

Case Study: Legal Action to Stop Hotels Discriminating Against Women in Zambia

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Introduction

This case study takes a personal look at legal action taken against a *Zambian* hotel in Lusaka during the period 1984–1992 to stop their discrimination against women in access to the hotel. The hotel in question was the Hotel Inter-Continental in Lusaka, which – like other expensive hotels in the country – had a well-known policy of preventing ‘unaccompanied women’ from entering the hotel, or otherwise from certain parts of the hotel (especially the bar).

I challenged this discriminatory practice as a *Zambian* citizen, during the period 1984 to 1992, when I finally obtained a High Court order that such practice was unlawful and in contravention of the human rights provisions of the constitution, and that such practice must be “scrapped forthwith”¹

I begin by looking at my first brush with the hotel’s discriminatory practice, the subsequent raising of a complaint with the Investigator General (the *Zambian* equivalent of an ombuds), and the unsatisfactory outcome of this action. I then go on to consider a second similar incident, which caused me to petition to the High Court. This is followed by an account of the court case, the judgment and the events which followed.

The final sections look at some of the issues arising from this case, and its wider implications for legal action as a means towards women obtaining their right to equal treatment under the law.

This is a well documented case, and the titles of almost all of the documents referred to are listed; what makes this study different from others is that I write autobiographically, not in any spirit of self-congratulation, but in the acknowledgement that the work of this case was an intimate part of my own life, and my family’s life, for eight years. The realities of challenging the law, as a feminist activist, include the personal experience of coming up

against a wall of resistance and opposition. While it is possible to manage this and to strategize against the psychological and political impact of this opposition, there is need to recognize the multiplicity of roles, such as litigant, petitioner and witness, which an African feminist must assume when daring to enter into the field of legal activism.

The First Case of Discrimination

The Incident

In the late afternoon of 4 February 1984 I went, with my husband Roy Clarke, to the Inter-Continental Hotel in Lusaka, Zambia, to collect two of my children from a children's birthday party which had been held within the hotel. I got out of the car at the main hotel entrance, while my husband drove with our toddler to wait in the hotel car park while I went into the hotel to fetch our two daughters. Although aware of the 'no unaccompanied women' rule which was part of the policy of surveillance over women's access to hotel spaces in the evenings, I had not expected this rule to be operating in the afternoon, and during daylight hours.

In this I was wrong. As I tried to enter through the main entrance, the security guard addressed me, saying "Where are you going, madam?" to which I replied "I'm going into the hotel." He immediately said "You can't go in, you are unaccompanied." I was shocked and replied "Rubbish", and walked past him. The security guard then grabbed my arm from behind, pulling me back. Being a fit young woman with some training in karate, I threw him off, which caused the security guard's hat to fall to the ground, whereupon he instinctively stooped down to pick it up. I took advantage of the guard's distraction and ran into the hotel.

The security guard, who had followed me into the hotel, shouted and other hotel personnel came onto the scene. The duty manager was called, and I attempted to lay a complaint concerning the treatment I had received. However, instead of any attempt at redress from the duty manager, I was informed that I had transgressed the hotel regulation that a woman could enter the hotel only if accompanied by a man.

All this took so long that I sent my daughters to go and fetch their father, who then came to find out what had happened. Upon his appearing upon the scene, I instructed him to go at once to the nearby police station and return with the police. This is because, by then, the hotel duty manager had admitted that the security guard had transgressed hotel instructions because

he was not supposed to physically accost “unaccompanied women.” Roy duly returned with four policemen, one of whom appeared to be an inspector, and the other three appeared to be constables. I explained my experience to the police, and laid a complaint against the security guard for physical assault, and against the hotel for refusing access to the hotel without reasonable grounds. However, the police treated me as the offender. Despite my account of having been (literally) manhandled by the security guard being fully and enthusiastically corroborated by the security guard himself, the police warned me to immediately leave the hotel premises.²

When I told the police I would be lodging a complaint about their attitude, the police inspector in charge told me that I could report to anybody their refusal to accept the complaint of assault. They further warned me that if I did not immediately “shut up” and stop “making a nuisance of yourself,” they would lock me up in the cells for the night.

In the face of the police threat, I asked each of the policemen to provide their name, rank and number (their numbers were not displayed on their uniforms). One junior officer (a constable) gave his name and number grudgingly, but the others refused to do so. At this stage I chose to leave the premises of the hotel, for fear of the safety of my unborn child (I was four months pregnant at the time).

Letters, Appeals, Delays: Action on First Hotel Incident

Four days later, on 8 February 1984, I sent a letter, complaining about my treatment at the hotel, to the Executive Secretary of the Women’s League of the United National Independence Party (UNIP), the ruling party of the then one-party state. No reply was ever received to this.

This same letter was also copied with covering letters to various public institutions including the Investigator General, Minister of Home Affairs, Commissioner of Police, Minister of Tourism, Hotel Board of Zambia, Hotel Inter-Continental Proprietors and Anderson Security Systems Ltd (which was the company which employed the security guards at the hotel).

Complaint to the Hotel Proprietors and Others

Six days later, I wrote a letter to the President of Hotel Inter-Continental in New York, complaining of non-response from the General Manager of the Lusaka Inter-Continental Hotel to my letter of 8 February 1984 which was copied to the hotel management. There was no reply from New York either.

However, the Acting General Manager of the Lusaka Inter-Continental Hotel wrote two letters on 14 and 27 February 1984, without reference to the New York head office. In the first letter, which I received after I had already written to New York, the local hotel management promised that they “will do everything possible to investigate this unpleasant incident with the Anderson Security Systems Ltd”.³ However, in the second letter the manager invited me to go to their hotel to be informed of their findings. I replied in a letter in which I refused this invitation on the following grounds:

- i. The hotel had not put their findings in writing, which should have been copied to all interested parties mentioned in her letter of 8th February 1984 for their consideration;
- ii. I continued to run the risk of being molested and humiliated again by the hotel security guards, since I had been given no assurance that this would not happen;
- iii. The manager had not apologized for what he called an “unpleasant incident” that he had investigated with the Anderson Security System Ltd;
- iv. The manager was evidently treating the “unpleasant incident” as an isolated and private matter which he considered warranted no more than a “verbal explanation.”

I concluded this letter by inviting the hotel management to reply in a satisfactory manner to the issues summarized above. They did not reply.

2.2.2 Complaint to Lusaka Police Commanding Officer

On 27th April 1984 I wrote a letter of complaint to the Lusaka Central Police Commanding Officer for police failure to take action in my case of physical assault and unlawful exclusion from public premises. I pointed out the unsatisfactory aspects of the police:

- i. The police refusal to take a statement from me.
- ii. The four policemen on the incident scene constituted themselves as a kangaroo court by declaring that the hotel had no case to answer and yet the hotel manager on duty at the incident scene admitted that it was hotel policy to prevent unaccompanied women from entering the hotel.
- iii. The police had taken no action against the assailant on the ground, they said, that I had no physical signs of injury. This determination

was made even after the assailant had admitted in their presence that he had indeed physically attacked me and even boasted that he habitually assaulted unaccompanied women who tried to enter the hotel.

- iv. The police had pointed out that the security guard was wearing a uniform, and I should always obey instructions from a person wearing a uniform.
- v. The police refused to disclose names and ranks of all the police officers present.

I received no reply from the police to this letter.

2.2.3 Appeal to the Investigator General

When I followed up the case at the office of the Investigator General, who had also been sent a copy of my complaint of 8 February 1984, and asked to investigate, I was told in writing (1 October 1984) that the Investigator General had declined to look into the case, claiming that he had not been directly asked (but he had), and that the ruling party UNIP was already looking into the matter (it wasn't).

Undeterred, I wrote back to the Investigator General putting my views on why he should intervene in the case as part of their mandate. I specifically pointed out that:

- i. The original letter of complaint, although addressed to the UNIP Women's League, was not only copied to him, but included a covering letter addressed to the Investigator General that directly requested the Commission to investigate my complaint about the unwarranted and unlawful discrimination against unaccompanied women being practiced by the Lusaka Inter-Continental Hotel.
- ii. The Commission's assertion that the UNIP Women's League were handling the matter was false because they had not replied to my letter of 8th February 1984 and since then, through Press reports of the Zambia Daily Mail of 24 and 28 August 1984, the Chairperson of the League commended the Hotel's action of barring entry to their premises to unaccompanied women because they are 'home breakers', contradicting her Executive Secretary, who had given the opposite view to the same newspaper.
- iii. Since the UNIP Women's League clearly had conflicting views on

what constitutes women's rights, and had not responded to my complaint, it was essential that the Commission for Investigations took interest and action in this issue on women's constitutional fundamental rights.

My letter had its effect because, notwithstanding the Investigator General's earlier dissociation of himself from the case, he wrote to me on 10 June 1985 (more than a year after the complaint was originally put before him), agreeing to attend to my complaint, and inviting me to a hearing. Subsequently, at this hearing, I verbally re-put my complaint before the Investigator General and a panel of his colleagues, and answered their further questions on what exactly had happened, and why I considered this to be a case of illegal discrimination.

Despite now having finally persuaded the Investigator General to properly investigate my complaint, I did not have any feeling of optimism. It was obvious that the case had been taken on reluctantly, after excuses not to do so had been shown by me to be inadequate. Furthermore, apart from within my own family, I could find little support or enthusiasm for pursuing the case – rather there was an attitude that I was making a fuss about a minor matter, and there were more important issues in women's rights than trying to gain access to an expensive hotel.

The Outcome

On 23 March 1987, more than three years after the complaint was made, the Investigator General wrote to me giving a ruling in my favour. He stated that the Ministry of Tourism had agreed with the Investigator General that it was wrong for hotels 'to discriminate against women in this wholesale manner'.

According to his letter, the Investigator General had advised the Ministry of Tourism to advise the Hotels Board to advise the hotels that they should not discriminate in this way. It may be noted that the Investigator General did not think to extend his advice to the police, that they should in future ensure that their actions on such issues should be guided by laws made in parliament rather than laws made by hotels.

I did not feel any sense of victory about this outcome. Although I was subsequently given a copy of the policy position and directions given by the Ministry of Tourism to the Hotels Board, there remained the question of whether the Board ever formulated new regulations and gave these to all hotels. And if the Hotels Board did ever make a ruling on the matter, did

the hotels ever take any notice of it? It looked rather as if the ruling by the Investigator General had no force, and no means of enforcement.

I did not attempt to celebrate or publicise the outcome, because it seemed to be little more than a piece of deliberately ineffective lip-service. And sure enough, as time went on, it became clear that hotel discrimination against women continued to follow the same pattern as previously, as is evidenced by the second similar instance of discrimination which I experienced, and which is recounted below.

The Second Case of Discrimination

The Incident

On 1 February 1992, eight years after the original incident, I had an almost identical experience at the same hotel. I had gone to the hotel in the morning for an all-day meeting to discuss strategies for promoting women's rights. I was one of the organizers of the meeting and both myself and my husband were amongst the main speakers.⁴ The meeting was held in a conference room within the main hotel building.

After the meeting had ended, late in the afternoon, my elder sister Christine and I decided to relax and review the meeting at the hotel's Luangwa Bar (my husband Roy had already gone ahead to the bar). However, as we approached the bar, we found a security guard posted at the door who denied us entry. When I asked why, he replied that we were unaccompanied. In an apparent effort to be helpful, the security guard asked us if we knew anybody who was already in the bar. The implication of this question was that, if there was a man we knew within the bar, he could invite us in, so that technically we would be "accompanied".⁵

It was at this point that the incident took on the character of a test case, because my husband was already at the bar, and was watching the proceedings from a few meters away. However, neither I nor my sister said that we had come to join him, and my husband stood there and stared at us as if he had never seen us before in his life. All three of us had immediately recognized that this was an issue for all women, and that it had to be treated as such from this point on. In other words, I had just been given the basic material for a test case.

Unlike the previous incident eight years earlier, there was no violence from the security guard, nor did we make any attempt to push past him. Instead, in the company of Christine and Roy, I turned and headed for the reception desk and asked to see the duty manager.

The duty manager was quite polite, but nonetheless defended the behaviour of the security guard, who he said was merely doing his job. He was at pains to explain that it was hotel policy to exclude “unaccompanied women” from the Luangwa Bar. After some discussion of an essentially circular and unproductive nature, the duty manager invited all three of us to come with him to the privacy of his office, where we could sit comfortably and where he could explain the position in more detail.

I was aware, from several of my friends’ accounts of similar instances, that in recent times the standard hotel response to such complaints was to offer the complainant compensation in the form of a free dinner at the luxury restaurant in order to settle the matter. The standard story from the manager would be that the exclusion rule was directed at preventing women prostitutes/sex workers from entering the premises, but this was not intended to embarrass “respectable” customers, and therefore the complainant should accept the hotel’s apology and compensation for any embarrassment she had suffered.

I made it clear to the manager that I considered this discrimination was more than an insult to me as a person, but was an insult to all women in Zambia, and therefore that I was not in a position to sell the rights of all women by eating an expensive dinner on their behalf. I therefore refused to hear the duty manager’s further explanation in his office, but instead informed him that I would hear his further explanation in court.

It may be noted that, since the first incident eight years earlier, there seemed to have been some changes in the hotel’s regime of discrimination. The discrimination now operated at the cocktail bar within the hotel, and not at the main entrance. Secondly, there was no physical assault upon the hotel guest. Thirdly, the approach of the duty manager was more reasonable and conciliatory. But despite this rather different regime, the same discriminatory rule was operating, albeit by means of a less vicious form of administration.

On the other hand, some aspects of the discriminatory rule had become more blatant: the newly established casino, which was in a building separate from the main hotel building, had a large plastic notice screwed onto the wall outside the entrance announcing ‘Unaccompanied Ladies Prohibited’.

Follow-up Action: Petition to High Court

In March 1992 I lodged a petition with the High Court of Zambia, demanding the following declarations against the Inter-Continental Hotel:

- i. That I had been and was likely to continue to be unfairly discriminated against on the grounds of sex.
- ii. That I and indeed any person female or male was entitled to human rights and that it was therefore unlawful for the hotel to refuse permission to public places on the grounds that a person was female or on the ground that a female was not accompanied by a male.
- iii. That the ministerial policy position and the Investigator General's ruling attached to my affidavit [in support of the Petition] be a pronouncement of the law which should be observed and enforced in all hotels, motels and other institutions, punishable by contempt if not observed.
- iv. That all public institutions be open to all people irrespective of sex or other discriminatory attributes, provided that they had not breached any written laws or regulations and that all institutions whose policies and regulations result in female harassment are against the law, against public policy interests, and against international conventions to which Zambia is party.
- v. That an injunction be issued restraining the respondent hotel whether by itself, its servants or agents, or otherwise from turning away any unaccompanied woman from its hotel or doing any other act which amounts to discrimination of people on the basis of sex or marital status.
- vi. That extraordinary and exemplary costs be awarded to the petitioner for the embarrassment and humiliation caused ; and
- vii. Costs.

I must say that this “second phase” of the same issue gave me renewed enthusiasm to tackle the hotel. In effect, I had been defeated in my previous efforts, mainly because I had had an overly optimistic view of the powers of the Investigator General. I also had optimistically thought that the Women's League of the ruling party would be interested in furthering women's rights. As time went by I came to a better understanding of the Women's League as a subordinate wing of the party, largely concerned with supervising and perpetuating the subordination of women within the party, as well as within the wider society, apparently as part of a policy of supporting what they imagined to be “traditional values.”

So I now saw the court as a better and more open forum for airing this issue, and even getting justice. And in the intervening eight years my life had changed considerably. I was no longer an employee of the University of Zambia, having resigned in disgust after various struggles concerned with gender discrimination, just as I had previously resigned from being a secondary school teacher employed by the Ministry of Education for similar reasons.

I had now embarked on a career as an independent consultant on gender and development. This began after the local United Nations Development Programme (UNDP) office, having noticed my gender activism, in 1988 asked me to review their entire country programme in order to make recommendations for better attention to gender issues. By 1992 I was becoming quite well known in this field, and had even published my 'Longwe Framework' which provided a way of interpreting the process of women's empowerment.⁶ I now had influential friends in the sisterhood of the women's movement in many countries.

I was ready for another fight!

The Court Case

The case was heard on 30 July 1992 in the High Court, before Justice Musumali. I was represented in court by Ms Lillian Mushota of Mushota and Associates, who had been provided *pro bono* by the Women's Rights Committee of the Law Association of Zambia. Representing the Inter-Continental Hotel was Mr. Mumba Malila of Russel, Cook and Company.

One most unusual aspect of the case was that the respondents did not question any aspect of my account of the treatment I had received at the hands of the hotel in the early evening of 1 February 1992. On the contrary, the argument of the hotel was entirely concerned with showing that they were entitled to treat any female visitor in this way, and that such treatment was not discriminatory.

The case had only two witnesses. Firstly there was the petitioner, myself, who was asked at length to re-affirm the facts of the incident as recounted in my affidavit. Secondly there was the witness called by the hotel, the Chief of Hotel Security, who was also a retired police officer.

The questioning and cross-examination of the Chief of Hotel Security was undoubtedly the highlight of the court hearing. Questioned by the hotel's lawyer, the Chief of Security stoutly maintained that the prohibition of

unaccompanied women was indeed a rule, and it had been instituted to keep prostitutes out of the hotel. Prostitutes had a tendency to “cause a fracas”, especially in the bar, and that was why it was hotel policy to keep them out. When asked by my lawyer whether he considered all unaccompanied women to be prostitutes, he answered “yes” without pause, and with some conviction. The answer caused a general murmur of amusement from my (few) supporters in the gallery.

At this point the hotel’s lawyer jumped up and pleaded with the judge that the witness may not have properly understood the question, due to his limited command of English. The judge asked for the witness’s mother tongue, which he said was Lozi, and the judge asked if there was present in court any member of the public who could pose the same question in Lozi. So now the lawyer had cleverly engineered an opportunity for the Chief of Security to change his opinion, and indirectly delivered a heavy hint to him that he would be wise to do so. A member of the public duly obliged to serve as a translator, and the same question was now posed in Lozi to the Chief of Security. However, the same answer was obtained, causing renewed mirth and open laughter, with the hapless Chief of Security seemingly rather angry and puzzled at so much mirth at his expense.⁷

The main arguments put forward by my lawyer were as follows:

- i. The treatment I had received from the hotel was a violation of my human rights, as given in Articles 11, 21 and 23 of the 1991 constitution. Article 11 guaranteed all rights given in the constitution irrespective, *inter alia*, of sex; Article 21 guaranteed freedom of movement; Article 23 prohibits discrimination on various grounds, including sex, in various forms of public provision.⁸
- ii. The hotel is a public place, and must follow the law in its provision of services to members of the public patronizing its premises.
- iii. Even if the court were to hold the hotel to be private premises, they would still be subject to Article 23 of the constitution in the light of the definition of a ‘person’ under Article 11 3 (1) of the constitution.
- iv. Zambia has acceded to *African Charter on Human and Peoples Rights* and to the *UN Convention on the Elimination of All Forms of Discrimination Against Women*, where the behaviour of the hotel contravened articles 1-5 of the former and article 3 of the latter. Furthermore, the Bangalore Principles of 1988, which had been formulated by Commonwealth Chief Justices, had agreed on

the relevance of looking at principles which had been ratified by a government in an international convention, even where this had not been domesticated into local law.⁹

In answer, the arguments of the hotel's lawyer were as follows:

- i. The principles outlined in the constitution were for the control of government and government institutions, and were not applicable to the hotel, which was not part of the government.
- ii. Even if the court were to hold that the principles of the constitution were applicable to all public places, these principles would still remain inapplicable to the hotel, since the hotel was private property.
- iii. As a private property, the management of the hotel had absolute discretion concerning whom they might allow to enter, and whom to exclude.
- iv. Even if the hotel were subject to the requirements of Article 11 of the constitution by which people were entitled to freedom of movement, the constitution did not give unlimited freedom of movement. On the contrary, the hotel had the right to exclude unwelcome visitors, and visitors also have the duty to abide by all reasonable conditions obtaining on the premises.
- v. The hotel had previously had trouble with prostitutes causing a fracas on the premises, and it was their decision to deal with this problem by excluding unaccompanied women, which was an entirely reasonable regulation in the circumstances.
- vi. The rule excluding unaccompanied women was not discriminatory against women, since a woman was excluded on the grounds that she was unaccompanied, and not on the grounds that she was a woman. In fact other women, if accompanied, were admitted.
- vii. Sara Longwe had no cause for complaint, because according to her own account she had previously been excluded from the hotel in 1984, and therefore must have known the hotel rules.
- viii. The provisions in the cited international conventions had no relevance since Zambia had 'unfortunately failed to pass an implementing statute'.

The Judgment

Judgment was given on 4 November 1992. The judge agreed with all of the legal arguments put forward by the petitioner's lawyer, and found for the petitioner. The main points of the judge's decisions were as follows:

- i. That, since the exclusion of women on the basis of being unaccompanied contravenes the human rights provisions of our constitution, this hotel regulation is ordered to 'be scrapped forthwith'.
- ii. On ordinary and exemplary damages, there was no evidence adduced in either category, so a token amount of only five hundred kwacha is awarded.¹⁰
- iii. I was awarded the costs of bringing the action.

In his preceding arguments to justify the above decisions, the judge systematically demolished each of the hotel lawyer's arguments. The judge's main arguments are summarized below:

- i. On the basis of cited legal authority and the wording of the document itself, it is clear that the constitution is not applicable only to the government, but to all people.
- ii. The hotel is open to the public, and must be considered a public institution and not private property.
- iii. The exclusion of unaccompanied women was not a reasonable way of avoiding a fracas of women fighting over men in a bar, a problem which should instead be taken care of by invoking the public laws on law and order.
- iv. The judge confessed that he was "quite amused" at the hotel lawyers attempt to persuade him that the hotel rule was not discriminatory against women. It was clearly discriminatory, since there was no equivalent rule to exclude unaccompanied men. Therefore Sara Longwe was clearly discriminated against, on the basis of her sex, in both the 1984 and 1992 incidents.
- v. According to the Bangalore Principles of 1988, where the state has ratified an international convention but not domesticated them into statutory law, then the principles enshrined in this convention may be relevant to the determination of a case in the circumstance where statutory law is not sufficiently clear to make such determination, and may be cited to support such judicial determination.

The last point is rather interesting, and may seem irrelevant since the judge had determined the case entirely on the basis of the hotel's clear contravention of the constitution, and was not relying on the Bangalore Principles.

However, we may perhaps presume that that he included a lengthy statement of the Bangalore Principles, and an argument to support their potential relevance in this petition, to allow for the possibility that his judgment might subsequently be brought to appeal. If an appeal court judge were instead to decide that the provisions of the constitution were not clear enough to provide the basis for determining the case, then Judge Musumali is here laying the ground for the use of the Bangalore Principles to establish the general relevance of international conventions in determining human rights issues in cases where local law may provide insufficient basis to bring the case to clear determination.

The Aftermath: Did Hotels Stop Discriminating?

Since the Inter-Continental Hotel was evidently quite immune to the earlier ruling from the Investigator General, and since it is not unlikely that women can call upon the police to take action against discrimination against them, the next question is whether the hotel has obeyed the court injunction.

Evidence from friends and colleagues are that unaccompanied women have been allowed into the Luangwa Bar from the day of the judgment. However, my husband discovered a month after the judgment that the notice prohibiting "unaccompanied ladies" remained attached to the wall at the casino entrance. He went and spoke to the General Manager about this, drawing the manager's attention to the judge's ruling. The Manager claimed that the judgment applied only to the Luangwa Bar, and not other parts of the Hotel. Roy explained to the general Manager that the ruling applied to all parts of the hotel, to all hotels in Zambia, and indeed to all public places in Zambia. The next day the notice disappeared from the casino entrance.

Even given the evident ineffectiveness of the Ministry of Tourism and the Hotels Board in controlling hotels in the treatment of women, the main hotels in Zambia could scarcely claim ignorance of Musumali's judgment, and its implication for all hotels, since the case was well reported in all three of the daily national newspapers, along with some discussion and editorial comment. Nonetheless, there have been continuing reports of occasional misbehaviour by hotels. The most notable of these was the attempt by a security guard to exclude two young women, Ms Elizabeth Mwanza and

Clotidah Mulenga, from the McGinty's pub which forms part of the Holiday Inn at Ridgeway in Lusaka. Particulars of the case are that the two women, who attempted to enter the pub at 20h00 On the evening of 8 November 1996, were told by the security guard at the door that they could not enter the pub because they were 'unaccompanied'. They then went with the security guard and to the reception in order to complain to the duty manager. But the duty manager never appeared, and apparently declined to appear.

Subsequently the two women petitioned the High Court, asking the judge to make much the same declarations as had been earlier made by Judge Musumali in response to my petition. In lodging this petition, the two women had my support and my encouragement, and I assisted them in finding supporters who were willing to pay part of the funds to pay the lawyer who would take the case.

The case was heard by Judge Peter Chitengi, who delivered his judgment on 24 June 1999, more than two years after the incident at the hotel.

In this court hearing, and perhaps forewarned by the earlier embarrassment of the Inter-Continental Hotel, the hotel's lawyer did not make the 'mistake' of not questioning the evidence, nor did he admit that all unaccompanied women were denied entrance. Instead he claimed that the policy was to refuse entry to known prostitutes and any person appearing drunk and disorderly. In the case of Ms Mwanza and Ms Mulenga, the claim was that they behaved as if drunk and disorderly, evidence of which came from the security guard that they had manhandled him and physically hauled him off to the reception, for an explanation from the duty manager.

As for the Deputy Manager who was a witness in court, he claimed to have no knowledge of the incident at the time, and only became aware when the complaint was brought before the court.

The petitioners' lawyer was at pains to counter the claim that the petitioners were drunk, with evidence that they were respectable young business women who did not take alcohol, and they had brought this case especially because they had experienced discriminatory behaviour several times previously, and they had reached the end of their patience with the hotel. The petitioners' lawyer also referred the judge to the earlier 1992 ruling from Judge Musumali that excluding women from admission to a hotel on the basis that they were "unaccompanied" was discriminatory and unconstitutional and that the judgment had directed all hotels stop such discrimination.

The main points made by the judge were that:

- i. He accepted the evidence from the security guard that the girls appeared drunk and behaved in an unruly manner, and that they had manhandled him. The judge accepted this evidence on the basis of his opinion that ‘this witness was a simple man and struck me as incompetent of fabricating the story’ (*sic*).
- ii. He considered that further proof of the security guard’s honesty was that he was quick to admit that he asked the two women whether they were accompanied by a man.
- iii. Although the “Longwe case” was “not reported in any of the Zambia Law Report Volumes”,¹¹ he was “well aware of the Longwe case”, where “Sara Longwe was totally barred from entering the hotel, and did not brow beat her way into the hotel.”

The reader does not need to be a legal expert to see that the above argument is inadequate in various particulars, to the point of being factually incorrect. On the basis of this argument the judge ‘dismissed the petition with costs to the respondents to be taxed in default of agreement.’

Subsequently I tried to persuade the young women to lodge an appeal, for which I had funding offered by an international women’s rights organization, *Equality Now*. However, the two women declined, on the basis that they were thoroughly fed up with the public misrepresentation of the case by the hotel, and very skeptical of any Zambian court delivering justice. (They actually were a pair of established and fairly prosperous young business women, and perhaps understandably did not want to attract any more of the negative publicity which had been inflicted upon them by the court.)

Discussion of Issues Arising *Inadequacies in the Law*

The different treatment in court of the Longwe petition, as against the Mwanza-Mulenga petition, of course leads the reader to the trite observation that the law may receive very different interpretation in different courts. A main difference in the judgments may be put down to the different ideological orientations of the judges concerned, where the (late) Musumali was known as a liberal judge with a special interest in human rights cases, whereas the (late) Chitengi was of the opposite persuasion (to put the matter as politely as possible).

One limitation in the constitutional protection against discrimination on grounds of sex in Article 23 is that this protection is qualified by exceptions

from protection in the areas of marriage law, personal law, inheritance law and customary law. These qualifications were not cited in either of the cases reported above, although perhaps smarter lawyers might have made use of them. As is discussed below at Section 4.2 of this Case Study, the Chief of Security's claim, in the Longwe case, that "all unaccompanied women are prostitutes" is typical of the traditional patriarchal perspective.

It should be noted that the favourable judgment in Longwe's case followed in large part from her lawyer's success in establishing that the hotel is a public place, over the respondent's lawyer's claim that it was a private establishment. This was in the context where the constitutional protection is given only in public places, institutions or facilities. By the same token, therefore, there is no law to protect women from discrimination in private places, such as the home, or private clubs.

In addition, the (somewhat partial) protection against gender discrimination provided in the constitution is couched in very general terms, so that it is quite difficult to prove that gender discrimination has actually happened in practice. What is clearly needed is anti-discrimination legislation which defines gender discrimination not only in general terms, but clearly outlaws its various different forms in different sectors and situations, in private and in public, and in known problem areas.

Also, as is discussed below at Section 4.3, there is the difficulty in mounting a test case, which also has limitations as a means towards changing behaviour.

The Influence of Customary Law and Tradition

Here we need to look a bit more closely at the answer from the Hotel Chief of Security, in the Longwe case, where he claimed that all unaccompanied women are prostitutes. Although this answer may seem ridiculous from a Western point of view, is understandable from a traditional Zambian patriarchal point of view, where women are supposed to be under the supervision of a husband or other supervising male relative. Therefore, from this point of view, an unaccompanied woman entering a hotel without a supervising male is self-evidently out of control, and may be presumed to be a prostitute/sex worker.

This perception also tallies with the opinion of the Chairperson of the Women's League (quoted in Section 2.2.3 of this Case Study) who was quoted in the newspaper as congratulating the hotel for excluding 'unaccompanied' women, since these women are "home-breakers." Very similarly, we here see 'unaccompanied' treated as a sign of immorality. We further see the opinion

that such women are not being properly supervised. We are implicitly being told that unaccompanied women should be controlled by the appropriate supervising male; such women are considered to be out of control. Equally implicit is the Chairperson's discriminatory attitude that there is no objection to the presence of "unaccompanied" men in the hotel who are the presumed target of the "unaccompanied" women!

Here it has to be borne in mind that Zambia has a dual legal system, although statutory law takes precedence over the (unwritten and uncoded) customary law. Most Zambian citizens' experience of the law is in local courts where matters of personal law, marriage law, divorce and minor infractions are settled under customary law. Under customary law a woman is generally treated as a minor, under the control of a male husband, father or other male relative. In customary law, adultery is an offence, but in a polygamous system it is an offence committed by women against their husbands. A man can only be held to have committed adultery if he sleeps with another man's wife. A daughter, even below the legal age under statutory law, may be given away to a man in marriage without her consent, and for payment in cattle or cash (known as lobola). A man who impregnates an unmarried girl can settle the matter by paying "damages" to her parents.

Although modern urban Zambia may ostensibly be governed mainly by statutory law, many of the mores which govern social and institutional behaviour arise from customary law. This influence of customary law is particularly relevant in the area of gender relations. Thus the social relations in the workplace and other institutions may perhaps be mainly understood in terms of modern and rather Western patterns of organization and behaviour, but the pattern of gender relations is often better understood as a reflection of the traditional domestic pattern of gender relations.

The Need for Better Mobilisation of the Women's Movement

Despite some limited support from women's organisations in Zambia, my campaign against the Inter-Continental Hotel was mostly a lonely struggle. However, a lawyer to represent me in court was provided by the *Women's Legal Aid Clinic* of the Women's Rights Committee of the Law Association of Zambia, and in this way the case was supported by Zambia's women lawyers, who in 1991 established the *Women's Legal Aid Clinic*.

The importance and place of a test case in furthering women's rights is apparently not well understood amongst women's organisations, and there

seemed to be a common perception that this was “Sara Longwe’s Case” rather than a Women’s Rights Case. For example the newsletter of a regional women’s legal research association persistently referred to “Sara’s Longwe’s Case”, and saw no need to become involved as an organisation; instead individual members were invited to “give Sara their support.”

When the same women’s legal research organisation was holding a regional workshop in Lusaka at the same time as the first court hearing (30th July, 1992), the workshop did not adjourn to attend the court hearing. Instead, the members attendance at a so-called ‘women’s rights workshop’ prevented them from attending a High Court session of a women’s rights test case brought by one of their own members! This provides a sad but graphic example of the extent to which the women’s movement was a talking shop rather than an activist organization!

Only six or seven interested members of the local Zambian women’s movement attended each of the two court hearing. This lack of solidarity was in contrast to the support and assistance from the international sisterhood: IWRAW employed lawyers in the United States of America to dig up relevant case material to supply to my lawyer. After the judgment a journalist from *Ms* magazine telephoned me from New York to get the story, and IWRAW’s publication *Women’s Watch* reported the case and commented on its importance.

To understand this lack of local enthusiasm, even amongst women who are (ostensibly) working in the area of women’s rights, one has to understand the extent to which women live in a very oppressive patriarchal culture, to which professional women must conform if they are to advance within the system. There may be very real career penalties against women who in any way publicly identify with feminist principles, or challenge institutionalized male domination.

Conclusion

In retrospect, there were some very positive outcomes from this case. My persistence did finally carry the day, and a woman was able to use a court to overcome the patriarchal establishment, therefore ending a blatantly discriminatory behaviour which was clearly against the law. Not only did this come as a shock to the hotel, but changed the behaviour of all hotels, albeit with the occasional aberration here and there.

From a publicity point of view, it made the front page of the newspapers, and provided a confidence builder for the growing local women’s movement – even if this movement hadn’t shown much enthusiasm at the time! It was

also a shock to the patriarchal establishment, that a woman could use the court to prevent a common form of discrimination which was widely not regarded as such, but instead regarded as a quite “normal” or “traditional” way of treating women.

It has to be admitted that this case was never selected by the women’s movement as a focus for legal action. Instead it was thrust upon me, in the form of an outrageous personal indignity against which I felt I had to take up arms, on behalf of myself but also on behalf of all women who suffer such treatment. It is only as women recognize such indignities for what they are, an assault upon all women, that we can work together to take collective action and properly call ourselves a women’s movement.

Looking back at this “hotel case,” it becomes clear that a well planned legal challenge to discrimination would do better to focus on an instance of discrimination which is more obviously a general obstacle to all women’s advancement, which women can therefore more easily recognize and mobilize around, and which is more difficult for the patriarchal establishment to defend. A good test case needs to be selected to focus on all of these strategic advantages.

But despite its general lack of these strategic advantages, the case nonetheless reveals the potential for using the courts as a weapon for women to obtain their rights under existing law. But such court strategies need to be married to legislative strategies for extending women’s rights in law, including the introduction of anti-discriminatory laws which ban specific forms of discriminatory behaviour

Endnotes

1. This is the phrase used in the judgement, cf. Zambia High Court, Sara H Longwe vs Intercontinental Hotels, 1992/HP/765, pJ20.
2. It was only later that my husband and I considered that the police behaviour could very likely be explained by their probable assumption, when Roy went to the police station to lodge the complaint on behalf of his wife, that his wife was a white woman (since Roy is white). This might explain their complete change of attitude when they arrived at the hotel and found that the complainant was in fact a black Zambian woman. The relevance of this consideration is explored further in Section 4.2 of this Case Study.
3. I did not, at the time, fully appreciate the hotel manager’s indirect attempt to shift the responsibility for the incident onto Anderson Security Systems, as if the hotel was not the one responsible for the incident. This aspect of the treatment of ‘unaccompanied’ women is considered further in Section 4.2 of this Case Study.

4. A report of this meeting is obtainable from ZARD: Roy Clarke and Regina Shakakata (Eds), 1992, *Using the Democratic Process to Promote Women's Rights*, Zambia Association for Research and Development (ZARD), Lusaka. One of the outcomes of this meeting was a letter to the then President Frederick Chiluba demanding reform of the constitution in order to provide adequate protection for women against gender discrimination. The text of this letter is included in the report of the meeting.
5. It should be noted that the phrase "unaccompanied woman" is a euphemism which is far from self-explanatory. It means that a woman who is not accompanied by a man is treated as "unaccompanied." Therefore a woman who is accompanied by another woman is nonetheless "unaccompanied," so that two women who accompany each other are both "unaccompanied." Such exclusion of "unaccompanied women" was entirely at the whim and discretion of the hotel, or even the security guard of a company employed by the hotel but not a member of the hotel staff. Such exclusion was less likely enforced during the daytime, but more likely once the sun had gone down. However, there were also additional categories of women who were excluded from the rule. Excluded from the rule were all white women, and black women holding high rank within government or the ruling party.
6. See, for instance, Longwe, S, 1991. "Gender Awareness: The Missing Element in the Third World Development Project" in Tina Wallace and Candida March (Eds.), *Changing Perceptions: Writings on Gender and Development*, Oxford: Oxfam Publications.
7. Although the Chief of Security's answer caused much mirth, his answer was not without some rational basis. Firstly, he seems to have been aware, more than the hotel's lawyer, that to admit that some unaccompanied women were not prostitutes was fatal to the defence of the hotel rule of excluding "unaccompanied" women in order to keep out prostitutes. Secondly, as is discussed further at Section 4.2, his answer can be understood in terms of a traditional and patriarchal attitude towards women. Thirdly, and rather curiously, my lawyer failed to ask him whether the hotel rule meant that it was acceptable for female prostitutes to enter the hotel provided they were accompanied by a male. The answer to this question might have revealed whether the hotel rule was really concerned with controlling prostitutes/sex workers, or more concerned with controlling the movement of "unaccompanied" women (i.e. more independent women).
8. Here it may be noted that my petition took advantage of a recent reform in the constitution. The inclusion of sex as a specifically mentioned category equally entitled to fundamental rights and freedoms (Article 11) and as a category specifically protected from discrimination (Article 23) were new inclusions in the new 1991 constitution. This was an advance upon the earlier 1973 constitution which did not specifically mention 'sex' amongst the list of categories in the equivalent articles. It was these advances in the (then) new 1991 constitution which therefore provided a firmer constitutional basis for my petition in 1992. I had been one of the voices in the local women's movement which had agitated for years for this change in the constitution.

Prior to 1991, an argument for legal protection from gender discrimination would have had to lean largely on the Zambian government's ratification of various relevant international conventions, most notable amongst which was the 1979 *UN Convention on the Elimination of All Forms of Discrimination Against Women*. However, none of these international instruments had been put before parliament, let alone passed by parliament (and this remains so today, in 2011). Therefore, appeal to the court for protection on the basis of the provisions of such international instruments is normally a waste of time in a Zambia court.

9. A fuller account of both lawyers' arguments, and of the judgment, can be found in the resulting High Court Judgment, 1992/HP/765. 10. Worth about two or three dollars at the then rate of exchange.
11. Here we may note that, although the *Zambia Law Reports* is normally well behind with its publications, the judgment in the Sara Longwe verses Lusaka Hotel Inter-Continental case was made in the same Lusaka High Court in which Judge Chitengi sat, and a copy of the judgment should therefore have been readily available from Judge Chitengi's own High Court Registry.