

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

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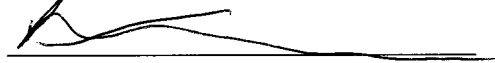
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## **Declaration**

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.

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## **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 bearing 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 Gramscian/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.)

