembas expect women to be subordinate to men. Government condemns these acts of oppression and the manner in which Chisungu promotes early sex and the disempowerment of women. He notes:

[26] In depth Interview held with Deputy Director 18/9/04

There have been serious short comings in the Chisungu like sex teachings which should not expose girls to such activities at a tender age, because this is against national law and state practice, where in this day of HIV/Aids we must remove the bad elements that are against women and children's rights. [27]

He states that traditionally a woman's place is "in the kitchen" and that men are accorded a higher status on account of their sex, and to remedy these imbalances, the Zambian government has implemented counter hegemonic rights based strategies; which are challenging the dominant patriarchal hegemony in the Bemba community. Their approach entails engaging the community in perceptual changes, by employing participatory methods. Government works with communities to ascertain what community perceptions are on women and children's rights and based on these notions, government builds on and transforms these discourses.

Alan Hunt (1993:8) explains how the most significant stage in the construction of counter hegemony, comes about by building on the elements of the hegemonic discourses and by introducing elements which transcend that discourse. His notion of fighting power where people "are at" effects counter hegemonic shifts in power relations within the capillaries or subtle elements of state practice, resulting in the dying away or exhaustion of elements once dominant and securing real social change. It is apparent that government is implementing such counter hegemonic strategies by commencing where people "are at" as Chibamba emphasizes:

So what we try to do is to build on what exists, to reinforce the already existing knowledge of rights in the community. We reinforce the models that are in the convention to suit tradition and culture. The rights of women and children exist, so we just remind the communities and build up based on the community's perceptions, based on their own knowledge of rights.[28]

[27] See note 27 supra.
[28] See note 28 Supra.

Programmes entail simplifying the Convention on the Rights of the Child (CRC) and translating it into 7 local languages "so that even a villager or a primary school child can read and understand their individual rights."[29] Government and UNICEF have coined this strategy, promoting the "simplified version of the CRC." He argues that communities are beginning to understand their rights and entitlements where in some provinces traditional leaders have banned early marriages and are campaigning against harmful traditional practices. Chibamba mentions that they use international law to promote human rights in the community.

5.5 Government Promotes International Law (Universalism)

Chibamba emphasizes government's unwavering support for international law when he asserts:

> To answer your question, we have full faith in the application of international law in fighting for the rights of women and children where I believe that relativist notions of human rights merely perpetuate subordination so we need specific laws to govern and regulate culture, other wise there will be chaos. On a theoretical level, I find that cultural relativist arguments undermine culture and so, universal human rights are our preferred option.[30]

Chibamba insists that these international instruments are not accepted automatically. He reiterates:

> In some countries, universal law is enforced directly, but not in Zambia. In this country, we must implement specific enabling legislation before we incorporate universal systems, so for us, international law is not an automatic standard...we must harmonize local traditions with the international treaties, and then look at how they match.[31]

This case conforms to the literature in which Richard Wilson (1997:18) analyzes how global human rights are modified to fit within local specificities, a term he coins the "vernacularisation of global human rights." He defines this as "the deployment and

[29] See note 29 Supra.
[30] See note 30 Supra.
[31] See note 31 Supra.

refiguring of law within the local, where such transnational cultural appropriations are fundamentally creative and represent forms of resistance to global homogenization" (1997:18.) This conforms to Chibamba's statement:

> We need to preserve our national identity where the key is to analyze the articles contained in International law and their conventions, to see what and how they fit into the local environment, so that we ensure that we do not incorporate foreign elements to our people because we have our own traditions. [32]

Chibamba argues that as much as possible, Zambia attempts to adhere to its own traditions by assessing how the process of domestication conforms to cultural values: "If we discover variance and disparity, we will exclude that component"[33] he asserts. He adds that to date, they have examined the CRC and CEDAW and have not identified any controversial issues, so the domestication is automatic and government has approved the localization of international instruments. He states that his line ministry, in charge of incorporating the CRC and CEDAW has since domesticated the laws by obtaining authority from cabinet, presenting a bill to parliament, and parliament has endorsed the legislation used to domesticate international law. In the near future, these laws will be justiciable. In other words, Zambia has ratified and is in the process of domesticating the CEDAW and the CRC as they have succeeded in harmonizing international law with traditional culture. Chibamba's views are supported as well as rejected by civil society as described in the following section.

5.6 A Brief Background of the Civil Society Movement in Zambia

Aili Mari Trip (2001:4) describes how African women's movements are highly independent and are capable of taking positions contrary to government. Most activities are achieved through struggles between the state and this describes the women's movement in Zambia. The women's movement in Zambia emerged in the

[32] See note 32 Supra.
[33] See note 33 Supra.

late 1980s and comprises of urban intellectuals who mobilize peri- urban and rural women at the grass roots level. Since the mid 1990's, they have been in constant contention with government on various issues, including women and children's rights. Within the context of this animosity, I sought to ascertain civil society's position on the local appropriation of international law as it applies to women and children's rights in Zambia.

L. Macmillan of the Women and Law in Southern Africa (WILSA) asserted that around the issue of localizing international law, the movement supports government's stance on local appropriation. She argues that the value of modifying international conventions in line with domestic legal systems is the advantage of including local specificities, which protect the traditions, cultures and customs of Zambia. She affirms that the guidance of the internationalist agenda is such that Zambian constitutions have tended to approach rights discourse as individualist, where each person is equal before the law, and where each person has fundamental inalienable rights before the law. However, the biggest site of contestation within the formal human rights framework is centered around Article 23 clause(c) of the Bill of Rights which undermines the overall strategy to eradicate patriarchy because Article 23 permits customary law to run parallel to statutory and international law; meaning that the constitution tolerates discrimination against women and children by allowing customary law to function within the Bill of Rights. Women for Change Research officer, Stella Ngona Nkatya confirms this assertion:

> The constitution as it stands, is not user friendly, because we are using an outdated model, which allows customary law to run side by side with statutory law, and this gives blanket approval for the discrimination of women and children in Zambia. It is evident that Article 23 does not prohibit discrimination on the grounds of religion, language, social origin, property, non-political opinions, birth or other status,

disability, pregnancy, age, culture and belief. Furthermore, the anti-discrimination clause sanctions discrimination under customary law or personal law. But it is well known that most of the discrimination against women occurs in the area of personal law and customary law given the fact that Zambian society is patriarchal. Another weakness of this clause is that it does not prohibit discrimination by private entities or individuals.[34]

Beston Banda of Children in Need network adds to the debate:

Basically women are not considered as equal before the law within the constitution because of the allowance of customary practices as sanctioned by Article 23, where there is a provision that there shall not be discrimination of a person according to grounds of sex and gender except in issues of personal law which means women can be discriminated against as authorized by the constitution.[35]

An NGOCC spokesperson contributes with frustration:

This is a site of deep-rooted contestation, where a plural legal system made up of statutory modified universal principles creates confusion. [36]

Nkayta claims that in a similar vein the courts apply no clear rules when assigning judgments, where sometimes, they appear to lean towards statutory law, while at other times, they support customary law which leaves the perpetrators free to abuse the rights of women and children. She adds that rights are easily compromised by custom and social dictates. For example the customary law system of lobola is fundamentally discriminatory towards women and women are valued as men's property. This notion is sanctioned in customary law.

Macmillan adds to this, by contending that these conflicts are especially relevant to the Bemba tradition of Chisungu, where customary law supports these practices as part of culture. She asserts that the effect of Article 23 is to provide a blanket approval of discrimination and negate the fundamental principles of equality and the rule of

[34] In depth Interview held at WFC Offices held at Lusaka, Zambia 15/09/04
[35] In depth interview held at Chin Offices in Lusaka, Zambia. 16/09/04
[36] In depth interview held at NGOCC offices in Lusaka, Zambia. 17/09/04

law of the constitution. This has created conflict within the statutory framework of the constitution:

> This is a site of deep rooted contestation, where a plural legal system made up of statutory modified universal principles, and English common law and customary law, creates clashes and confusions at both the local court level and in society in general, where most local courts, who are governed by customary law, discard state law and practice in favor for what tradition allows, which has lead to wide spread discrimination of women and children at the community and family level.[37]

She concludes that customary law is now a tool that manipulates power relationships in the community and protects the position of men, and it is often manipulated for this purpose, where the duality of the legal system particularly within a changing socio-economic framework, opens the door for confusion and possible manipulation.

As I examine arguments of civil society, and the contestation surrounding the formal human rights framework, it is clear that the universalist relativist divide exists in this context where universalist notions of "rights" are in contra to traditional notions of "rights" meaning that universalist notions within the Bill of Rights are at variance with customary law, yet the formal framework upholds both a relativist standard and a universalist standard. The relativist notion clearly undermines efforts to implement international law where two diametrically opposed paradigms counter act each other. Universalism seeks to promote the rights of women and children as individuals, while customary law seeks to adhere to communitarian principles that clearly suppress the rights of women and children. It is apparent that by allowing the application of parallel law, the administration of women and children's rights is in jeopardy. Subsequently, international norms within the constitution simply do not conform to relativist notions in customary law.

[37] Interviews held at Wilsa Offices 18/09/04.

A clear example of this is how a child is defined. Under custom, a child is defined as anyone who has not attained puberty while international law defines a child as anyone below 18 years of age. So what may be considered abuse under international law is deemed normal under custom. This disparity suggests conflict where for example, there is great resistance to the banning of early marriages, because while early marriages amount to child abuse within the formal human rights framework, early marriages are acceptable cultural practice in the Bemba community. This brings us to Mutua's (1993) contention that the westernization of human rights discourse is especially troubling for the non- western cultures that face difficulties relating to and conforming to the premise of the declarations and protocols, which are diametrically opposed to a non western value system on human rights and civil liberties.

It is clear that tensions have arisen with the quest to universalize human rights, and one can argue that government's failure to reconcile customary law with universal law within a parallel legal system has lead to an inadequate and antiquated human rights protection mechanism in Zambia. It also demonstrates the conflict between two value systems in the society as a whole, which is manifest in the Bill of Rights. Wildaf Executive Director Mrs. E. Lubasi validates this assertion:

> Unfortunately the constitution allows customary law to concur with state law in matters that deal with personal status, marriage, divorce, and inheritance rights. This means that such cases can be decided according to state law or according to the customary law that applies to the litigants, where under customary law, a woman does not have the same rights which results in discrimination. [38]

She argues that it is in this vein that they have mounted a campaign to force government to change the constitution, to ensure that legal loop holes are sealed. Civil Society is at war with government, "pushing and pulling them," to change the Bill of

[38] In depth Interviews held at WILDAF offices at Lusaka, Zambia 19/09/04.

Rights and its flaws which has created animosity between civil society and government.

A survey of newspaper reports[39] confirms these tensions where one article mentions the President of Zambia, Levy Mwanawasa arguing that civil society has no mandate from the Zambian people to spearhead arguments around women and children's rights and around the CRC process. President Mwanawasa asserts that civil society possesses no powers to drive the constitutional review process, because they were not elected representatives of the people. The president backed Justice Minister George Kunda's argument that it would amount to usurping powers held by the executive if civil society spearheaded the constitutional review process:

> We were elected into government so that we could handle the affairs of the people and no person or group; NGO has the power to usurp that authority. Government will take center stage in the constitutional making process because Government and that is democracy represent the people where the people act through their representatives. A government is elected by the people, for the people of the people, so we are the best suited to formulate a Bill of rights and take it to parliament based on the will of the people. Mwanawasa said. [40]

Macmillan of WILSA expresses dismay because prior to these wrangles, civil society was developing a cordial relationship with government. The Republican President even requested a formal meeting with the women's movement regarding the Constitutional Review Process, but suddenly, the President "changed his views" and asserted that the demands for women and children's rights were treasonable; that the women's movement would be charged with treason if they continued making these demands as she bemoans:

> I am surprised at this war like explosion because before, we thought there would be continuous cooperation, and harmony with government but brutal tensions have surfaced with the current constitutional review process. The current process is a hotbed of contestation around the area of women and children's rights.[41]

[39] The post Newspaper 23/8/04
[40] The Post Newspaper. 23/8/04.
[41] Interviews held at WILSA offices see note 38 Supra.

NGOCC contends that civil society is being marginalized with intent, because previously, government decided on the content of the constitution but today civil society demands that government relinquish its power and make the CRC process people driven:

> Zambians must have the final say on the constitution but today; Government has the final say on the constitution and has the power to amend the constitution according to its personal agenda. All we can do is recommend, but government decides what goes into the final document. This has a negative impact on women and children's rights. For example, government argues that the Bill of Rights is Sacrosanct, meaning it cannot be amended and this stance is undermining women and children, because of the continued stagnation of the Bill of Rights.[42]

Subsequently, the women's movement has threatened government with legal action. Michael McCann (1994:283) says that legal threats provide an ideal framework for invoking rights claims against the state and legal battles provide an ideal platform for mobilizing grass roots support for the claim in question. When I asked Macmillan whether litigation was effective in fighting for their demands, Macmillan contends that threats of litigation has enabled the women's movement to generate support locally and internationally. Specifically, legal threats have mobilized a transnational body around the CRC process, and has galvanized the women's movement regionally and internationally, to fight for a more balanced constitution. She laments however, that actual court battles are a failure:

> Litigation is a failure because of the power of government. Because for instance, we tried to sue government over the constitutional issue, but government has power, and we could not mount a legal challenge successfully. [43]

Macmillan expresses her annoyance at litigation's failure to push for the amendment of the Bill of Rights as this undermines collective efforts to eradicate sexism in the Bemba Community. She reiterates how the Bemba society is sexist and how Chisungu

[42] Interviews held at Wilsa Offices 18/09/04.
[43] See note 41 Supra.

disempowers women, which call on the urgent need for a revised Bill of Rights. She comments:

> We need a satisfactory Bill of Rights to protect Bemba women and children because Chisungu is inherently sexist. Not only does it lead to subordination, but it also publishes the fact that girls are ready for sex which can lead to promiscuity where girls dance half naked which is a direct violation of the right to privacy as promoted in international and statutory law. The whole issue is appalling, and we find these practices to be highly problematic. All these practices will continue if we do not amend the constitution because customary law supports sexism at community level. [44]

In addition to their push for a new Bill of Rights, civil society has also mounted counter hegemonic strategies to end discrimination within the Bemba Community. Beston Banda of Chin mentions how they have successfully employed rights language as a rights based approach to awaken the communities on their entitlements. Alan Hunt (1993:9) argues that employing rights language is an effective counter hegemonic strategy where the use of "rights rhetoric" results in the legitimization of the claim, giving it authority, and potency, which can effect a reconstituted hegemony. Specifically, they use the language within the CRC to mount formal campaigns against patriarchy. The enlightenment of the community through language legitimating is causing great shifts in power relations at community level, as girls and women are beginning to demand for their equality. He claims that language legitimating is especially potent, as it enhances and promotes women and girl children's rights as contained in various international treaties and conventions.

WILSA Adopts Cause Lawyering Techniques

Another counter hegemonic strategy employed by civil society is cause lawyering. White (1988:751) mentions that cause lawyering is effective at dismantling destructive social processes through which groups construct their experience as subordinated groups imbibe subconsciously practices of the dominant hegemony.

[44] See note 40 Supra.

Specifically, WILSA uses such cause lawyering approaches to transform the psychological processes that lead Bemba women into accepting their subordinated status where Chisungu molds their perceptions of inferiority through a process called the engineering of consent. Engineering of consent involves imbibing destructive notions without questioning their legitimacy, which leads to feelings of self-depreciation, and alienation. White mentions that the remedy is to adopt confidence-building methods to achieve perceptual changes. By learning from the community and teaching the community, the lawyers and communities can educate each other through participatory interaction.

Macmillan asserts that while these techniques usually reconstitute a new claim to human rights by transforming the consciousness of duty bearers, cause lawyering as administered by WILSA has come under attack from the women themselves. Groups who insist that they should be subordinated and who refuse to change their perspectives assault community workers for disrupting the community during mobilization activities. She mentions points of great contestation during legal sensitization programmes where activists are accused of spoiling culture:

> The community attacks our legal officers because they believe that we are importing strange ideas from Lusaka, and we are giving the community strange ideas. There is an enormous battle around the Chisungu because it is virtually impossible to change the community's perspectives because of deep rooted traditional values and beliefs that are handed down from generation to generation. [45]

She notes even greater resistance to Children's rights because the community believes that the NGO's are giving children too much power. She laments:

> Firstly, the community hates the CRC. They think that we are making children wild. And the other difficulties faced by NGO's are indescribable, because maybe our strategies are all wrong, and sometimes we believe that our strategies may not be working. Maybe the sensitization processes are ineffective and we're questioning whether we are really going to change these practices and behaviors. We do however

[45] See note 43 Supra.

need to make people question their traditions that have been handed down from previous generations. This is the counter hegemony we must fight to promote women and girl children's rights. [46]

It is apparent that the community is reacting to a "foreign invasion" where the CRC and other programmes are viewed as opposing culture. In other words, some communities are hostile to the westernized concepts of human rights, which are out of sync with their traditional framework. This was clear in the previous chapter seen with respondents who spoke about their dislike for the CRC and international instruments. They argued that the promotion of individual rights of the child lead to wild behavior and loose morals.

Subsequently, these clashes in paradigms must be taken into account by Civil Society organizations and government, where there is need for a reconstituted notion of rights claims. This new conception must not necessarily replace standardized international law, but must seek to modify these paradigms to make them more culturally friendly. It is apparent that universal models in their current conception are facing resistance within some sectors of the community, because customary practices are entrenched in the community and duty bearers are reluctant to conform to a foreign standard. Makau Mutua (2002) confirms these assertions when he says; "it is a shameless presumption to purport a common standard for all peoples and all nations. This is not to say it's invalid, but it is incomplete (Mutua, 2002.) In other words, Mutua calls for a wider conception of rights claims.

I am not proposing that one must cease applying international law as it is obvious that part of the resistance to the counter hegemonic strategies is an attempt by the community to maintain the status quo. It is found that in most patriarchal societies,

[46] See note 44 Supra.

new rights claims are met with animosity when these new claims challenge the existing set up, and seek to dismantle dominant structures of power. The aim of the Bemba community is to sustain male hegemony, or resist a new consolidation of power for women and children. They seek to maintain notions that continue to subordinate women and children. Other wise stated, we are witnessing what Richard Wilson (1997:3) calls concrete social struggles, where the battle between two sets of rights claims, a relativist and a universalist conception are in contestation This tension indicates a call for a new paradigm.

In calling for new rights claims, I wish not to argue for a culturally relativist notion because Bemba models are inherently flawed as they degrade women and children to maintain the dominant patriarchal order. Subsequently, why insist on maintaining this social order simply because it is a part of culture? Why say, this is culture and we cannot interfere? Should we not challenge the Chisungu, when it is apparent that Chisungu is the main framework through which invisibility is reinforced and subordination of the rights of women and children are sanctioned at community level? Should we allow duty bearers to remain constricted by customary law? We cannot turn a blind eye to injustice simply because we must preserve culture in its purest form. In fact, this relativist notion of a pure non-western culture is a myth, a romanticized and essentialised ideal that does not exist in so called traditional culture. Contrarily, I have witnessed that culture is in flux, with various influences within traditional culture. There are different opinions, value systems, perspectives, and notions on human rights shaped by some western influences. There is no unadulterated pure culture as purported by the relativists. In stating this, I am not condemning the relativists. I see no system as better than the other.

Both systems have their shortcomings. Universalism (international law) succeeds at alienating certain sectors of society, while cultural relativism undermines women and children's rights in the Bemba community by promoting sexist traditional practices. In short, I am arguing for a new conception of rights, based on a multicultural and multifaceted international paradigm- -based on a model that challenges patriarchy but is in harmony with culture. The concluding chapter elaborates on these remarks.

CHAPTER 6

CONCLUDING REMARKS

This research reveals that patriarchy is deeply embedded within the social organization of the Bemba Society. Specifically, women and girl children submit to this domination through processes of enculturation as entrenched in cultural practices like the Chisungu Ceremony. Unfortunately these patriarchal values are perpetuated by Chisungu where specific teachings reinforce customs and beliefs that impose expectations on the behavior of women, which are linked to their gender identities. These expectations are ingrained in power relations. I observed gender based socialization processes of attitudes and behaviors, rights and responsibilities, which were socially aligned to the girl's physical sex. Her socialization included learning the significance of her role as a subordinate object. She was coached on how to satisfy a man, how to accept abuse, and how to respect his authority as the supreme head of the household.

More specifically, this indoctrination is achieved through physical enactments of the body, which is used as a framework for reinforcing patriarchal hegemony. Chisungu uses the body as a vehicle for imbibing and reinforcing power imbalances where physical dances and songs are designed to implant feelings of submissiveness and inferiority within initiates. These dances are a form of social control, as girls internalize their secondary status by learning gestures that are inextricably linked to psychosocial processes.

Another key finding is that human rights are framed around patriarchy. I discovered that Chisungu is a central actor in shaping and maintaining the administration of

women and girl children's rights seen with how Chisungu teaches young girls to accept subordination as part of their rights. Chisungu administers specific gendered rights that are embedded within a broader framework of human rights. The rights of women are a mere sub set of a series of rights that are administered and managed by the community.

Specifically, the Bemba constructs rights vertically and horizontally. At the top of the hierarchy is the supreme chief who possesses the most rights, while women and girl children fall at the bottom of the social order and possess the least claims to rights. Furthermore, human rights are community based and are horizontally structured around mutual respect and morality for their realization. This is contrary to international law, which protects the inalienable rights of the individual, and seeks legal enforcement for individual protection. These two systems are diametrically opposed and there is clear contestation between the two models. Munalula (1997:65) asserts that this is attributed to a clash in value systems. The clash in value systems is seen in the deep-rooted contestation at community level, where some women yearn for a higher status of rights as prescribed by universalism, (CRC and CEDAW) while cultural relativists despise international law and yearn for a traditional legal administration of rights. It is clear that this conflict evidenced in the community exists at three levels within the wider societal framework of human rights.

The second level of conflict exists between government and civil society. Civil society and government are in battle, and they counter accuse each other of stalling the human rights process. This conflict has worsened in recent months as civil society demands for the revision of the Bill or Rights specifically Article 23, which they

assert is a loophole for customary law to run parallel to statutory law. They call on government to remove the customary law provisions, which allows discriminatory practices as sanctioned by custom.

The third level of contestation rages between civil society and the community. Some women's groups are fighting NGO's whom they accuse of invading the community with strange ideas. Tensions have arisen because civil society is implementing a range of counter hegemonic strategies to fight patriarchy. Alan Hunt (1993:4) defines counter hegemony as transforming and refashioning oppressive practices by employing a range of approaches that achieve shifts in power relations within the capillaries or subtle elements of state practice. He says that rights activists must secure social change by deconstructing hegemony, which results in the dying away or exhaustion of elements once dominant. Civil Society is implementing such strategies such as cause lawyering, which entails interacting and dialoguing with the community, on their legal rights. This technique can reconstitute a new claim to human rights, by transforming the consciousness of marginalized groups who are roused to a new understanding of their agency. By learning from the community and teaching the community, the lawyers and communities can educate each other through participatory interaction.

Civil society reveals that cause lawyering is a near failure because women attack legal officers during sensitization campaigns- -as they refuse to change their views, and refuse to accept that they are subordinated. I witnessed this myself where some groups failed to discern how specific aspects of Chisungu reinforce processes of subordination. Several women denied out right, that Chisungu disempowered them or limited their rights. On the contrary, they insisted that Chisungu gave them agency

and pride. This demonstrates that more effort is required by Ngo's to awaken the community to their rights and entitlements.

A more successful counter hegemonic strategy is language legitimating where the children's movement is employing rights rhetoric within the CRC to empower the community. In specific areas, women are waking up to their entitlements through the introduction of the language of international law. The children's movement is witnessing transformation. Women and girls are standing up and demanding for their entitlements, as they begin to understand their rights within the CRC and CEDAW.

The research reveals a key point, namely, the diversity between groups debunks the myth that traditional culture is static and monolithic as asserted by relativists who romanticize and "essentialise" culture arguing that there is one culture, a pure culture and a monolithic mind set of duty bearers. I have discovered that in reality traditional culture is multifaceted, and multileveled and in constant flux where notions transform with the introduction of new ideas.

However, in critiquing the relativists, I am not contending for the continued promotion of universalism (international law) in its current conception, as it is apparent that international law is effective but defective as it is not culturally friendly and tends to alienate certain aspects of the community. International law requires some modification to conform to the various cultural paradigms as witnessed in this case study.

In calling for a new model, I concur with multiculturalists like De Sousa Santos, Mutua, and Cassesse, who call for a new multicultural and pluralist conception of human rights that embraces various opinions which are agreed upon at a point of convergence, where people come to a compromise grounded in mutual respect on certain broad based norms, without necessarily having a deep mutual understanding or congruence with each others' backgrounds. Each ideology may seem strange to the other, but all recognize and value practical and applicable norms that are legally binding and culturally friendly. This is best summarized by Cassesse who says: "In a world as divided and fragmented, as the international community today, the existence of a set of general standards, however diversely understood and applied, in itself constitutes an important factor for unification" (Cassesse, 1997) In conclusion, I argue for a new universalist paradigm that respects all. I believe that the quest for universality is not a futile goal, as the CRC, and CEDAW (the current paradigm used to implement women and children's rights) can be reformulated to incorporate less Euro centric ideals and more multi cultural options. I urge member states to sit together, and learn from case studies like this one, and based on their findings, they can establish a new universalist paradigm that is culturally friendly.

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