

(872)

Women and Rape in Zimbabwe

By

A. Armstrong



Human & People's Rights Project
Monograph No.10



h/a

Institute of Southern African Studies
National University of Lesotho
P O Roma 180 Lesotho

207 0079
184

Women and Rape in Zimbabwe

By

A. Armstrong

Human & People's Rights Project
Monograph No.10

Institute of Southern African Studies
National University of Lesotho

The ISAS Human and People's Rights Project is supported by the Ford Foundation. It is a regional research project drawing on Academic resources in the Southern African Region. The series has been edited by NUL/ISAS staff members.

First published in the Kingdom of Lesotho, through the National University of Lesotho's Institute of Southern African Studies, 1990.

The publication is set in 10 point Times. Pre-press proofs were prepared using DTP technology.

© Copyright Reserved by
ISAS/NUL 1990

The views expressed herein are attributable to the Author. Neither ISAS nor NUL hold responsibility for them.

Typesetting By **Epic Printers,**
Maseru, Lesotho

Table of Contents

I. Introduction and Methodology	1
II. Rape Under International Human Rights Conventions	2
III. Background: The Official Story	3
IV. The Unofficial Story: Attitudes and Custom	8
Notes	30

Preface

The right of a woman to have sexual intercourse only when she consents is a fundamental human right. To be forced to submit to sexual intercourse without consent is perhaps the greatest infringement of bodily integrity, privacy and dignity which is possible. This infringement is called rape. It has been said that rape is a way that all men keep all women in a state of fear.¹ It is also a way that men express their power over women, a power that stems ultimately from the unequal social and economic status of men and women. States committed to equality therefore have a duty to protect their women from the crime of rape, and to punish the crime adequately when it occurs. In addition, a study of rape in its social context will yield information about the power relations between men and women in the society, an issue which goes to the very root of the quest for the equality of women.

I. Introduction and Methodology

This study of rape in Zimbabwe included a review of case law on rape, a study of secondary sources of customary law, and over one hundred open-ended interviews by nine students over a period of two months throughout the country. The interviews were conducted over a broad geographical range including Harare, Bulawayo, Chipinge, Chiredzi, Zaka, Gwanda and many other small communities. There was no attempt to devise a statistically random sample, other than to spread the students around the country. Therefore, this information cannot be taken as a statistically accurate portrayal of the attitudes of Zimbabweans. Rather, we attempted to get a feel for attitudes towards rape in the country.

The study attempted to investigate both the official and the unofficial story behind rape in Zimbabwe - both the way it is perceived officially by the criminal justice system and the way it is perceived unofficially by society. The first will be dealt with briefly as a background, while the second, much more interesting aspect will be dealt with at length. Since a massive amount of data was collected in the form of interviews, I have attempted to recognize and systematize the results by choosing issues most consistently pointed out by our informants to be relevant to the crime of rape.

II. Rape Under International Human Rights Conventions

The protection of a person's bodily integrity and the right to dignity of a human being are human rights clearly enshrined to international human rights documents. The African Charter on Human and People's Rights provides for these rights with crystal clarity. Article 4 reads: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Article 5 reads: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status...." Therefore a woman, as a human being, is entitled to respect for the dignity of her body and protection of the integrity of her body.

Under these provisions, and similar ones in other human rights documents, women have a right to be protected from the physical assault to bodily integrity, the humiliation, the indignity, and the invasion of privacy involved in the crime of rape. Since Zimbabwe, like all States, has laws making rape a criminal offense, the question is whether these laws are adequate to protect women from this violent infringement of their human rights. The state is involved in the infringement of a woman's human rights if it does not adequately protect her, or if it fails to sufficiently punish persons who infringe those rights.

Human rights instruments go further, to provide specifically that women are entitled to equal rights and protection. Under Article 2 of the African Charter on Human and People's Rights all rights contained in the Charter are guaranteed without distinction based on sex. Under Article 18 it is specifically provided in subsection 3 that "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions." Since the crime of rape reflects the power imbalance between men and women in society, a study of the crime will provide important information on progress towards equality for women, and therefore whether the human right to equality is being protected.

III. Background: The Official Story

The criminal law in Zimbabwe is governed by the Roman-Dutch law. The customary law of crime does not apply. The law of rape presents both substantive and procedural problems for women. The substantive problem lies with the definition of rape. The procedural problems relate to evidence admitted in a rape trial and publicity surrounding that trial. Finally, sentencing of convicted rapists presents a problem. Other problems with regard to rape are not strictly legal ones, but relate to the treatment of rape victims by the criminal justice system and by society.

Substantive Problems

Rape is defined as unlawful, intentional sexual intercourse by a man with a woman without her consent.² The definition of sexual intercourse presents the first problem. To be sexual intercourse there must be partial or total penetration by the male sex organ of the female sex organ. If sexual intercourse is not proved, the accused may still be found guilty of indecent assault or attempted rape,³ but these crimes are less serious than rape and involve lesser penalties. It is clear that there are many sexual acts which are just as degrading and violent as the act of sexual intercourse. For instance, the insertion of a foreign object, such as a coke bottle, into the female's vagina or the insertion of a man's penis into the female's mouth may be even more humiliating than sexual intercourse. Persons who force such acts on unconsenting victims should be guilty of rape.

The definition of consent presents the second problem. Areas for concern are the proof of consent and the significance of violence, the concept of non-violent threats and particularly the exercise of authority, the question of the men's area of the accused, and rape of a married woman.

The essence of the crime of rape is the element of lack of consent. Although historically rape was defined as forced sexual intercourse, force is no longer an element of the crime. Therefore, if a woman submits to the will of a man because of fear or the knowledge that to resist would be useless, even if actual force is not applied, it is rape. In *R. v. Dombo*⁴ where the accused induced fear in the mind of his vic-

4 ISAS Human Rights Series No.10

tim which disabled her from exercising a free choice, he was held to be guilty of rape even though there were parts in the evidence "which suggest that the complainant did not put up a spirited resistance." Notwithstanding the law, it is difficult for a woman to prove that she did not consent if no force was used, particularly if she has no overt signs of injury. Part of the reason for this is our own deeply entrenched attitudes about how a woman should behave if she is raped: that she should scream and kick and cry and fight back. However, recent research from abroad indicates that rape victims are more likely to react not by struggling, but by submitting in order to protect their lives, with behaviour which is "terror-induced, pseudo-calm and detached."⁵

Threats which are not threats of violence⁶ do not vitiate consent. Therefore what amounts to 'sexual blackmail' is not rape. For instance, if an employer threatens to sack a woman unless she sleeps with him, or a policeman threatens to arrest a woman unless she sleeps with him, or a landlord threatens to evict a tenant unless she sleeps with him, it is not rape. In this way the law fails to recognise the power that men in authority have over women under their authority. Some jurisdictions have enacted special legislation to deal with sexual intercourse by a man in authority over a woman and with sexual intercourse with vulnerable persons such as step- daughters, employees, prisoners, etc.⁷ To fully protect women, sexual blackmail should be treated as an offense. Introduction of such an offense would require legislative intervention.

In order to be guilty of rape, the accused must know that the victim is not consenting or act recklessly with regard to whether or not she consents.⁸ The court does not consider whether the accused's belief was reasonable. Guilt depends on what this particular accused believed, not what a reasonable man would have believed. This rule, although based on the important legal principle that intention is necessary and is assessed subjectively, can cause problems with regard to rape. It leaves it open to a man to argue that although any reasonable man would have been aware that the victim was not consenting, he subjectively believed that she was. A recent South African case gave an example of this: the accused said that he thought the woman's screams, struggle and threats to call the police were merely an attempt to prolong foreplay.⁹ The law should be reformed to punish those who force a woman to submit to sexual intercourse in

circumstances where a reasonable man would have realised that the woman was not consenting.

It is usually said that a man cannot rape his wife. This rule is not actually supported by Zimbabwean cases, but may be followed in Zimbabwe because of its support in English and South African law. However, recent South African case law has doubted the validity of the rule and its moral support in view of the "bodily integrity of woman..."¹⁰ It is also not supported by Roman Dutch authority. If a man forces sexual intercourse on his unconsenting wife, he may be guilty of assault with regard to the force he uses. If a couple are legally separated, the husband may be convicted of rape perpetrated upon his wife. The rule that a man cannot rape his wife, if it does apply in Zimbabwe, is outmoded and not in keeping with Zimbabwe's progressive attitude towards women and the desire to protect the bodily integrity of women.

Procedural Problems

The procedural problems with regard to rape trials include the admission of evidence of prior sexual conduct, the application of the immediate complaint rule, and publicity surrounding trials.

The Criminal Procedure and Evidence Act (Cap. 59) does not explicitly deal with evidence of prior sexual experience of the rape complainant. In terms of Sec. 238 irrelevant evidence is excluded. Evidence of prior sexual experience should certainly be ruled to be irrelevant, yet it is clear that such evidence is being admitted at rape trials. Therefore, specific legislative guidance is necessary to clarify the issue. A recent High Court case explicitly rejected the argument that rape of a sexually experienced woman should attract a lesser punishment than rape of an inexperienced woman. In the *State v. Adam Bwanasi*¹¹ the court held on review that:

"...it is discriminatory and therefore wrong to conclude that a woman who frequents and drinks in bars, beer-halls and hotels whether alone or in the company of others has questionable morals without necessarily drawing the same conclusion in connection with a man...even if it could be accepted that the complainant is of questionable morals there is no reason why in this case this factor

6 ISAS Human Rights Series No.10

should be taken into account.”

The doctrine of immediate complaint provides that an out-of-court statement which would otherwise be inadmissible due to the hearsay rule is admissible if it is the statement of a woman who has just been raped complaining about the rape. The complaint must be made at the earliest opportunity and to the first person to whom she could reasonably make it, and is admitted not as corroboration of her story but only to show consistency with her claim that she did not consent to the intercourse. This rule as it stands does not present a problem. However, the rule is often interpreted by the courts to mean that if there is not immediate complaint then the woman must be making a false complaint. This interpretation ignores recent evidence (and, indeed, common sense) which says that women react differently to rape. Some express themselves immediately, while others have a controlled reaction in which they hold in their emotions.¹²

There is no explicit provision for the hearing of rape trials *in camera* at the instance of the complainant. The Criminal Procedure Act provides that a trial may be heard *in camera*, but only at the instance of the accused.¹³ A rape trial is very difficult for a complainant. She must describe intimate details in front of a magistrate, the prosecutor, a translator, the accused, and the public. Many women fail to report or prosecute the crime of rape because of their reluctance to appear in public to give evidence. In spite of lack of clear legislative authority, the practice in the Magistrate's courts in Zimbabwe appears to be for the Magistrate at his or her own initiative to exclude the public from rape trials, particularly of young girls. However, clear legislative authority is needed to bring the law in line with practice. The same applies to the publication of names of rape victims. The practice of the media is to exclude names and other identifying facts, but this practice should be made a legal requirement.

Sentencing

There has been little research on sentencing in rape cases. Technically, the death penalty can be imposed for rape, but this has not occurred for many years. The courts have been warned to take a serious view of this type of crime. An accused was convicted of having had unlawful carnal knowledge of a girl of 12 and sentenced to a fine of \$120 or to 2 months imprisonment. The sentence was wholly inadequate in view of the fact that the accused was an adult and the victim

just above the statutory age of consent, there was no indication that the victim was a willing participant, the accused transmitted a sexual disease to her and ruptured her hymen.¹⁴ In another instance a 45 year old man had carnal knowledge of a 13 year old girl and received a sentence of 8 months imprisonment of which 4 were suspended. The sentence was held on review to be shockingly lenient in view of the youth of the complainant and the fact that she was made pregnant, thereby effectively destroying her life both as a scholar and future mother; there were indications that she was going to have trouble in labour.¹⁵ One problem which arises in these cases is that the police and/or prosecution prefer a charge under the act even when the young girl did not consent to the intercourse. The proper charge where the girl does not consent would be a charge of rape, or, if penetration is not effected, attempted rape.¹⁶

IV. The Unofficial Story: Attitudes and Custom

“Yes, I remember one rape in this area recently. It was the case of a young boy and girl who raped each other. The fathers of the two children were good friends, so they settled the matter quietly between them.” – An old man in the Chimanimani area (paraphrased from Shona).

It was statements such as this one that began my investigation into rape in Zimbabwe. Although rape is defined as sexual intercourse without the woman's consent, and therefore CONSENT is the key feature, it is clear that this is not the way rape is seen by the public. The distinction between rape and unlawful consensual sexual intercourse has become blurred. This has three results. First, sometimes when a man and a woman have consensual sexual intercourse, the public calls it rape. Second, sometimes when a man forces sexual intercourse on a woman without her consent, the public does not recognise the act as rape. Third, many (perhaps most) cases of rape and illicit intercourse are handled outside the criminal justice system. This section will discuss historical circumstances, attitudes, and customs which influence the blurring of the meaning of consent for sexual offenses.

Customary Law

Rape, seduction and adultery were all sexual offenses under the customary law of the Mashona and the Matebele. All three were punished by the payment of compensation, in the case of an unmarried woman (for rape or seduction) to her father, and in the case of a married woman (for rape or adultery) to her husband. The distinction between rape (sexual intercourse without consent) on the one hand, and seduction and adultery (sexual intercourse with consent) on the other, is therefore blurred. Consent is not the central issue. Damages are awarded as compensation for unlawful sexual intercourse, whether or not that intercourse is with the woman's content. As Goldin and Gelfand state, “In either event, there has been what is considered to be a wrongful invasion of the rights or dignity of the husband and a wrongful act in itself.”¹⁷

Goldin and Gelfand report¹⁸ that rape was not punished as a crime in customary law unless committed on the wife of a chief. "Rape was regarded merely as a more serious form of seduction, adultery or unlawful sexual intercourse. No fine was payable to the chief." They cite as their authority Whitfield,¹⁹ whose statement on rape among the Mashona deserves to be quoted in full:

The crime of rape in our law is regarded so seriously that, by statutory provision, we have made its attempt punishable by death. It was not so regarded by the Mashona, unless committed on the wife of a chief. It was not thought to be an act against the course of Nature: the possible result might indeed be a healthy child, adding to the strength of the clan. Unless accompanied by physical injury, therefore, rape was regarded merely as a more serious form of adultery or seduction, as the case may be; and a higher compensation was demandable by the owner of the woman. No fine was payable to the chief, so that rape was not classed as a crime. The general attitude of Mashona women is to be noted in allegations of rape - so easily made and so difficult to refute. Their mentality might lead them to say, in effect: "Since you insist, have your will. But the responsibility is yours." Thereafter there may be no wish to conceal what has occurred, such as there would be in the case of an accepted lover; and possibly, there may be a thought of hoped-for compensation, mingled with such ideas of justice or retribution as they may have. (my emphasis)

On the other hand, Goldin and Gelfand report²⁰ that under customary law the man who rapes a woman is liable for damages on a higher scale than in a case of seduction or adultery. The act of having intercourse without the woman's consent is thus a factor which justifies the award of compensation. They go on to say:

A man who raped an unmarried woman was traditionally compelled to acquire her as a wife by the payment of *lobola*. Compensation for raping a grown-up unmarried person is two *mombe**. If she

is a married woman, it can be five or six *mombe*. If the raped person dies the award usually is from ten to twelve head of cattle. Traditionally a daughter from the guilty family was also given to the family of the victim. This daughter when she grew up, was given to one of the men and, after producing a child for the family, she was allowed to return to her own family.

*cattle.

Several important observations can be made about these passages. First, is, of course, the racist and sexist attitude of Whitfield. He imparts his own concepts of the way that women behave and doubts the sense of justice of the 'natives.' He speculates that women must allow themselves to be raped in order to be compensated. This is an example of the problem presented by relying on written sources of customary law. His interpretation is coloured by the fact that he is both a male and a European.

The second observation to note is the fact that the man who rapes a woman can be compelled to marry her. This is a concept completely foreign to western legal systems. The idea that a woman who is raped might want to marry her rapist appears at first to be absurd. However, customary law developed in a small, rural, close-knit society. It is unlikely that many rapes were perpetrated by strangers, unless in time of war. The girl who had been raped probably lost her chance of a good marriage, being 'defiled', and an unmarried woman had no status or means of economic support. Socially and economically, her only chance of survival may have been to marry the man, who because of his misconduct, could be forced to marry her. Here, the treatment of the man who rapes is not much different from the treatment of the man who seduces a woman. Either can be forced to marry the woman. Again, the question of whether the woman has consented to the intercourse appears to lose its significance.

Third, rape which results in a child is tolerated since the addition of a child into any family is welcomed. A child means more labour power on the family lands. If it is a girl there will be lobola or brideprice when she reaches marriageable age, and if it is a boy he will marry and produce more children for the family. Again, the question of whether the woman consented to the production of this child appears to be irrelevant. What is important is that there is a new life.

Fourth, is the question of injury. If a raped woman is injured the man owes greater compensation and if she dies even greater. Clearly, although the consent of the woman may be brushed aside in some cases, any physical injury is relevant. This attitude seems to parallel western legal systems, where a rape is often not considered rape by the criminal justice system unless there are physical injuries.²¹

Fifth, damages are not payable to the woman herself but to her guardian - her husband if she is married and her father if she is not. The injury, therefore, was not perceived in terms of injury to the woman, but in terms of injury to the family. This concept, however, is in keeping with other customary law principles which regard the family as unit both when there is compensation for the infringement of rights and when there is liability for actions of individual family members.

Finally, the question of consent does appear to have been relevant to the determination of the amount of damages for sexual offenses. Although damages were awarded for all sexual offenses, regardless of whether the woman consented, higher damages were awarded when she did not consent.

At customary law, adultery was an offense against the husband of the married woman. For this offense he was entitled to an award of damages from the man who committed adultery with his wife. Adultery was seldom a ground for divorce, since the husband received his satisfaction through the award of damages.²² Whitfield reports:

Adultery, in the unwritten code of Mashona law, was a crime, when committed with the wife of a chief, punishable by death, or by such mutilation as the amputation of both hands. Among the subjects of the chief, adultery was a delict, giving rise only to an action for damages against the paramour; but, when the adulterer was caught in flagrante delicto, the wronged husband in his wrath might kill him and incur only the liability of paying the blood fine to the chief. In civil actions for this wrong the damages awarded varied from one to several head of cattle, according to circumstances. It was considered that the tort was greatly aggravated, when it was committed with a woman who had a settled status as a wife and was

12 ISAS Human Rights Series No.10

the mother of a family.²³

Seduction is sexual intercourse with an unmarried girl, usually on promise of marriage. Seduction was an actionable wrong, and the offender was required to pay damages in compensation or to pay *lobola* for the girl.²⁴ The seducer does not have a right to marry the girl, but may do so only if her guardian agrees. If the guardian does not agree, the seducer still must pay damages. Unlike with some other southern African ethnic groups, such as the Swazi,²⁵ seduction was an actionable wrong whether or not it resulted in pregnancy.

Only the guardian of the girl was entitled to damages for her seduction, not the girl herself.²⁶ The action lies whether or not the girl was a virgin, although the amount of damages is lower.²⁷ Circumstances such as the girl's age, the social standing of her guardian, the number of times intercourse took place, the character of the girl, and whether pregnancy resulted are considered in determining damages.²⁸

The rationale behind the awarding of damages in cases of seduction is the fact that the amount of *lobola* payment which the family will receive when she marries is reduced. Therefore, the payment of seduction damages is closely related to the payment of *lobola*. The whole family is injured, because the *lobola* payment they were expecting was reduced. In modern times the amount of damages has also been linked to the amount of expenses that the father of the girl has incurred in raising and educating her, if she is pregnant, the lying-in expenses which will be incurred when she delivers the baby and her loss of earnings if she is employed.²⁹

As has been shown above, sexual offenses under customary law were treated similarly, whether or not the woman consented. In the case of rape or adultery of the wife of a chief, the offender was punished by death. In the case of rape or adultery of a commoner, the offender was required to pay damages to the husband. In the case of rape or seduction, the offender was required either to pay damages or to marry the girl. In all case it was not the woman herself but her guardian who received compensation.

The result of this is that the issue of whether the woman consented to sexual intercourse was not the most important issue. Damages were awarded whether or not she consented. Although her lack of consent might have increased the amount of damages, it was unlikely to do so unless she had overt signs of injury. This was because the economic

injury to the family was the same whether or not the woman consented.

Dual Legal System

As with most former British colonies, Zimbabwe has a dual system of law, applying both general law (Roman-Dutch common law and statutes) and customary law (the law, customs and norms of the indigenous people). Criminal law is governed only by general law and enforced by general law courts (Magistrate's Courts and High Court). The customary law, although it can be applied by any court in the land, is generally applied only in the Primary Courts (Community Courts and Village Courts, formerly called Tribal Courts) and applies only to civil cases.

Seduction and adultery, both of which are unlawful sexual intercourse with the consent of the woman, are considered to be civil actions and therefore can be governed by customary law and adjudicated in the Community Courts. On the other hand, rape, which is sexual intercourse without the consent of the woman, is a crime and can be tried only in the general law courts. This distinction has important effect on the treatment of rape in Zimbabwe, underemphasising the importance of the issue of the woman's consent.

The division between criminal and civil wrongs is one that was generally not recognized in the customary law. Both crimes and delicts were punished under customary law by compensation to the victim or his family for injuries suffered. However, distinction was introduced early in the British rule of what is now Zimbabwe; from the beginning unlawful sexual intercourse was explicitly singled out as an area to which this distinction would apply.

The British South Africa Company first entered the territory now known as Zimbabwe in 1890 under a Royal Charter issued on 29 October 1889.³⁰ Section 14 of the Charter provided that "careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong." The High Commissioner's Proclamation of 10 June 1891 provided for a court system presided over by Resident Commissioners, Assistant Commissioners and Magistrates. The High Commissioner was enjoined to:

respect any Native laws and customs by which the civil relations of any Native chiefs, tribes or popu-

lations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction. (*My emphasis*)

The jurisdiction of these courts did "not extend to any matter in which Natives only are concerned unless in the opinion of such court the exercise of jurisdiction is necessary in the interest of peace or for the prevention or punishment of acts of violence to persons or property" (my emphasis).³¹ Thus, customary law was to apply to cases involving 'natives' except in cases where violence to persons or property was concerned. Therefore, from the beginning rape, as a crime of violence, was handled by the court system administered by white civil servants, while seduction and adultery, as civil matters, were governed by customary law.

The Charter was followed by a succession of other laws through the years, the most important of which is African Law and Tribal Courts Act of 1969 (Chapter 237) which specifically refers to seduction and adultery as cases to be determined by customary law. Under section 3(i), in any civil case between Africans or between an African and a person who is not an African, the decision may be in accordance with customary law. Unless the justice of the case otherwise requires:

(a) customary law shall be deemed applicable in any case which is between Africans and which relates to —

(i) seduction or adultery

(ii) the custody or guardianship of children; or

(iii) the devolution other than by will of movable property on the death of an African...

(iv) rights in land which is not held under registered individual title; or

(v) marriage consideration

(vi) a marriage between Africans contracted under customary law, whether or not it has been solemnized under the African Marriages Act;

(b) the law of Rhodesia shall be deemed applicable to any other case. (*My emphasis*)

The African law and Tribal Courts Act was replaced in 1981 by the

Customary Law and Primary Courts Act 6 of 1981. The 1981 Act, which still governs, introduced far-reaching changes by abolishing racially-based rules for the application of customary law and introducing the 'surrounding circumstances' test in its place. Although seduction and adultery are no longer singled out as cases to which the customary law must apply, in practice the customary law will almost always apply to these cases since this is the law that is applied in the Community Courts where most of these cases are litigated.

In western law the distinction between a criminal and a civil wrong is important. A crime is considered an offense against the state, for which the state punishes the offender either by imprisonment or by a fine to go to the state. A civil wrong, on the other hand, is a wrong against another individual. The offender must compensate the injured person for the damage she/he has caused. Further, in most western legal systems, a criminal action is brought in a criminal court by a prosecutor employed by the state, while a civil action is brought in a civil court by the individual himself.

The distinction between crime and delict is not so clear cut in customary law. Regardless of the nature of the wrong, the wrongdoer must compensate the injured party for the damage he has caused. The 'Robinson Report' (1961) 22 explained:

"the aim of the (customary) law is primarily to compensate the person or family wronged by the crime rather than to inflict punishment of the criminal...The African in our rural areas still has this outlook and he regards our approach to criminal law as wrong. The chiefs in Matebeleland made this quite clear to us. They certainly asked to be granted some criminal jurisdiction. In elaborating this request they appeared to be more interested in being able to award damages to the wronged person than in fining or putting the accused in prison."

It is clear that compensation is central to both civil and criminal customary law. The European colonists, in attempting to institutionalize the distinction between crime and delict by providing that seduction and adultery would be governed by customary law in the 'Tribal Courts' and rape by general law in the general law courts, encouraged the reporting of all unlawful sexual intercourse as civil wrongs, to be

governed by customary law, and therefore the question of the consent of the woman lost its importance.

This happened in the following way: if the father or husband of a woman who has been raped reports that rape to the local police, the rapist is arrested, spends months waiting for trial, perhaps years in jail, and he receives no compensation. He is forced to deal with the general law courts, with which he is unfamiliar and which are often located far away in the city centres. All rapes are officially handled only in Regional Magistrates Courts, of which there are only two in the country.

If, on the other hand, the father or husband treats his daughter or wife's rape as seduction or adultery, he can report it locally to the Community Court with which he is familiar, the Court will apply customary laws with which he is familiar, and he receives compensation. Or he can go one step further, and settle the matter privately, with the family of the guilty man or through the chief of his area. This way he gets his compensation, and avoids the embarrassment of hearing his wife or daughter tell her story in public. Therefore, there is a great incentive to disregard the issue of consent on the part of the woman, and to treat rape as if it were seduction or adultery.

Customary Law Today - The Interviews

Our interviews showed that many of the customs outlined above are still the custom today. For instance, informants say that when there is a rape, the couple is forced to marry. A hearing is held in the community and the chief or headman would probably first ask the boy whether he loved the girl, and then negotiate for marriage. "The first question is, Were you raped? If she answers yes, the second question becomes, Were you in love?" The girl herself actually does very little talking, her father speaks for her. There is usually no need to ask the man involved a lot of questions, but only to determine how much damages should be paid. If the accused admits the charge, the community will usually feel great sympathy for him. If he denies it, he has to give reasons, for example, the complainant is a loose woman, who is not a virgin, and "has been knocking at my door ever since she began to have breasts." The girl is then judged by the court in terms of what they already know of her, and if she is known as a loose woman the case is likely to be dismissed.

The traditional view is that it takes two to commit the crime of rape, and that it usually happens when the boy has some feeling for the girl. No good comes from reporting the crime to the police – it is better to resolve the problem either by charging the boy with seduction in the primary courts or by negotiating with his family. Rape is seen as a problem which exists mainly in the urban areas. The way to solve the problem of rape is proper marriages for all the girls. The traditional view of rape is that there is no problem presented if the boy wants to marry the girl. It is assumed that the ‘rapist’ will be known to the community and that the girl will want to marry him. The procedure for handling all cases of illegal sexual intercourse would appear to be similar – the solution is marriage, and failing that, damages to be paid to the family of the girl. This pattern was confirmed by many other interviews in many areas.

Examples Of Traditional Disregard For Woman’s Consent

The issue of consent for sexual intercourse may in part be blurred because of other traditional attitudes which disregard the consent or wishes of a woman. Some of these traditional attitudes are falling into disuse, and this review is not intended as an indication of the way all people still think in Zimbabwe today. However, the influence of these age-old customs is still strong, and may affect the way society looks at the question of a woman’s consent.

In customary law, a woman’s consent was not required for her marriage. The only consent required was the consent of her guardian, usually her father. Although a guardian would probably seldom give his consent if his daughter was strongly opposed to the marriage, the customary principle which ignores a woman’s wishes for her future sexual partner surely has an influence on the issue of her consent to illicit sexual intercourse, whether seduction or rape. The customary practice of ‘pledging’, which allowed a father to give his daughter in marriage while she was still a child, or even while still *in utero*, is an extreme example of the disregard for the consent of a woman. Although this practice has long been outlawed for girls below the age of 12, old practices and attitudes die slowly. One convicted rapist who was interviewed admitted that his 7 year old victim had been pledged to him as his wife-to-be.

18 ISAS Human Rights Series No.10

The custom of *kuzvarira* is another which disregards a woman's wishes or consent. *Kuzvarira* simply means to give someone control over a girl in return for gifts or service.

The age and consent of the girl is irrelevant. This custom occurs particularly in drought years when a daughter may be given to a rich family in return for 5 bags of sorghum or maize. These cases seldom come to the attention of the police, and are not seen by the people as wrong, much less so as rape.

Both of these practices, and probably the whole question of disregard for a woman's wishes, is rooted in the fact that in customary law a woman was perpetually a minor, under the guardianship of a man for life. She was not entitled to make any major decisions on her life. This legal situation has been changed by the Legal Age of Majority Act 1985, which makes all persons, male or females, majors at the age of 18. However, the extent to which this law has actually affected the lives of women in Zimbabwe is unknown.

Submissiveness of Women

In African custom, a woman is not supposed to express a desire for sex. Consequently, even a married man is unlikely to wait to receive an express indication of consent to sexual intercourse. Girls are taught to feign indifference to suitors. If a girl shows interest in sex, she will be thought of as a prostitute or a loose woman.

This passivity on the part of women is even expressed in the language itself. For instance, in Shona a man marries a woman, but a woman is married by a man. As Chimhundu has observed about the Shona language:

The language is so structured that activities relating to courtship, marriage and sex are described by using expressions in which the men are the subjects who "DO" and the women are objects who are "DONE." The men court the women (*kunyenga*, *kupfimba*) and the women are courted by the men (*kunyengwa*, *kupfimbwa*) in a series of encounters which are both a verbal duel and a battle of wits. Eventually the man convinces the woman that he is sincere and eligible (*kuukonesa*) and the woman abandons her protests and objects (*kukoneswa*).

She takes a long time to decide to accept his proposition (*kuda*). Therefore, for the man, *kudiwa* (to be loved) comes after a struggle and as a form of surrender or capitulation on the part of the woman.³²

In Shona culture, sexual relations involve victory or conquest on the part of the male and surrender or defeat on the part of the female.³³ Chimhundu argues that this is why the first experience or sexual encounter tends also to be a physical battle, particularly where the girl is a virgin and the man is determined *kuboora* (to pierce, break through) or *kuparura* (to plough virgin land) He goes on to relate the linguistic images of violence used in speaking of sexual matters:

The images in all these expressions are strong and imply that a certain measure of force or violence is involved. Even in idiomatic language the strong imagery of violence is still there, as in *kugara mbabvu* (to sit on the ribs) or *kutyora gumbo* (to break a leg). The expressions become even stronger in slang where the men talk in terms of *kutsika* (to crush underfoot), *kudhinda* (to stamp), *kupaza* (to break in or destroy), *kubvarura* (to tear apart), *kukuvadzaaura* (to damage), *kusota* (to sort out), *kuvulaya* from *kuuraya* (to kill) and *kudya zvinhu* (to eat things up). The slang vocabulary keeps changing but the basic trend in the imagery remains. Some form of violence is always implied. Only in extreme cases do people actually begin to talk about rape, *kubhinya* (to take by force, to violate, to vandalize) or *kuhata chibharo* (to hold and force to labour)...The logical conclusion from all these examples is that the Shona view sex as a form of invasion and conquest in which the men annihilate the women who are forced to yield and surrender.³⁴

As a result of these attitudes and practices, the question of a woman's consent to intercourse may become blurred. She is expected to refuse sexual advances at all times, for fear of being thought a prostitute. The man, on the other hand, is expected to fight for sexual favours, even to the extent of using violence to obtain his wishes. This affects

the question of what is rape and what is not, in the sense that it affects the determination of when a woman has consented, and when a man is aware that a woman is not consenting. In the cultural context, the fight for sexual intercourse is expected and customary, and therefore it is difficult to label it illegal. On the other hand, the law must not allow 'sexual bullies' to force themselves on women who do not consent, and then fall back on the argument that all women fight against sex and therefore the question of her consent is irrelevant.

This attitude was reflected in a recent newspaper article entitled 'Was it really rape? Only the court must decide' by Willie D. Musarurwa. He writes:

[A woman] has to struggle as a matter of duty and honour to defend her chastity. There is also the feeling that if she quickly and cheaply gives in her man will think she is a cheap woman who will sleep with anybody on request. Men are always faced with the problem to determine the amount of force they have to use. If it is too much it becomes rape. If it is too little it achieves nothing. They are in a dilemma. The mid-point is very elusive.

In an African society no woman worth her salt will readily agree to sex on the first day, even with her husband. The husband has to struggle for that. He has to defer his wife's resistance. Fortunately enough in terms of African customary law one cannot be charged with raping one's wife. However, in this situation both have a cultural obligation to fight it out. The man's all-out fight and the woman's all-out resistance are culture-bound and culture-encouraged.³⁵

This 'cultural obligation' makes it very difficult for a court faced with a rape case to decide when there has been consent and when there has not. Perhaps this is one reason that the consent of the woman to sexual intercourse is not central to the question of rape in the eyes of the public, who expect all women to fight and all men to use a certain amount of force.

Lobola and Virginity

The question of *lobola* was, in customary law, central to the question of damages in a case of unlawful sexual intercourse. Damages were given in cases of seduction and rape on the basis that the guardian's right to *lobola* would be diminished because his daughter was no longer a virgin. Because virginity was lost, whether the sexual intercourse was with or without the consent of the woman involved, damages were awarded in either case and the question of whether the woman consented had relevance only to the amount of damages. This section will therefore discuss the centrality of virginity to customary culture.

Traditionally, boys and girls are separated at puberty and given instructions as to appropriate sexual behaviour and marriage as well as advice on how to perform the tasks appropriate to their sex. This custom is not very widespread in modern times, but its remnants may be found in the attitudes of people towards appropriate sexual behaviour.

Much sexual instruction for girls revolves around ensuring that young girls remain virgins until marriage. Young girls are taught very strict limits to sexual behaviour. They are taught not to meet alone with boys so that the opportunity for sex does not arise. It is considered by custom (if not often actually true in practice) to be important to remain a virgin until marriage. One reason is financial – a girl's family receives more *roora/lobola* for a daughter who is a virgin. The importance is illustrated by a custom following the marriage ceremony: if the young bride is found not to be a virgin her husband's family will send a blanket with a hole in it to her family, thus disgracing them, and in particular her auntie who is responsible for her sexual instruction. Since the *lobola/roora* has been set on the representation that the bride is a virgin, she can be sent back to her family in complaint, and a settlement can be made.

The importance of virginity is relevant to sexual offenses in that it indicates the economic damage done to a family when a daughter is raped or seduced. Because virginity is prized, she becomes damaged goods, regardless of whether the sexual intercourse was with her consent, and her value as a wife is diminished. Perhaps this is the reason one person we interviewed defined rape as "seduction where the man refuses to marry the girl."

Reporting Rape

In traditional law, a woman or girl will not report a rape directly to the authorities. As in all matters, it is her guardian who is responsible for her welfare, and therefore responsible for reporting. The victim of a rape traditionally reports either to her mother or to her auntie, who will then report to the girl's father or guardian.

In some communal land areas we found an elaborate reporting procedure. The girl might report to her mother, who reports to her husband, who reports to the Kraalhead, who reports to the headman or chief, who reports to the Vidco (village committee), which reports to the Wardco (Ward committee), which reports to the Councillor, before the matter finally gets to the police. On farms and mines, she reports to the foreman and then the mine or farm owner, before the police. In other areas, interviewees say that people tend to report to the ZANU (PF) chairman. Apart from the obvious problem of the length of time that all this takes, and the fact that any evidence which the police might have been able to collect from the person of the girl will probably have disappeared long before the reporting protocol is completed, it is also important to consider the psychological effect all this reporting may have on the girl. Before she knows it, everyone for miles around knows what has happened to her.

Another problem with reporting is the inaccessibility of police stations. In many rural communities the nearest police station is 15–20 km away. The people are not used to reporting things to the police and prefer to settle disputes their own way. This situation, inevitably, affects the reporting of sexual offenses. Transport is infrequent and unreliable – both public transport to get the victim to the police station, and police transport to get the police out into the community. Few communities in such remote areas have telephones. We came across many examples of women reporting rape by letter, which of course makes the collection of evidence impossible because of the delay. In such isolated communities, it is unlikely that a rape would ever come to the attention of the police. It is also more likely that the offender would be known by the community and could be punished by them. Although the same problem does not arise in such a drastic form in the urban areas, urban police stations also suffer from lack of adequate transport either to go to the woman who phones to report a rape, or to take a woman to the hospital to collect evidence, or to visit the

scene of the crime and collect evidence. Even if enough evidence is collected to bring the case to trial, in some areas it was reported that cases took as long as 2-3 years. One interviewee recalled a case involving a young woman who, by the time the case finally came to trial, was married with a child and did not want to testify because she did not want her husband to know about the rape.

Language difficulties were also presented as a problem relevant to the reporting of rape. Because of cultural diversity in Zimbabwe, it is not unusual in some areas for senior police officers to be unable to speak the vernacular of the area in which they work. This was particularly true in the Gwanda area, which has been a centre of dissident activity; Shona speaking police officers have been dispatched to this primarily Sindebele speaking region. It is clear that reporting through an interpreter may increase the female victim's ordeal, as well as increase the possibility of inaccuracies in her report. Perhaps with the recent Unity Agreement and amnesty for dissidents, Shona police will be unnecessary in these areas and the problem will resolve itself.

Finally, it was the general feeling, particularly in the rural areas, that rape was not a crime which involved only the woman and the offender. "In all cases in our custom a case was not for an individual but for the whole clan with the same totem." Both parties had relatives to consider - relatives who might have to bear the financial burden of the punishment in the case of the offender, and who would have to share the embarrassment and indignity of the victim. In keeping with traditional attitudes in general, rape was seen as a family matter and would bring social humiliation on the whole family. As one woman told us, "Most women would not want the social humiliation of being labeled a rape victim. Think of a mother who has sons as old as you are. Would she want her children to know that she was raped?!"

And a woman interviewed in Chipinge put it this way:

In a rural environment such as ours the consequences of a girl or woman having sexual intercourse outside marriage - however that sexual intercourse is brought, are great. First, the feeling among the people is that a woman is raped because of her fault. Second, that when a woman is raped it becomes certain that she had sexual intercourse outside marriage and this is a very big social hu-

miliation here. In most cases the girl's chances of finding a good husband are drastically reduced. Also the possibility of being continually reminded of the rape incident by would-be insulters is great.

Female Police Officers

It was found that very few areas had female police officers available for handling rape cases. Where there were female officers, they were likely to be junior and therefore not assigned to rape cases. In some rural areas, where female officers were not available to examine the complainant for evidence, any woman who is available – including at times the wives of the police officers, – will be asked to examine the woman for signs of rape. These women are, of course, untrained in evidence collection, and this may cause difficulties if the case proceeds to court. This practice also accords with the practice in customary law, where in a case of rape, elderly women are expected to examine the victims for evidence and report to the headman or chief.

Surprisingly, we found that many women were either reluctant to speak to female police officers, or had no preference as to male or female officers. This was surprising in that one of the major reforms called for in the West has been for more female police officers to deal with rape cases. Several possible causes were identified.

First, women traditionally had a relatively powerless position in Zimbabwean culture. This is, of course, an over-simplification, since elderly women, and women of strong personality, often wielded great power. However, most women, particularly young women (and police-women are generally young), have little power. Female rape victims may feel that if they are going to report the rape, they would rather report to someone who has the power to do something about it.

Secondly, there appears to be some lingering mistrust of policewomen dating from independence. Some women reported that most policewomen had been in the camps (Zanla and Zipra) during the war, and that it was well-known that there was sexual promiscuity in those camps. Some women therefore did not trust policewomen because of their supposed sexual past.

Thirdly, some women reported a general mistrust of other women, complaining that the treatment they received from professional women whether nurses, teachers, policewomen or others was impol-

ite and unconcerned. This attitude, which was widespread but not unanimous, can be linked again to the powerless, inferior position of women. It has often been observed by Western feminists and by Marxists that oppressed persons have a tendency to turn against each other rather than joining together to confront their oppressors. One of the early objectives of the Western feminists movement was to teach women not to compete against each other but to unify. On the other hand, it has also been observed in some Western studies of rape that unconscientised women are less sensitive to the needs of rape victims than are men. It may be that a woman puts herself in the position of the female victim and thinks 'I never would have done that', and as a result is less sympathetic. For example, one woman we interviewed stated 'If you see a woman dressed in such a way that her thighs and hips may not be covered, can you blame the man in those circumstances (for raping her)? They (men) are human beings!'

Witchcraft And The Churches

'Witchdoctors' or *n'yangas* were perceived by many of those we interviewed to contribute to the problem of sexual offences. These men are extremely powerful in customary society and their orders are firmly believed and invariably obeyed. The prescriptions given by *n'yangas* for ailments or for good luck include sex with specific persons. For example, one father went to an *n'yanaga* for good luck gambling and was told to have sexual intercourse with his daughter. A farmer and store owner whose business was doing badly was also told to sleep with his daughter. Another was given the same advice in order to protect and increase his herd of cattle. Because of the power of *n'yangas* and the community's belief in the spiritual world, the consent of the young girls to these acts is irrelevant.

Some church sects have powers similar to the *n'yangas*. According to the doctrine of some churches, for example the *Mapostori*, the prophet tells the man which girl is to become his wife, and that girl is given to him by her parents. In some cases the man is old enough to be the girl's grandfather. It was also reported that girls are sometimes given to the church elders from the *Mapostori* or the Zionists as "gifts from God." As one man noted, "Pastors, reverends or high priests are feared and respected by these young girls and all the time they propose marriage to them there is a feeling that the man has God's power to impose punishment on her if she refuses him as a husband."

Neither of these two types of incidents are considered to be rape by the parties concerned, and would probably not be considered to be rape under the law (unless the girl concerned was below the age of 12, which is the age of consent). On the other hand, in neither incident is the will or the choice of the girl involved given much consideration. She has been trained to believe that someone else makes choices for her, and she acquiesces. Although in most cases she has not been forced to submit, it is also not correct to say that she has chosen freely.

Rape And War

Some areas of Zimbabwe have been in a virtual state of war for over 20 years. First there was a War of Liberation, and then after independence South African-backed dissidents kept the peasants in a constant state of fear. Fortunately, this situation is likely to normalize due to the recent unity agreements and the amnesty afforded to dissidents. Through interviews in some of those areas, we attempted to discover the affect this war situation had on the crime of rape.

The first factor noted was the deterioration of court systems in these areas. Primary courts, although well distributed throughout the country, are still far away from where many people live; in times when travelling is dangerous, people are unlikely to apply to these courts. Magistrate's courts, which are theoretically the only courts handling rape cases are even further from where the people live. In addition, it was dangerous for a person to be seen at any government offices, since he or she might be seen as a sellout, and in any case the inhabitants of many of these areas were suspicious of the government. The police and soldiers in these predominately Sindebele speaking areas were usually Shona-speaking, and many inhabitants were afraid to deal with them at all for fear they would be seen by dissidents as collaborating with the 'enemy'. The peasant was put in a dangerous position if he reported any crime, which also included reporting rape.

During the Liberation Struggle women had difficulties from both sides. The soldiers, stationed far from home and without their women around, often demanded sexual favours from them, and – with the power of the gun on their side – were easily able to force compliance. The guerrillas, although firmly instructed not to, also demanded that women contribute to the struggle by satisfying their needs. As one interviewee told us, "As you know, you could not deny sexual intercourse

to a 'mujibha' or to a 'comrade.' "There is also some evidence that a woman who had voluntarily kept her guerrilla boyfriend for the night and been caught, might claim she had been forced in order to avoid prosecution for 'harboring a terrorist.' This situation is reported to have continued during the period after independence, when the soldiers remained in some areas and the dissidents simply replaced the freedom fighters. Women in unsettled times of war are, therefore, the pawns of both sides, and are allowed little sexual choice by either.

An old man we interviewed put it well:

To speak frankly, during the war fear was the ruler of the time. People were divided. Liberation fighters demanded the attention of unmarried girls to come and cook for them and also to share beds with them. I feel under these savage circumstances of the war a girl was left no chance to say no to a guerrilla fighter who was considered a bandit by the then government. Such girls feared for their lives and sex to them was not a threat as compared with death. (At the same time soldiers also) engaged in very serious activities of rape....Guns were pointed at the women to be raped....No soldier was brought to court on the charge of rape since nobody dared to report...I remember in 1976 when a 16 year old girl was raped 8 times by 4 soldiers....You can see how the situation was, full of anarchy and disorder.

Statutory Rape

So-called 'statutory rape' is really not rape at all, but it is prosecuted under the Criminal Law Amendment Act which makes it an offense to have sexual intercourse with a girl under the age of 16. It is a criminal offense whether or not the girl consents to the intercourse. This crime is probably even more unreported than the crime of rape, and is much more closely linked to the customary law offense of seduction since the consent of the woman involved is not the focus of the offense. The existence of statutory 'rape' may be one reason for the widespread confusion over the meaning of 'rape'.

Interviews indicated that in most cases where this crime has been

committed the man involved is forced to pay damages or marry the girl. It is only when he refuses to do so that he is reported to the police.

Interviews also indicated that people felt that this crime was widespread, and were concerned. It was felt that a young girl can be easily swayed by the attention of an older man, who may even begin buying her small presents such as ice-cream and 'frozens.' Some attributed the crime in part to the rise in standard of living and urbanization of black Zimbabweans. Young girls now want to move about well dressed and want money for movies and sweets, and may rely on 'sugar daddies' to supply these. Parents are losing control over their children who walk to and from school alone. In traditional society every adult had social responsibility over every child, and could at appropriate times admonish or advise him or her. In modern times, and in the urban areas, each parent minds his or her own business and no one will interfere with someone else's child who is misbehaving. This enables children to get into trouble without anyone finding out or doing anything about it.

There was also evidence in very rural areas that people were unaware of the Criminal Law Amendment Act. In Bikita, the police described one case of a man who married a very young girl under customary law and she bore him a baby boy. He then applied to register the marriage and filled in the form truthfully, admitting she was under the age of 16. The police then charged him under the Criminal Law Amendment Act, he was convicted and sentenced to 3 years imprisonment two of which were suspended.

Conclusions

Research has shown that there is some confusion in the minds of the public about the crime of rape, and the significance of the consent of a woman to sexual intercourse. This blurring of the issue of consent has its roots in several historical circumstances and culture practices. It also reflects the overall inferior position of women in society, who are generally under the control and power of men. This discussion has not provided answers to the problems presented. Perhaps part of the answer is merely to begin to come to an understanding of the problem. If women are to enjoy their full human rights, enshrined in international human rights documents, they must be fully protected from rape. Efforts should be made to encourage the reporting of rape and its efficient prosecution by the courts. The public must be educated to

understand the nature of the problem and the law. And, perhaps most importantly, efforts must be made to equalize power relations between men and women which lie at the core of the crime of rape.

Notes

1. Brownmiller, Susan, *Against Our Will : Men, Women and Rape* New York: Simon & Schuster, 1971.
2. Feltoe, *Guide to the Criminal Law of Zimbabwe*, University of Zimbabwe, 1985, p.104.
3. S. v. H. 1985 (2) SA 727 (N)
4. R. v. Dombo 1969 RLR 83.
5. Griffiths, "Understanding the Behaviour of the Rape Victim: Fear is the Key" *The Detective, Vol. 12, No.1.*
6. Commentary on Proposed Criminal Code, p. 12. The authors of this commentary do not state their authority for this proposition, and I am inclined to dispute it. However, it is certainly true that the law must be clarified.
7. Boyle *et. al, A Feminist Review of Criminal Law* , Minister of Supply and Services, Canada, 1985, p. 61. Connors, "Violence Against Women", a paper presented to the Meeting of Commonwealth Law Ministers, Zimbabwe, 26 July-1 August 1986.
8. S. v Gardner SC 2/1983 following R. v. Morgan (1976) AC 182.
9. S. v. H. 1985 (2) SA 727 (N) p.751J.
10. *Ibid.* p. 756E.
11. Judgment No. HC-B-48-87 at p. 4 of cyclostyled judgment.
12. Griffiths, "Rape Trauma Syndrome: The Overlooked Evidence in Rape Investigations" *The Detective Vol. 12, No. 1 1985 p. 1.*
13. Criminal Procedure and Evidence Act Cap. 59 s. 360.
14. The State v. Jairos Mwale HC-H-11-87, S. v. Chuma 1983 (2) ZLR 372.
15. State v. Zacharia Machona HC-H-271-85.
16. The State v. Jairos Mwale HC-H-11-87, State v. Itayi Shoniwa HC-H-25-87.
17. Goldin and Gelfand, *African Law and Custom in Rhodesia* Juta, 1975 Lawrence v. Musomali 1951 SRN 259 Useni v. Zhuwakinu 1953 SRN 386.

18. *Ibid.* p. 269.
19. Whitfield, *South African Native Law*, Juta, Cape Town, 1948, p. 417.
20. *Op. Cit.* p. 199.
21. Edwards, S. *Female Sexuality and the Law*, Martin Robertson, Oxford, 1981 Chapter 4. She argues that it is extremely difficult for a rape victim to prove she did not consent, particularly if there are no overt signs of injury.
22. Whitfield, *Op. Cit.* p. 247.
23. *Ibid.* p. 460.
24. *Ibid.* p. 75, 459.
25. *Ibid.* p. 458.
26. *Nira v. Marebe and Ngando* (1945) 1941–57 Reports and Decisions of the Native Appeals Court Southern Rhodesia. p. 175.
27. *Muza v. Mbunjwa* (1944) 1941–57 Reports and Decisions of the Native Appeals Court Southern Rhodesia. p. 17.
28. *Goldin and Gelfand*, *Op. Cit.* p. 209 and *Makiwa v. Makina* (1944) 1941–57 Reports and Decisions of the native Appeals Court Southern Rhodesia p. 1.
29. *Nyoni v. Mamova* (1946) 1941–57 Reports and Decisions of the Native Appeals Court Rhodesia p. 216, *Masako Pombi v. Chimombe* (1953) 1941–57 Reports and Decisions of the Native Appeals Court Southern Rhodesia p. 412.
30. Child, *The History and Extent of Recognition of Tribal Law in Rhodesia*, Government Printer, Salisbury, 1976.
31. S. 8.
32. Chimhundu, Herbert, “Language, Literature and Sex Stereotypes” Paper Presented at 8th PWPA Annual Conference, Siavonga, Zambia, 3-6 July 1987, p.4.
33. *Ibid.*
34. *Ibid.* p.5.
35. The Herald 10/6/88.



This work is licensed under a
Creative Commons
Attribution – NonCommercial - NoDerivs 3.0 License.

To view a copy of the license please see:
<http://creativecommons.org/licenses/by-nc-nd/3.0/>

This is a download from the BLDS Digital Library on OpenDocs
<http://opendocs.ids.ac.uk/opendocs/>