

**BATTERED WOMEN  
IN BOTSWANA**

**Vol. 2**

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7. Comparative Legislation

One of the aims of this comparative chapter is to provide the researcher with ideas for recommendations for her own situation. A brief excursus will be made into selected Zimbabwean legislation and its practical effect on the lives of women in that country.

Zimbabwe was selected as the comparative country because:

- it is a neighbour of Botswana
- like Botswana, it is a member of S.A.D.C.C.<sup>1</sup>
- as a newly independent country, it is making strides in putting to paper its government's commitment to the liberation of women and the establishment of equality of men and women in all spheres of Zimbabwean society.<sup>2</sup>

The main reason for this excursus is not to seek out similarities, but instead to focus upon noteworthy differences. These may provide suggestions for recommendations for change to the remedies presently available to battered women, and for general legislative changes in Botswana.

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1. The Southern African Development Coordination Conference - a grouping of the Frontline states which seek to decrease economic dependence on South Africa.

2. Welshman Ncube, Matrimonial property rights of spouses in Zimbabwe - paper presented at the International Family Law Conference, University of Zimbabwe 1987 p 1.

Zimbabwe

Both the general civil and criminal law remedies available to battered women are broadly similar to those available in terms of Botswana law. This is largely because the same basic legal system is used in both countries.<sup>3</sup> Responses in terms of the customary law focus upon the mediatory role of the family.

7.1. General responses

The pattern of responses appears to be similar to that in Botswana.

Battered women tend to report the matter to the family rather than to the police. This is because battering is seen as a 'family affair based on traditional belief (that) occasional chastisement by the husband is (seen) to keep the wife in her place.'<sup>4</sup> The traditional structure is considered to be more successful at solving the problem. 'If the husband does not stop (battering), the wife stays at her parents' house.'<sup>5</sup>

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3. Other countries in the region which use the Roman-Dutch law system are Lesotho, Swaziland, Namibia and South Africa.

4. Amy Tsanga, attorney, in interview with researcher in Harare 1986.

5. Tsanga, 1986.

Since independence in 1980, the government, committed to equality, 'took upon itself the task of removing as many legal obstacles as possible ... and (bringing) everyone into the mainstream of development and social transformation ... this would demand maximum participation on an equal footing, regardless of race, colour, creed, political affiliation or sex.'<sup>6</sup> It has manifested these intentions through the promulgation of various Acts which affect the legal rights of women in terms of both the general and customary law systems. These Acts, inter alia, are the following:

- the Legal Age of Majority Act,<sup>7</sup>
- the Labour Relations Act<sup>8</sup> 2,
- the Matrimonial Causes Act,<sup>9</sup>
- the Customary Law and Primary Courts Act.<sup>10</sup>

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6. Joyce L. Kazembe, "The Women Issue" in Zimbabwe - The political economy of transition 1980-1986, ed. by Ibbo Mandaza. (Dakar: Codesria, October 1986), p 386.

7. 15 of 1982.

8. of 1986.

9. of 1985.

10. 6 of 1981. See also Corruption, inefficiency threaten credibility of primary courts - 60 presiding officers dismissed in 2 years The Herald (Tuesday May 5 1987), p 4. For other interesting legislation not directly relevant to this dissertation but relevant to women in general see the Sex Disqualification Removal Act of 1983 and the Minimum Wages Act of 1982.

7.1.1. The Legal Age of Majority Act

This Act both:

1. sets the age of majority at 18 and
2. applies for the purpose of any law, including customary law.<sup>11</sup>

The effect of this law on women, both in terms of the general and customary law, was to remove, in theory, the legal disabilities comcomitant with the legal minority status usually afforded women.

a. General law

In terms of the general law, women were generally considered to be legal minors within marital relationships. There are two types of matrimonial property regimes:

- marriage in community of property, and
- marriage out of community of property.

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11. Welshman Ncube, "Released from legal minority: The Legal Age of Majority Act in Zimbabwe" in Women and Law in Southern Africa, ed. by Alice Armstrong assisted by Welshman Ncube. (Harare: Zimbabwe Publishing House, 1987) p 197.

(1) Marriage in community of property

This regime applies only to marriages in which an antenuptial contract has been entered into.<sup>12</sup> The standard community of property regime consists of community of property, community of profit and loss and the marital power of the husband. It is however possible to adjust the components of the regime.

In practice, this property regime has not been greatly utilised in Zimbabwe.<sup>13</sup> One of the reasons could be the husband's control over the communal property. The marital power entitles him (as administrator of the property) to alienate, acquire, dispose of, sell, etc. the property in any way in which he deems fit.<sup>14</sup> The contractual capacity of the woman is limited. Though in terms of the law she is not a ward, in effect she can

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12. The situation used to be the reverse. A marriage used to be automatically deemed to be in community of property unless an ante-nuptial agreement was entered into expressing the parties' intention to the contrary. This change was introduced by the Married Persons Property Act of 1929, Chapter 38 s 2. A similar situation exists in Botswana. In terms of the Married Person's Property Act, Laws of Botswana Chapter 29:06, marriages after 1 January 1971 are deemed to be out of community of property unless the spouses enter into an ante-nuptial agreement to the contrary.

13. Between 1929 and 1984 only three registrations appear in the records. Ncube, Matrimonial., p 6.

14. For more on problems faced by Zimbabwean women in community of property regimes, see W. Ncube The matrimonial property rights of women during and after marriage in Zimbabwe: A study of property relations, domestic labour and power relations within the family (unpublished M. Phil. thesis, University of Zimbabwe) cited in Ncube, Matrimonial., note 6.

be viewed as a ward of her husband. The two main effects of this are that she

- is legally 'assisted' by him in most contracts into which she enters,<sup>15</sup> and
- she lacks 'locus standi in judicio'. He therefore legally 'assists' her in suing or being sued.

(ii) Marriage out of community of property

In terms of this regime, the marital power of the husband is theoretically non-existent. The woman has control over her property, is liable for her debts and, inter alia, has contractual capacity.<sup>16</sup>

There is thus a legal distinction drawn between the status of a woman who is married in community of property and subject to the husband's marital power, and that of a woman married out of

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15. These exclude daily transactions such as domestic purchases, household necessities, etc. The married woman's contractual capacity is limited to 'all juristic acts which can reasonably be seen as necessary for the proper functioning of the household.' Lee and Honore, Family, Things and Succession (Durban-Pretoria: Butterworths, 1983), paragraph 67 Aquisition of household necessities p 54.

16. For more on the theoretical legal effects of this regime see L.J. Hosten, A.B. Edwards, C. Nathan, F Bosman, Introduction to South African Law and Legal Theory (Durban-Pretoria: Butterworths, 1983).

community of property to the exclusion of the husband's marital power. In this writer's view that distinction is somewhat artificial. Since the invariable consequences of marriage exist in marriages governed both by the community and out of community proprietary regimes, the woman in both situations is made subject to limitations in the exercise of her rights.<sup>17</sup> This, because she is a woman.

In terms of Roman Dutch law principles:

- 1 marriage gives rise to:
  - i. majority status for the woman who marries at an age under the age of majority
  - ii. invariable or personal consequences
  
- 2 marriage contracted in terms of the community of property regime subject to the husband's marital power limits the woman's contractual capacity.

This theoretical distinction between consequences which flow from the general marriage contract per se (personal consequences) and

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17. See Lee and Honore, Family, Things and Succession, ed. by H.J. Erasmus, C.J. Van Der Merwe and A.H. Van Wyk. (Durban-Pretoria: Butterworths, 1983), paragraph 62 Attainment of majority: p 48.

(proprietary consequences or patrimonial consequences) serves to detract from the effects of marriage in practice. The exercise of the husband's marital power partly reduces the woman to a position analogous to the minority status which she had before marriage or before she attained the age of majority. It is submitted that the exercise of marital power does include personal consequences. The express legal exclusion of the husband's marital power merely limits its application in practice.<sup>18</sup> All marriages (whether in or out of community) impose limitations on the exercise of her rights by the wife. Although the express exclusion of the marital power (in so far as such power relates to the proprietary situation of the spouses) does have the effect of diminishing the limitations imposed on the wife (she has full contractual capacity for instance as opposed to the limited contractual capacity of the wife subject to the marital power), such exclusion does not do away with all such limitations. (See note 17). If one is of the view that the marital power includes both proprietary as well as personal

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18. The invariable consequences of marriage are not affected by the choice of the proprietary regime. The consequences are:

- the husband's right to determine the 'matrimonial domicile';
- the husband's position as the head of the household or final decision-maker.

A related point is the rule that the father is the guardian of legitimate children of the union.

For a discussion on the invariable consequences of marriage, see A. Molokomme, "Marriage - what every woman wants or 'civil death'? The status of married women in Botswana" in Women and Law in Southern Africa, Armstrong and Ncube, pp 182-183. Lee and Honore, paragraph 63 Husband Head of household, p 49.

marital power includes both proprietary as well as personal limitations on the exercise by the wife of her rights, then the so-called exclusion of the marital power by the ante nuptial contract is in reality only a limitation of its application.

b. Customary law

In terms of customary law, women had limited contractual and proprietary capacities because they were deemed to be perpetual minors.<sup>19</sup>

In practice,

... the customary laws on matrimonial property perceive a married woman as an unpaid servant of her husband. She works for him, looks after his family, acquires and preserves property for him. At the end of the marriage she leaves the matrimonial home propertyless and destitute like a sacked employee.<sup>20</sup>

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19. For the different types of property which a woman could own, see Ncube, Matrimonial., p 10.

20. Ncube, Matrimonial, p 11.

What is clear from the brief examination of the position of women married in terms both of the general and customary law systems, is the minority status accorded them by law. What the Legal Age of Majority Act (LAMA) did was to make all persons subject to its provisions.<sup>21</sup> The effect of these provisions is, inter alia, to remove the ward-guardianship relationship (which hitherto had existed until the ward attained the age of 21 years) upon the attainment by the ward of the age of 18 years.

The effect of the implementation of LAMA on women will be discussed under the following headings:

- 'locus standi in judicio',
- contractual capacity,
- seduction,
- proprietary capacity.

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21. The previous LAMA, Chapter 46 (repealed by the present LAMA), which declared the age of majority to be 21 years, did not in terms of the proviso to s 3(2) of the African Law and Tribal Courts Act 'affect the operation of customary law, except in so far as such enactment has been specifically applied to Africans by that or any other enactment.' This Act was repealed by the Customary Law and Primary Courts Act 21 of 1981. Ncube, Released., p 195.

1. 'Locus standi in judicio'1(a) General law

As noted above, the express legal exclusion of the husband's marital power is of limited real effect. The personal marital power present in the invariable consequences of marriage ought not to be overlooked. Reference to 'the exclusion of marital power', therefore, in fact means reference to 'limitation of marital power.'

LAMA does not therefore effect any change in the 'locus standi' of a woman married out of community of property with the exclusion of the marital power (the 'automatic' matrimonial property regime in Zimbabwe. (See note 12 supra).

Marriages which are contracted in community of property can include the marital power. This would depend on the specific constitution of the regime. It is not clear how LAMA affects such a marriage. By including the marital power, the wife is placed in a position analogous to a legal minor and lacks 'locus standi'. However, in terms of LAMA, if she is over the age of 18 years, she is a legal major capable of suing and being sued without the 'assistance' of her legal guardian. It is submitted that she ought to be considered a legal major. This would,

however, render the entire concept of marital power useless.<sup>22</sup> It is possibly due to this and other problematic and contradictory situations which arose as a result of LAMA, that the Married Persons Property Bill 1987 was created.

The two main aims of the Bill are seen to be:

- the abolition of the marital power in community of property marriages, and
- the introduction of an "accrual system".<sup>23</sup>

The effect of LAMA is therefore limited in terms of the general law, due to other areas of family law which do not reflect the government's policy to strive towards the removal of sexual inequalities.

1(b) Customary law

Prior to the Act, in terms of the customary law, women lacked 'locus standi'.

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22. Note that in terms of South African law, majority status and marital power can theoretically coexist. There is a clear contradiction. Cf Lee and Honore paragraph 62 especially the notes.

23. For more on the Bill and his observations of it, see Ncube, Matrimonial, pp 38-40. Cf. the Matrimonial Property Act 88 of 1984. (South Africa).

In terms of the Act they are majors after attaining the age of 18 years and consequently have the capacity both to sue and be sued without the legal 'assistance' of their guardians. This follows because majors do not have guardians. In the case of an unmarried woman, she no longer requires the 'assistance' of her father. In the case of a married woman, she no longer requires the 'assistance' of her husband.

This interpretation was manifested in Jenah v Nyemba<sup>24</sup>. It was held that it would be

'... unthinkable that in the context of its avowed aim of liberalization the Legislature could have intended to limit its grant of capacity to unmarried African women who fulfill the age requirement, but to retain a married African woman of, say, fifty years of age in the disadvantageous condition of minority.'<sup>25</sup>

#### Implications for battered women

An effect of LAMA on the position of battered women is that those

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24. SC 49 of 1986.

25. Mr Justice Beck in dismissing the appellant's claim that the defendant wife had lacked 'locus standi' to institute a claim concerning property on the grounds that she was a legal minor and ought therefore to have been legally 'assisted' by her husband. Cited in Ncube, Released., pp 197-198.

who hitherto were unable to appear in court due to lack of 'locus standi' are no longer impeded in this way.

In terms of the customary law, as already mentioned above, a woman has to be 'assisted' by her guardian when she intends to take the case. Under the present statutory position, she is able to do so unaided. In theory this augurs well. In practice, change is not as smooth or as swift. 'The law can say one thing while society behaves in exactly the opposite way.'<sup>26</sup> It will take some time before the actual effect of LAMA is understood and accepted and not viewed as being a possible threat to 'cultural norms'.

In terms of the general law, a woman requires 'assistance' where she is married in community of property and is subject to the marital power of the husband. The implications of LAMA in respect to her status have already been alluded to above.

## 2. Contractual capacity

### 2(a) General law

In terms of a marriage contracted in community of property with the inclusion of the marital power, the woman has limited

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26. Kazembe, p 402.

contractual capacity. As pointed out above, her position is analogous to that of a legal minor. LAMA appears to alter her legal status. Although it is arguable that she is now considered a legal major and has a less limited contractual capacity, there is a lack of clarity as to the effect of LAMA on the status of the wife married in this regime.

2(b) Customary law

In terms of the customary law, a woman is a legal minor and is therefore unable to enter into contracts 'unassisted'. LAMA has altered the position.

'... the old customary law concept that an African woman was a perpetual minor who needs a guardian to assist her in her contractual obligations, has been done away with because every person acquires majority status on the attainment of the age of 18 years ...'<sup>27</sup>

A significant development which flows as a consequence of LAMA, relates to the practice of 'roora'/'lobolo'<sup>28</sup> and the role of the

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27. Chief Justice Dumbutshena in Katekwe v Muchabaiwa SC 87/1984 p 15 cited in Ncube, Released., p 198.

28. This corresponds to the practice of 'bogadi' in Botswana. Its aim was twofold:

'...transferred the labour services of the bride to the

guardian. Both these formed a part of the overall structure of marriage because:

- 'Roora' or 'lobolo' was considered a prerequisite for marriage<sup>29</sup>
- the consent of the guardian was required.<sup>30</sup>

As already stated, LAMA affects the contractual capacity of the woman over the age of 18 years. She is consequently empowered to enter into a contract of marriage without both 'roora' or 'lobolo' and the consent of her guardian.

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groom's family ... ,  
who also secured her genitricial rights as well.'

Joan May, Zimbabwe Women in Customary and Colonial Law (Gweru: Mambo Press, 1983) pp 41-42 cited in Kazembe, p 380.

29. In terms of s 7(1)(a) of the African Marriage Act Chapter 238 (prior to the LAMA) the African marriage officer could only solemnise the marriage after satisfying himself that such an agreement existed between the woman's guardian and the prospective son-in-law. It was possible to marry in terms of the general law. If this was to be done, s 12 (1) of the Marriage Act Chapter 37 would apply. In terms of this section, the District Administrator would issue a certificate stating that 'there was no bar to the marriage by reason of lack of consent of the guardian of the woman.' Ncube, Released., p 202.

30. The significant roles which both 'roora/lobolo' and guardians played is illustrated by the results of a study by Joshua M.M. Mpofo. The study revealed that almost 50% of unregistered marriages were unregistered because the woman's guardians had insisted on receiving the 'roora/lobolo' first. 'Some Observable Sources of Women's Subordination in Zimbabwe' Centre for Applied Social Studies (CASS), University of Zimbabwe 1983 pp 9-11. Cited in Ncube, Released., p 202.

' ... what the Legal Age of Majority Act has done with regard to roora is this: The major daughter will say to her father, 'Father I want to get married. You have no right to stop me. I do not require your consent because I have majority status. But if you want lobola you are free to negotiate with my prospective husband. If he agrees to pay roora that is a contract, an agreement between you and my prospective husband ... If he refuses to pay roora, I shall go ahead with my marriage.'<sup>31</sup>

#### Implications for battered women

The effect of LAMA in terms of this section of the customary law is far-reaching and very encouraging. In theory, women may now exercise the right to determine whom they will marry and how the marriage is to be executed. In practice, however, these rights will most probably remain unexercised to a large degree. Societal pressure, cultural practices, public opinion etc will all serve to complicate the translation of the legal into the social. 'Women are said to be the custodians of customs and

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31. Chief Justice Dumbutshena in Katekwe v Muchabaiwa op cit p 19 cited in W. Ncube op cit pp 202-203. Note that since the introduction of LAMA in 1982, 'only 52 couples out of 906 registered their marriages without roora transactions of any sort, with or without consent at Harare CC (Community Court) between April 1983 and March 1985 (from a Harare CC Presiding Officer). Kazembe, p 392.

culture, but they should realise that culture is not always progressive. So, any laws that are positively inclined towards women should be welcomed by women themselves, before they can hope to convert men to their side.<sup>32</sup>

A woman married in terms of the general law community of property regime is often also married in terms of the customary law and would therefore also be subject to the effects mentioned above.

As was made clear in the interviews, the role and effect of 'bogadi' (similar to 'roora' or 'lobolo') on the woman's reaction to the battering situation ought not to be underestimated.

The psychological effect of knowing that there has been an exchange of property for, inter alia, the legitimisation of both the marriage and issue therefrom, places a responsibility on the woman. Marriage is seen as a contractual matter which involves, not only the two persons, but two entire families.<sup>33</sup> LAMA

32. Kazembe, p 402.

33. The researcher held discussions with battered Zimbabwean women, but they did not form part of the study. This was because the sample was intended to comprise women who live in Botswana.

One woman who had decided that she wished to return to her parents' home said that she could not do it. Her parents would only accept that the marriage had terminated if her husband 'officially' returned her to them. Her husband would only return her on condition that the 'roora/lobolo' which he had given them at the beginning of the marriage was returned to him. Her parents were unable to return it to him because they no longer had it. It had been utilised.

separates the woman's right to decide for herself from the guardian's right to do so. This challenges the very meaning of marriage as it is understood in customary law. It is institutionalisation of marriage in this way which has masked the essence of what marriage may be. Within the institutionalised marriage, the unequal power relationship is accentuated. This, together with familial pressure, assumed responsibilities, and ensuing guilt, serve to complicate further the already very limited framework within which the battered woman is located.

### 3 Seduction<sup>32</sup>

This delict is examined because:

- it is gender specific;
- it is based upon the notion that women are commodities;
- it is directly linked to the unequal power relationship between the sexes.

All these characteristics are also present in the offence of battering.

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32. It is an offence in terms of both the customary and general law systems.

This offence is only actionable against a man. The underlying notion appears to be that women are weak and unable to take decisions in a responsible manner. Instead, they are capable of being misled by immoral men.

The main difference between the offence in terms of the general law compared with the customary law relates to 'locus standi'.

In terms of the general law, the woman, if a major, is herself capable of suing for seduction. If she is still a minor she can sue with the necessary assistance. Under the customary law, she is incapable of suing because she herself is not perceived as having suffered as a result of the seduction. Instead, it is her guardian who is perceived as having suffered the injury and therefore having a right to sue. This reasoning is clearly based upon the notion that the woman is the property of her guardian. Seduction devalues her.<sup>33</sup> The guardian is the one who suffers the loss. He is the one who lays the claim.

The position has since been altered by LAMA.<sup>34</sup> The present

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33. Seduction reduces the potential 'roora'/'lobolo' to be given by the prospective son-in-law to the family of the woman.

34. 47% of cases heard in the community courts (for an explanation of these, s 7.5. The Customary Law and Primary Courts Act) for the period 1981-1982 comprised claims for seduction damages. For the period 1982-1983 only 21% of the cases comprised claims for seduction damages. Fundamental Rights and Personal Project Findings cited in Kazembe, p 391.

position was described by the Dumbutshena C.J. in Katekwe v Muchabaiwa.

'Does the father still have the right to sue for damages for the seduction of a major daughter? The answer is simple. He has not, because his daughter is a major and cannot vest her own right in her father. He has lost his right under the customary law to sue for damages for seduction ... The right to sue for seduction - a delict - now falls on the daughter ... under the general law of Zimbabwe'<sup>35</sup>

The hitherto strong link between seduction damages and 'roora'/'lobolo' is weakened by the present legislation. A major woman may marry without the 'roora/lobolo'. Seduction damages, based largely on the compensatory aspect of devaluation in relation to 'roora/lobolo', are no longer justifiable in the manner discussed above.

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35. Cited in Kazembe, p 391. Note however that if the seduction is that of a minor daughter, the father still retains the right to sue on her behalf. This concept is objectionable because it is based on the notion that the daughter is the property of her father. Her marketable value is decreased by the seduction. It is the father who suffers injury and so it is the father who sues for damages. For criticism on this see W. Ncube, "The decision in Katekwe v Muchabaiwa: A critique" in Zimbabwe Law Review, Vol. 1 and 2, 1983-84, pp 217-8. Cited in Ncube, Released, p 210 and note 22.

Implications for battered women

Unlike battering, seduction relates only to women. However, since it has already been established above that most battered persons are women, battering may be categorised as a woman-specific offence for the purposes of this study.

The effect of LAMA has been to challenge the notion that women are of commodity value.<sup>36</sup> In viewing them as major persons, the imbalance in the power relationship is redressed at a theoretical legal level. This is by no means the total solution required, but it is a beginning.

For the battered woman, one of the factors which makes leaving the relationship difficult, is that of the legal, social, and self-imposed notions of minority status. These three components are inseparable. As a result, legal majority status does not per se redress the situation adequately. The societal perception of the woman, both at the general and personal levels, has to reflect the legal. For this reason, the principle underlying

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36. Some people were opposed to the idea that a woman could marry without 'roora'/'lobolo'.

' Having spent so much money to raise and educate a daughter, parents felt nobody should expect them to give her away gratis. 'Impossible! Unheard of! Never!'. ' Kazembe, p 391.

LAMA<sup>37</sup> as a legal tool needs to be articulated in the other components.

4. Proprietary capacity

Implications for battered women

The lack of proprietary capacity would affect the battered woman to the extent that it would increase her dependency on the batterer. LAMA could only therefore be of significance in a case in which the lack of such capacity was directly linked to the legal minority status of the woman.<sup>38</sup>

7.1.2. The Labour Relations Act<sup>39</sup>

In terms of the Labour Relations Act, it is an offence to place

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37. It is submitted that the main reason was to implement the government's policy to strive for the equality of sexes. See the first page of this chapter.

38. For example, a woman married in community of property who has legal status analogous to minority status as a result of her husband's marital power. A brief comment has been made above concerning the effect of LAMA on the position of a woman married in terms of this property regime.

39. Op cit.

advertisements which discriminate on the grounds of sex in newspapers.<sup>40</sup>

#### Implications for battered women

At first glance this legislation may not appear to be relevant to the subject of this dissertation. However, as the writer has attempted to indicate, the base of battering, namely the unequal power relationship, is manifested and reinforced in different ways. Discrimination on the grounds of sex is merely a different angle taken on the same issue.

The effect of legislating against sexism in advertisements is to challenge one of the tools of the dominant ideological base.

Women are often portrayed in ways which reinforce the 'stereotypical woman'. She is considered to be capable of doing only certain tasks. These tasks are generally located within the domestic sphere. Where they are outside this sphere, they

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40. See for example the notice in the smalls 30 VACANCIES in 'The Herald' 10th September 1986

'Advertisers should note that in terms of the Labour Relations Act, it is an offence to place an advertisement which discriminates on the grounds of sex. Advertisers are urged to familiarise themselves with the Act. For instance, we shall not accept advertisements that ask for "Female" or "Male", whatever the case may be.'

closely resemble those within it. Examples of these are shop assistant, secretarial, teaching, nursing, and social worker occupations.

The manner in which these occupations are presented to society reinforces the ideological attitude. With the removal of stereotypes in the wage-earning sector, the distinction between the domestic and the public world is made questionable.

Consequently, as battering is very clearly located and hidden within the domestic world, access may then be created through the public world acknowledgement of the private as a part of it. This change in attitude would then be manifested in the reactions of social agents. Police, for example, would no longer see battering as being 'a domestic matter', instead, it would be viewed as an offence perpetrated by one person against another.

### 7.1.3. The Matrimonial Causes Act<sup>41</sup>

In terms of the Matrimonial Causes Act,<sup>42</sup> the court is empowered both to:

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<sup>41</sup> Op cit.

<sup>42</sup> Op cit s 7.

- re-distribute property in an equitable manner at the dissolution of marriages contracted out of community of property, and
- issue a maintenance order to be paid in either a lump sum or in regular amounts.<sup>43</sup>

The power of the court to re-distribute property in an equitable manner, in terms of the Matrimonial Causes Act, enables the court to take the actual situation into account.<sup>44</sup> This provides an

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<sup>43</sup> Ncube, Released, p 13.

<sup>44</sup> The court is provided with statutory guidelines along which it proceeds in determining the re-allocation of property. These are:

- (a) the income, earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future;
- (c) the standard of living of the family, including the manner in which any child was educated or trained or expected to be educated or trained;
- (d) the age and physical and mental condition of each spouse and child;
- (e) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties;
- (f) the value to either of the spouses or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;
- (g) the duration of the marriage.

The main aim of the court is to attempt to locate the spouses and children in the position in which they would have been had a 'normal' marital situation prevailed. s 7(3) (a)-(g) cited in W. Ncube, Matrimonial, p 15. For discussion on the above sub-

example of law being located within societal realities and not outside them. Societal realities are often overlooked in cases in which court decisions rely purely on legal argument, without regard to, for example, the economic position of the parties.

Giving the court the power to determine the form of maintenance payments indicates an acceptance, by the legislature, of the reality of the non-implementation of these orders. Reasons for this vary, from genuine lack of employment of the defendant, to his stubborn refusal to pay. In those cases in which there is no steady and regular income, the court can consider the possibility of ordering a lump sum payment to be made.

As illustrated by the sample group, it is often these extra-

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sections see Ncube, *ibid* pp 16-20; for general points concerning the pros and cons of the Act see pp 20-27.

The section which is of most significance to women generally is s 7(3) (e). If, for example, at the dissolution of a marriage executed in terms of an out of community property regime, the woman is in a very weak financial position, the court has the capacity to take serious note of her domestic contributions. These would include bringing up the children of that union, caring for the husband, looking after the house etc., in short, taking note of her seemingly non-quantifiable contribution to the relationship which enable him to be employed and consequently to acquire his possessions. By acknowledging that domestic work is work and is a contribution to marriage, the court is beginning to lift the domestic veil which separates the private world from the public. Cf sections 7(3) -(6) of the Divorce Act 70 of 1979 as introduced by s 36(6) of Act 88 of 1984.

legal considerations which obstruct the implementation of legal decisions.

#### Implications for battered women

This legislation clearly provides an access which had hitherto not existed.<sup>45</sup> It is deemed to apply to both the general and customary law relating to the re-allocation of property at divorce.<sup>46</sup>

As highlighted by the sample group, the wife's self-perceived and real dependency on the husband plays a determinant role in her ultimate reaction to the battering situation. By accepting that her domestic contribution is real and needs to be taken into account, the court is correctly moving towards the concept of

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<sup>45</sup> Prior to this Act, in Chiromo v Katsidzira the wife was said to have no claim to the communal home. Her contribution to the home in order for extensions to be made was not deemed important. Cited in W. Ncube Underprivilege and inequality: The matrimonial property rights of women in Zimbabwe in Women and Law in Southern Africa Armstrong and Ncube, p 17.

<sup>46</sup> W. Ncube argues that since it was enacted 'without any express repeals of other laws', implicit repeal needs to be examined. He contends that s 7 'overrides any customary law on the distribution of property on divorce. Thus the distribution of the marital property ... has to take place in terms of the new law ... there is also no doubt that the court's powers of distribution extend to all general law marriages that are out of community of property.' Ncube, Matrimonial, p 24.

marriage as a partnership.<sup>47</sup> The spouses contribute in different but equally valuable ways. For many battered women, the will to leave the battering situation is closely linked to their dependency on the head of the household. Their contribution is not valued by society in the same way in which the husband's is. As a result, the women themselves do not value their own domestic contribution.<sup>48</sup> However, with legal and societal recognition of it, it will be realised that the battered women's dependency and contribution are, in reality, respectively lesser and greater.

#### 7.1.4. The Customary Law and Primary Courts Act<sup>49</sup>

In terms of this Act, changes were effected to the traditional customary law structure of courts.

Taking note, both of:

- the importance of the customary law system to the majority of Zimbabweans, and

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<sup>47</sup> It is moving away from the 'traditional' patriarchal notion that marriage is an institution headed by the husband because he is male.

<sup>48</sup> Some of the questions asked by the researcher focussed upon domestic work. See A2. Questionnaire questions 21-39 and A3. Analysis of data A Discussion of sample questions 5a, 5b and 6. in Appendix.

<sup>49</sup> Op cit.

- the need gradually to move away from feudal laws which were inherited from the colonial period at independence,

the government replaced the district commissioners', traditional chiefs' and headmens' courts with the Primary courts system. These comprise two branches, the village and the community courts. The main aim of this system appears to have been to 'decentralise justice'.<sup>50</sup> The village court consists of presiding officer and assessors selected from the villagers. It has no jurisdiction to hear criminal matters.<sup>51</sup> The community court consists of presiding officers who are trained in customary and criminal law matters.<sup>52</sup>

While such a structure may have served, inter alia, both to:

1. make the law more accessible to the majority of persons within a more democratic structure<sup>53</sup> comprising officers chosen from amongst the community itself, and

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<sup>50</sup> The Herald loc cit.

<sup>51</sup> In terms of the Customary Law and Primary Courts Act of 1981.

<sup>52</sup> Loc cit.

<sup>53</sup> Structures based upon lineage are clearly not democratically constituted. Note, however, that the village court can be presided over by a chief, but this is not mandatory. Wilson Manase, attorney, Legal Projects Centre in interview with researcher in Harare 1987.

2. gradually filter in the general law, thus moving towards the removal of a problematic result of colonialism, namely a dual system of law within a single country,

the logistics, 'inadequate infrastructure' and financial considerations<sup>54</sup> have meant that the system has been less than successful.

#### Implications for battered women

It is important to note that this structure, similar to those with which the majority of the population can easily identify, provides a different type of access to legal remedies for battered women.

- Though the punitive power of the courts, limited to monetary compensation and the issuing of warnings, reflects the limitations placed upon the customary law by the colonial administration,<sup>55</sup> LAMA nevertheless<sup>56</sup> effectively

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<sup>54</sup> Manase, loc cit.

<sup>55</sup> See Chapter 5 for pre-independence whittling away of the power of the chiefs in Botswana. In relation to Zimbabwe:

'Roman-Dutch common law was made the general law ... while various colonial enactments recognized to varying degrees the applicability of customary laws to disputes between Africans in so far as it was not "repugnant to natural justice, morality and good conscience."

removes the debilitating 'ward role' assigned to women in terms of the customary law; and

- the jurisdiction of the community courts extends to maintenance orders for:

- deserted wives and children of marriages executed in terms either of the general and the customary law, and for
- unmarried mothers.<sup>57</sup>

The effect of this in theory, is the removal of the two-tiered approach to marriage<sup>58</sup> and 'security (for women and) for their children, especially if the man is in regular employment.'<sup>59</sup> In

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Ncube, Matrimonial, p 5 and note 5, refers to the Royal Charter (1890), the Matebeleland Order in Council (1894), the Native Law and Courts Act, No. 33 of 1937 and the African Law and Tribal Courts Act (1969).

<sup>56</sup> Op cit.

<sup>57</sup> Amendment 21 of 1982. The children of unmarried parents are eligible for maintenance until they reach the age of majority. Kazembe, p 389.

<sup>58</sup> By not discriminating between customary and general law marriages.

<sup>59</sup> Kazembe, loc cit. Cf Botswana. It is difficult for an unmarried mother to claim maintenance in terms of the general law. Inter alia,

in terms of the Affiliation Proceedings Act of 1970 s 4, she is required to enter a claim for maintenance within the first 12 months after the birth of the child for initial maintenance. Where payment has ceased, she is required to bring such to the attention of the court within 12 months following the date on

practice, the enforcement of maintenance payments (or lack thereof) tends to render somewhat hollow women's rights to such payments.<sup>60</sup>

## 7.2. General observations

In general, notwithstanding the progressive attitude of the government as manifested in legislation such as is dealt with above, the societal attitude towards battering is still largely rooted in the concepts of guardianship, culture, and tradition.

... A husband is the guardian of the wife - it is his duty to keep her on the straight path. It is our well-tried tradition, and we will not lower our standard. If a husband loves his wife, it is better to chastise her for her faults than to get a divorce, or a

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which the last payment was made;  
 in terms of said Act s 6, she is required to produce corroborated evidence that the man she claims to be the father of her child, is in fact the father.

Anne Griffiths, "Support for women with dependent children: Customary, common and statutory law in Botswana" in Women and Law in Southern Africa Armstrong and Ncube, p 166.

<sup>60</sup> As already discussed above.

second wife. It shows that he loves her and wants to keep her .<sup>61</sup>

'... No matter what the law says, the custom of beating wives to correct them is still customary.'<sup>62</sup>

What emerges from this excursus is confirmation of the view that

'... the removal of formal legal inequalities is only

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<sup>61</sup> Anonymous interviewee cited in Wife Beating in Zimbabwe- It's not traditional, it's against the law but happens every day Paula Lindsay, 'Mahogany', Harare, May 1986, p 10.

<sup>62</sup> Male quoted by Lindsay, Wife Beating in Zimbabwe. He was commenting on the laws in Kenya and Tanzania which were to 'do away with wife beating.' On the actual custom, psychiatrist Dr Jane Mutambirwa:

'... there were certain circumstances in which it was considered permissible - for instance, if a wife had been unfaithful to her husband ... The view that this was demoralising for the husband, having to share her body with someone else, but also for her, having physically abused herself in this manner. She could then be beaten lightly with a flail, a small branch with twigs and leaves at the end, as a means of discipline and punishment. The physical part of it was not as important as the proverbial meaning of the procedure ... But I must stress that this was not the accepted thing. It was only employed when extreme misdemeanours had occurred. The point was that the wife was supposed to be the spiritual presence in the home. If she stepped out of line, it was necessary to bring her back to that spiritual state of being.'

Quoted by Lindsay, loc cit.

a-step (but a vitally necessary one)<sup>63</sup> in the right direction - violence is endemic in any society which treats women as unequal.<sup>64</sup>

Notwithstanding the efforts made by the government in Zimbabwe in the implementation of its policy of sexual equality, the general societal attitude has yet to reflect this. As pointed out above, legal reforms require societal acceptance for their efficient implementation. While Zimbabwe, unlike Botswana, has made visible headway in attempting to redress the sexual inequalities, there still remains a lot to be done.

This chapter examined selected Zimbabwean legislation to determine how it relates to battered women. In the following chapter recommendations are made for the situation in Botswana. It will be seen that certain ideas taken from the Zimbabwean legislation form the basis of some of the recommendations.

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<sup>63</sup> My comment.

<sup>64</sup> M.D.A. Freeman, Violence in the home (Farnborough, England: Saxon House, Teakfield Ltd., 1979), p 128.

## 8. Conclusion

In the main, this paper set out to determine:

- whether there is a specific concept of battering related to a particular 'culture';
- how women in Gaborone deal with battering;
- whether the law is the best medium through which to deal with the problem of battering.

The theme which has emerged most strongly has been that of the relationship between the battering of women and the social structure as articulated in the legal sphere. The societal attitude towards battering manifests its attitude towards the position of and problems affecting women.

It has become increasingly clear that one cannot talk of 'culture' as though it were a directive for life. Instead, it must be recognised that, as a living concept, 'culture' is the way in which people are brought up. It is therefore adaptable and adapted by people.<sup>1</sup> It follows therefore that, while certain practices may in the past have served a useful and complementary role to other practices, the situation may no longer be the same.

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1. It has been described as a 'resource.' 'It is people who create cultural resources and control access to them.' R.J. Thornton, "Culture - A contemporary definition" in Basic Myths of South African Politics (working title), ed. by E. Bonzaaier and J. Sharp. (Cape Town: David Philip, 1988), p 6.

The role of 'bogadi' for example, has clearly changed in the present time. It is now a displaced symbol of what it was. It has taken on a different meaning, the full extent of which is made clear when parents comment that they expect 'roora' after they have spent a lot of money on the education of their daughters.<sup>2</sup>

It cannot be said that battering is a specifically African phenomenon. Control of women occurs in many societies under the guise of 'culture'. Battering is only one manifestation of such an attitude.

Women in Gaborone respond to their position in two ways - they either remain or leave the battering situation. They appear to have very little faith in the socio-legal structures to which they have access. The real experience of battering and the limited societal and legal responses serve ultimately to reinforce the women's secondary position in society.

It is clear that superficial amendments to existing legislation and the creation of new legislation which proceed from the existing ideological base ultimately change nothing. Instead, the situation remains the same while certain perspectives are altered. It was to this end that the research aimed to:

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2. See Zimbabwe section, Chapter 7, for the role of 'roora' in the present society.

- identify the problems which face battered women;
- analyse the social and legal attitudes towards battering;
- attempt to trace the underlying reason for battering by exploring both the private and public spheres.

Until the links between:

- battering as violence and other forms of violence against women, and
- battering as oppression and other forms of oppression against women,

are perceived and challenged, battering will continue to be viewed as an isolated incident which occurs in problem families.<sup>3</sup> This, instead of it being identified as a mechanism of social control over women.<sup>4</sup>

It is from these observations that the following recommendations flow.

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3. In the same way in which it is erroneously believed that 'nice girls don't get raped.'

4. For more on battering as control see Ingrid Vienings and Claudia Kleeberg, Violence as a means of control and women as property: The perceptions of battered women (in the Rape Crisis Shelter). Unpublished Honours paper, University of Cape Town, 1988.

## 8.1 Recommendations

Recommendations which are either too far removed from the general societal position or which challenge culturally-bolstered notions risk rejection.<sup>5</sup> For this reason the recommendations shall both reflect principles of the preferred society, while providing interim measures operative within the present society. These are intended as signposts towards that preferred society.

The preferred society is itself aimed at:

- the elimination of traditional structures (which result in) oppression and exploitation,<sup>6</sup>
- the elimination of ideological relations which create and reinforce oppressive social relations at both a personal and global level e.g. patriarchal control over women's

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5. This dilemma was articulated in the Mozambique Family Code (first draft 1977) article 4 in which the payment of bride-price was disapproved of but was not penalised. Barbara Isaacman and Allen Isaacman, "A Socialist Legal System in the Making: Mozambique before and after Independence" in The Politics of Informal Justice Vol. 2 Comparative Studies, ed. by Richard L. Abel. (New York: Academic Press, 1982) p 319.

6. Isaacson and Isaacson, p 304. Examples of oppressive practices which proceed from the traditional structure are 'bonyatsi', 'bogadi'/'lobolo'/'roora', polygamy, initiation rites etc. These 'reinforce(d) women's sense of inferiority and ensured their continued subordination within the family.' For this reason the OMN (Organisation of Mozambiquan Women) undertook a national campaign against them, including child-marriage. Op cit p 306.

productive and reproductive capacities,<sup>7</sup> the illogical connection between sex and gender, job discrimination, sexual harrasment, etc.

- a society, the laws of which both reflect and effect the principles of equality<sup>8</sup> and legality.<sup>9</sup>

7. A married woman requires a letter of authorisation from a male guardian before the land-board can allocate her land for cultivation and stock-raising. Female headed households are particularly discriminated against. Where the husbands work outside the country, they 'have to wait for up to six ... months' for the authorisation. Lesego Molapo, "Women and Agriculture in Botswana" in Women in Southern Africa, ed. by Christine Qunta and tr. by Margaret Nanayane Nasha. (Johannesburg: Skotaville Publishers, 1987) p 205.

8. Theoretical equality of 'equal access to legal representation regardless of ... economic circumstances' was created by the abolition of 'private practice of law' in Mozambique. Isaacson and Isaacson, p 319. Due to a shortage of legal personnel an interim measure was taken - the creation of the National Institute of Legal Assistance. Composed of legal personnel, the Institute replaced the private law practices. In the preferred society laws relating to marriage would be governed by the principle that marriage 'is a consensual union with equal rights and duties' etc.

9. Legality is:

'... the organised way in which the state protects the people as a whole, defends them against aggressors and against exploiters.' Albie Sachs, "The Two Dimensions of Socialist Legality: Recent Experience in Mozambique" in International Journal of the Sociology of Law 13 (1985) 140.

Legality clearly does not exist when women do not feel protected from batterers because:

batterers are reprimanded by the police and told to go back home and treat the women 'properly';  
 batterers are not imprisoned because they have a family to support;  
 batterers are given suspended sentences  
 the women are told to persevere and accept the situation.

Flowing from the information provided both by the women interviewed and by the real scope of the legal remedies available, it is clear that a two-pronged approach is required.

The question of battering needs to be examined from both the legal and the social perspectives. 'Ultimately the effectiveness of the legal remedies is limited by society's unwillingness to cope with the problem of domestic violence. The widespread scepticism of the efficacy of legal remedies is therefore not the fault of the law; it is the problem of the people who operate the law in the way they assume society approves.'<sup>10</sup> The two aspects are clearly linked.

## 8.2. Legal reform<sup>11</sup>

Notwithstanding the fact that law:

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10. Susan Maidment, "Domestic Violence and the Law: the 1976 Act and its aftermath" in Marital Violence, ed. by Norman Johnson. (London: Routledge and Kegan Paul, 1985) p 23.

11. '... the dominated and oppressed have often perceived their grievances in legal terms and articulated their needs and interests in terms of rights thought to be promised or owed by law. In fact, some of them had the impertinence, and the imperfect sense of historical perspective, to expect justice ...'

E.P. Thompson, Whigs and Hunters 1975 p 148 cited in M.D.A. Freeman, "Violence against women - does the system provide solutions or itself constitute the problem?" in British Journal of Law and Society, Vol. 7, 1980, 233.

- reflects the dominant ideological base and in so doing  
 '... reproduces an ideology about (women and)<sup>12</sup> the family which not only makes violence against women understandable but almost makes it necessary ...';<sup>13</sup>
- requires societal acceptance for it to be implemented in a manner which reflects societal attitudes;
- '... cannot prevent violence ...'<sup>14</sup>,

it is necessary to explore legal avenues because at least they can and do provide guidelines and goals towards which the society can strive.<sup>15</sup>

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12. my insertion.

13. Freeman, Violence against women., p 216. 'The legal system has been committed to a patriarchal ideology'. Freeman, op. cit. p 241.

14. B. Raisbeck, 1976 p 105 cited in Borland "The Legal Framework", 1976 cited in J.P. Martin, Violence and the Family (U.K.: John Wiley and Sons Ltd., 1978) p 234.

15. The irony encapsulated in the concept is best articulated by Jocelyne Scutt:

'... it is ironic that we are forced to call on the very system that oppresses us to 'reform' the legal system - which after all, is one of the major tools of our oppression.'

"Rape Law Reform: who chooses the direction?" in Legal Services Bulletin, Vol. 6 No. 1, February 1981, 11.

The areas of the law with which this dissertation will concern itself are:

Preferred measures

- a whether battering ought to be criminalised as a specific crime;
- b educative methods of punishment. Sentence would comprise:
  - (i) community service aimed to benefit the society
  - (ii) education processes in terms of which batterers are taught about non-violence, sexual equality, etc.;
- c amalgamation of elements of the two legal systems and an adaptation to form a system which can be located within Botswana's 'socio-cultural' milieu e.g. the official use of both Setswana and English in the courts; recognition of 'de facto', unions, etc.

Interim measures

- a whether battering ought to continue being dealt with by the 'mediatory' principle of civil law;
- b more efficient methods of utilising the present legal remedies available to battered women;

- c ratification of the United Nations 'Convention on the Elimination of All Forms of Discrimination against Women';<sup>16</sup>
- d legal process to be used as an educative mechanism. In terms of this, the presiding officers of all courts (customary and general) should be required in passing judgment, to locate the offence within its social context e.g. identifying battering, rape, sex-based job discrimination and harassment as forms of social control of women, and to analyse such location in terms of the constitutional rights guaranteed to all;
- e establishment of a State Legal Assistance programme.<sup>17</sup>

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16. This convention was 'adopted by the United Nations on 19 December 1979 as part of the U.N's Decade of Women. By April 1987, 92 countries had ratified the convention. Only one country in Southern Africa has ratified, and that is Zambia.' Appendix p 277 in Women and Law in Southern Africa, ed. by A. Armstrong assisted by W. Ncube, (Harare: Zimbabwe Publishing House: 1987) p 277; see pp 277-281 for a summarised version of the convention.

17. In terms of Chapter II s 10(2)(d) of the constitution,

' Every person who is charged with a criminal offence ... shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice.'

There is no allowance made for those who cannot afford to pay for a legal representative. None of the women interviewed was charged with or tried for assault of the batterer. This can occur where the woman acts in self-defence. Noting the general economic position of women it is clear that they would be hard hit by the lack of a State Legal Assistance programme. It would also provide assistance to women in civil matters e.g. divorce, obtaining court orders, interdicts etc.

8.2.1. Preferred measuresa. Battering as a specific crime

Two contrasting approaches to the notion of criminalising battering can be forwarded. The one approach is opposed to this notion because:

criminal law would then intrude into the marital relationship thereby introducing a merger of public and private law;

it would not necessarily improve the marital relationship (or 'de facto' marital relationship);

due generally to the attitude of the social agents, cases are not taken seriously - this would sabotage efforts by the law to take battering seriously.

The other approach supports the notion of criminalising battering because:

- it accepts that '... it is one of the functions of the criminal law to express public disapproval of certain types of activity ...';<sup>18</sup>

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18. Christine Boyle, "Violence against wives - the criminal law in retreat?" in Northern Ireland Legal Quarterly, Vol. 31, No 1, 1980 55.

- assault as a crime (as opposed to a delict) already exists but in ineffective terms - specific criminalisation would isolate it as a crime per se;
- the civil law 'option' tends to ameliorate the seriousness of the offence.

The latter approach is preferred.

The concept of the rigid separation of the public law sphere from the private finds an echo in the argument that marriage, as a contract between two persons, cannot be infringed upon by the criminal law. To base an argument against the criminalisation of battering on the importance of the preservation of legal spheres is to prioritise legal theory without regard to its social application. In practice, however, there is a merger of the two spheres.

An example of this is an assault within an intimate relationship between the two persons involved.<sup>19</sup> Both the criminal and civil law regard assault as an offence. The same assault can

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19. The same reasoning can be applied in an argument for the criminalisation of marital rape, either as sexual assault or rape. For an exploration of that see Alice Mogwe, Marriage - A raping licence?. Unpublished paper, University of Cape Town, 1985.

simultaneously be considered a crime and/or a delict. What in effect determines which label is to attach to it is:

- the nature of the relationship between the parties and
- the manner in which the woman seeks a remedy.

Where there is an intimate relationship between the parties, the offence is generally considered as a private matter and private law remedies are applicable. The main objective articulated by social agents acting within the private sphere is that of mediation for reconciliation.<sup>20</sup> The battered woman is constantly reminded of her responsibility to her family and the importance of 'trying to make things work.' The effect of this is to pressurise the wife '... to place her responsibility to preserve the family unit above her wish to preserve the integrity of her person.'<sup>21</sup>

It is submitted that the major focus ought not to be on the preservation of the relationship, but on the quality of the relationship to be preserved. As illustrated by the experiences of the women interviewed, battering is essentially symptomatic of disintegrating relationships. Nevertheless, the law continues in its attempts to focus more on a mediatory approach. This is

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20. To be contrasted with the punitive basis of the criminal law.

21. Susan Atkins and Barbara Hoggett, Women and the Law (Oxford: Basil Blackwell Ltd., 1984) p 72.

clearly inadequate. One effect of this is the preservation of and symbolic reverence given by both the law and society - for the institution of marriage, rather than for the essence of the relationships which create marriage.<sup>22</sup>

By criminalising battering, the law will express 'public disapproval'<sup>23</sup> of the offence. This would indicate a rejection of violence, whether it occurs within or without intimate relationships.

However, in order to be effective, real enforcement of the law by social agents will be required. An attempt to accomplish this can be made both by:

- separating the offence from 'assault', and
- requiring that the police and the courts treat the offence as a crime.<sup>24</sup>

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22. 'Marriage' is focussed upon because the law tends to be clearer in its reluctance to intrude upon the privacy of the parties to a marital relationship. The same argument would clearly hold for 'de facto' marriages or cohabiting couples.

23. Atkins and Hoggett, p 72 note 7.

24. For example, in terms of The Domestic Violence reforms (1983) of New South Wales, the position of the police in relation to entering 'private premises where a domestic violence offence is suspected to have occurred, or is occurring' is clarified. Report of the New South Wales Domestic Violence Committee to The Hon. Neville Wran Q.C., M.P., Premier of New South Wales. April 1983 to June 1985 p 5.

The courts would be able to act effectively if they are heard and seen to denounce battering itself both as offensive and as a

It is hoped that public awareness and opinion will begin to change<sup>25</sup> when society sees the law both:

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crime. As mentioned above, the courts do not appear to pay much attention to battering when it comes before them in divorce proceedings. A welcome alternative attitude would be the one adopted by a judge towards a defendant:

'... I don't care if she's your wife or not. A marriage license is not a hitting license. If you think that the courts can't punish you for assaulting your wife, you are sadly mistaken.'  
Gail A. Goolkasian, Confronting Domestic Violence: A guide for criminal justice agencies (U.S.: U.S. Department of Justice, National Institute of Justice, Office of Communication and Research Utilization, May 1986) p 82.

In addition, the onus would then not rest upon the battered woman to pursue the case. Subject to pressure from the batterer and society to withdraw the case, it is difficult for her to continue pressing charges. A prosecutor commented:

"... I have seen relief on a woman's face, relief when I have said, 'I am sorry, I am not waiving' ... it works, it really does work."

Prosecutor "Sam" Aaron in Attorney General's Task Force on Family Violence, Final Report p 30 cited in Goolkasian, p 72.

25. This researcher is aware of the difficulties entailed in attempting to alter societal attitudes towards what has for several generations been considered acceptable and 'cultural'.

A case in point is the attempt by the government in post-revolutionary China to abolish arranged marriages, betrothal gifts and rituals which symbolised the separation of the bride from her natal home. This attempt was contained in the Marriage Law of 1950. A concerted effort was made to disseminate the information as widely as possible. The government has, since the introduction of a change in attitude towards marriage, women and property relations, 'tended to attribute the persistence of ... old forms of marriage in rural areas to the 'conservatism' or 'backwardness' of the peasants and of women in adopting new forms of social behaviour.' Elisabeth Croll, "The exchange of women and property: marriage in post-revolutionary China" in Women and property - women as property, ed. by Renee Hirschon. (London: Croom Helm, 1984) pp 49-50.

- categorising and treating battering as a criminal offence, and
- effecting the necessary procedural changes to allow for real results e.g. prosecution.

By the creation of a special 'anti-battering' squad with at least two of its members on duty<sup>26</sup> at all times, there will be greater sensitivity and an increase in knowledge about the underlying dynamics at play within the battering situation. Relevant practical action will then be able to be taken.

b. Educative methods of punishment

By utilising community service and education in the penal process, social and legal reforms converge.

The conventional aims of punishment are to punish and to deter from repetition of the offence. It is clear that imprisonment (the most favoured form of punishment in most countries) may serve to breed vengeance by the offender against the person whom s/he perceives to be responsible for her/his incarceration. In the case of an imprisoned batterer, the perceived blameworthy person is the woman whom he batters. This is largely because the

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26. If possible the pair should comprise a female and a male.

community fails to take collective action. Instead, the woman is required to take individual action.

If the community were to take action in the form of laws reflecting community concern and punishment reflecting community benefit, it is hoped that the batterer would himself be less inclined, from evidence of community involvement, to isolate an individual as the source of his incarceration or punishment. Examples of community orientated activities include road building, cleaning the environment, etc.

The education process which would form the basis of the reintegration of the offenders into society would be based upon assisting them:

- to perceive the offences in relation to the offender's social construction;
- to understand the social relations which are reflected at both the person societal and global levels;
- to raise their consciousness about non-violence, sexual equality, etc.;
- to understand the meaning and importance of the basic human rights to which the society adheres.

This socio-legal approach to punishment, occurring within a context based upon the guiding principles of the preferred

society, would assist in the move towards a community-based legal system in a non-patriarchal society.

c. Amalgamation of the two systems

Even though both Setswana and English are theoretically perceived as official languages, it would appear as though English, used more in official matters, is generally perceived as being the language of officialdom.<sup>27</sup>

The effect of such perception, whether imagined or real, is to create lack of self-confidence in those who do not feel that they are capable of sufficient self-expression in English. It is not being submitted that English ought not to be used. Instead it is strongly recommended that Setswana be seen to be accorded an equal position with English in the social and legal structures.

This would increase the accessibility of such structures and make them a truer reflection of the society. Without such accessibility, the structures serve the interests of only a small percentage of the society.

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27. When asked by the researcher why she had not approached a lawyer, a battered woman replied 'Ga re itsi Sekgoa.' (We do not know English).

### 8.2.2. Interim measures

#### a. Battering as a civil matter

As mentioned above, even though battering, an assault, may be either a civil or criminal matter, it is generally treated as a civil matter.

The reasons for this include, inter alia:

- the reluctance of society to be seen to be interfering in a private relationship;
- the preservation of the relationship is of paramount importance - criminalising the offence leaves little room for mediation;
- most women want the battering to stop but not the relationship because its demise would reflect badly on their capacity to be good wives and mothers. Criminalising the act would mean that the batterer would have a criminal record as a result of the women's actions;<sup>28</sup>

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28. It still causes concern if one has 'ever been in prison.' It is submitted that this is largely because the society respects and accepts the law. Those who disobey it are punished by incarceration. This is interpreted as evidence of the dubious morality of the person in question. This may be contrasted with a society in which the laws are despised, where having a 'record' is almost 'per se' symbolic of resistance to the unjust laws of the dominant ideology.

- some persons do not want to be involved with criminal procedure.<sup>29</sup>

Societal reluctance to interfere in a private relationship has been dealt with above.

Taking note of the main thread which runs through the interviews of the women, the attitude of society as reflected in the law etc, it becomes clear that marriage and the family are still of significance in present-day Botswana. Recommendations which lose sight of this fact risk irrelevance.

The importance attached to the maintenance of an intimate marital relationship is accepted by the writer. However, when this becomes the overriding factor without regard to the quality of the network of relationships which constitute marriage, it becomes apparent that both the legal system and society are

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29. Rebecca laid a charge.

'... he came and asked if I'd be happy if he was in prison - I worried about the children and wanted him to be punished but not put in prison ... there was no other way ...'

She withdrew the charge but was not satisfied with the outcome. She was mainly concerned about the method of punishment (being imprisoned) and not about the actual punishment. By her concern she implicitly rejected a part of the criminal procedure which, in terms of present forms of punishment, may mean imprisonment.

effecting a retention of mere ideology in this regard.<sup>30</sup> Directly linked to this preservation of the patriarchal ideology is the attitude of the women themselves in not wanting to be categorised as 'failed wives or mothers.' Consequently, the two reinforce each other by:

- the pressure from the legal sphere and conventional morality encouraging the woman to discuss the matter,<sup>31</sup> to seek superficial relief for symptomatic results<sup>33</sup> etc while not losing sight of the most important issue - the retention of the relationship, and
- the 'self-imposed'<sup>34</sup> sense of responsibility which the battered woman feels she owes towards society and which she sees reflected in the attitude of the law. An extension of the woman's sense of responsibility is her reluctance to take steps to brand the batterer a criminal.

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30. '... if women are treated unequally, if they are powerless and dependent, ... if women are to occupy a subordinate position, then violence against them becomes more meaningful. ... it is a mechanism of social control.'

Freeman, Violence against women, p 238. For expansion on this point in note 185 he cites Jalna Hanmer, "Violence and the Social Control of Women" in Power and the State ed. by G. Littlejohn et al. (1978) 217.

31. In terms of the customary law family court method.

33. From social agents who are not concerned with finding a solution to the situation, but only ameliorating it.

34. Not totally since the influences of the other sectors play an important role.

As a result of the tendency of most women to use civil law remedies as opposed to criminal, the average battered woman is reluctant to use the latter.

The civil remedies available<sup>35</sup> could be increased to include:

- family court;<sup>36</sup>
- civil claims against social agents who fail to exercise their duty;<sup>37</sup>

35. see Chapter 6 ss 6.3.3.3.1.; 6.3.3.3.2.; and 6.3.3.3.3.

36. It would have to be ascertained whether by 'family' is meant the immediate 'nuclear' family, or what is understood to be 'family' in terms of Setswana 'culture'. At the moment, the customary law makes provision for the latter concept. However, since:

- . the lives of Batswana in the urban areas comprise and are governed by elements of both the general and customary law,
- . it is common practice for relatives to be 'adopted' and brought up as offspring of other relatives,
- . adapting the customary law interpretation of 'family' would contribute further to the attempt to remove the duality of the legal system

it is suggested that the term 'family' be given as loose a definition as possible.

37. in contravention of the constitution. In terms of s 3(a),

'... every person in Botswana is entitled to the fundamental rights and freedoms of the individual ... subject to respect for the rights and freedoms of others and for the public interest to ... life, liberty, security of the person and the protection of the law.' My emphasis.

- therapy.<sup>38</sup>

(i) Family court

While the establishment of a family court positively serves to create a deliberately specialised branch of the legal structure, it can also be perceived as a negative development.

The positive aspects of such a court would be:

- the merging of the general and customary law by way of the adaptation of the latter's 'mediatory family' approach;
- the creation of a separate branch which would be devoted to 'family' matters, adoption, offences by family minors etc, thereby reducing the risk of such matters being dealt with at a more general level by courts which lacked the necessary specialisation;
- the pioneering educative role which it could play if staffed by progressively minded people. By introducing and enforcing judgments which are based upon the values outlined above which relate to the preferred society, the new values could be all-embracing rather than fragmented.

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38. Note however that the therapy would not be of immediate assistance to the battered woman.

The negative aspects for battered women would be:

- the creation of a structure within the private world, which would serve to reinforce the separation both of
  - the private from the public and
  - women from the public
- the perpetuation of the attitude that battering is a private matter, thereby making it difficult for its links with the public sphere to be seen.

The advantage of a battered woman who has access to the legal system, however limited, cannot compare with one who does not. If such a court were to be established, its existence would provide evidence that the judiciary considered battering a serious enough offence to be included amongst the offences over which the courts have jurisdiction.<sup>39</sup>

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39. other offences in terms of which the court could have jurisdiction are:

- . all offences (excluding treason and murder) committed by a person below the age of 18 years;
- . rape;
- indecent assault;
- sodomy;
- assault when a serious wound results;
- assault committed by one member of a family on another;
- incest;
- bigamy;
- polygamy;
- any offence which constitutes a family matter or is connected therewith and which is referred to the court by the attorney-general.

Adapted from the Family Court Bill No 62 - 85 (GA) Republic of South Africa.

(ii) Civil claims against social agents

These can only be instituted once the duties and rights of social agents have been clarified, both for the agents themselves and for the battered women. An example of a failing of the present system is made evident in the reporting of cases to the police.

The average woman who approaches the police to lay a charge does not realise that she has a right to lay the charge. Her right is reinforced by the duty of the police officer to register it. It is not his duty to dissuade her from laying it. By so doing, he infringes upon the woman's exercise of her right to lay the charge. Due to her unfamiliarity with the law, the woman does not realise what is at play in such a situation.

A possible effect of knowing that a claim may be laid against the police for obstructing her in the exercise of her rights may be that the police will begin to take battered women's charges more seriously.

(iii) Therapy

This is a possibility which needs to be considered with caution because of the assumption underlying such a remedy. It is

important to stress that battering is not generally caused by mental or psychological disorders. By considering therapy as a remedy, battering is perceived as being a problem of the individual. As already mentioned, battering and the general societal responses are linked to the patriarchal ideology.

In some cases, however, therapy may prove to be of assistance to those batterers whose battering can be linked to behavioural disorders. In such cases the courts could rule that the batterer receive therapy.

The main problem with such a remedy is its voluntary nature. If the batterer is not convinced that he requires therapy, it will most probably not be very effective.

In general, the civil law remedies are geared towards less drastic measures than the criminal law.<sup>40</sup> The main thrust of this area of the law appears to be towards short-term relief aimed at eventual reconciliation.<sup>41</sup> Until the importance afforded reconciliation is re-examined in light of the comments

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40. Except for divorce.

41. Interdict, delictual claim for damages and maintenance. See 8.2.2. ss 2(ii) (a) (b) and (g).

made above<sup>42</sup>, the civil law will continue to be used to maintain the status quo.

b. More efficient use of present remedies

1. Women who remain in the relationship

(i) Criminal law remedies

The remedies available in terms of the general criminal law are:

- laying a charge of assault;<sup>43</sup>
- private prosecution;<sup>44</sup>
- binding over of the peace order<sup>45</sup>.

An examination of these remedies has already been made. The remedy in theory was contrasted with its practical application.

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42. See p 252 on the importance of examining the quality of the relationship aimed at being preserved as opposed to preserving it for its own sake.

43. See further Chapter 6 s 6.3.3.2.1.

44. See further Chapter 6 s 6.3.2.2.

45. See further Chapter 6 s 6.3.3.2.3.

a. Laying a charge of assault

The main reason for the ineffectiveness of this remedy lies in the attitude of the police. By persuasively discouraging the battered woman from laying the charge, the police do not ultimately accept such charge. The attitude of the police officer strongly influences the decision of the woman. Discouraged from pursuing the matter, she tends to cease her attempts to use this remedy.

The role of the police in domestic violence matters ought to be reviewed. General awareness could be raised by ensuring, inter alia, that:

- all domestic violence cases reported to the police are accepted and correctly recorded;
- an analysis of domestic violence, its inner dynamics and its relationship to society and the law be included in the police training course;
- a clear procedure be established concerning domestic violence cases;
- whenever possible, the battered woman be attended to by a female police officer. This would facilitate reporting by the woman who often feels humiliated and ashamed to have to report intimate matters to a man.

b. Private prosecution

The inefficiency of this remedy lies largely in its inability to address the psychological and economic difficulties encountered by the battered woman.

The psychological aspect cannot be dealt with by a legal remedy. It falls outside the scope of this dissertation.<sup>46</sup>

The economic aspect is two-fold:

- where the woman is economically dependent on the batterer, his imprisonment would mean cessation of income;
- where the woman is either not employed outside the home or earns very little, she may be unable to furnish the required security.

The economic position of women is closely linked to their position in society. They are generally not regarded as property owners.<sup>47</sup>

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46. See further Chapter 1 s 1.1. Definition.

47. See further Chapter 2 s 2.2. which deals with the feminist theory adopted in this paper.

There is no immediate short-term way of ameliorating women's position of economic dependence. Long term plans aimed at the removal of economic discrimination both on a sexual and class basis seem to be the only effective remedies available.

(ii) Civil law remedies

The remedies available in terms of the general civil law are:

- an interdict;<sup>48</sup>
- a delictual claim for damages;<sup>49</sup>
- maintenance order.<sup>50</sup>

a. An interdict

This remedy is largely dependent upon the attitude of the batterer. If he elects to respect the law, he will take note of the conditions of the interdict.

The attitude of the batterer towards the law is ultimately fashioned by the attitude of the law and social agents towards

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48. See further Chapter 6 s 6.3.3.3.1.

49. See further Chapter 6 s 6.3.3.3.2.

50. See further Chapter 6 s 6.3.3.3.3.

the issue of battering. If the 'hands off' attitude of the legal system as articulated by social agents is made apparent, the batterer will realise that his act is not considered to be serious. He will subsequently treat the law with the contempt which it appears to invoke.

A change in attitude by social agents<sup>51</sup> can therefore play an influential role in the more effective application of this remedy.

b. A delictual claim for damages

As mentioned above,<sup>52</sup> in practice there appear to have been no cases recorded in which this remedy was used. One of the main reasons may be linked to the attitude towards battering. A change in attitude would allow social agents to be innovative in the manner in which they dealt with battering.

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51. both in theory and practice. Ways in which they could alter their present attitudes have been briefly mentioned above.

52. See Chapter 6 s 6.3.3.3.2.

c. Maintenance

Before exploring ways in which this remedy can be used more effectively, it is necessary to examine:

- the purpose of the remedy, and
- whether or not this purpose is achieved.

Purpose of remedy

The contract of marriage creates varied rights and duties between the two parties.<sup>53</sup> One of these is the common law 'duty of support'. This duty and corresponding right persist for as long as the 'partner requiring support does not lose the right to be maintained by violating the fundamental spousal obligations of cohabiting and fidelity.'<sup>54</sup> In the event of one of the partners believing that this duty is not being satisfactorily carried out by the other, an order to enforce fulfilment of such duty may be sought.

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53. These are the invariable or personal and variable or proprietary rights. See A.H. Barnard, D.S.P. Cronje and P.J.J. Olivier for the status of "being married." The South African Law of Persons and Family Law (Durban: Butterworths, 1986), pp 163-164.

54. '... Roman-Dutch principles dictate that a deserting wife has no claim to maintenance - her husband's reply to her demands would be that food and shelter await her in the matrimonial home.' See H.R. Hahlo, The South African Law of Husband and Wife fourth edition (Cape Town:Juta, 1975), p 114.

As has been clearly illustrated by the women interviewed, physical battering is often accompanied by a drastic reduction in financial support of the family.

Of the 13 married women:

- 5 spent all their salary on the household;
- 4 shared household expenses with their husbands;
- 2 spent most of their salary (approximately 80%) on the household;
- 2 spent a negligible amount on the household.

The main reason why some of the women spent all their salary on the household appears to be what is perceived as irresponsibility and self-interest of the husband.<sup>55</sup>

'... I'm having to use it all - there's no-one to help me  
....'

Mmanko.

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55. Contrast the situation of this type of women with one of those who spends a negligible amount on the household:

'... I spend absolutely nothing - he pays for everything - he wouldn't deprive me ....'

Shirley.

'... my month-end comes before his so I spend all mine on the household - he hangs onto his and I suffer ....'

Doreen.

Whether or not this purpose is achieved

The otherwise useful remedy of applying for a court order for regular maintenance of the family and battered woman is potentially problematic because:

- the financial restraints of several women may mean that this remedy is beyond their reach;
- a court order has to be seen to be effective.

This remedy could be used more effectively by addressing these aspects.

The economic position of women in the society is a recurring theme which limits their access to some of the remedies presently available. By the establishment of a national legal aid scheme which could initially provide legal advice and at a later stage

provide lawyers to take cases, the women's position may be ameliorated.<sup>56</sup>

Coupled with legal assistance is the attitude of the legal system. If it is clear that a breach of the court order is considered to be a serious matter, the husband against whom the order has been made will himself take cognisance of the order. It is hoped that he will consequently attempt to satisfy its requirements.

## 2. Women who intend to leave the relationship

### (i) Criminal law remedies

The remedies available are the same as for women who remain in the relationship:

- laying a charge of assault;
- private prosecution;
- binding over of the peace order.

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56. Legal aid ought not to be perceived as a solution to the unequal access routes to the legal structure. Instead, it is a short-term remedy to the situation. It admittedly runs the risk of entrenching the status quo by soothing the discomfort experienced by those whom it aims to assist.

For an examination of how these may be more effectively used see the corresponding section above under the heading Women who remained in the relationship.

(ii) Civil law remedies<sup>57</sup>

The remedies available are:

interdict;

delictual claim for damages;

eviction order;

court order for the interim custody of the children;

divorce;

judicial separation;

maintenance order.<sup>58</sup>

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<sup>57</sup> For more on these remedies see Chapter 6.

<sup>58</sup> Note that this remedy differs slightly depending on whether the claim is made during the marriage or at its dissolution.

While it is acknowledged that maintenance after divorce differs depending on whether it is maintenance for a mother or for a childless woman, the main focus of this paper is the position of women distinct from their role as 'mother'. For explorations on the differences between women as 'mothers' and 'childless spouses' in relation to maintenance claims on their former husbands, see generally, John Eekelaar, Family Law and Social Policy second edition (London: Weidenfeld and Nicholson, 1984), pp 86-89; 111-122.

For an examination of the ways in which the:

- a. interdict and
- b. delictual claim remedies may be more effectively used, see the corresponding section above under the heading Women who remained in the relationship.

c. Eviction order

The main practical failing of this remedy occurs because the communal house is generally neither registered in the name of the woman, nor leased to her. This is a consequence of the societal structure. Property is usually controlled by the husband.

The only ways in which this remedy can be used to the advantage of the battered woman are:

- where the property is registered in her name, by personally instituting an action for eviction
- where the property is leased, by succeeding in persuading the owner to evict the batterer.

The latter approach may prove impractical. Where the house is leased in the name of the husband, it generally reflects the fact that he pays the rent. As a result, the property owner will be hesitant to evict the source of his or her income.

Ultimately, this remedy can only be of real effect in the case of a woman who is economically independent.

d. Court order for the interim custody of the children

This remedy serves to reassure the woman that terminating the relationship does not necessarily entail forfeiting the custody of the children. Failure to secure custody can have the effect of dissuading her from leaving the relationship for fear of being separated from the children.

By the courts taking serious note of:

- the battering itself
- its effect on the relationship between the two parties
- its effect on the welfare of the children,

applications for interim custody would tend to serve a slightly different end.

At present an application would primarily be the testing ground for whether or not the battered woman should leave the relationship. With a change in judicial attitude, it could also serve to determine to whom custody is to be awarded. Children would begin to be less important as a reason for battered women to remain in abusive relationships. Instead the quality of the intimate relationship which ultimately determines the welfare<sup>59</sup> of the children would be scrutinised.

e. Divorce

The main problem which exists in terms of the present Act<sup>60</sup> relates to the 'fault' requirement which takes note of 'guilty or blameworthy conduct,' e.g. adultery.

In terms of the Act, a divorce is only granted if the court, having examined the facts available, is satisfied that there has been an irretrievable breakdown of the marriage.<sup>61</sup> Irretrievable breakdown is indicated by adultery, desertion and/or certain unreasonable behaviour by one of the parties and where the

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<sup>59</sup> The meaning attached to the word here encapsulates happiness, confidence, etc., characteristics which tend not to be exhibited by the child of an abused mother.

<sup>60</sup> The Matrimonial Causes Act op cit.

<sup>61</sup> s 15(3).

parties have lived apart for a set period immediately prior to the divorce proceedings.<sup>62</sup>

The effects of the Act for the battered woman are:

- she has to convince the court that the respondent's behaviour is unreasonable;
- by initiating the proceedings, she is cast into the role of the 'innocent' spouse who has been wronged by the 'guilty' one.

As the general judicial attitude towards battering is one of considering it as a peripheral issue best dealt with as another offence,<sup>63</sup> it would not be easy for the woman to convince the court that battering is an unreasonable act. Instead, she faces the risk of the batterer describing her as being equally guilty. This can be in the form of a nagging wife, alleging that she has lovers etc. The aim of such a response is to decrease the amount of guilt and thereby minimise the penalty. Battering as an offence, is lost in the legal wranglings of apportioning blame for the breakdown of the relationship.

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<sup>62</sup> s 15(1).

<sup>63</sup> as an assault and not as a separate offence.

If the 'fault' base of divorce was minimised to allow for conditional consensus,<sup>64</sup> the problem encountered by women who would otherwise fail to secure a divorce because they are not truly 'innocent' would be taken into account.

Until the law is adjusted to reflect more closely both:

- that relationships are not static with one 'good' and one 'bad' person,<sup>65</sup> and
- that abusive acts within marriage are as repulsive as they are outside marriage,

the battered woman is well advised to use this remedy with caution.

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<sup>64</sup> For a discussion about different divorce legislations and grounds for divorce, see generally A.H. Barnard, The New Divorce Law (Durban: Butterworths, 1979) and for the section on consensual divorce see Barnard, pp 17; 32-42.

<sup>65</sup> In the same way in which divorce is

'... not a reward for marital virtue on the one side and a penalty for marital delinquency on the other; not a victory for one spouse and a reverse for the other; but a 'defeat' for both ....'

Inverted commas are mine because while I agree with the rest of the statement, divorce need not necessarily signal a defeat. Group appointed by the Archbishop of Canterbury, Putting asunder - A Divorce Law for Contemporary Society (1966) par. 26, cited in June Sinclair, "The Divorce Act And The Duty Of Support" in 1981 South African Law Journal 89 at 90.

f. Judicial separation

This remedy can serve to provide the battered woman with the time and space to live apart from the batterer. This provides her with an opportunity to weigh up the situation and try to decide whether she is to take the next step and institute divorce proceedings, or return to the communal home.

As it provides a 'breather' for her, at a time when she is unable to take long-term decisions, its applicability is self-evident in those cases in which the time scale is less of the essence than in others.

g. Maintenance order

The main basis for the maintenance order appears to be the duty and corresponding right which flow from the marriage contract. It therefore follows logically that if the would-be recipient has behaved in a way which effects forfeiture of her right, the duty itself is affected. Examples of this would be cases in which the wife satisfied the common law grounds of adultery and desertion. The theme of the 'innocent' versus the 'guilty' is again apparent.

Maintenance orders are issued by the court in a manner which it deems 'just and equitable.'<sup>66</sup>

The general and customary law systems use different methods of payment:

- In terms of the general law a 'periodical sum' is paid;<sup>67</sup>
- In terms of the customary law, a lump sum is paid either in terms of livestock or money.<sup>68</sup>

The general law, apparently based on the notion that women are dependent upon men, views marriage more as a 'support institution' than a 'partnership of equals.'<sup>69</sup> This attitude, it is submitted, reflects the situation of many battered women, but ought not to be accepted as an inevitability. Rights and duties

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<sup>66</sup> s 25 of the Matrimonial Causes Act op cit.

<sup>67</sup> s 25(2)(ii).

<sup>68</sup> In the case, for example, of a maintenance claim for the support of a child, a lump payment is made. This is known as 'marebana' or 'seduction payment.' Note that she is only eligible for this if the claim is for her first child. If it is for her second child, she is not deemed worthy of maintenance. Wendy A. Duncan, Schooling for Girls in Botswana: Education or Domestication? (Gaborone: National Institute of Research, June 1985) p 8.

<sup>69</sup> June Sinclair, "Marriage: is it still a commitment for life entailing a lifelong duty of support?" in 1983 Acta Juridica 75 p 79.

which flow as a result of a relationship clearly cease at the cessation of that relationship. However, the end is not so clearly identifiable. The position in which the battered woman may find herself at the dissolution of the marriage is generally a direct consequence of the marriage and needs to be addressed as such.<sup>70</sup>

Periodic payments by the former husband to the former wife can be viewed from two perspectives:

- as being to the woman's advantage because this method theoretically permits regular adjustments to the amount so as to reflect the changing cost of living;
- as being to the woman's disadvantage, because in practice it entails the collection of regular payments.

From an examination of the practical problems attached to securing regular maintenance payments it appears that:

- such payments cannot be enforced where the payor is intermittently employed;
- payments are not always regular;
- payer often 'disappears' and becomes 'untraceable.'

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<sup>70</sup> Married women often channel their skills and energy into home labour which is not easily quantifiable. At the dissolution of the relationship, they often have nothing of substance to reflect their contribution.

If the customary law approach were adapted for use in the general law, early payment in lump sum form would effect a situation in which the woman's dependent position would be ameliorated. As it is, under the present legislative position, most women do not receive maintenance due to them because of the problems mentioned above. The effect is that the battered woman has in fact already begun to shift from her position of total dependence to one of less dependence.

By continuing to use this remedy as it presently exists, the base upon which it rests is being continually legitimised. In order to use it effectively, more stringent penalties ought to be seen to be applied by the courts. The complacency with which the payors regard the issue of maintenance is bolstered by the seeming reluctance on the part of social agents to enforce the court orders strictly.

c. Ratification of the U.N. Convention

For a law to acquire meaning it has to be put into effect. It derives its validity from the acceptance by those in whose interest it is to operate. In a similar manner, conventions require more than theoretical acceptance for effective application.

By ratifying the 'Convention on the Elimination of All Forms of Discrimination against Women', Botswana would be committing

'... itself to the principle that all its citizens, male and female, have equal worth. It is based on the principle that all persons, both male and female, contribute to the economic and social development of the country. (By ratifying, Botswana would be promising) to pass laws and pursue policies to eliminate discrimination against women ... the convention can sometimes be used to strengthen and enforce women's rights within the domestic legal system ....'<sup>71</sup>

d. Legal process to be used as an educative mechanism

By using the influential positions which they occupy, presiding officers could assist in the education and consciousness-raising of society. In most of the case examined by the researcher, the presiding officers failed to express an opinion on the actual battering. Instead attention was focussed on whether or not the domestic situation was such that it was unreasonable for the plaintiff to continue cohabiting with the batterer.<sup>72</sup>

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<sup>71</sup> See Armstrong and Ncube, pp 277-281 for summary of convention.

<sup>72</sup> See above under Legal responses - Civil law remedies for women who leave - divorce.

If, in passing judgment, and at any other stage during the proceedings,

- the nature of the offence was analysed within its immediate and social context;
- the constitution was used more, both
  - to assist in the protection of rights guaranteed to all; and
  - to familiarise the society with the constitution in a non-exclusivist manner;<sup>73</sup>
- guiding principles and values more in accord with those of the preferred society were espoused;

it is hoped that the legal structure, through its agents, would begin to challenge those laws which serve to discriminate against and oppress women.

e. Establishment of a State Legal Assistance Programme

One of the main themes to emerge during the research was that of the secondary position of women in economic terms. The effect of

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<sup>73</sup> At the moment, the constitution, as part of the laws of Botswana, is largely accessible to a small percentage of the population e.g. the legal and political agents.

this is limited access to legal advice and therefore to remedies to the battering situation.

Since:

- the general position of women in society is a result of the patriarchal social relations;
- the economic position of women in society is a result of the economic policies pursued by the government;
- battered women are incapacitated by their economically dependent status;

it is submitted that it is the responsibility of the government to attempt to remedy the situation. By creating a programme which will provide legal access to women,<sup>74</sup> most of the legal problems associated with the battering situation as examined above, will be minimised.

#### Summary

Though there is a case and need for the preferred measures, it is clear that those recommendations need to be preceded by the

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<sup>74</sup> The Legal Assistance Programme is not seen as being a solution to the problem of unequal access to the legal structure, but only as a temporary ameliorative remedy. It would serve to make the legal structure accessible to all who at present are economically impeded.

interim measures. They form the link between the preferred society and the present. In order to support this process, it is necessary to turn to the social recommendations. These too are dealt with under the headings of 'preferred' and 'interim' measures. It is hoped that the social recommendations will assist in raising societal consciousness about both the existence and extent of battering.

### 8.3. Social reform

The contemporary Botswana society is experiencing societal changes in both the urban and rural areas. Since 1966, there has been rapid urbanisation accompanied by a rural-urban migratory pattern.

A direct result of urbanisation has been the breakdown of the extended family. With the elderly in the rural areas, and the young wage earners in the urban area, the hierarchical structure is being whittled away. There does not presently appear to be any substitute structure. A major result is the inability of the society to identify and cope with matters which would have been dealt with by the extended family.<sup>75</sup>

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<sup>75</sup> An example of the effect of the societal metamorphosis relates to children. Those whom their parents could not afford to clothe, feed or educate, would in the past have been 'adopted' by a member of the extended family. However, without similar access to such assistance in the urban area (due inter alia to

As already mentioned, the extended family played and still plays an influential role in attempting to deal with the battering of women. However, due to the attitude underlying the customary law acceptance of the chastisement of wives by their husbands,<sup>76</sup> the extended family tended and still tends to reinforce that legal approach. It is only by attempting to alter society's attitudes with inter alia, programmes, structures and a change in the attitudes of the social agents, that battering can begin to be perceived as the offence it is.

The social recommendations relate to:

Preferred measures

- gender sensitivity as part of political make-up of government policy as manifested in its social agents;
- battering and general gender sensitivity integral part of police training.

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distance from village to town, financial limitations, urban housing shortages etc), children are either abandoned at birth or join the rapidly increasing number of 'kids of the street.' They then make their living from washing cars, pushing shoppers' shopping trolleys for them, begging and engaging in petty theft.

<sup>76</sup> A subsequent change of attitude alleged by Former Chief Bathoen II appears to have passed by unnoticed.

Interim measures

- government committment to removal of oppression of women;
- counselling for both battered women and batterers;
- counselling for children of battered women;
- special training of the social agents; special 'anti-battering' police squad with some members on around-the-clock duty;
- general education and community awareness programme;
- places of safety;
- women's support group relating to general societal control of women - battering, rape, sexual harrassment, etc.

All these measured are based upon the guiding principles of the preferred society as described at the beginning of this chapter.

8.3.1. Preferred measuresa. Gender sensitivity in government policy as articulated by social agents

The government policy, based upon the guiding principles, would find expression in the theoretical framework within which the social agents would operate. Just as at present, the patriarchal

relations find reflection in the manner in which, for example the police respond to a battered woman, so the police response would then be to assist one whose human rights were being infringed by another.

In order to raise the awareness of social agents in relation to gender issues and gender sensitivity, these matters would form an integral part of the training. An appreciation of the relations of power (in sexual and economic terms) and the resultant social construction of and by the society, would, it is hoped, lead to a greater awareness of the role which they themselves as social agents play in supporting the ideological underpinning.

### 8.3.2. Interim measures

#### a. Government commitment to removal of oppression of women

The first meaningful step in this direction could be the ratification of the United Nations convention.<sup>77</sup> This would serve as a pointer towards the preferred society. Legislation, customary practices, government policies, etc. could be measured against this commitment. Without such an express commitment it is very difficult for those concerned about safeguarding human rights in Botswana to do so in a comprehensive manner. Instead,

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<sup>77</sup> Armstrong and Ncube, pp 277-281.

women are forced to utilise 'ad hoc' strategies to challenge seemingly sporadic evidence of a patriarchal base. Until the government commits itself to this aspect of human rights in a direct, challengeable manner, its occasional gestures in the interests of women cannot be considered to be indicative that women's issues are a priority matter.<sup>78</sup>

b. Counselling for both the battered women and the batterers

While the focus of this paper is on battered women, it is clear that excluding batterers in the recommendations would point towards a hollow solution. The battered women are the result of battering. Treating only them would mean dealing with the symptomatic results of the situation. This may bring short-term relief, but means that a recurrence of the situation is inevitable.<sup>79</sup>

It falls beyond the scope of this paper to advance methods of counselling. What can be mentioned though is that the types of

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<sup>78</sup> The impression is created that women's issues are important by the creation of the Women's Affairs Unit and by President Masire's comments. See Masire, Botswana Daily News 18 July 1987, p 1.

<sup>79</sup> It is not being suggested that foolproof solutions are possible or are being advanced in this paper. However, acknowledging that there is another aspect to this two-personed issue is crucial if real solutions are to be sought.

counselling will clearly be different. Generally, the aim of both will be:

- to raise consciousness about their situations as abuser and sufferer;
- to examine reasons why they are in the relationship;
- to explore alternative options out of the abuse, the relationship or both;<sup>80</sup>
- as with the research and counselling technique used in this research, the relationship between the counsellor and the counselled would aim:
  - to eliminate much of the hierarchical nature of the counsellor/counselled relationship, and
  - to increase or restore the self confidence of the person being counselled. The women in the research were empowered in this way.<sup>81</sup>

One way in which the batterers could be encouraged to participate in counselling could be by the court issuing an order directing him to counselling therapy.

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<sup>80</sup> This would be determined by the individual cases.

<sup>81</sup> After the interview, for the first time after a long time, one of the women felt angry about her situation. She had not felt confident enough to be angry about it because she had come to believe that she was being battered because it was her fault, because 'she is cheeky.'

c. Counselling for the children of battered women<sup>82</sup>

Sometimes children of battered women are themselves physically abused by the batterer.<sup>83</sup>

As in the case of an adult child of an alcoholic, the after effects of living in such a domestic environment can make it difficult for the child to interact with other persons and form intimate relationships.

Counselling of such children can assist in attempting to raise their consciousness about how relationships can be.

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<sup>82</sup> A commonly held belief is that children of a batterer in turn either become male batterers or female battered. In this research, the statistics relating to violent domestic situations were as follows:

20 batterers were from a home situation in which they had witnessed arguments between their parents which had upset them;

10 were not;

10 could not be accounted for;

11 women were from a home situation in which they had witnessed arguments between their parents which had upset them;

29 had not.

See A3. in Appendix for Analysis of data.

<sup>83</sup> Sunshine said that she was battered on one occasion when she asked her lover why he had beaten the child.

d. Training of social agents

As already mentioned above, the role of social agents is crucial in influencing the decision ultimately taken by the woman.

Both social workers and police have been traditionally trained to preserve and respect the family. Until this approach is altered to allow for an analysis of the actual relationships which constitute 'the family', whether or not they are destructive etc., these agents may inadvertently continue to be of little real assistance to the battered woman.

Social workers

'... family and marriage have been defined by social work as situations of love, growth, creativity with little recognition of the potentially destructive role of the 'family' as a unit ... it is seen as a thing to be preserved, or if failing, to be improved - never as destructive 'per se'... social workers will most probably define the problem of wife-battering in terms of a marital problem for which therapeutic marital counselling is appropriate ....'<sup>84</sup>

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<sup>84</sup> J.P. Martin, "Family violence and social policy" in Violence and the Family (U.K.: John Wiley & Sons Ltd., 1978), pp 316-317.

Police

Police are hesitant to become involved in domestic violence cases because of:

- ... the ambivalence of those in the domestic disputes-wife withdrawing charges ... thought that the unity of the spouses who are 'bound in marriage' is important
- ... unless the police felt it was a serious assault which required prosecution, they could minimise their involvement by saying that it was a civil matter and that the wife should get an injunction ...<sup>85</sup>
- their training as law enforcers. The ... social service nature of police is given very little emphasis in police training ...<sup>86</sup>

Judicial officers

Until the legal system is seen to deal with battering in a serious manner, it will continue to pass by unnoticed in divorce, custody and other cases in which it ought to be accorded more prominence.

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<sup>85</sup> J.P. Martin op cit pp 229-231.

<sup>86</sup> R. Emerson Dobash and Russell P. Dobash, "Love, Honour and Obey: institutional ideologues and the struggle for battered women" in Crisis 1 (1977), (Amsterdam: Elsevier Scientific Publishing Co., 1977), pp 410-411.

### Medical officers

They, most probably more often than all the other social agents, are in contact with battered women. However, due to the societal attitude and the knowledge that there is no guarantee of support from the legal system, they tend to carry out 'patch-up' jobs on their patients.

### Religious advisors

Battered women may be made to feel responsible for the problems which they encounter. This can occur because the religious advisors, largely male, generally espouse a view on the matter which reflects their socialisation as men.<sup>87</sup>

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<sup>87</sup> While the researcher acknowledges that religions vary, the basic social construction to which people are exposed plays a role in fashioning attitudes towards society and other persons. Taking the patriarchal relations as being dominant in social construction in Botswana, it is submitted that patriarchal attitudes will therefore tend to be intermeshed with the religious. For example see J. Scutt, "Spouse Assault: Closing the door on criminal acts" in The Australian Law Journal, Vol. 54, December 1980, pp 729 note 97.

'... he was a clergyman but nevertheless a man first ... he had the attitudes of the society at large, that I was here to serve my husband, and if I got slapped around some, I ought to search my soul and find out what I was doing wrong ...'

With access to information<sup>88</sup> and workshops aimed at raising inter alia the problem and effects of battering, it is hoped that religious advisors will be sensitised to the predicament of the battered woman, and thereby be of more assistance than at present.

e. General education and community awareness programme

Formal education plays an important role in Botswana society. It determines inter alia:

- employment opportunities, and
- the extent of involvement in policy-making.

Although boys and girls are theoretically given the same educational opportunities, in practice, fewer girls manage to complete their secondary education. This is mainly due to:

- difference in career aspirations between boys and girls;
- difference in self-perception as future parents;

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<sup>88</sup> Angless produced an informative handbook based on her paper. It is aimed at social agents. T. Angless, Battered Women: Implications and information for those in the helping professions (unpublished honours paper, University of Cape Town, 1985).

- teenage pregnancies.<sup>89</sup>

In a research survey,<sup>90</sup> it was shown that certain careers were considered to be gender-specific.

Those careers which were classed as being traditionally 'female' were those to which the girls aspired. Examples of these are: teaching, nursing, being a community development officer, family welfare educator, etc. Those careers which were considered to be 'male' oriented were those to which the boys aspired. Examples of these are: medical doctor, engineer, agricultural demonstrator, journalist, mechanic, teacher, lawyer, etc.

Generally the careers which were favoured by the girls were attainable without a Cambridge school certificate or a university degree. The effect of this was:

- to remove any incentive to proceed with formal education

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<sup>89</sup> For an exploration of the reasons for and attitudes towards teenage pregnancies, see Claudia Williams, Theresa Shashane and Mary Kay Larson, Sexuality and Lifestyle from the perspective of Secondary School Students (Gaborone: MCH/FP Unit, Family Health Division, Ministry of Health, November-December 1987).

<sup>90</sup> Duncan, p 12.

beyond the level which was required for the careers which they sought to pursue,<sup>91</sup> and

- reinforce socialised attitudes towards employment and career opportunities.

The choice of career is clearly linked to the roles which they understand to be socially determined. The 'female' careers are structured such that the roles of mother and wife are not excessively interfered with. Although the woman would be a wage earner and a part of the public world, her career runs less of a risk of intruding upon the domestic domain. The 'male' careers, on the other hand, fit neatly into the public sphere.

In general, it was concluded from the research survey that in both academic and career motivation, boys have higher aspirations than girls.<sup>92</sup>

It is only by educating young people about mutual respect that their attitudes towards one another can be formed in that manner. Systems of education which reinforce stereotypes serve to maintain the status quo.<sup>93</sup>

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<sup>91</sup> Duncan, pp 12-13.

<sup>92</sup> Duncan, p 13.

<sup>93</sup> Examples are books which show and reinforce concepts that nurses are female and doctors are male.

The result is:

- even though there is no direct discrimination between the sexes in terms of opportunities theoretically offered, the social and legal structures do not support such educational approach;
- the social and legal patterns are reflected and played out within the framework of the education structure.

There is clearly space for improvement in both the formal and informal educational spheres.<sup>94</sup>

In the informal sphere community awareness could be raised by programmes in the media (radio and newspapers) which provide opportunity for discussion of issues relating to women e.g.

- customary practices, ('bonyatsi', 'bogadi'/'lobolo'/'roora', polygamy),
- laws (relating to Citizenship etc.), government policies (land board requirement relating to women and letter of authorisation from male guardian), etc.

These programmes could, by social analysis and debates, provide more of a forum for women to challenge matters which affect

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<sup>94</sup> By 'informal' is meant workshops, newsletters, magazines, posters, awareness-raising groups, etc. outside the definite 'school' and 'university' structures.

them. The role of the independent media is crucial because state controlled media would most probably be reluctant to challenge state policies.

f. Places of safety

The concept of a place of safety is in direct contradiction to the traditional Setswana concept of community.<sup>95</sup>

Before urbanisation, and, to a lesser extent, in the present urbanisation phase of Gaborone, the extended family provided a network through which family disputes and problems could be channelled and resolved. While it is acknowledged that the network would not necessarily be sensitive to the issues facing women as articulated by the women interviewed, it must nevertheless be acknowledged that the women did at least have access to a stable established structure.

With the breakdown of that structure and without the substitution of a similar one, battered women have nothing to

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<sup>95</sup> '... "community" can best be understood as an "image of coherence", a cultural notion which people use in order to give a reality and form to their social actions and thoughts...'

which to relate in that way. It is at this point that the concept of a place of safety may be mooted.<sup>96</sup> However, for this to be useful to the women, the manner in which it operates would have to be such that it could be absorbed within the society.

The concept of a shelter as commonly understood seems to be premature in the present Gaborone<sup>97</sup> because:

- battering as a problem has not yet been publicly acknowledged;<sup>98</sup>
- as a result, the idea has not yet been discussed to determine whether that is what women want and whether they would feel comfortable about making use of such a place.

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<sup>96</sup> It was raised as a possibility by Nono. She said that it would be comforting to know that there is somewhere to go to.

<sup>97</sup> The Rape Crisis was shelter established in Cape Town in early 1987; For Chiswick Women's Aid, see Erin Pizzey, Scream Quietly or the Neighbours will Hear (Middlesex: Penguin Books Ltd., 1974).

<sup>98</sup> As far as the writer knows, only in two women's workshops has the subject of violence against women been raised and seriously discussed. See A. Mogwe "Battered Women" in Women and the Law in Botswana - report of the proceedings of a seminar held at the University of Botswana, 3rd to 5th July 1987 (Gaborone: Emang Basadi Women's Association, 1987), pp 31-32; and the symposium to celebrate International Womens' Day March 12 1988. For the latter, see Judith van Allen "Celebrating International Womens' Day: Turning Anger into Action?" in Mmegi wa Dikgang, Vol. 5 No 11, March 26-30, 1988 p 8.

Instead, what is suggested<sup>99</sup> is an informal arrangement between those women who are prepared to offer their homes as temporary places of safety to those who are in immediate danger and need to remove themselves from the batterer. Many of the batterings occur at night.<sup>100</sup> Due to fear of being raped, assaulted etc by strangers while wandering around in the dark streets, the battered women often remain in the home with the batterer.<sup>101</sup> The names of the volunteers would be known only to a few people who would, in the event of being contacted by a battered woman, arrange for the temporary move.

It must be stressed that this suggestion is not being forwarded under the illusion that it will prevent or drastically decrease battering. Instead it ought to be seen for what it is, i.e. a short-term relief measure, aimed at offering temporary assistance

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<sup>99</sup> After discussions with women, both with those who are battered and those who are not.

<sup>100</sup> In this research, of 73 batterings,

15 incidents occurred between 12.00 midnight and 6.00 a.m.;

5 incidents between 6.00 a.m. and 9.00 a.m.;

1 incident between 9.00 a.m. and 12.00 noon;

3 incidents between 12.00 noon and 2.30 p.m.;

8 between 2.30 p.m. and 5.30 p.m.;

27 between 5.30 p.m. and 9.00 p.m.;

9 between 9.00 p.m. and 12.00 midnight; and

5 incidents were not located.

<sup>101</sup> Perhaps a case of 'better the devil you know than the devil you don't know?.'

to the individual battered women. It is hoped that with an increase of seminars and workshops aimed at raising public awareness of the problem, such an informal structure will ultimately be replaced by one which can offer longer term relief.

g. Women's support group relating to battering, rape, etc.

During the research it became clear that there was a need for a support group for women. Even though the research focussed on battering, other related issues emerged.<sup>102</sup> They were perceived as being related as they related to women because they were women.

The support group would ultimately derive its direction from the women. However, the basic aims would be:

- to provide counselling and support for women in matters relating to their general societal control<sup>103</sup>

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<sup>102</sup> One of the battered women's daughters was a rape survivor and felt that the social agents accountable to her did not take the matter seriously. A battered woman-head-of-household felt she lacked the self confidence to approach the Ministry of Education about fees for alleged 'free primary education.' On investigation the researcher was informed that payment was not for 'fees' but for the wages of cooks employed to prepare the government funded feeding scheme.

<sup>103</sup> It would also be stressed that apparent lack of oppressive behaviour or attitudes does not necessarily signify a non-oppressive relationship. Patriarchal attitudes are subtly disguised in clearly defined domestic sex roles from which

- to provide information about professionals who are gender sensitive. Approaching professionals who reiterate the attitudes to which the woman is continuously subjected further complicates the situation for the woman.<sup>104</sup>

#### 8.4. Summary

As this dissertation has attempted to show, the battering of women extends beyond the immediate domestic environment. It is only by acknowledging that battering is symptomatic of more than an individual person's problem and relates to the social construction of society as a whole, that remedies more closely suited to the problem can even begin to be considered. It was with this perspective in mind that this writer made the recommendations above. It is clear that the law needs to reflect the qualities of equality and legality for it to begin to fulfil its main role as custodian of societal values. The social values themselves need to be clearly located within a community-orientated framework for the legal and social spheres to coexist

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neither partner can deviate even if they are unhappy with them. The reason for adhering to them is that society dictates demand such roles in keeping with the illogical connection of sex and gender. See thematic structure for discussion of sex and gender.

<sup>104</sup> Some of the women said that they did not want to consult again with the social agents because they had felt as if the social agents were on the side of the batterer.

in a manner which could ultimately prevent acts of violence against women from occurring without punishment.

APPENDIX

A1.

### Diary of Responses

The initial preparatory work for the research took six months.

During this time, I attempted to acquaint myself with the subject. I was convinced that my Rape Crisis counsellor's course would prove to be inadequate. I read several articles about battering and finally left for Botswana with the feeling that even though I had read a lot I knew very little. Worried about the possibility that no woman would want to talk with me about such personal experiences, I suggested to one of my supervisors that perhaps I ought to have a 'back-up' plan ready, 'just in case.' She assured me that women would talk and that I had nothing to worry about.

I spent the six months riding around Gaborone on my bicycle as I carried out the research. Using this mode of transport had both negative and positive aspects. Negative because the geographical ambit of the research was limited to the extent of my physical fitness. Positive because not only was I more accessible to women (I had several relevant and interesting conversations about battering with women whom I met as I cycled), but particularly in the case of cross-class interaction, a fifteen year old bicycle was not seen as a class defining mode of transport. Added to this is the sex-specific expectation that women do not generally ride bicycles. The significance of 'the bicycle' became increasingly clear. I must stress, though, that I always ride a bicycle as I have no other means of transport.

Tentative explorations of societal reaction to my research were disappointing. 'No-one will talk to you about such relationships, you've never lived with a man?', 'Battered women here? We don't have any, that's a Western thing.', 'Battered women? When are you going to get down to some proper work?', etc.

Initially I had planned to focus solely upon married women, because I wanted to explore the power dynamics at play behind the facade of 'acceptable behaviour' as symbolised by the traditional notion of the institutionalised marriage. However, the research topic was expanded to include cohabitees at their request because, '... we suffer the same as married women but people do not know because we are not married.' As a result, the research comprised approximately the same number of married as cohabiting women. (see appendix B1.).

Through my contact with professionals I gradually came into contact with battered women. I had made it clear to those who assisted me in locating the battered women that I would only meet women who already knew about the research, were sure that they wanted to participate, and were prepared to be interviewed.

Anonymity was paramount. In this way the chances of contact with a woman who felt that I had intruded upon her privacy were greatly minimised.

The police response to my request that I be given access to statistics was initially very positive. This response waned drastically over the next twelve months. The general attitude of non-involvement which I encountered clearly contributed towards their reluctance to consider the research as a serious matter. As a result of the poor cooperation, the statistical input (see appendix C1.) falls short of the period which I had initially intended to cover.

Through the social workers I was able to gain access to working-class women. Trust, the basic ingredient of the research, was easier to create because the social workers introduced me to the women with whom they had already worked for a few years. We would sit and talk as they knitted and sewed. The meetings were relaxed and informal. My interaction with the middle-class women was potentially less problematic. The interviewing and counselling of all the women generally occurred with little difficulty. The fact that we were all women facilitated some transcending of the boundaries of class.

The response of the medical profession was very helpful. Through them I was put into contact with women of different classes.

The legal profession was not as helpful as I had hoped it would be. Perhaps it's response correlates directly to the law's underlying attitude towards battering as examined in the main part of this dissertation. I was told that there was not much 'wife-battering' but that there was a fair amount of 'wife-beating' ... when the latter occurs it is not very serious, it usually arises in divorce or leads to divorce.' This lawyer promised to pass on 'serious cases' to me - that was the last I heard.

With regard to the people I approached (not battered women) for assistance in locating women, there appears to be a general trend relating to their responsiveness. Those who were enthusiastic either retained their enthusiasm and assisted me, or their interest waned. As it turned out, those who appeared to lose interest were either themselves experiencing domestic problems or had close relatives who were being battered emotionally, physically, or both. These matters were never discussed, but during the research I made links as matching pieces became apparent.

The subject of battered women had not yet become a public issue.

As the word spread, more people began to assist me by providing suggestions, newspaper interviews, having informal discussions in

the streets, in offices, private houses and night clubs. I screened the video of 'The Burning Bed' for a motley group of women of varying ages and backgrounds.

The myths surrounding battering emerged 'en masse.' One myth which I kept encountering was that battering is limited to particular people - class, race, type, etc. Once I was introduced to a woman from England who, on hearing about the research, said: 'Oh yes, battering is such a problem in Africa - I can remember when I was in Zambia, the men beat the women so badly.' My response? 'Yes ... I believe that the first shelter in England was opened in the 1970's by Erin Pizzey.' The other side of the coin is of course the person who knows all about the subject and about the type of women who frequent the shelters. 'Don't you think that these shelters are a waste of time? I come from England and I know what happens in them. The women just use them as a time for free baby-sitting by the others and they go off prostituting themselves. These shelters just become a holiday camp.' My response? 'Yes ... a holiday from battering.'

At a personal level I experienced changes and discovered parts of myself which I had not known existed.

For me, superficially, my society had always seemed to be fairly stable, non-racial and democratically based. The research revealed a different side. It was very clear that women's issues could not be separated from the society. Different areas were encountered in discussions during the research. These were 'women and housing', 'women and health', 'women and education', 'women and custom', 'women and racism, tribalism and nationalism', 'women and the law' - in short, women and their oppression in the society in general.

I learnt to adopt a far less rigid attitude towards time than the attitude which I had before the research. For those women who still lived with the batterer, returning home late after an interview with me could precipitate another attack. One interview took place while the batterer waited nearby. He had initially been reluctant that the woman see me, but later 'gave his consent' without realising what the meeting was going to be about. Most of the women were employed outside the home which meant that we could only meet after office hours. Returning home two hours after work could be suspicious. We therefore had to find other times which were less suspicious. The best times were over the weekends during the day. As a result of this time-juggling the women would at times be unable to keep the appointment. I soon learnt to have a book and writing-paper in my bag at all times.

I had to learn how to protect myself from being sapped. Unlike my Rape Crisis colleagues, I had no support group upon which I could rely at the end of a particularly draining session.

Instead, I found that I turned more and more to my close male friends. Perhaps a subconscious attempt to reassure myself that not all men were batterers? In the same way in which I turned to a male friend after an attempted rape?

One of the most delicate areas of conducting research in ones' own home city is the inherent risk to oneself. In some cases I knew both the battered woman and the batterer. Some I had known for several years as respectable members of society. Others I had known as former colleagues. The sensitivity required, both in reassuring the women that confidentiality was paramount and that they could trust me, was immense. By entrusting them with personal information, thereby indicating to them that I was prepared to trust them with my personal experiences, a relationship was soon created based on trust.

After twelve months of being associated with the subject of 'battered women', a steady trickle had begun. These were mostly women who were referred to me by women whom I had already seen. Due both to limited time and to the fact that I had not been in Gaborone for a long enough period to begin a support group for the women, plans to establish a group have had to be temporarily shelved.

From the outset I had doubted my capabilities to locate, interview, and counsel the battered women. Once I began talking with the first woman and gave her the space to 'feel' the interview, the counselling flowed. There was a rapport between us which could not have been faked. The Rape Crisis counselling course held me in good stead and provided a valuable base from which I was able to interact with the women in as least a hierarchical manner as possible. This, despite the fact that I was a researcher and that their experiences formed the subject matter of my research.

A2.

A. QuestionnaireEnglishNO:DATE:CITIZENSHIP

1. NAME
2. ARE YOU A MOTSWANA? NO/YES
3. FOR HOW LONG HAVE YOU LIVED IN BOTSWANA?

RESIDENTIAL AREA

4. WHERE DO YOU LIVE IN BOTSWANA?
5. WHERE DO YOU LIVE IN GABORONE?
6. FOR HOW LONG HAVE YOU LIVED IN GABORONE?
7. IN WHICH OTHER AREAS HAVE YOU LIVED IN THE PAST?
8. DO YOU FEEL SAFE WHERE YOU ARE LIVING AT THE MOMENT? NO/YES
9. HOW MANY ROOMS ARE THERE IN YOUR HOUSE?
10. DO YOU HAVE A SPACE OF YOUR OWN IN THE HOUSE? NO/YES
11. DOES THE MAN WITH WHOM YOU ARE INVOLVED HAVE HIS SPACE IN THE HOUSE? NO/YES

RELIGION

12. ARE YOU A BELIEVER? NO/YES
13. IN WHICH RELIGION DO YOU BELIEVE?
14. IS HE A BELIEVER? NO/YES
15. IN WHICH RELIGION DOES HE BELIEVE?

SOCIAL STATUS

16. ARE YOU MARRIED? NO/YES
17. HOW ARE YOU MARRIED?
18. FOR HOW MANY YEARS HAVE YOU KNOWN HIM?
19. IF MARRIED, FOR HOW LONG HAVE YOU BEEN MARRIED?

20. IF LIVING TOGETHER IN A 'DE FACTO'  
RELATIONSHIP, FOR HOW LONG HAVE YOU  
LIVED TOGETHER?

OCCUPATION AND JOB SATISFACTION

21. DO YOU WORK OUTSIDE THE HOME? NO/YES  
 22. DO YOU WORK OUTSIDE FULL-TIME? NO/YES  
 23. DO YOU WORK INSIDE THE HOME? NO/YES  
 24. DO YOU WORK INSIDE FULL TIME? NO/YES  
 25. DO YOU ENJOY YOUR JOB? NO/YES  
 26. WHAT DO YOU THINK ABOUT YOUR JOB?  
 27. WHAT DOES HE THINK ABOUT YOU JOB?  
 28. WHAT JOB DOES HE DO?  
 29. HAS HE BEEN WORKING DURING THE PAST YEAR? NO/YES  
 30. DO YOU THINK HE ENJOYS HIS JOB? NO/YES/DK  
 31. WHAT ARE YOUR SALARIES SPENT ON?  
 32. WHAT PROPORTION OF YOUR SALARY GOES  
INTO THE HOUSEHOLD?

CHILDREN

33. WHAT DO YOU DO ABOUT THE CHILDREN  
WHEN YOU WORK OUTSIDE THE HOME?  
 34. HOW MANY CHILDREN ARE THERE IN THE HOME?  
 35. ARE THEY ALL YOUR OWN? NO/YES  
 36. HOW MANY ARE YOUR OWN?  
 37. HOW MANY ARE HIS OWN?  
 38. HOW MANY ARE BOTH OF YOURS?  
 39. HOW MANY ARE OF OTHERS?

FAMILY

40. DO YOU HAVE CLOSE RELATIVES  
LIVING NEARBY? NO/YES  
 41. DO YOU SEE THEM REGULARLY? NO/YES  
 42. DO YOU SEE THEM ONCE A MONTH? NO/YES

VIOLENCE

43. DID YOUR PARENTS EVER HAVE  
ARGUMENTS WHICH UPSET YOU? NO/YES  
 44. DO YOU KNOW IF HIS PARENTS HAD  
ARGUMENTS WHICH UPSET HIM? NO/YES  
 45. DO YOU KNOW OF ANY OTHER COUPLES  
WHO HAVE HAD ARGUMENTS WHICH HAVE  
UPSET YOU? NO/YES  
 46. HAVE YOU EVER BEEN BADLY UPSET BY  
AN ARGUMENT BETWEEN YOU AND HIM? NO/YES

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 PROCEED TO INCIDENT SHEET/S IF ANSWER TO Q. 46. IS 'YES'  
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47. DO YOU KNOW OF ANY OTHER WOMAN  
 TO WHOM THIS HAS HAPPENED? NO/YES
48. IF HE ASSAULTED YOU OR  
 ASSAULTED YOU AGAIN, WHERE WOULD  
 YOU GO FOR HELP?
49. WHAT WOULD YOU EXPECT THEM TO DO?
50. DO YOU THINK THAT A LOT OF WOMEN  
 ARE BATTERED BY MEN? NO/YES/DK
51. IS PHYSICAL VIOLENCE PART OF MARRIAGE?  
 Please elaborate. NO/YES/DK
52. IS PHYSICAL VIOLENCE A PROBLEM?  
 Please elaborate. NO/YES/DK
53. DO YOU SEE ANY DIFFERENCE BETWEEN  
 PHYSICAL VIOLENCE IN A MARRIAGE AND  
 PHYSICAL VIOLENCE OUTSIDE A MARRIAGE?  
 Please elaborate. NO/YES/DK
54. WAS HE EVER VIOLENT TOWARDS YOU  
 BEFORE MARRIAGE? ('DE FACTO'  
 MARRIAGES INCLUDED) NO/YES

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 PROCEED TO INCIDENT SHEET/S IF ANSWER TO Q. 54. IS 'YES'  
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55. HAS HE BEEN VIOLENT TOWARDS YOU  
 SINCE MARRIAGE? NO/YES
56. HOW MANY TIMES HAS HE BEEN VIOLENT  
 TO YOU?
57. ARE YOU IN FAVOUR OF A BATTERERD  
 WOMEN'S GROUP BEING STARTED?  
 Please describe what you would  
 expect from it and whether you  
 would be prepared to be involved in it. NO/YES/DK
58. HER OCCUPATION.

59. HER AGE.  
 60. HIS AGE.  
 61. HER TRIBE.  
 62. HIS TRIBE.

A. Dipotso  
Setswana

NO.:

LETSATSTSI:

BOAGEDI

- |    |   |          |
|----|---|----------|
| 1. | LEINA                                   |          |
| 2. | A O MOTSWANA?                           | NNYAA/EE |
| 3. | O NTSE MO BOTSWANA LOBAKA<br>LO LO KAE? |          |

KWA O AGILENG TENG

- |     |  |          |
|-----|--|----------|
| 4.  | O NNA KAE MO BOTSWANA?   |          |
| 5.  | O NNA FA KAE MO GABORONE?  |          |
| 6.  | O NTSE LOBAKA LO LO KAE MO GABORONE?                                     |          |
| 7.  | O KILE WA NNA FA KAE GAPE MO<br>NGWAGENG O O FETILENG?                   |          |
| 8.  | A O IKUTLWA O AGILE KWA NTLE GA POIFO<br>KWA O NNANG TENG?               | NNYAA/EE |
| 9.  | NTLO YA GAGO E NA LE DIKAMORE<br>DI LE KAE?                              |          |
| 10. | A O NA LE LEFELO LE LE<br>FAPHEGILENG MO NTLUNG E O<br>NNANG MO GO YONE? | NNYAA/EE |
| 11. | A MONNA YO O GOLAGANYENG NAE<br>O NA LE LEFELO LE LE FAPHEGILENG?        | NNYAA/EE |

TUMELO

- |     |                                   |          |
|-----|-----------------------------------|----------|
| 12. | A O MODUMEDI?                     | NNYAA/EE |
| 13. | TUMELO YA GAGO KE EFE?            |          |
| 14. | A MONNA WA GAENO ENE KE MODUMEDI? | NNYAA/EE |
| 15. | TUMELO YA GAGWE KE EFE?           |          |

SEEMO EA SETHO

16. A O NYETSWE NNYAA/EE  
 17. O NYETSWE JANG?  
 18. LO ITSANYE LE MONNA YOO LOBAKA  
 LO LO KAE?  
 19. FA LO NYALANE, KE LOBAKA LO LO KAE?  
 20. FA LO SA NYALANA GONE LO TSHEDILE  
 MMOGO LOBAKA LO LO KAE?

MMEREKO LE GO ITUMEDISIWA KE TIRO

21. A O BEREKELA KWA NTLE GA LEGAE? NNYAA/EE  
 22. A O BEREKELA KWA NTLE LOBAKA LOTLE? NNYAA/EE  
 23. A O BEREKELA MO NTLUNG YA GAGO? NNYAA/EE  
 24. A O BEREKELA TENG LOBAKA LOTLE? NNYAA/EE  
 25. A O ITUMEDISIWA KE TIRO YA GAGO? NNYAA/EE  
 26. O AKANYA ENG KA TIRO YA GAGO?  
 27. MONNA WA GAGO ENE O AKANYA ENG  
 KA TIRO YA GAGO?  
 28. ENE O DIRA ENG?  
 29. A O NE A NTSE A BEREKA LE MO  
 NGWAGENG EE FETILENG? NNYAA/EE  
 30. A FA O BONA ENE A ITUMEDISIWA KE TIRO  
 E A E DIRANG? NNYAA/EE-  
 /GK  
 31. LO DIRANG KA MADI A LO A AMOGELANG?  
 32. LO DIRISA KAROLO EE KAE YA MADI A LONA  
 GO TLHOKOMELA TSA LOLWAPA?

BANA

33. O DIRA ENG KA BANA FA O BEREKELA  
 KWA NTLE GA LEGAE?  
 34. PALO YA BANA E KAE?  
 35. A KE BA GAGO BOTLHE? NNYAA/EE  
 36. BA GAGO BA KAE KA PALO?  
 37. ENE BANA BAGAGWE BA KAE?  
 38. BA LO BA TLHAKANETSENG BA KAE?  
 39. KE BA LE KAE BA E LENG BA BASELE?

TSA LOSIKA

40. A O NA LE BA LOSIKA BA BA  
 AGILENG GAUFI NAO? NNYAA/EE  
 41. A O BA BONA KA DIPAKA TSOTLHE? NNYAA/EE  
 42. A O BA BONA GANGWE KA KGWEDI? NNYAA/EE

DIKGOKA

- |     |  |          |
|-----|--|----------|
| 43. | A BATSADI BA KILE BA FAPANA MO<br>BILENG GA GO KGOPIISA?                             | NNYAA/EE |
| 44. | A O ITSE GORE ENE BATSADI BA GAGWE<br>BA KILE BA NNA LE DIPHAPENG?                   | NNYAA/EE |
| 45. | A O ITSE BA LOLWAPA LONGWE<br>BA BA KILENG BA FAPANA MO GO<br>BILENG GA GO KGOPIISA? | NNYAA/EE |
| 46. | A KILE WA FAPAANA LE ENE MO<br>BILENG GA GO KGOPIISA THATA?                          | NNYAA/EE |

-----  
**FA KARABO YA NO. 46. E LE 'EE', TSWELELA KA TSA DITIRAFALO**  
 -----

- |     |   |          |
|-----|---|----------|
| 47. | A O ITSE MASADI MONGWE O SELE YO<br>O KILENG A DIRAGALELWA KE TIRAFALO E?   | NNYAA/EE |
| 48. | FA A KA GO LWANTSHA A BA A GO<br>TLHASELA GAPE, O KA TSHABELA KAE<br>GO BATLA THUSO?  |          |
| 49. | O TLAABO O SOLOFETSE GORE BA KA<br>THUSA JANG?  |          |
| 50. | A O GOPOLA GORE BASADI BA LE BANTSI BA<br>ITEWA KE BANNA?   | NNYAA/EE |
| 51. | A DIKGOKA TSA TITEO KE SENGWE SE GO<br>KA TWENG SE TSAMAYA LE NYALO?<br>Tlhalosa.   | NNYAA/EE |
| 52. | A DIKGOKA TSA GO ITAYA KE SELO<br>SE SE ATILENG?<br>Tlhalosa.   | NNYAA/EE |
| 53. | A O BONA GO NALE PHAROLOGANYO NNGWE<br>FA GARE GA DIKGOKA TSA GO ITAYA<br>FA BATHO BA NYALANE LE FA BA SA NYALA?<br>Tlhalosa. | NNYAA/EE |
| 54. | A O KILE A GO BETSA LO ISE LO TSHESLE<br>MMOGO KANA LO ISE LO NYALANE?  | NNYAA/EE |

-----  
**FA KARABO YA NO. 54 E LE 'EE', YA KWA GO TSA DITIRAFALO**  
 -----

- |     |   |          |
|-----|---|----------|
| 55. | FA LO SALE LO NYALANA A O KILE A GO BETSA?                  | NNYAA/EE |
| 56. | KE GAKAE A GO BETSA?  |          |
| 57. | A O ELETSA GO KA DIRWA LEKGOTLA LA<br>BASADI BA BA ITEWANG? | NNYAA/EE |



10. DID YOU ASK ANYONE FOR HELP? NO/YES  
If 'yes' please describe.
11. WHAT DID YOU DO AFTER THAT?  
Please describe.
12. WHAT WAS THE OUTCOME OF THE INCIDENT?  
e.g. doctors, police, etc.
13. WERE YOU SATISFIED WITH THE OUTCOME? NO/YES  
Please explain.
14. WOULD YOU GO BACK TO THEM AGAIN? NO/YES  
Please explain.
15. DID YOU TELL ANYONE ELSE ABOUT IT? NO/YES  
Please explain.
16. WHAT WAS THEIR REACTION?
17. HOW DID YOU FEEL ABOUT THE INCIDENT  
IMMEDIATELY AFTER IT HAPPENED?
18. DID YOU CHANGE YOUR BEHAVIOUR  
AFTERWARDS AS A RESULT OF THE INCIDENT? NO/YES  
Please describe.
19. HOW DO YOU FEEL ABOUT IT NOW?
20. HOW OFTEN DOES THIS KIND OF THING  
HAPPEN?

B. Thlaganyo ya ditirafalo

Setswana

ORE. PALO:

I/S/ PALO:

KGWEDI:

1. TLHALOSA SE SE DIRAGETSENG.
  
  
  
  
  
  
  
  
  
  
2. SE BAKILWE KE ENG?
3. SE DIRAGETSE KAE?
4. SE DIRAGETSE LENG?  
Letsatsi: Nako:
5. KE MANG GAPE YO O NENG A LE MO  
TIRAFALONG EO?
6. KE MANG YO NENG A LE TENG?
7. A O NE A GO TSHOSA KGOTSA A GO  
GOMISA FELA KGOTSA A O NE A GO  
TLHASELA KA MOKGWA MONGWE?  
Tlhalosa. NNYAA/EE
  
  
  
  
  
  
  
  
  
  
8. A GO NE GA DIRISIWA DIBETSA DINGWE?  
Fa karabo ya gago e le 'ee', tlhalosa. NNYAA/EE
  
  
  
  
  
  
  
  
  
  
9. A MONGWE O NE A UTLWA BOTLHOKO?  
Fa karabo ya gago e le 'ee', tlhalosa. NNYAA/EE
  
  
  
  
  
  
  
  
  
  
10. A O NE WA IKUELA MO GO MONGWE?  
Fa karabo ya gago e le 'ee', tlhalosa. NNYAA/EE

11. O NE WA DIRA ENG MORAGO GA MOO.  
Tlhalosa.
12. GO NE GA DIRAFALA ENG MORAGO GA MOO?  
dingaka, mapodisi, jalo jalo.
13. A O NE WA ITUMELELA KAFA GO NENG GA  
DIRWA KA TENG?  
Tlhalosa. NNYAA/EE
14. A O KA IKUELA KWA GO BONE GAPE?  
Tlhalosa. NNYAA/EE
15. A O NE WA BOLELELA MONGWE O SELE  
KA GA TIRAFALO EO?  
Tlhalosa. NNYAA/EE
16. BA GOPOLA ENG KA GA YONE?
17. MORAGO GA TIRAFALO EO O NE WA  
IKUTLWA FELA GO NTSE JANG?
18. A MAITSEO A GAGO A NE A FETOLWA KE  
TIRAFALO EO?  
Tlhalosa. NNYAA/EE
19. GOMPIENO O AKANYANG KA TIRAFALO EO?
20. SELO SE SE NTSENG JAANA SE DIRAFALA  
GAKAE?

### A3. Analysis of data

#### A Discussion of sample

The sample for this research comprises 40 women. Any information included which relates to the batterers was obtained through interviews with the women only. This is both because women form the subject of the study and because they are involved in relationships of conflict with the batterers. Any attempt to obtain information from the batterers themselves would have resulted in being led to deal with information provided by persons located in different subjective positions. This would have indirectly served to detract from the main subject of this dissertation, namely, the battering of women.

##### 1. Citizenship

- 38 are Batswana citizens,
- 2 are non-Batswana.

This research primarily aimed to examine the attitudes of Botswana society towards battering as manifested in both the legal and social spheres. The two women who are not Batswana citizens are included in the sample because as women they are made subject to the same general law and similar social attitudes as the majority of the sample. The responses of the sample, comprising largely Batswana women, serves as an indicator of the manner in which battering is perceived in part of contemporary Botswana.

##### 2. Residential Area

- 36 reside in Gaborone,
- 3 reside in Mogoditshane,
- 1 resides in Gabane.

The research focusses upon women who live in Gaborone and its environs. The latter is included because the lives of women who reside there are directly affected by their proximity to Gaborone. Evidence to support this lies in the facts that:

- they commute daily from their homes in the two villages to the city where they are employed;
- their accessibility to the general legal system was similar to that of the other women, etc.

It is submitted that this may not necessarily be an indicator

of the 'urbanisation' of the rural areas close to the city.

- The city of Gaborone was itself established little more than 22 years ago;
- the average age of the women interviewed is 32;
- the average time Batswana women who reside in Gaborone have spent living there is 15 years.

This perhaps suggests that most of the women in the urban area have spent a portion of their lives in other areas, either rural or urban. This fact supports the idea suggested in the text of the dissertation that the two systems of law (the general and the customary) are linked in people's lives on a daily basis, though at a theoretical level they operate separately.

#### Women's perceived safety

- 23 of the women feel safe where they are living at the moment.

Accepting that the home is generally considered to be the haven of safety, this question sought to establish whether the sample reaffirms such a view. Reasons for not feeling safe in the home varied.

Most focussed upon the battering situation:

'... I'm scared of him, he knows where I live.'  
Mmaletsatsi had left her husband.

'... since he came to the place (where I stay) to hurt me twice, I don't (feel safe).'  
Beverley had left her husband.

'... he comes there easily and the landowners seem to be on his side.'  
Gaofengwe's husband had left her but kept coming back.

'... I fear my husband and I fear thieves.'  
Mmanko had left her husband.

Some mentioned wider political and social factors:

'... I fear the Boers raiding us ... I live near one of the places which they bombed.'  
Boipelo had left her lover.

'... botsotsi (thugs) ... there's a lot of stealing.'  
Mavis had stayed with her husband.

'... I am scared of people who steal.'  
Peta had stayed with her husband.

Some of the women who said that they felt safe where they lived nevertheless qualified their responses.

'... I feel safe but sometimes I fear because I'm scared of him discovering where I live.'  
Miriam had left her husband.

'... I feel safe only because I am with my parents but feel unsafe with him.'  
Kgomotso had left her husband.

'... I have an alarm system.'  
Angela had left her husband.

'... I am just scared of South Africa.'  
Mmalebogo stayed with her lover.

#### Women's perceived space

- 7 women had their own space.

'... I use the spare room and the kitchen. When he's angry he leaves and spends the night out.'  
Mmaletsatsi.

'... I use one of the empty servants quarters' rooms ... he uses the communal bedroom ... he goes in there when he is angry, stays there and locks the door.'  
Reba.

'... I have space because the house is mine and he works away from Gaborone for a lot of the time.'  
Sappho.

Those who had no perceived space gave indications in their responses as to why this was the case.

'... he'd end up pushing me out of the house, it's registered in his name.'  
Maggie.

'... even though he has no space, when he's angry he'd go out but I think I couldn't do that because he'd be angry with me.'

Matshediso.

'... when he was angry he'd go to the bedroom and ignore me but if I went there when I was cross he'd follow me there.'

Beverley.

'... as head of the family he can do whatever he wants - if he says 'Don't go in' you have to obey.'

Linda.

The questions of safety and space in the home are closely linked. Personal space relates to areas in the dwelling which the women regard as being their own; a place to go to where they can be alone, etc. The existence of personal space was obviously dependent upon the availability of living room. The sample comprised women who lived in houses, rented rooms, and a hut.

- 34 live in houses,
- 4 live in rented rooms,
- 1 lives in a room which is linked to her occupation
- 1 lives in a hut,

The average number of rooms in the dwellings was 4.

### 3. Religion

- 33 are believers in a religion;
- 7 are not believers;
- 35 see themselves as Christians, 3 of whom are not believers.
  
- 20 of the batterers are believers;
- 18 are not believers;
- 2 could not be categorised.

This question aimed to establish whether religious belief plays any role in women's responses to battering. What emerged was that even though for some divorce was anathema because the Church discourages it, it was largely the women's perception of the dominant societal attitude towards battering and their responses to it that played a more determinant role in their ultimate position relating to the battering situation.

#### 4. Social Status

- 27 are married,
- 13 are not married.

The research results clearly indicate that battering is not determined by social status; it does not matter whether women are married or whether they are cohabiting. What women in both categories have in common is the fact that they are women involved in abusive and oppressive intimate relationships. The effects of belonging to one or other category were felt more in the remedies available to them than in any other manner.

The types of remedies available, though separable in terms of the two legal systems in Botswana were integrated in practice by the women. Evidence of this was presented in the forms of relief used. Several women made use of both the customary and civil law practices of relief.<sup>1</sup>

#### Length of relationship

The extent of intimacy in relationships is generally calculated in terms of the length of time for which the parties have known each other. It could be assumed that battering would occur in a relationship in which the parties had known each other for a short time. This assumption would be based on the underlying assumption that no-one would tolerate a relationship with someone they knew to be a batterer and who regularly battered them. What emerged from the research was that on average, the parties had been known to each other for more than 10 years.

- the average time for which all the women had known the batterer was 13 years;
- the average time for which the married woman had known her husband was 14 years;
- the average time for which the married woman had been married to the batterer was 10 years;
- the average time for which the cohabiting woman had known the batterer was 11 years;
- the average time for which the cohabiting woman had cohabited with the batterer was 6 years.

The fact that such relationships last for so long can erroneously suggest that the women either want the battering within the relationships to continue or are 'addicted to violence'. The research indicated the contrary. While the women realised that their relationships were unhappy and wanted to change them, often their ultimate decision is determined by factors linked to the

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<sup>1</sup> See section on legal responses to the battering situation.

legal and social spheres.

- 23 remained in the relationship;
- 17 left the relationship of whom
- 5 divorced their husbands;
- 6 separated from their husbands;
- 6 left their lovers.

## 5. Occupation and Job Satisfaction

### a. Occupation

- 36 work outside the home full-time;
- 4 do not work outside the home;
- 39 work inside the home;
- 13 work inside the home full-time.

### b. Job satisfaction

- 33 derive satisfaction from their job,
- 6 do not,
- 1 does not know.

The types of jobs in which the women were employed generally tended to reflect their location within the private world. These were jobs which carry a sex-specific label. These were:

- 4 secretarial,
- 2 accounting,
- 4 banking,
- 8 cleaning staff,
- 2 domestic worker,
- 9 administrative,
- 5 shop assistance,
- 1 academic,
- 2 medical and technical,
- 1 business.
- 2 home worker.

For those who worked outside the home, their employment meant an element of self-reliance and differentiated them from those women who only worked in the home.

As is clear from the list above, the majority of women are employed outside the home. This is not usually out of choice. The economic situation tends to dictate. This is suggested by the fact that of the women employed outside the home 91% of the average woman's salary is spent on the household and not on

herself. Even though this was the case, the general attitude expressed concerning the opinions of the women relating to their jobs suggests that employment outside the home creates a space in their lives over which they themselves have control. The attitude of the batterer was generally determined more by economic reasons and the woman's economic contribution to the household than his concern about the decrease of her financial dependence on him.

'... I enjoy working with the public ... he is happy that there is money.'

Masegolo.

'... my job gives me self esteem and boosts me ... he is not happy, he is jealous of me.'

Maggie.

'... I work long hours ... he is not happy because I am independent.'

Mmaletsatsi.

'... I can cope with my job ... he is happy because of the money which I earn.'

Mmanko.

'... I am not happy with my job because it does not have a future ... he is not happy with it either and says that I should get a better job.'

Letina.

'... I was happy in my job ... he was not happy to see me progress.'

Mary.

'... there is no money in my job ... he is happy that I have a job and that there is money but he is not happy that the money is not enough.'

Boitumelo.

'... I liked my job because it gave me the chance to analyse myself ... he was happy with my job and also interested in it.'

Shrew.

'... I was not happy in my job ... he was happy that I had a job but he despised me.'  
Yvette.

'... my job gives me confidence ... he is happy that I have one and is proud of me.'  
Shirley.

'... I want to work outside the home ... he would be happy if I worked.'  
Basadi.

28 of the men had been employed within the 12 months preceding the interviews with the women. The women were asked whether in their opinion, the batterer was happy or satisfied with his job. This question was asked because the battering may have been symptomatic of dissatisfaction in the work place.

- 29 said the batterers had job satisfaction;
- 9 said that they did not;
- 2 said that they did not know.

This clearly indicates that the cause of battering within the domestic sphere is not necessarily located in the batterer's own dissatisfaction in his work place.

## 6. Children

One of the issues which arises when one discusses women who work outside the home is that of childcare. Social construction stresses the role of women as being that of wives and mothers. Women who enter the workforce outside the home are generally considered to be part-time workers, particularly if they are mothers. The question of childcare was germane to the research as the average number of children in a household was 3.

- 30 women had their own children as opposed to adopted relations;
- the average number of children which they had had with a man other than the batterer was 1;
- the average number of children which they had had with the batterer was 2.

The answers to the question concerning what arrangements were made for the children while the women were at work outside the home varied depending on the economic position of the women. Those who could afford to relied on other women whom they paid,

while those who could not relied on neighbours, friends and relatives.

- 23 relied on domestic workers,
- 1 relied on the school,
- 8 relied on relatives,
- 1 relied on the day care centre provided by her employers,
- 1 relied on neighbours,
- 1 relied on friends,
- 2 looked after their children themselves,
- 1 relied on a child minder.

## 7. Family

The importance of the extended family in the social fibre is examined in the main body of the dissertation. One of the effects of internal and external migration has been the disintegration of the extended family network and the emergence of female-headed households.

- 22 women had close relatives who lived nearby,
- 18 of the 22 saw them regularly,
- 22 women saw relatives regularly,
- 27 women saw relatives once a month.

## 8. Violence

Violence can be perceived as being self-perpetuating. Based on this assumption, it is tempting to locate the reason for battered women and battered men in their past experiences. The question relating to whether the woman and the batterer had ever been upset by arguments which they had witnessed between their respective parents seeks to examine to what extent violence in the domestic situation of the individual can be seen to influence the individual's tolerance or infliction of violence.

- 11 women had witnessed arguments between their parents which had upset them;
- 29 women had not;
- 20 batterers had witnessed arguments between their parents which had upset them;
- 10 batterers had not;
- 10 batterers could not be accounted for;
- 32 of the women knew of other women who were involved in violent relationships.

These findings challenge both the arguments that:

- the reason why women remain in the battering situation is because they have become 'violence-addicted';
- the reason why men batter is because they are themselves from violent homes; and

suggest that there may be as many people from violent homes who who are not battered as there are those who are not from violent homes who are battered.

With both the batterers and the women emerging from varied family situations, it became clear that the reasons, while linked to the individual person were part of a more embracing reason which exists in all the cases. It is submitted that the balance of power in the relationship between the parties is crucial in providing an idea of the main reason. This will become clear in the analysis of the incident sheets, see B.

The women's responses to the questions:

- If he assaulted you or assaulted you again, where would you go for help?
- What would you expect them to do?

appeared to contradict the overriding majority attitude which revealed little confidence in remedies and in social and legal agents. This apparent contradiction is explicable. For those women who seek relief from the battering situation there are certain remedies available. Even though these may fail to satisfy the women, they are the only ones both to which they have access and which are offered in terms of the dominant ideology.

Some women mentioned one place to which they would go while others mentioned two or more.

- 20 would go to the police;
- 5 would go to his parents;
- 4 would go to a lawyer;
- 3 would go to a customary law court;
- 2 would go to her parents;
- 1 would go to both sets of parents;
- 1 would go to the general law court;
- 1 would go to relatives/family;
- 1 would go to a medical doctor;
- 1 would go to a district commissioner;
- 1 would go to the chief;
- 1 would go to the batterer's employer.

The women selected the people and agents whom they did because

they hoped that they would take certain action. This included inter alia:

- police were expected to 'act' in accordance with their duty to protect people by 'punishing', 'arresting', 'scolding', 'reprimanding', 'keeping away' the batterer; by 'taking him to court' and 'by separating the couple';
- parents and relatives/family were expected to 'talk' with the batterer and 'question him' about his behaviour;
- lawyers' role was to 'advise' and 'separate' the couple;
- customary law courts were expected to punish the batterer by 'lashing' him and 'ending the relationship' while the general law courts were expected to 'act' by applying the remedies available;
- the woman who mentioned the medical doctor said that she would go to the doctor so that s/he could write her a letter to provide proof of the injuries sustained during the battering;
- the woman who mentioned the district commissioner said that she did not know what s/he would be able to do but believed that s/he had the capacity to assist her;
- the woman who mentioned the batterer's employer did so because she said that such knowledge would affect his job and let the employer know about the batterer's behaviour. She hoped that the employer would help her by talking to the batterer.

An attempt was made to determine the way in which the women perceived violence by focussing on three different levels. These related to:

a. violence against women

whether they thought that a lot of women are battered by men;

b. violence in marriage

1. whether they saw violence as being part of marriage, and
2. whether there is a difference between violence which occurs within a marital relationship and that which occurs in an intimate relationship outside marriage;

c. violence in general

whether physical violence is itself a problem.

The responses to these questions in the main clearly reflected

an attitude towards violence which was closely linked to the notion that when employed as a corrective punitive measure violence is acceptable. This attitude was echoed in the attitude towards violence against women both within and outside marital relationships.

- a. 30 said that they thought that there were a lot of women who are battered by men;  
 2 said that they did not think so;  
 8 said that they did not know.
- b.  
 1. 14 said that they saw violence as being part of marriage;  
 26 said that they did not.

Those women who considered violence as being part of marriage largely did so not because they necessarily agreed with it, but because they considered it to be the attitude of the dominant ideology.

'... it is in the custom, but it kills.'  
 Mavis.

'... if it is for a good reason.'  
 Boitumelo.

'... it should not be part of the custom.'  
 Rebecca.

'... the custom is bad.'  
 Boipelo.

'... the culture is wrong.'  
 Sunshine.

'... the custom is not right.'  
 Vivien.

Those women who considered violence not to be part of marriage did so because they did not consider it to be part of custom any more or conducive to a harmonious relationship.

'... violence spoils marriage.'  
 Masegolo.

'... where there is love there is no violence.'

Maggie.

'... violence does not build homes.'  
Matshediso.

'... it is not the custom.'  
Gaofengwe.

'... it is very wrong.'  
Sappho.

'... it is not necessary.'  
Nono.

b.

2. 15 said that there was a difference between violence which occurs within a marital relationship and that which occurs outside it;  
25 said that there was no difference.

Those women who saw a difference between the two situations generally viewed marriage as consisting of a hierarchy of relationships. The husband was seen as being in a position of dominance, the head of the household, the father. Intimate relationships outside marriage were considered to be less hierarchical thereby facilitating the ending of the relationship. It was said that the cohabiting woman was free to walk out of a relationship unlike the married woman who was bound by social duties. The social duties were stressed and not the legal ones as being influential in making it difficult for the married woman to leave the battering situation. The husband was also perceived as being subject to social duties to support his wife and family. Social duty is not as clearly identifiable in the case of lovers.

'... a boyfriend is not a husband.'  
Masego.

'... a lover has no right.'  
Sunshine.

'... the wife is the property of the husband, she is his child.'  
Janet.

'... a lover can leave.'

Vivien.

'... there must be a reason if one is married.'  
Lesege.

'... the husband cannot just leave.'  
Peta.

Those women who saw no difference between the two situations viewed both marriage and intimate relationships outside marriage as being relationships which ought to be based on non-violence.

'... the only difference is the (wedding) ring.'  
Jane.

'... the woman is hit in the same way.'  
Neo.

'... they (both) have no rights to hit.'  
Mmanko.

'... being hit is wrong.'  
Mmaletsatsi.

'... it causes the same pain.'  
Boitumelo.

'... love is important not violence.'  
Maggie.

'... there is no difference today.'  
Doreen.

c. The majority of women considered violence to be a problem. Some mentioned that disciplining a child need not necessarily be carried out physically. They stressed the need to talk matters over and felt that society largely encourages the use of violence.

- 39 said violence was a problem,
- 1 said it was not.

'... it is not right because one can be injured.'  
Mmasegolo.

'... with violence the problem is not solved.'

Maggie.

'... one should only 'scold with the mouth'.'  
Letina.

'... it makes one lose respect (for the person who is being violent).'  
Rebecca.

'... society encourages it.'  
Kgomotso.

Malebogo did not think that violence was a problem where it was used to discipline children. She nevertheless considered it a problem where it was used against women.

The women were asked whether they had experienced violence within the relationship before marriage or cohabitation. This was asked to determine whether any support could be found for the 'violence-prone' woman argument. This approach suggests that there are women who are addicted to violence. Due to their addiction they enter and remain in violent relationships.

- 10 said that they had experienced violence in the relationship before marriage or cohabitation;
- 29 said that they had not;
- 1 said that she did not know.

The responses suggest that most women entered a violence-free relationship and subsequently experienced violence. Most of the women remained in the relationship because they hoped that the relationship would become like it used to be. The women's reasons for remaining in the relationship are examined in the main text of the dissertation under the section which deals with sociological responses to the battering situation.

#### 9. Attitudes towards a support group

One of the methods suggested by this researcher to the women in terms of which they could deal with the battering was the creation of a support group. All the women supported this idea. They were asked why they supported the idea and what they would expect from the group.

The reasons fall into four broad categories:

- advise women,
- influence society,
- give women confidence,

- legal reform.
- a. - It was felt that women desperately needed advice as to what their rights were in the battering situation. At the moment there is nowhere women can go for such information. Those who do not have access to the existing legal channels are particularly affected.
  - Once the group was established it was also hoped that it would serve as a forum for other ideas on how to deal with the battering situation in both the legal and social spheres.
  - Peta hoped that it would help to teach women how to be good to their men and in that way assist them in 'getting back our men.'
  - The plight of rural women was raised as a matter to be examined. Without the real choice of customary or general law remedies and lacking access to legal agents, rural women were considered by some of the women in the sample to be in a worse position than those in the urban areas.
- b. - The negative role which society plays in reinforcing attitudes towards women and violence against them was identified. Society could itself be influenced by battering being brought out of the private world into the open for public discussion. The group could play an informative role.
- c. - One of the results of prolonged battering is the woman's lack of self confidence. She often believes that the battering occurs because she is 'to blame because she is not a good wife', 'a good woman to her man' (viz Peta in a. above) etc. This attitude is facilitated by the isolation in which battered women find themselves. Often social pressure makes it difficult for them to talk about their experiences. By keeping them inside themselves the isolation is increased. For some women one of the roles of the group would be to 'comfort' women, 'give them support' and 'give them confidence by allowing them a forum for discussion' of their experiences.
- d. - Women expressed disappointment in the present legal remedies. They did not feel that they provided adequate protection for them. They themselves were often torn between laying a charge and risking the imprisonment of the family's main breadwinner and not laying a charge and risking further battering. Although there were no concrete suggestions as to how the law could be reformed, the feeling was expressed that the group could provide guidance for legal reform in this area.

Summary

This research was conducted in Botswana to determine:

- whether a pattern of information would emerge indicative of a particular social construction;
- how women in Gaborone and its environs deal with battering;
- whether the law is the best medium through which to deal with battering.

What emerged from the research was that:

- a. The majority of the sample had experienced broadly similar social construction patterns. These were continually reinforced by social pressures to conform. These pressures existed in different forms:
  1. religion discouraged divorce so blind allegiance was paid to an already non-existent marriage in the belief that one was acting in accordance with religious convictions;
  2. maintaining theoretical social status became more important than accepting and dealing with the reality of an oppressive abusive relationship;
  3. conformity dictated that the women remained in the abusive relationship because the children would then be seen 'to have a father';
  4. pressure to conform was reinforced by relatives concerned that the family reputation should not be tarnished;
  5. social agents generally acted in accordance with the dominant ideology and prioritised preservation of the family before the protection of the individual;
  6. the hierarchical nature of the societal structure is reflected in intimate relationships. In a society in which age is closely linked to authority and consequential ability to oppress, the women were asked for their ages and those of the batterer:
    - average age of the sample was 32 years
    - average age of the batterer was 38 years.

In general the women were younger than the men. This difference in age reinforces the parent/child perspective which Tswana society has of marriage. The husband is in a position of authority over his wife. The alleged change in the custom

relating to chastisement of wives<sup>2</sup> appears to have occurred more because the men have 'had a change of heart' than because the beating of women was declared reprehensible. Locating such 'magnanimity' within a society which in other ways continues to view women as minors, it becomes clear why the non-official 'chastisement of women' continues with impunity.

- b. The silence surrounding battering in Gaborone exists not because there is no battering, but because battering is a silent crime. It is acknowledged that what this research has revealed is but a small fraction of the occurrence of battering.

Women in Gaborone deal with battering in a personal individualised manner which maintains the secrecy and creates isolation. They do make use of social and legal remedies available to them but the extent of such use is determined by economic and socially determined factors. These include:

- the extent of the woman's perceived economic dependence upon the batterer;
- the societal influences and pressure to conform;
- the effectiveness of the legal and social remedies available.

- c. It became clear that the law is not the most suitable medium through which to deal with battering.

Being a socially determined and determining set of rules, reliant upon society for acceptance and adequate application of those rules, the influence of society upon the law can clearly not be ignored. Law which emerges from an ideology which is far removed from the general societal position or which challenges culturally-bolstered notions may with difficulty find validity in the society for which it is created.

Legal reform therefore has to be closely linked to social reform so that the risk of contradiction between the two spheres is decreased. While the law may play the role of reflecting the position of the society at a given time, it is this writer's opinion that it ought to be flexible enough to be a pointer towards the direction in which the society would like to proceed.

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<sup>2</sup> Court President of the Customary Courts of Appeal in interview with researcher in Gaborone 1987.

An activist legal structure within an integrative approach to legal and social reform is preferred as a medium through which battering and general violence against women can be addressed.

## B Quality of violence

The quality of violence was determined by analysing the incident sheets (see B2B) in which accounts of the violence were documented in terms of the women's experiences.

The total number of incidents reported was 73. Of the 40 women interviewed 33 described 2 incidents each.

The women were asked to describe the incidents as they remembered them. Where possible, they provided the dates and the times when these incidents occurred. After recounting the incident, questions relating to it were asked in an attempt to determine how the woman perceived it. These related to what she understood to have been the cause of it, what she had done in response to the situation, and how she had subsequently felt about what had happened.

### Cause:

- 50 incidents related directly to the women;
- 20 related to other people; and in
- 3 the women did not know what the cause had been.

The women-related incidents seem to have focussed upon the perceived<sup>3</sup> 'failure' of the woman to conform to her expected role-model characteristics of obedience, being home-centred, etc.

'... I had gone out alone ....'  
Masegolo.

'... I had refused to obey him ....'  
Maggie.

'... I came home late ....'  
Mavis.

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<sup>3</sup> Perceived as such by the batterer who seemed to use violence to enforce conformity.

'... I stood up for myself ....'  
Boitumelo.

'... he said that I was rude ....'  
Gaofengwe.

'... I had asked him for money ....'  
Vivien.

In the cases in which the cause was linked to other people, the thread linking them seems to be related to the 'failure' of women to behave in accordance with their expected role of supporting and not challenging what the man wanted to do.

'... I had found him at his girl-friend's house ....'  
Mmanko.

'... I had been to visit my parents ....'  
Malebogo.

'... I didn't want sex ....'  
Cleopatra.

'... I had visited my male friend ....'  
Linda.

'... he complained about my food ....'  
Doreen.

Place:

- 46 incidents occurred in the communal home;
- 27 places other than the communal hom; of which
- 3 occurred outside the home;
- 1 at his girl-friend's house;
- 2 at a night club;
- 6 in the street;
- 5 in the woman's space;
- 3 in his space;
- 2 at his parent's home;
- 1 on holiday;
- 1 at a bar;
- 2 in their car; and
- 1 at her parent's home.

What clearly emerges from the fact that over 50% of the incidents occurred in the 'safety of the home', is a need to reassess the generally unchallenged notion that 'women are safest in the

home.'

Time:

The time pattern of the incidents also served to challenge this notion. Night time and the early morning are times when it is said that it is best that women stay indoors. However what is revealed by the study is that these appear to be 'peak times' when women are battered and need assistance from outside the domestic environment.

A qualitative basis is used to separate the timeblocks in a day. These are based on where the average person is at different times during the day. These divide into:

- sleeping,
- working, and
- eating times.

There were:

- 15 incidents between 12.00 midnight and 6.00 a.m.;
- 5 incidents between 6.00 a.m. and 9.00 a.m.;
- 1 incident between 9.00 a.m. and 12.00 noon;
- 3 incidents between 12.00 noon and 2.30 p.m.;
- 8 incidents between 2.30 p.m. and 5.30 p.m.;
- 27 incidents between 5.30 p.m. and 9.00 p.m.; and
- 9 incidents between 9.00 p.m. and 12.00 midnight; and
- 5 incidents were not located.

These figures suggest that the early evening (5.30 p.m. to 9.00 p.m.) and the early morning (12.00 midnight to 6.00 a.m.) are the peak battering times. This suggests that those times of the day when it is often thought that one is safest at home are not necessarily so for battered women. Instead, it is during the 'family' hours, (when cohabittees and families congregate at the end of the day and when all are asleep) that it appears that women are at their most vulnerable.

Linked closely to the question of place and time is that of witnesses to the battering. With the bulk of incidents taking place in the domestic sphere, it follows that the witnesses will comprise those persons who are involved in the lives of the couple at a more intimate level than the general public.

- 34 incidents occurred in front of children.  
4 of these were from homes other than that of the woman and the batterer;
- 24 incidents occurred with no other person present;

- 1 occurred when his girl-friend was present;
- 7 occurred in the presence of relatives; in 2 of these her relatives were present, and in 5 of these his relatives were present.
- 5 incidents occurred in public;
- 1 occurred in the presence of the woman's friend;
- 1 in the presence of the police;
- 1 in the presence of the domestic worker;
- 1 in the presence of an elderly visitor;
- 22 incidents occurred with no other person present.

It must be noted that these incidents occurred with a combination of persons present.

Information provided in the section which relates to the analysis of the sample indicates that:

- 50% of those men who, as children, had themselves experienced violence in their domestic situation, had become batterers;
- 25% had not experienced violence;
- 25 % could not be categorised;
- 27% of the women who, as children, had themselves experienced violence in their domestic situation, had become battered women;
- 72% had not.<sup>4</sup>

#### Violence used

The women were asked to describe the type of violence and the kind of weapons used by the batterer when he used weapons.

In:

- 40 incidents the women were hit generally;
- 7 they were choked or throttled ;
- 9 they were kicked;
- 8 they were slapped;
- 2 they had their hair pulled;
- 1 the woman was pushed;
- 1 the woman was scratched;
- 5 the women experienced general physical violence.

In 28 of the incidents, a weapon was used. In 27 of these, the

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<sup>4</sup> The actual figures are 27.5% and 72.5% but these were kept at 27% and 72%.

weapon was used by the batterer. In 1 incident the woman used the weapon. She threw a glass at the batterer. The following were weapons used by the batterers in the indicated incidents.

In:

- 9 incidents a belt was used;
- 2 a hosepipe;
- 3 a knife;
- 2 a stick;
- 3 shoes;
- 1 a door;
- 1 a picture-frame;
- 1 petrol and a lighted candle;
- 2 a car;
- 2 insulated wire; and
- 1 a branch.

The types of injuries sustained by the women after being battered were to different parts of the body, although there appeared to be certain areas which were generally affected. This could be either because the batterer aimed at them, or because they were the most exposed. The information is divided between the head and the body. This is because several women mentioned that the batterer seemed to focus his attacks on the upper part of their bodies.

71 incidents resulted in injuries. In 69 of these, the injuries were sustained by the woman; in 2 the injuries were sustained by the batterer.

In:

- 11 incidents there were general injuries to the head;
- 1 to the nose;
- 18 to the eye;
- 4 to the neck;
- 3 to the throat;
- 2 to the ears;
- 13 to the face;
- 1 to the lip;
- 2 to the jaw.

In:

- 12 incidents there were general injuries to the body;
- 1 the woman had a miscarriage as a result of the battering;

- 1 the woman sustained injuries to her arms;
- 2 to her back;
- 4 to her legs;
- 2 to her breasts;
- 1 to her ribs;
- 1 to her kidneys.

In:

- 1 incident the woman got burnt; and in
- 1 incident the batterer set himself alight by mistake while he was trying to set the woman alight.

To whom does she turn for assistance?

Faced with these incidents of battering and the types of injury which she sustains, the woman was asked to whom she went after the attack.

The women's responses indicated that there was a split between the informal and formal levels of assistance. It appears from the information provided that they tended to favour the informal structure of assistance rather than the formal structure.

Informal

This structure comprises relatives, friends, neighbours, etc.

- 7 incidents were reported to his parents;
- 2 were reported to his other relatives;
- 10 were reported to her parents;
- 8 were reported to her relatives;
- 17 were reported to the women's friends (in 5 of which reports the friends were also battered women) ;
- 2 were reported to the women's neighbour and housemate.

Formal

This structure comprises the professionals, e.g. nurses, medical doctors, religious advisors, lawyers, social workers, etc.

- 5 incidents were reported to the medical professionals;
- 2 were reported to lawyers;
- 1 was reported to the police;
- 2 were reported to religious advisors;
- 4 were reported to the chief, township elders and the district commissioner;
- 2 were reported to the women's employers;

- 1 was reported to 'everyone'; and
- 10 were not categorisable.

The reactions of the people and/or social agents to whom the women go for assistance determine whether or not they return to them after another battering.

Of those approached, in:

- 3 incidents the woman was blamed for the battering;
- 16 the woman was supported;
- 2 there was an attempt to stop the batterer attacking the woman;
- 1 the woman was told that they should 'stay together';
- 1 the woman was told that 'it was up' to her to deal with the situation;
- 3 the people were 'used to' the woman being battered and only offered an ear for her;
- 1 that she should forgive him;
- 4 the people did not know what advice to give;
- 2 they felt angry;
- 3 they felt hurt;
- 1 the person cried;
- 6 the batterers were reprimanded;
- 3 the woman was advised to report the matter to the batterer's parents;
- 1 she was told to wait for a while before taking any drastic action;
- 5 she was advised to leave him;
- 5 she received medical and police assistance;
- 1 the person did not believe her story.

#### Women's own reaction to the violence

In an attempt to determine how the women themselves perceive their own situation, they were asked:

- 1 whether they had been satisfied by the way in which the incident had been dealt with;
- 2 whether they would return for assistance to the same people whom they had approached initially;
- 3 how they had felt about the incident immediately after it had happened;
- 4 whether the incident had affected their attitude towards the batterer; and
- 5 how they felt about it at the time of the interview.

- 1 In only 38 of the incidents the women had felt satisfied by the way in which the matter had been dealt with.

- 2 Of 32 of the incidents, the women expressed their belief that they would have returned to the same people to whom they had gone for assistance initially.
- 3 The women reacted to the actual incident at two levels: the one related to themselves, and the other to the batterer.

### Internal/Self

These 'introspective' reactions focussed on the feelings which the women had about themselves. They perceived themselves as vulnerable and generally unable to control their own lives. The main emotions<sup>5</sup> experienced related to hurt, humiliation, depression and confusion. Other emotions experienced were shock, 'feeling bad', feeling sick, upset, desperate, wanting to kill oneself and feeling that it was all 'unfair.'

In:

- 24 incidents the women felt hurt:

'... my heart was very full ....'  
Mmanko.

'... I was heartsore ....'  
Letina.

'... I was heartbroken ....'  
Neo.

In:

- 4 incidents the women felt humiliated;
- 3 incidents they felt depressed; and in
- 3 they felt confused.

### External/Batterer

These emotions were externalised and focussed on the batterer. This seems to be either because he is perceived to have been wrong in what he did, or being deserving of negative reactions from the women. The main emotions were anger, fear, and wanting to kill him. Other emotional responses related to resentment towards the batterer, wanting to leave him, not wanting to see

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<sup>5</sup> For the purposes of this study, those emotions which occurred in 3 or more incidents are regarded as being 'main'. The others occurred in or two or less of the incidents recorded.

him and wanting to 'hit him too.' Only one woman seemed to have reacted 'positively' to one of the batterings.

'... I felt happy that he was jealous of me ....'  
Beverley.

In:

- 12 incidents the women experienced anger

'... I was really angry ... this was because he had beaten me just a few times before that and this was for an absolutely stupid reason ....'  
Kgomotso.

'... I felt ... angry and did not feel guilty at all ....'  
Nono.

'... when I came round on the way to the hospital I felt very angry because it wasn't necessary for him to beat me the way he did - it's better to slap someone once if you are really angry, but not the way he did ... it would be understood if he'd found me kissing someone ....'  
Cleopatra.

'... I felt very angry - I'd never been beaten before.'  
Mary.

In:

- 4 incidents the women experienced a fear of the batterer.

'... I didn't want to go to where he was, I was too scared.'  
Susan.

'... I felt that he really didn't want me and that was why he'd thrown my things out - I was scared of him, he was harsh that day ....'  
Vivien.

'... I just sat there very scared that he'd start on me again.'

Queen.

'... I was scared that he'd hurt me from the way he hit me -it was the first time he choked me - and it was the first time I'd run out to get help from someone.'

Boitumelo.

In:

- 3 incidents the women said that they had felt like killing the batterer or seeing him dead.

'... I wanted to do something to show that one day I'll kill him because he'll have forced me to - I just wanted to show him how dangerous it was to treat me the way he did, that one day I too could injure him.'

Janet.

'... I was so hurt that I felt like hearing that he was dead.'

Gaofengwe.

'... I felt like killing him.'

Neo.

4 The women were asked whether they had experienced a change in attitude towards the batterer after the incident. The women's main responses related to negative changes towards the batterer. Other responses related to their consequential experiences of hatred for him, confusion about whether to leave him or to give him another chance, breakdown of communication and the woman's inability and unwillingness to have sex with him. Rape within the battering situation is often camouflaged because sex between people involved in an intimate relationship is not generally considered ever to be 'forced' in the sense of 'normal' rape between strangers.

'... he tried to get us to make love, I refused and he forced me ... sometimes when I think about it, I hate him more.'

Masego.

In:

- 14 incidents the women experienced a negative change of feelings towards the batterer.

'... I broke off the engagement.'  
Masego.

'... my love for him wasn't the same as it used to be.'  
Matshediso.

'... I loved him less until the baby was born because I didn't trust him anymore.'  
Cleopatra.

'... I didn't feel towards him like I used to - I still love him, but no longer a lot.'  
Boitumelo.

In:

- 11 incidents the women had experienced the cessation of love for the batterer.

'... I didn't want him around me - he irritated me - I didn't want him to touch me, I wanted nothing to do with him.'  
Sunshine.

'... I kept most of my time keeping quiet - I thought that maybe that was what he wanted - I hated him.'  
Reba.

'... by this time I didn't love him anymore ... I hadn't for five years ... I went through a stage where I hated him which started more battering but so then I became nice to him again - I had no feeling for him though.'  
Yvette.

'... love ended.'

Mmaletsatsi.

In:

- 5 incidents the women felt that the relationships had not changed much.

'... I still love him the same way as before.'

Peta.

'... I still love him, he makes me pity him.'

Basadi.

'... I still loved him but was always hurt and asking God to help this man so we could live properly together.'

Queen.

'... in my life I didn't ever want to divorce but these days he doesn't even help with the children ... I would like us to co-operate and stay together.'

Janet.

5. In response to the question relating to their present feelings about the past incidents, the women's main responses suggested dissatisfaction with the situation. Other responses either related to resignation to the situation,

'... he seems to be a type of person who'll never change- if it happens again I won't have mercy anymore ... but I must give him time to play around because he still seems, to want to play.'

Linda.

an attempt to find the cause for the battering located outside the relationship,

'... I sometimes think that he must be ill and can't be the same person.'

Mmanko.

or a realisation that perhaps they could have taken a different 'decision':

'... I wish that I'd left him then, but it was so difficult.'

Boitumelo.

In:

- 15 incidents the women said that they were not happy.

'... these days when I am with him and I think about these things I just feel as if I'm with another woman - I feel no love like I used to for him.'

Doreen.

'... when I think about the life I lead and what happened I am really sore. I'll end up mad because I think about what he does to me too much. It isn't normal life.'

Boitumelo.

'... I feel extreme hurt -if I'd left after the first time, things wouldn't be as bad as they are now.'

Queen.

In:

- 8 incidents the women felt angry about what had happened.

'... I get very angry and wish that it mustn't happen that he should come here ...I wouldn't let him in.'

Boipelo.

'... the hate sometimes comes ... now I just see him like another person but I get angry and worked up when I think about the things I could have done.'

Masego.

In:

- 5 incidents the women felt that they had 'got over' the worst.

'... it's out of my heart now, I'm married and so is he.'  
Mavis.

'... I feel I've done the right thing.'  
Kefilwe.

In:

- 4 of the incidents the women said that they no longer had any feelings about the batterer.

'... I have no interest in him.'  
Matshediso.

'... it was one of his episodes.'  
Angela.

#### Frequency of battering

24 incidents were able to be described in terms of frequency. Of these:

- 12 women were hit more than once; in
- 49 incidents women could not remember the frequency; and
- the average time battered was 5 times.

#### Summary

Patterns which emerge from this study indicate that:

- in 68% of the incidents there was no external cause, the battering related directly to the relationship between the batterer and the woman;
- 63% of the incidents occurred in the communal home;
- 56% of these occurred during 'domestic'<sup>6</sup> times; and
- 46% of the incidents occurred while there were children present.

These suggest that there needs to be a societal change in attitude towards the battering of women. This because the 'non-involvement' stance, based firmly on the notion that 'non-interference in private domestic matters' is the best approach,

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<sup>6</sup> When the family is together.

fails to acknowledge that the domestic situation may itself constitute a life-threatening prison for the battered woman. An awareness of what can constitute domestic relationships is required before societal responsibility may be expected to extend into the domestic sphere.

A4.

Police statistics for the period January 1986-February 1987<sup>1</sup>

Police cooperation was generally poor although in the initial stages the enthusiasm to assist in the research was clear. As a result, information obtained is not consistent and does not cover the two year period (January 1986-January 1988) as initially intended. However, it is hoped that a rough idea of the ratio will be noted of cases withdrawn by the complainant. In the majority of cases the complainant is the woman.

Assault cases

<u>Month</u>	<u>Total no.</u>	<u>Int.relt.</u>	<u>Mard.</u>	<u>Cohab.</u>	<u>Complt.</u>
Jan-Dec. 1986	-	-	21	-	Female (18)
Jan-Feb. 1987	34	13	3	10	Female (34)

<u>Month</u>	<u>Withdrawn</u>	<u>Cust.Ct.</u>	<u>Sub.Ct.</u>	<u>Fine</u>
Jan-Dec.				

<sup>1</sup> Meaning of abbreviations:

Mard.	-	Married.
Cohab.	-	Cohabiting.
Complt.	-	Complainant.
Int.		
Relts.	-	Intimate Relationships.
Cust. Ct.	-	Customary Court.
Sub. Ct.	-	Subordinate Court.
AOG.	-	Admission of guilt fine.
PO.	-	Peace Order.
W&D.	-	Warned and Discharged.
Unactd.	-	Unaccounted for.
Peng.	-	Pending.

1986	12	- <sup>2</sup>	-	4
				AOG P50 3mths P30 PO P20 P10 both the resp. & complt.

Jan-Feb. 1987	9	3 2 W&D 1 lashed	1 2mths P100	-
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Month                      Unacctd. or pendg.

Jan-Dec. 1986	4
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<sup>2</sup> But one was advised by the police to approach the customary court.

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