

PN/AAV-512

12th 20769

62

LEGALIZED DISCRIMINATION AGAINST
WOMEN IN ZAMBIA

by

Sara Hlupekile Longwe
Zambia Association for Research
and Development (ZARD)

Working Paper #102
November 1985

Abstract: This paper examines the extent to which discrimination against women in Zambia is the result of discriminatory laws. The author began to explore this question as the result of a personal experience of discrimination, which led to the question of whether discrimination existed only in administrative practice, in defiance of law, or whether the law itself was discriminatory. An examination of the Constitution reveals that, although it provides protection against discrimination on such grounds as tribe and race, there is no general protection against discrimination based on sex. This means that the Constitution allows laws and administrative practices that discriminate against women.

In fact, the Constitution itself, in the law on citizenship, provides an example of discriminatory law. This paper does not attempt an overall survey of all the discriminatory laws of the statute book, but considers some notable examples of discrimination against women in the Employment Act and in the Income Tax Act. It then goes on to consider some examples of discrimination in the Government's administrative practice in such areas as women's access to credit facilities, extension services, and education. The paper also briefly considers the extent of discrimination in customary law. It is noted that, although there is a strong element of patriarchy in customary law, women nonetheless had definite rights in precolonial times. It is noteworthy that, although Zambia has recently ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women, much of statutory law, and even some of the Constitution, would have to be rewritten in order to conform to the provisions of the Convention.

The paper concludes with a brief consideration of the line of action that Zambian women must take if they are to make some headway against the weight of discrimination against them.

About the Author: Sara Longwe is Co-Secretary of the newly formed Zambia Association for Research and Development (ZARD) which is concerned with promoting participatory research into the position of women in Zambia. She is also co-editor of Women's Rights in Zambia, a collection of papers published by ZARD (Box 37836, Lusaka).

LEGALIZED DISCRIMINATION AGAINST WOMEN IN ZAMBIA

INTRODUCTION

In this paper, I shall describe how discrimination against women in Zambia not only exists in administrative practice and customary behaviour, but is also, in important instances, prescribed by law and permitted by the Constitution. After considering a personal experience of discrimination and my powerlessness to protect myself, I shall consider the concept of equal rights for women and what this entails in the way of constitutional and legal protection for women. By contrast, I shall then consider some notable examples of the way discrimination against women in Zambia is allowed and legalized by considering discriminatory aspects of the Constitution, of various laws, and of administrative and customary practices. Finally, I shall consider the implications of these findings for collective and concerted action by women if they are to gain an equal place in Zambian society.

A PERSONAL EXPERIENCE OF DISCRIMINATION

Despite the fact that women are in the majority, Zambia remains a very male-dominated society. My general and perhaps somewhat ill-defined consciousness of this situation was brought forcefully into focus by an experience of crude and overt discrimination which brought home to me my utter powerlessness as a woman in the face of such discrimination and the extent to which I could expect no protection from the law or from the organs of the state that are supposed to uphold the law and to guarantee individual rights and redress against unlawful behavior. In recounting this experience, I realize that many female readers will have experienced similar, and perhaps worse, situations. I am reporting my experience here because it was one that caused me to reflect upon my actual position in society and to consider the question to which this paper addresses itself; namely, the extent to which discrimination against women in Zambia is not merely the result of ignorant behavior by a minority of male chauvinists but is rather a pervasive pattern of behavior practised by most men, accepted by many women, institutionalized in society, and established by law.

The incident itself can be reported quite briefly and is a fairly commonplace example of the humiliation that women in Zambia suffer. At 7:00 p.m. on the evening of February 4, 1984, I attempted to enter a hotel in Lusaka to fetch my two daughters (12 and 10 years old) who had been at a birthday party in the hotel. A security guard at the door told me that I could not enter the hotel because I was an unaccompanied woman. I attempted to pass him and he caught hold of me to prevent me from entering the premises. Being somewhat larger and stronger than the little security guard, I threw him off, entered the hotel, and registered a complaint with the manager-on-duty that: (1) I had been denied admission to the hotel for no good reason; and (2) I had been physically assaulted by a security guard who was evidently in the service of the hotel and acting under the instructions of the hotel management.

The manager-on-duty was unimpressed by my complaint. He told me that unaccompanied women were not allowed into the hotel and that the security guard had been following hotel instructions which were part of hotel policy. I summoned the police from Lusaka Central Police Station and laid a complaint against the security guard for physical assault. There was no difficulty in presenting evidence on this because the security guard himself related to the inspector in charge that he had physically tried to prevent me from entering the hotel. However, I was told somewhat forcefully by the police inspector that: (1) unaccompanied women were not allowed into the hotel after dark; (2) the security guard was only doing his job; and (3) (perhaps most absurd of all) I should respect all orders received from a person wearing a uniform (in this case a civilian security guard). When I protested that the hotel regulations had no force of law, that I was entitled to enter the hotel, and that this was a clear case of physical assault, I was told to keep quiet and leave the premises immediately or I would be put in the police cells for making a public nuisance of myself.

Subsequently, I wrote to various authorities, trying to get some action on the subject of the hotel, which is clearly discriminating against women, and on the police who were not willing to take action in a clear case of discrimination and of physical assault. Unsurprisingly, I have made no progress. I wrote to the Investigator General, complaining of the apparent misuse of institutional powers by both the hotel and the police, but the belated reply merely stated that the Investigator General was not interested in the matter. I wrote to the hotel management, but the General Manager found himself unable to put any explanation into writing. He did invite me to the hotel for a verbal explanation but I explained that I wanted a reply in writing and, in any case, I could not visit the hotel again for fear of being unable to get in through the door unmolested. I wrote to the Officer-in-Charge at Lusaka Central Police Station; he promised to hold an investigation into why his officers could not lay charges, or even take notes, on a clear case of simple physical assault but had instead threatened to arrest the complainant. I have heard no results from the investigation. I also wrote to the manager of the security firm of the guard who assaulted me, asking how it was that the security guards were taking instructions from the hotel that involved them in making physical assaults upon visitors to the hotel, but I have received no reply.

According to the Zambian Constitution, I have a clear right to my liberty, security of the person, freedom of assembly and association, and the protection of the law. But on the night of February 4, 1984, I discovered I had none of these rights simply because I am a woman. This is parallel to the situation before independence when people were barred from public facilities on the basis of being black rather than white. Now the situation has changed to sexual rather than racial discrimination. Does this mean that independence was for men, but not for women? The relevance of the ban being on unaccompanied women should be noted. A woman is allowed to enter if she is in the company of her owner--the man--just as the black man in colonial Africa would have been allowed into the hotel in the company of his colonial master. What is prohibited is not women but independent

women. We should consider, however, the explanation of the manager-on-duty of the hotel as to why unaccompanied women are prohibited from entering the hotel. It was the familiar argument that the prohibition is necessary in order to prevent prostitutes from entering the hotel. This argument is invalid on several grounds. First, it operates against other women, such as myself, who are not prostitutes. Second, it cannot prevent prostitutes from entering the hotel, since they can enter in the company of customers or, more likely, pimps. Third, there is in any case no defence in law for prohibiting the entry of prostitutes, since prostitution is, in itself, not illegal, and being a prostitute is not a bar to civil rights. It is soliciting that is illegal, and the hotel management is not legally entitled to ask a woman to leave or to call a security guard or the police unless the woman is found to be soliciting.

In fact, the hotel explanation cannot be accepted at face value at all. As a policy for excluding prostitutes from hotels it is, in my experience, absolutely ineffective. Prostitutes are a common sight in hotels at night, and I have never seen the management of any hotel take the slightest action against quite blatant soliciting within the hotel premises. The problem of prostitution is, therefore, better understood as an excuse put forward for a general policy of prohibiting unaccompanied women. The ban should be understood as being exactly what the hotel management describes it as: a prohibition against unaccompanied women. It can be best understood as part of the male resentment against the single woman or, more specifically, the independent woman. The general male sentiment is that the proper place of women after dark is in the home, and the only exception to this rule is that a woman is allowed out in the company of her husband or boyfriend or even a customer. This understanding of the rule provides a much better understanding of its social basis and explains why the rule is such an obviously inadequate way of preventing prostitutes from entering hotels. Whether or not the unaccompanied woman is a prostitute has nothing to do with the reason for prohibition.

In summary, then, what was my experience? It was that the hotel was able to enforce a rule that violates my constitutional rights. It is, furthermore, a rule for which there is no provision but against which I was able to get no protection from the police or, indeed, from any other authority. To understand more fully why I could not get any redress against such blatant discrimination, it became necessary for me to open some law books. I had always assumed that the constitution protected women from sexual discrimination and that discriminatory practices were not sanctioned by the law and so would naturally fall away as people became more educated and as women became more assertive. But what I found quite shocked me. I found that the constitution provided no protection against sexual discrimination and that the constitution itself, as well as various laws, actually served to legalize various discriminatory practices.

THE LACK OF PROTECTION IN THE CONSTITUTION

The question that concerns me here is not so much the rights of the individual that are enshrined in the Zambian Constitution but, rather, the

question of whether these rights are established equally for women and for men. The purpose of a state constitution is to outline the rights of a citizen and the limits to these rights, as well as the duties of the citizen to the state (i.e., the rights of the state over its citizens). But a constitution is also concerned with establishing equality of treatment under the law, that all citizens have equal rights, irrespective of the social group to which the citizen belongs. The question here is whether all citizens are equal under the law, irrespective of sex. There are basically two ways in which a constitution may uphold the principle of equality. First, it can make it clear that a particular right or law applies equally to all citizens, irrespective of sex. Second, and more effective, a constitution may include antidiscrimination clauses that prohibit the making of any law, any administrative practice, or any access to government facilities that discriminate on the basis of sex. This second way of establishing equality is much stronger and more effective than the first, since the first method has the form of establishing equality with respect to particular laws or rights, whereas the second method makes it clear that equal treatment is required for all laws and rights. Unfortunately an examination of the Zambian Constitution reveals that women have some limited protection of the first sort, for particular rights, but there is no general protection against discriminatory provisions in law, rights, or administrative practices.

An example of the limited form of protection referred to above is found in Article 13 of the Zambian Constitution which 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 or sex ... to each and all of the following, namely:

- a) life, liberty, security of the person and the protection of the law;
- b) freedom of conscience, expression, assembly and association, and
- c) protection for the privacy of his home and other property and from deprivation of property without compensation ...

(author's emphasis)

This is the classic form of the concept of equality under the law, irrespective of social group. And it is gratifying to note that "sex" is included as a social group and, therefore, that discrimination against women is evidently not allowed in the provision of these fundamental rights. However, the items listed above are not the sum total of the rights, since any citizen is also interested in other and various forms of equality under the law, irrespective of social group membership: the citizen is interested

in equality of opportunity in many aspects of ordinary life. For example, the citizen expects equal access to education, to health facilities, and to job opportunities, without being discriminated against on the basis of tribe, race, color, and so on. In short, the overall principle of nondiscrimination requires that all public facilities should be equally available to all, and each citizen should have a chance to achieve wealth and social position in society without being held back on the basis of belonging to a particular social group.

Examination of the Zambian Constitution reveals that there is indeed a much broader provision against discrimination, which prohibits discrimination in any law or administrative regulation. Article 25 of the Constitution is where this general prohibition of discrimination is made explicit, Clause 3 of which defines discrimination as:

... affording different treatment to different persons attributable wholly, or mainly to their respective descriptions by race, tribe, place of origin, political opinions, color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(author's emphasis)

In contrast to Article 13, quoted previously, the term "sex" is now suddenly missing from the list of social groups that are to be protected from discriminatory laws and regulations. Can this omission be merely accidental, with the equality of women under the law being sufficiently established under Article 13? After all, Article 13 promises the protection of law, irrespective of sex; what can this provision mean if the law itself discriminates against women? My conclusion is that the omission of the term "sex" from Article 25, Clause 3 of the Constitution is not accidental. It opens the way for all the sexually discriminatory laws and regulations that are beyond the scope of the "fundamental rights" described at Article 13. I shall therefore now consider some notable examples of particular laws and administrative practices that do discriminate against women and exist for the purpose of discriminating against women. These would be unconstitutional and become null and void if Article 25, Clause 3 were to add the single word "sex" among the words denoting the groups that are to be protected from discrimination.

AN EXAMPLE OF DISCRIMINATION WITHIN THE CONSTITUTION

It might be argued that the omission of the word "sex" from Article 25, Clause 3 of the Constitution is in itself an example of discrimination against women. But it is not the only example. If the word "sex" were inserted into Article 25, not only would many of the laws in Zambia immediately become unconstitutional, but also some parts of the Constitution itself would become unconstitutional!

Article 4 of the Constitution makes it clear that even eligibility to citizenship in Zambia depends partly on sex. The eligibility to citizenship on the basis of marriage to a Zambian citizen is extended to a foreign woman who has married a Zambian man, but not to a foreign man who has married a Zambian woman. Clause 8.1(b) makes it clear that there is an eligibility for citizenship for:

any woman who is or has been married to a citizen of Zambia and has been ordinarily resident in Zambia for a continuous period of not less than three years after such marriage and immediately preceding her application for registration;

This is a clear-cut case of discrimination by sex. It is not immediately obvious that the law in this case discriminates particularly against women, since the entitlement to citizenship by marriage is given to women. In fact the law discriminates in favor of foreign women and their Zambian husbands; it discriminates against foreign men and their Zambian wives. However, since the Constitution is particularly, by its very nature, concerning itself with the rights of Zambians, it is interesting to note that the law here operates in favor of Zambian husbands (with foreign wives) but against Zambian wives (with foreign husbands). In this it follows a general pattern in Zambian law of discrimination not merely against women, but particularly against married women. What this law means in practice is that a Zambian man who takes a foreign wife may expect that his wife will become a Zambian citizen and that he will be free to spend the rest of his life in Zambia if he so wishes since his wife will have right of abode in Zambia. But the Zambian woman who marries a foreign man in effect may forfeit her right of abode in Zambia. Her husband will not be eligible for citizenship until after ten years of residence in Zambia, and his marriage will not make him eligible for such residence. If the husband fails to obtain an employment or residence permit or is declared a prohibited immigrant and the marriage is to continue, the wife has no choice but to leave her country and move to her husband's country. This is the fate of thousands of Zambian women who are forced to move to neighboring states, or even further, and eventually take the nationality of the husband.

Various arguments are put forward by those who attempt to defend this discriminatory law. Some feel that foreign men are less desirable citizens than foreign women, are more likely to be spies, or are more likely to take jobs from indigenous Zambians. Others consider a married woman to be the "property" of the husband and should, therefore, follow him to his home country. Others see an analogy with the traditional practice (which is not found in all tribes in Zambia) that the husband's new wife moves to his village, rather than vice versa.

The extent to which such arguments depend on patriarchal attitudes and sexist assumptions is obvious. These arguments do not deny that the law discriminates on the basis of sex, but merely attempt to justify it. My own position is very simple. All examples of discriminatory laws are wrong by definition since it should be accepted as a basic constitutional provision that women and men should be treated equally.

I assume this law has its basis in the British legacy. At the time of Zambian independence, the British law on citizenship was similarly discriminatory; the foreign husbands of British citizens could only gain citizenship by means of establishing residence, whereas the foreign-born wives of British citizens had an automatic right to British citizenship. It may be, therefore, that the origin of the law is related to the patriarchal British view of the wife as property, rather than to Zambian traditional practice (which of course had no sense of "citizenship" before the advent of the nation state). However, the British government has since removed sexual discrimination in the British law on citizenship and has also introduced a bill against sexual discrimination which outlaws such discrimination in all laws, in all administrative provisions, and in all provision of education and employment opportunities.

This example of sexual discrimination in entitlement to citizenship provides a nice example of a simple rule in the framing of laws which would automatically make legalized sexual discrimination impossible: the use of gender terms in describing citizens should be avoided in the framing of any law. Instead of "man" and "woman," the word should be person; instead of "husband" and "wife" the word should be "spouse." With this simple rule, all of the present sexist laws would automatically disappear from the statute book.

EXAMPLES OF DISCRIMINATORY STATUTORY LAWS

As pointed out above, the absence of protection of women from discrimination in most areas of law and women's rights leaves the way open for discriminatory laws to find their way onto the statute book. Without attempting any representative survey of all statutory laws in Zambia, I shall merely illustrate the existence of discriminatory laws by pointing to three particular examples.

1) Employment of Women, Young Persons and Children Act
(Chapter 505 of the Laws of Zambia)

This act explicitly prevents women from taking up particular forms of industrial employment, and therefore gives men protection from competition from women in wage employment. Given the copper-based economy in Zambia, much wage employment is, in fact, industrial employment. Much of the low rate of participation of women in wage employment in Zambia (only 9% of wage employees are women, according to the 1980 Census) must be because women are legally barred from taking particular forms of work that are reserved for men. Clause 14(1) of Chapter 505 of the Laws of Zambia specifies that women are prohibited from employment underground in the mines:

- 14(1) No woman shall be employed on underground work in any mine.
- (2) The provision of this section shall not apply to:
 - a) Women holding positions of management who do not perform manual work;
 - b) Women employed in health and welfare services;

- c) Women who, in the course of their studies, spend a period of training in the underground parts of a mine; and
 - d) Any other woman who may occasionally have to enter the underground parts of a mine for the purpose of a nonmanual occupation.
- (3) For the purpose of this section, "mine" includes any undertaking, whether public or private, for the extraction of any substance from under the earth.

This law too has its origins in the legacy of British law in which nineteenth century labor laws effectively excluded women from heavy industrial work. Such legislation was represented as "protecting" the biologically more "fragile" woman from unsuitable and heavy work. In practice, of course, women are just as capable as men of doing heavy work. The underlying purposes of such legislation were to keep women out of the factories, to prevent the financial independence of single women, and to establish the married woman as a domestic slave who was not paid for her labor. This established the man as the "breadwinner" who received the wage and, therefore, had control over the rest of his family and ownership of all property which was bought with "his" wages. In Zambia, such legislation cannot be justified in terms of the need to keep women away from heavy work because, in traditional society, it was typically the woman who was responsible for the heavy work, particularly in agriculture and in the carrying of heavy burdens such as children, wood and water. By a peculiar irony, the mining of copper ore in Zambia in precolonial times was performed by women and men were responsible for the less strenuous process of smelting.¹ What changed during colonial times was not that the rocks became less heavy or the digging became easier, but that the job became one of wage employment, which was a benefit to be reserved for men.

The same Act further discriminates against women in other forms of industrial employment by prohibiting women from undertaking night work in any industrial employment. Clause 13 of Chapter 505 states that:

No woman shall be employed during the night in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed:

Provided that this section should not apply

- (i) when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not a recurring character;
- (ii) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss;

- (iii) in the cases of women holding responsible positions of management who are not ordinarily engaged in manual work.

This "protection" of women from night work effectively keeps women out of almost all industrial employment because factories very often work twenty-four hours a day, and most industrial employees are called upon to work night shifts in order to keep the factory running on continuous production. The inconsistency in the argument that this prohibition protects women may be shown in the limitation of the prohibition to industrial work. If the occupation is nursing, which is defined as women's work and is low-paying, women are no longer "protected" from night work and are, in fact, required to do it. This demonstrates that the "protection" of women from industrial night work is not concerned with protecting women from work for which they are biologically unsuited but with reserving particular forms of wage employment for men and ensuring that the women's place is in the home--and not in the factory.

Even if such discrimination were not enshrined in the law, it would still be difficult for women to break the weight of custom and the belief that women are not suited to factory work. But, with the present state of legal discrimination, the plight of single women, unmarried women, divorced women, and widowed women is very bleak. Indeed, this may be one of the actual causes of prostitution in Zambia; if young urban women have little prospect of wage employment because of the legalized discrimination against them, they may be forced into prostitution to live and feed their children. This would seem to be a more plausible explanation of prostitution than the idea that it is caused by allowing unaccompanied women to enter hotels after dark.

2) The Employment Act
(Chapter 512 of the Laws of Zambia)

As we have seen above, the position of women in wage employment is not equal to that of men because of legalized discrimination in terms of job opportunities. Are women, however, entitled to equal pay in those jobs in which they are allowed to compete with men? There are, of course, not many jobs of this sort since many of the highly paid industrial jobs are reserved for men, and those few women who succeed in getting wage employment are mostly confined to low-paying jobs such as domestic service, primary school teaching, typing, and nursing. At the professional level, however, a small number of women have managed to break into some of the highly-paid and male-dominated occupations such as medicine, law, and management jobs. On the face of it, the principle here is equal pay for equal work. An employer has to pay the standard wage for the job, irrespective of whether the job is done by a man or a woman. Does this mean that the principle of equal pay for equal work is being observed in Zambia? No, unfortunately not. In wage employment in Zambia, only part of the worker's reward is given in the form of wages. There are other rewards in the form of "fringe benefits," such as housing, use of car, and entitlement of loans. In some forms of

professional employment, particularly with the parastatals, the value of the "fringe benefits" may be far more than the value of the wage itself. For example, an employee may be on a salary of less than K1,000 per month but be allocated a company house rent-free when such a house, in Lusaka, costs the company K1,000 per month in rent.³ Typically, the woman employee is entitled to the wage but not to the "fringe benefits." This often means, in real terms, that her compensation is worth less than half of the pay received by a man doing the same job at the same wage.

This form of discrimination is allowed and even supported by the law, which makes it explicit that an employer has an obligation to house a married man but is not required to house a married woman. Clause 7 of Section 80 of Chapter 512 states that:

- 7(1) When the wages paid to an employee by his employer amount to or exceed the sum forty kwacha per month the employer shall not be required to provide housing for any such employee, or pay the rent allowance in lieu thereof. The sum of forty kwacha in this regulation shall include basic pay and the cash equivalent of any food which may from time to time be provided, but does not include payment in respect of any bonus or in respect of housing, working, or other allowances.
- (2) The employer shall not be required to provide housing or pay the rent allowance in lieu thereof in respect of married female employees living with their husbands provided that the said husbands are in employment and are in receipt of the wages prescribed in subregulation (1); or are adequately housed, or are in receipt of the rent allowance prescribed in regulation 6.

(author's emphasis)

This Act, therefore, provides yet another example of discrimination against women. Typically, the discrimination is particularly against married women, presumably following the patriarchal principles that the married woman's proper place is in the home and that she should not take wage employment. Even if the employed married woman has a husband who is employed and has been given a house by his employer, the house given to him may be much inferior to the house she would be entitled to from her own employer, if only she had a housing entitlement. Furthermore, her husband may merely be in receipt of a housing allowance, which might be insufficient to actually rent an adequate house, but this would not enable the woman to be given a house by her employer. In addition, and perhaps more important, is the housing plight of deserted and separated married women who are homeless but cannot be given housing by their employers.

In practice, many employers are quite unwilling to give housing to any women, whether single, married, separated, divorced, or widowed. Rather than give protection to all employees and an equal entitlement to housing irrespective of sex, the law on the subject actually supports discriminatory practices.

In order to provide equality under the law for women, this Act, like all other Acts, needs redrafting to remove all reference to the sex of the employee. Under such a nondiscriminatory law it could still be allowable for the employer to give preference, in allocating housing, to the married employee (whether male or female) with a family to support; it could also be allowable for a company not to allocate housing to a married employee when the spouse of that employee has already been given an equivalent house. Obviously, it should not be allowable for a married couple to be allocated two houses; the allocation should be to either one if the couple is living together, but the allocation should be on the basis of housing need, and not on the basis of the sex of the person applying for housing.

3) The Income Tax Act
(Chapter 668 of the Laws of Zambia)

Discrimination in the allocation of housing is only one way in which women are denied equal pay for equal work. Another method is legalized in the Income Tax Act, which enables the state to tax married women much more heavily than married men. A single person is given a Single Allowance, the amount that the person may earn without paying tax. If the single person earns more than the Single Allowance, then income tax is paid on the earning over and above the Single Allowance. When two wage earners are married, they no longer have Single Allowance deducted from their income in order to establish a taxable income; in the case of a married couple, the two Single Allowances are combined into a Married Allowance, which is allowed against the husband's income, leaving the wife with no allowance, so that she has to pay tax on all of her income. The Act makes clear that the claimant for the Married Allowance is the husband:

A married allowance shall be deductible where the claimant's wife is at any time during the charge year living with him.
(Clause 2 of Part 1 of Schedule 8 of Chapter 668).

This is clear discrimination against married women and means, for example, that if a husband and wife have equal incomes, the wife's personal income tax will be more than the husband's by an amount that varies according to their salaries but, for a professional woman, may well exceed K1,000 per year.

What can be the purpose of such a discriminatory measure? It is best interpreted as yet another message that the married woman's place is in the home and that, if she does go out to work, she will be much more heavily taxed than the husband. Of course, the fact that a married woman with the same wage as the husband receives a smaller pay packet (after the tax deduction) does not cause difficulty in the family if the relationship between the husband and wife is such that both incomes are put into a joint account to be spent according to the agreement of both partners. But in many families this is not the case. Typically, the husband will treat the wife's income as the money for running the home and his own income as the money for running the car and financing his own pleasures. In some cases,

the husband feels that it is none of the wife's business to even know how much he earns, let alone how he spends it. In such cases, the operation of the Married Allowance serves to transfer part of the wife's earnings to the husband's pocket to be used for his personal pleasures.

Some slight effort has been made to reform this discriminatory practice. Clause 17 of the Income Tax (Amendment) Act No. 12 of 1982 allowed a married couple to be taxed separately (i.e., each with half of the Married Allowance and Children Allowance) provided both parties agree to this arrangement. This, of course, is a useless provision since, if the married couple could amicably agree on such matters, there would be no point in the wife's making such a request. Conversely, the wife in need of this provision is the wife with a husband who treats his income as personal income, who does not consult his wife on expenditure, and who is not likely to agree to an effective reduction in his "own" income. Indeed, the dominant patriarchal husband may even regard the wife's income as his and assume that he has the right to decide how it is spent. This is one reason that many married women in Zambia find it hard to accumulate capital; very often the husband demands the wife's savings, sometimes to be spent on his personal pleasures.

It is most unfortunate that the patriarchal husband's dominance over the family income should find support in the Income Tax Act. As with other such laws, the discriminatory aspects of this Act would fall away if it were written entirely in terms of spouses, rather than in terms of husbands and wives. If this were the case, then the Married Allowance would be equally divided between spouses where both were in employment; all of the Allowance would be given to the working spouse in cases where only one of the two married partners was earning or in wage employment.

EXAMPLES OF DISCRIMINATION IN ADMINISTRATIVE PRACTICE

In this section, I shall briefly consider some notable examples of government administrative practice that discriminate against women.

1) Access to Credit Facilities

In general, financial institutions do not entertain requests for loans from married women unless the application is accompanied by a consent form signed by the husband. Married men are not, of course, asked for consent forms signed by their wives. There is no requirement in law that such discrimination against women should be practiced; on the other hand, the Constitution provides no protection against such practices. This practice fits the general patriarchal assumption that it is the husband who should be in charge of a family business, that it is the husband who is in control of the finance, and that the woman's place is generally in the home.

It is often assumed that discrimination such as this has its roots in traditional African custom, but this cannot be the case. The whole notion of a capital loan has no equivalent in traditional society, and the husband

in traditional society did not have a dominant economic role since there was no distinction between household work and wage employment, nor was there any distinction between home and business. In traditional society all work was household work, and men and women shared the work and responsibilities more or less equally. The present-day control of men over finance can only be a legacy from the British patriarchal capitalist system, since there was no such thing as finance capital in precapitalist Zambia.

2) The Widow's Inheritance of the Deceased Husband's Property

Typically, under present-day practice, the relatives of a recently deceased man will descend on the widow and remove all her property and possessions, leaving her destitute. Although this is sanctioned in contemporary customary law, it is in fact a perversion of earlier practices. In fact, the practice depends on notions of property that were unknown in precolonial times. First, there was no notion of private property in precolonial times because land was communally held, and there was no accumulation of capital by the individual. In so far as private property existed in the modern sense, the individual "owned" only personal goods such as clothes, pots, and implements. In traditional society, the widow would not be left destitute but would be allowed to keep her own personal goods and would be provided for. (This point is considered in a little more detail in the next section). Second, in traditional society, there was no notion of things "belonging" to the husband rather than to the wife. This notion came with the growth of wage employment in colonial Africa, which brought with it the idea that property bought with the husband's wage belongs to the husband and that, since the wife's domestic labor is regarded as having no value, the wife has no claim on the property. It is because of these modern capitalist notions of wages and property that the deceased husband's relatives assume that they are entitled to remove the wife's property; since they have the very modern idea that the wife did not contribute towards the accumulation of the property.⁴

The law on inheritance should be changed, not merely to acknowledge the widow as one of the relatives deserving to share in the deceased husband's estate, but also to further acknowledge that the wife is already the part owner of the property because of the value of her domestic labor in the home which, in itself, enabled the accumulation of the property.

3) The Expulsion of Pregnant Women from School and Colleges

Although, on the face of it, women have equal opportunity to schooling in Zambia, this does not happen in practice. Recent Ministry of Education figures (1980) show that fewer women than men actually get schooling. Whereas the ratio of girls to boys is nearly 1:1 in Grade 1, by Grade 7 it has fallen to about 3:5, and by Form 5 it has fallen to about 2:5. By the first year University there is only one woman for every five men. The figures show that the proportion of girls drops at every grade level, whereas with the boys the decreases in numbers are concentrated at the selection examinations. Girls do not only drop out because of domestic

pressures, they are also pushed out by the school and college regulations that when a woman becomes pregnant she is expelled.⁵ This is by definition a discriminatory rule since it can be applied only against women. Once again this rule carries the message that the woman's place is in the home. Pregnancy brings not maternity leave but the message that the girl should stay at home and give up all ambition of acquiring an education and qualifying for wage employment.

By such means, women are excluded from education even in fields where women have traditionally made their biggest economic contribution. The most obvious example of this is agriculture; almost all of the students for higher level education in agriculture are men, whereas it is women who are the traditional agriculturalists in Zambia. Perhaps that is one reason that agricultural production in Zambia has fallen so much since independence.

4) Provision of Agricultural Extension

Although perhaps most of the subsistence farmers in Zambia are women, most of the Extension Officers are men. In effect this means that the Extension Officers provide advice to men on the assumption that it would be out of place to visit women and on the further assumption that emergent farmers are going to be men. Extension services should be made equally available to all farmers, irrespective of sex. This could be done by recruiting women as Agricultural Extension Officers. Women, by upbringing, are usually more knowledgeable about agriculture, and women Agricultural Extension Officers could visit women subsistence farmers to assist them in becoming more successful farmers. The modern, male-dominated extension service is quite different from the traditional pattern of sharing knowledge about agriculture. Traditionally, the clever women farmers would educate the younger women in the art of agriculture.

5) The Right to Include a Child on a Passport

If the father of a child wants to include the child on his passport, he may do so by simply filling out the appropriate form at the Passport Office. If the mother wants the child included on her passport, the passport officer will ask the mother to get the form signed by the father or legal guardian. The application form states, in effect, that the mother is not normally to be regarded as the legal guardian of the child. The application form must be signed by the child's "legal guardian," who must state his "relationship to the child" (Form D, Passport Office). A note explains that, if the person signing is any person other than the father, then "the mother or any person claiming legal custody, during the lifetime of the father, must produce the relevant Court Order." This means that, without evidence to the contrary, the father is presumed to have legal custody, but the mother must prove custody.

Such regulations can cause serious problems for the unmarried mother. It also means that the father can take children out of the country without the mother's consent, but the mother does not have the right to take her

children out of the country, by putting them on her passport, without the father's consent. If this regulation is to be made free of discrimination, it must be framed to state either that inclusion of children on a parent's passport needs the consent of both parents, or that it needs the consent of only the parent making the application. This discriminatory regulation makes little sense unless it is assumed that the underlying principle is that the children are the "property" of the father but not of the mother. If so, this would be in curious contradiction to the usual rule in divorce settlements in which the normal convention is that, other factors being equal, the mother is given custody of the children. Indeed, the normal patriarchal principle is that it is the mother's job to look after the children, but when it comes to putting the children on a passport, it is the father who is allowed to do so!

This regulation about putting children on passports is similar to a whole series of barriers that women encounter, often unexpectedly, as in the case of suddenly finding that admission to a hotel is barred, merely on the grounds of being women. Another example is the provision on contraceptives. Men may buy contraceptives for themselves, over the counter of a chemist shop; a woman has to be prescribed contraceptives by a doctor, who will ask for the written permission of the husband. This practice has no foundation in law and is a prime cause of the high rate of pregnancy and abortion among single women.

WOMEN'S RIGHTS UNDER CUSTOMARY LAW

In the previous section I considered, for some cases of discrimination, whether these might have their origins in customary law and practice. My conclusion in each case was that, although traditional society may be patriarchal to a large extent, notable examples of discrimination against women in Zambia may be found in the patriarchal element with colonial law and government, particularly in the way the colonial law introduced the idea of property, which, together with the division of work into wage employment (for the men) and unpaid domestic work (for the women), brought about the ideas that only men can own property and that the wife is the property of the husband. It is because of this possibility that discrimination arises more from the legacy of colonialism than from customary law and practice that I will examine briefly some of the rights women had under customary law. It should be noted, however, to do this I am imposing the modern concept of "rights" on a precolonial system that had neither a concept of individual rights nor a concept of individual property. In traditional society, people thought in terms of duties rather than rights. In a communal society, the emphasis is on the duty of the individual to the community or, in other words, the rights of the community over the individual. It is the modern state, with the recent notions of equality of opportunity, of the possibility of social mobility, and of the concept of ownership of property, that developed the concept of the rights of the individual (i.e., the duty of the community to the individual).⁶

Nonetheless, it seems that the traditional community did have a sense of duty to the individual woman, so that, in her relationship to men, she did have the following rights:

- (1) the right to be protected by men in time of war and other social dangers.
- (2) the right to use of property. There was no concept of private property, but women had rights to a share of communally-held property (e.g., plots of land for farming) either as wives or as daughters.
- (3) the right to an independent accommodation for herself and her children after marriage whether monogamous marriage or polygamous marriage.
- (4) the right to a share of family income because both husband and wife contributed their labor towards production which was shared by the household.
- (5) the right to leave a husband when the marriage broke down irretrievably and after the bridewealth was returned to the husband's family by the woman's uncles and cousins or father depending on the practice of the ethnic group.
- (6) the right to keep her maiden name after getting married. A married woman was officially known by her maternal family name, and her husband and close friends called her by the names of her children, usually the first born.
- (7) the right to be cared for with her children by her husband's family after the death of the husband. If the widow refused to be inherited by an in-law, she was given her share of the property she had shared with her deceased husband as the elders saw fit; she was free to leave the village if she was from elsewhere, and she was free to marry again as long as a reasonable period of mourning had elapsed as prescribed by the elders.

It is in modern Zambia that these traditional rights have been increasingly lost, with the husband getting increased power over property, over family income, over accommodation, and over his wife. By the use of the powers of the modern state, men have managed to increasingly extend their control over women.⁷

THE LACK OF PROTECTION FROM UNITED NATIONS CONVENTIONS

Although, as a member of the United Nations, Zambia assents to the Universal Declaration on Human Rights, such declarations have no legal force and provide no basis for legal action. The Universal Declaration on Human Rights specifically pledges all member states to "promote universal respect

for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion." Furthermore, the Declaration on the Elimination of Discrimination Against Women, unanimously adopted by all member states on November 7, 1967, states in Article 1:

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offense against human dignity.⁸

Zambia has recently ratified this Convention, but its provisions have no legal force in Zambia. Women in Zambia must work for the reform of statutory law to bring it into line with the Convention. All of the forms of discrimination that I have described in this paper would contravene specific provisions of the above mentioned UN Convention and would become illegal in Zambia if the Convention were to be observed in practice. Failure to make such discrimination illegal would mean that an aggrieved woman could take her complaint to the International Court of Justice to declare whether the particular discriminatory law or practice contravened the Convention and was, therefore, illegal in terms of the Convention.

Indeed, if Zambia were to outlaw discrimination against women in terms of the Articles of the UN Convention, most of the Laws of Zambia, including the Constitution, would have to be revised.⁹

Zambian women must, however, face the fact that law reform is not a likely prospect despite the ratification of the UN Convention because the present laws and regulations suit the interests of men.

COLLECTIVE ACTION BY WOMEN IN ZAMBIA

Women in Zambia must act collectively to ensure that discriminatory laws and practices are changed. The Constitution and the laws must be the immediate focus for action. It is common in Zambia for people to assume, without opening a law book, that the Constitution protects women from discrimination and that whatever discrimination exists is due to the customary patriarchal traditions of Zambia, which linger on in a society in which men occupy the top administrative positions and are, therefore, in a position to make administrative regulations favoring male interests and perpetuating male domination. If this were the case, collective action by women could challenge such discriminatory practices in court, to expose their illegal and discriminatory nature. In Zambia, however, the situation is much more serious. The fight for equal treatment in Zambia must begin with the fight for equal treatment under the law and for an amendment to the Constitution that will give women protection from discrimination in the law and in all administrative practice. It is a pity that, when the Constitution was revised in 1973, women did not speak out on the subject of the protection of the rights of the individual regardless of sex.

Such changes will not come automatically, nor will they come by appealing to the good will of liberal-minded men. The present laws serve the interests of men as a social group, and it may be expected that men will defend such discrimination in terms of "necessity" on various grounds, in terms of their right to control women, in terms of the husband's right to be "master" in his own home, in terms of the man's "biological superiority," in terms of the woman's "natural role" as minder of children and housekeeper, and in terms of the "traditional rights" of men which should be upheld.

To make their case, women need to have a clear understanding of what constitutes discrimination and why discriminatory practices should be changed. Discrimination continues unchallenged partly because so many women accept it and because they accept the idea that men have superior rights, both within the home and in affairs of state. Some women, in reading the examples of discrimination I have given in this paper may ask themselves "Is this discrimination? But surely we don't want foreign husbands being given citizenship! Surely pregnant students ought to be expelled from school!" But, if women themselves cannot recognize discrimination, no progress can be made. This paper asks women to recognize discrimination, to react against it as unacceptable, and to take action against it.

One weakness in the present system is the ambiguity and contradiction in the law on the subject of women's rights. For example as was pointed out earlier, the Constitution provides for equal rights for women in the matter of "fundamental rights" but, in other matters, does not make women equal under the law and fails to provide protection against sexual discrimination.

One way to expose the weakness and inadequacy in the law would be to attempt to put cases of discrimination before a court. In the example with which I began this paper, the matter of a woman being refused access to a hotel, for example, the individual woman should not be left to fight the issue alone. Women should act collectively to challenge such hotel regulations, both by providing witness to the discriminatory incident and by collecting funds to bring the case to court as a private action, because the police are not likely to take action. Such a court action would be valuable no matter what the outcome. If the case were lost and the court declared such discrimination against women in Zambia not illegal or unconstitutional, then the matter would be publicly declared.

NOTES

1. An earlier version of this paper was presented at a Conference on Women's Rights, Mindo's Ecumenical Foundation, March 22-24, 1985.
2. Desmond J. Clark, 1961, "Pre-European Copper Working in South Central Africa," in W.G. Watts (ed.), Proceedings of the Seventh Commonwealth Mining and Metallurgical Congress, Northern Rhodesia Section, May 1961.
3. The exchange rate for Zambian currency has varied over the past 3 years from K1=\$1.25 U.S. in 1982 to K1=\$.042 U.S. in late 1985.
4. For a good explanation of the way the capitalist system brought about increased inequality for women see Verena Stolke, 1981, "Women's Labours: The Naturalisation of Social Inequality and Women's Subordination," in Of Marriage and the Market, edited by Kate Young, CSE Books.
5. For an investigation into the various ways in which girls are discriminated against in Zambian secondary education, see Viv Martin, 1983, Gender Discrimination in Zambian Secondary Schools, B. Phil Dissertation, University of Birmingham (copy available in the Special Collection of the University of Zambia).
6. For a useful explanation of why the concepts of equality of opportunity and of individual rights make no sense in traditional societies, see, for instance, James Coleman, 1968, "The Concept of Equality of Educational Opportunity," Harvard Educational Review, Vol. 38, No. 1, pp. 7-22.
7. For a useful collection of papers on the modern patriarchal state, see particularly Annette Kuhn and Ann Marie Wolpe (eds.), 1978, Feminism and Materialism, London: Routledge and Kegan Paul.
8. United Nations, 1973, The United Nations Declaration on the Elimination of Discrimination Against Women, p. 2.
9. The United Nations Convention of the Elimination of All Forms of Discrimination Against Women provides a comprehensive set of principles and measures to ensure equal rights for women in all aspects of life and not merely the so-called "fundamental rights" of the Zambian Constitution. For example, on the subject of citizenship, Article 9 states that the state which is party to the Convention "shall grant women equal rights with men to acquire, change or retain their nationality."

170

PUBLICATIONS
OFFICE OF WOMEN IN INTERNATIONAL DEVELOPMENT
MICHIGAN STATE UNIVERSITY

The WOMEN IN INTERNATIONAL DEVELOPMENT PUBLICATION SERIES were founded in 1981 to disseminate information rapidly to national and international specialists in universities, government, and private institutions concerned with development issues affecting women. The two series, WORKING PAPERS ON WOMEN IN INTERNATIONAL DEVELOPMENT and the WID FORUM, publish reports of empirical studies and projects, theoretical analyses, and policy discussions that illuminate the processes of change in the broadest sense and encourage manuscripts that bridge the gap between research, policy, and practice. Publications in the series address women's historical and changing participation in economic, political, and religious spheres, intra- and inter-family role relationships, gender identity, women's health and health care, and the sexual division of labor.

EDITOR: Rita S. Gallin

MANAGING EDITOR: Patricia Hubbard-Garcia

EDITORIAL ASSOCIATE: Patricia Whittier

EDITORIAL BOARD: Marilyn Aronoff, Sociology; Anne Ferguson, Anthropology; Ada Finifter, Political Science; Peter Gladiart, Family & Child Ecology; John Hinnant, Anthropology; Susan Irwin, Anthropology; Akbar Mahdi, Sociology; Anne Meyering, History; Ann Millard, Anthropology; Nalini Malhotra Quraeshi, Sociology; Barbara Rylko-Bauer, Anthropology; Judith Stallmann, Agricultural Economics; Paul Strassmann, Economics

NOTICE TO CONTRIBUTORS: To provide an opportunity for the work of those concerned with development issues affecting women to be critiqued and refined, all manuscripts submitted to the series are peer-reviewed. The review process averages two months and accepted manuscripts are published within five to six weeks. Authors receive ten free copies, retain copyrights to their works, and are encouraged to submit them to the journal of their choice.

Manuscripts submitted should be double-spaced, sent in duplicate, and include the following: (1) title page bearing the name, address and institutional affiliation of the author; (2) one-paragraph abstract; (3) text; (4) notes; (5) references cited; and (6) tables and figures. The format of the article may follow any journal of the author's choice. Submit manuscripts to Rita Gallin, Editor, WID Publication Series, Office of WID, 202 International Center, Michigan State University, East Lansing, MI 48824-1035.

TO ORDER PUBLICATIONS: Publications are available at a nominal cost and cost-equivalent exchange relationships are encouraged. To order publications or receive a listing of them, write to Office of WID, 202 International Center, Michigan State University, East Lansing, MI 48824-1035, USA.

ACKNOWLEDGMENT: The Women in International Development Publication Series are partially funded by a Title XII Strengthening Grant.

MSU is an Affirmative Action/Equal Opportunity Institution