

**WHEN CULTURE AND THE LAW MEET: AN ETHICAL ANALYSIS OF THE
INTERPLAY BETWEEN THE DOMESTIC VIOLENCE ACT AND THE
TRADITIONAL BELIEFS AND CULTURAL PRACTICES OF THE NDAU PEOPLE
IN ZIMBABWE**

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DECLARATION

I Elias Konyana, declare that

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ABSTRACT

This thesis offers a critical analysis of the interface between culture and law focusing on the impact of the Domestic Violence Act (DVA) (Chapter 5: 16) of Zimbabwe on the Ndaus¹ people's culture. The DVA was introduced in 2007 as a legal instrument to deal with a wide range of gender-based violence problems, including domestic and intimate partner violence.

In order to find out why domestic violence is widespread in Ndaus traditional communities, the thesis goes on to explore and identify two critical factors of Ndaus culture, namely: patriarchy and masculinity as responsible for domestic violence prevalence. Furthermore, the thesis recognises that some of the DVA provisions such as arrest without a warrant, emphasis on separation and lack of adequate supporting resources for survivors are also responsible for perpetuating domestic violence. The thesis thus maintains that in so far as Ndaus culture can be called upon to account for the prejudices suffered by women, the DVA has not effectively improved Ndaus women's lives either. Instead, the existence of the DVA, to some extent, creates a dilemma associated with cultural allegiance for Ndaus women. It is observed that when culture and the law meet, more often than not, it is culture that emerges triumphantly. The breach of confidentiality by law enforcement agents becomes an ethical issue that arises and affects the effectiveness of the law within communities with strong traditional beliefs and cultural practices. Ndaus women are therefore torn between breaching confidentiality by using the law and observing allegiance to their culture. For this reason, the thesis realises that both culture and the law need to be interrogated in order to find the way forward to minimise the prevalence of domestic violence within traditional communities such as the Ndaus. Thus, using three interrelated theories of analysis namely; legal paternalism, African feminist ethics and feminist jurisprudence, the thesis lays out bare the fact that there is need for a paradigm shift in dealing with the domestic violence problem in traditional communities in Zimbabwe. In order to adequately deal with the problem of violence in intimate relationships, the thesis proposes that African feminist jurisprudence be considered as an alternative basis for the construction of legislation against domestic violence. It is hoped that the key characteristics of African feminist jurisprudence which are communalism, compassion and harmony can go a long way in the formulation of a DVA that can reach into the lives of women in all the different traditional communities in Zimbabwe.

Key words: Domestic violence, Ndaus, Domestic Violence Act, paternalism, patriarchy, masculinity, African feminist jurisprudence.

¹ The Ndaus are a traditional group of people located in the south-eastern parts of Zimbabwe along the border with Mozambique. More about their origin and ways of life is presented in chapter 4 of this thesis. A map of their location along the border with Mozambique is also provided. (See page 53).

DEDICATION

To my late grandmother Shambwa Nyowana Ngorima (*Mbuya Munda*) (1902-2012), who lived a full life in the pride of being a Ndau woman

AND

To my parents, Mrs. Dora Konyana and Mr. Johnson Mudio Konyana

AND

To my family: Wife Shoorai and children Blessing, Brighton and Innocent

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It was indeed a long journey; glory to God!

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immuno Deficiency Syndrome
BDPA	Beijing Declaration and Platform of Action
BSAC	British South Africa Company
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CMP	Common Moral Position
DEVAW	Declaration on the Elimination of Violence Against Women
DVA	Domestic Violence Act
GBV	Gender-Based Violence
HIV	Human Immunodeficiency Virus
IPV	Intimate Partner Violence
MDC-T	Movement for Democratic Change (led by Tsvangirai Morgan)
MICS	Multiple Indicator Cluster Survey
MWAGCD	Ministry of Women's Affairs, Gender and Community Development
NDAFA	Ndau Arts Festival of the Arts
NGOs	Non-Governmental Organisations
RSICC	Rome Statute of the International Criminal Court
SADC	Southern African Development Community
SAFAIDS	Southern Africa AIDS Dissemination Services
UN	United Nations
VAW	Violence Against Women
VDPA	Vienna Declaration and Programme of Action
WHO	World Health Organisation
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZDHS	Zimbabwe Demographic and Health Survey
ZIMSTAT	Zimbabwe National Statistics Agency
ZINATHA	Zimbabwe National Traditional Healers' Association
ZRP	Zimbabwe Republic Police

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GLOSSARY OF SELECTED NDAU WORDS/ TERMS

<i>Bvuri/ mweya/ mhopo</i>	Bad spell or curse usually cast by a witch or wizard
<i>Dare romusha</i>	Family court set up to settle family disputes
<i>Dzinza</i>	Family clan
<i>Kudira</i>	This refers to the process whereby family members honour their deceased relatives by offering beer and food at a ceremony
<i>Kupfuka</i>	Referring to the 'rising' of a dead person's spirit seeking revenge for being wronged before death
<i>Kuphosa</i>	Send or cast bad spirits/ curses on another person
<i>Kupira</i>	To give (pass on) a name of a deceased member of the family to an animal or another person so that the name remains in use. This is usually done in respect of a family name.
<i>Kuputsa</i>	Sending a girl into marriage (child marriage)
<i>Kutema ugariri</i>	Mortgage marriage (a kind of marriage in which the man works over a prescribed period of time at the in-laws for a wife)
<i>Musharukwa</i>	The eldest male member of a Ndaou family
<i>Nyanga</i>	Traditional diviner-healer
<i>Pfuma/ roora</i>	Bride wealth
<i>Tsvisa/ Kusemendera guwa</i>	Ceremony held to honour the spirit of a dead family member. It is usually done a year after the death of that member and it often ends up with laying of a tombstone at the dead person's grave.
<i>Uroyi</i>	Witchcraft or wizardry
<i>Vadzimu</i>	Ancestors or guardian spirits
<i>Varoyi</i>	Witches or wizards

CHAPTER ONE: INTRODUCTION TO THE STUDY

1.0 Introduction

Studies on the interplay between culture and civil laws² in many parts of Africa have been conducted but to my knowledge, no study has been carried out in Zimbabwe specifically focusing on how traditional societies such as the Ndaou community of south-eastern Zimbabwe have been affected by the enforcement of certain civil laws. This study is a critical analysis of the interface between culture and civil law in a marginalised Zimbabwean society. It is a reflection on how culture interferes with legislation on domestic violence. The study presents the challenges that arise when civil law is used to deal with intimate partner violence in a society with a strong traditional background. In doing so, the study interrogates the effectiveness of the current legislation on domestic violence within the context of strong traditional beliefs and cultural practices of the Ndaou people of south-eastern Zimbabwe. Essentially, the study argues that the effectiveness of the current legislation on domestic violence in Zimbabwe is largely compromised and affected by the existence of strong traditional beliefs and cultural practices of some of the people it seeks to help.

This study focuses on the Domestic Violence Act (Chapter 5: 16) (DVA) which is the current legal instrument to fight a broad spectrum of gender-based violence problems in Zimbabwe. In this study my argument is that the current legislation on domestic violence is characteristically paternalistic in both spirit and approach. It is this approach to the national agenda to end gender-based violence, particularly domestic violence, which is problematic. With reference to intimate partner violence (IPV) as a problem among the Ndaou, I argue that the paternalistic spirit and approach of the DVA worsens the problem by conflicting with the people's traditional beliefs and cultural practices. Thus this study critically analyses the DVA as it collides with the strong traditional beliefs, cultural expectations and practices of the Ndaou and gives rise to ethical issues. The study focuses on the Ndaou ethnic group because the Ndaou are particularly a traditional community. They are also keen observers of cultural practices which have ostensibly conflicted with the implementation of provisions of the DVA since its inception in 2007. The study therefore proposes a new trajectory for legislation on domestic violence based on African feminist jurisprudence as a theory to influence a law to end domestic violence among communities with strong traditional and cultural practices.

² These are laws that were introduced by colonial governments during the colonial occupation of Africa and the same laws were adopted at the independence of African states. Although some of the laws were discriminatory, they have since been modified and amended so that they have international recognition.

The Ndaou people's culture is the focus of the study for the reason that the Ndaou have an adherence to their strong traditional beliefs and cultural practices which is documented in a number of studies carried out. For example, Tapiwa Praise Mapuranga (2010)'s phenomenological study of the effects of Ndaou traditional beliefs and cultural practices on women in the era of HIV and AIDS clearly shows the Ndaou have a strong culture which they have been observing for many generations. In her study, Mapuranga (2010) claimed that the Ndaou people strongly believe in the patriarchal arrangement of society and that they observe traditional beliefs and cultural practices which show and maintain clear evidence of the inequality between men and women as an acceptable social norm among them. In this regard, Mapuranga (2010: 79) further observed that, in Ndaou society:

Women are regarded as second class citizens, used and handled like personal property of men to be exploited, oppressed and degraded. It then follows that some instances of gender-based violence are culturally condoned because they are perceived as being within the bounds of what is expected of men in their interaction with women in different situations.

As a result of this patriarchal traditional belief, abused Ndaou women³ hardly turn to state legislation on dealing with the domestic violence problem. For instance, women rarely report cases of domestic abuse to law enforcement agents such as the police and community social workers. In a few cases where domestic violence survivors⁴ report, Roselyn Sachiti (2011) concluded that the same domestic violence survivors are also quick to withdraw their cases before prosecution and turn back to family and local traditional courts for arbitration. One wonders why this happens when the law is in place to protect all survivors. This is another issue that preoccupies me in this study. Thus the study also analyses how Ndaou traditional beliefs and cultural practices make the implementation of provisions of legislation on domestic violence among the Ndaou not only complicated but also render the DVA ineffective as a legal response to the domestic or intimate partner violence problem. However, it must be stated at the onset that this study does not seek to interrogate and condemn Ndaou traditional beliefs and cultural practices *per se*. Instead, it seeks to offer an exposé of the contestations that emanate from the clash between upholding Ndaou traditional beliefs and cultural practices and implementing the provisions of legislation on domestic violence within Ndaou community.

³ Although women are the most affected by domestic violence in most Ndaou communities, men also suffer domestic violence but rarely come out openly about their plight.

⁴ Throughout this study I use 'survivors' to refer to people affected by domestic violence conflicts as this gives the impression that there is possibility by the affected people to live beyond the domestic violence problem.

1.1 Background to the Study

This study is on how domestic violence can be minimised or ended. It acknowledges the fact that, throughout the world violence of any kind and by anyone on any person is unacceptable. Although it is so condemned, it is still going on. The study also appreciates the efforts that have been made so as to achieve violence-free communities throughout the world. The United Nations' efforts to pile up pressure on member states so that they come up with specific legislation to end violence in all human communities are also considered in this study. It is the concern of this study however, that despite the various laws that different countries have been put in place to curb domestic violence, the problem still persists. Consequently, where there is a law to address a specific problem but the problem increases, there are bound to be questions. Some of the questions that arise border around at least three issues: the nature of the law, the structure of the community in which the law is being enforced and how the law is being enforced. At the same time the study acknowledges that other factors such as the socio-political and economic environments of the country in which the law is being enforced also come into the picture.

The current study however, is motivated by my desire to investigate the impact of civil law in African communities in which people have strong inclinations to traditional ways of life. It is my concern to find out the kind of legal approach that can be used to end the domestic violence problem in communities that have a low appreciation of the impact of domestic violence on women and girls in intimate relationships.

It has been outlined that the study focuses on the impact of the DVA as a legal intervention within the context of the existence of traditional beliefs and cultural practices in some parts of Zimbabwe. It is appreciated in this study that the legislature came up with the DVA to address the problem of domestic violence in the country. However, it has been observed that the law that was designed to prevent and eventually end domestic violence in Zimbabwe has not come close to achieving that goal so far. From an ethical point of view, the interplay between the DVA and culture raises confidentiality issues where the law requires that matters that traditional families regard as private be brought into the public domain. As a result, the problem of violence in intimate relationships has been on the increase in Ndau community which is predominantly patriarchal. It would appear that the success of the law has adversely been affected by different factors, including culture. Socio-political factors as well as economic factors have often been cited as central to the prevalence of violence in many communities in Africa and beyond. Apparently, programmes to prevent and subsequently end

domestic violence in African communities with strong cultural practices have often met some challenges. It appears as though in such communities domestic violence is not understood in the same way it is understood in other societies where it is less prevalent. This observation leads to the significance of the present study.

1.1.1 Significance of the Study

This study aims at providing an ethical discourse on how culture can be integrated with civil law with the view of allowing beneficiaries of the law to get the best out of legal reforms in their communities. In this regard, the study seeks to argue that laws that are introduced to curb certain relational problems such as domestic violence should be aligned with the local people's beliefs and cultural practices in order to achieve the intended goal. Thus, the study's contribution is multi-dimensional. In the first place, the study's specific contribution is to expose the Domestic Violence Act to ethicists so that they explore how best it can be used to curb domestic violence effectively. On one hand, the study is meant to equip ethicists with ways to refine the Domestic Violence Act by making sure that it does not jeopardise its beneficiaries. On the other hand, this study seeks to make a theoretical contribution in the protracted discourse on fighting to end domestic violence.

1.2 Research Question, Sub-questions and Objectives

As already pointed out in the section on the background to the research study, domestic violence is a big social problem not only in Zimbabwe but all over the world. It has reached prevalence levels too high to be ignored. In response, the government of Zimbabwe introduced the Domestic Violence Act to mitigate the problem. This section presents the research problem, key question, the sub-questions and the research objectives of the study.

1.2.1 Research Problem

In response to the domestic violence problem, particularly intimate partner violence, many countries promulgated laws aimed to minimise and eventually end the problem. However, in spite of the existence of such legislation on domestic violence in many African countries including Zimbabwe, the prevalence of intimate partner violence has been on the increase, especially in communities with strong cultural practices. The area of concern for this study is why there continues to be domestic or intimate partner violence among the Ndau people when the Domestic Violence Act has been in place since 2007. In the case of Zimbabwe, the study identifies the ethical problem of breach of confidentiality arising from the interplay between the Domestic Violence Act of Zimbabwe and culture as the reason for the continued existence of domestic violence among the Ndau.

1.2.2 Research Question

Based on the above general observation and concern indicated in the background to the study, the key research question to be answered is: Why is domestic violence prevalent among the Ndaou people despite the existence of the Domestic Violence Act (Chapter 5:16) in Zimbabwe?

1.2.3 Sub-questions

The broad research question highlighted above can be tackled using the following sub-questions:

- What is domestic violence and what is the extent of the problem in Zimbabwe?
- To what extent is the current legislation on domestic violence paternalistic?
- What are the ethical implications of enforcing provisions of the Domestic Violence Act among the Ndaou?
- How can the Domestic Violence Act be made more effective and culturally acceptable within vulnerable traditional communities in Zimbabwe?

1.2.4 Objectives

Given the key research question and the sub-questions stated above, the objectives to be achieved by this study are as follows:

1. To provide a general analysis of the prevalence of domestic violence in Zimbabwe and among the Ndaou people.
2. To describe the Domestic Violence Act (Chapter 5: 16) of Zimbabwe and explain the pertinent or core features which make it paternalistic.
3. To offer a critical analysis of the Domestic Violence Act (Chapter 5:16) of Zimbabwe by exploring the ethical implications of enforcing its provisions within the context of Ndaou culture.
4. To propose a new ethical theory upon which to ground legislation on domestic violence in Zimbabwean communities with strong cultural practices.

In order for the study to be able to achieve the objectives set above, there is need for it to be informed by appropriate theories. These are presented in the next section.

1.3 Methods and Methodology

In order to explore the main issues outlined in the research questions, the study used three methods namely the historical, the critical analysis and the constructive. The three methods were employed because they fit well in this qualitative research study which is an ethical exploration of the Ndaou people's social and cultural contexts in which they live. Hancock,

Ockleford and Windridge (2009:7) defined qualitative research as an approach that is “concerned with developing explanations of social phenomena.” By this the authors meant that qualitative research aims at helping researchers to understand the social world and why things are the way they are. With respect to the current study, the qualitative is preferred as it concerns itself with the social aspects of communities and seeks to answer questions such as:

1. Why people behave the way they do,
2. How opinions and attitudes are formed,
3. How people are affected by legal reforms that are meant to protect them, and
4. How cultures and traditional practices can be developed so that they remain not only traditional but also helpful in the modern world.

Thus, the qualitative research methodology is a suitable design for this study because it encompasses the phenomenological and the ethnographical approaches. At the same time it is flexible and allows the researcher to make use of other approaches, especially the historical-typological phenomenology which gives the researcher access to the history of the subject population. However, the study is not limited to this strand of the qualitative research approach alone as it also uses the historical, critical analysis and constructive methods which are described below.

1.3.1 The historical analysis method

First, a historical analysis approach was inescapable in this study because domestic violence has a historical context. In general, a history is an account of some past event or combination of event. In this case, domestic violence fits in the account of the people who experience it.

By definition, Wyche, Sengers and Grinter (2006:37-38) said that “[h]istorical analysis is a method of discovering, from records and accounts, what happened in the past.” Although the historical analysis method is commonly used by historians to gain insights into social phenomena it can also work for all disciplines in which human phenomena are studied. For this study therefore the historical analysis method meant that the researcher had to consider various sources of historical data such as historical texts, newspaper reports, archival records and maps.

The study proceeded by exploring the historical background of the Ndaou people covering their origin, movement and current location in Zimbabwe. The study also examined the Ndaou people’s traditional beliefs and cultural practices and explained how the Ndaou have continued observing their culture despite legal reforms instituted to address critical issues such as

domestic violence in Zimbabwe. At the same time a historical background of the Ndau helped to place Ndau community within the larger context of the state paternalism discourse in Zimbabwe. Above all, a history of legal reforms in both the colonial and post-colonial Zimbabwe also became relevant to explain the birth of the Domestic Violence Act in particular.

1.3.2 The critical approach

The second method used to carry out this study was the critical approach which helped in putting the Domestic Violence Act under scrutiny. Being a piece of legislation arguably with roots in the Western theories of justice and human rights, the DVA was critically appraised by engaging the larger cultural contexts in which it is applied. As Raymond Geuss (1988) put it, the critical approach contends that ideology is the greatest impediment to justice. Since the study critically focused on the DVA within a specific cultural setting, the critical approach was used became essential. It helped to argue that, although the DVA was introduced to end domestic violence in general, intimate partner violence in particular has continued to rise ostensibly because the provisions of the DVA are at variance with the people's culture. The idea of using the critical theory approach was to subject the DVA to a critical social policy review process in order to make it more accessible to all the intended beneficiaries.

1.3.3 The constructive method

The constructive approach was the third method used. According to Mills et al (2006:2) the constructive method “emphasizes the subjective interrelationship between the researcher and participant and the construction of meaning.” This means that researchers are part of the research endeavor rather than objective observers, and their values must be acknowledged by themselves and by their readers as an inevitable part of the outcome. Thus the constructive method was meant to provide a basis for the grounding of a theory for fighting DVA within indigenous African cultures such as the Ndau. The critical tools derived from Feminist ethicists as well as African feminist ethics were used to proffer a way forward which is not only sensitive to women's preferences but also treats Ndau women as capable of finding solution to the intimate partner problem within Ndau culture.

1.4 Sources of data

The desk top research was the principal data gathering method used for the study. This means that the researcher relied heavily on the library research design to collect the essential data for the study. At the same time data was also drawn from archival material as well as from journal articles on gender-based violence in general and domestic violence in particular.

Above all, books, periodicals, newspaper articles and magazines also constituted the resource base for this study. Furthermore, electronic resources such as the Internet and *e-libray* sources provided data necessary for compiling this study. Throughout the study secondary sources were used mainly because this study is not empirical. Interviews were not used because scholars such as Mapuranga (2010), Konyana and Mutigwe (2011) and Muyambo (2015) have done extensive empirical research work on the Nda and the researcher has no intention of repeating the work done.

1.5 Structure of the study

Having laid down the background to the study, the key research question and related sub-questions as well as the objectives to be achieved in this thesis, I proceed to present a brief general structure of the rest of the study in this section of the thesis.

The first chapter of the thesis provides the general introduction to the research study itself. It consists of an outline of the background to the problem and the motivation for the study. The chapter also provides an overview of the major issues to be discussed in the study. In this case, the present chapter sets the tone of the study and mainly acknowledges that domestic violence is a big social problem as it has been revealed in the section on the background to the study. Thus, in general, the first chapter unveils the research problem, key research question, the sub-questions and the objectives to be achieved. In addition, the theoretical framework to guide the study is also presented, including the methods by which the research is carried out.

In the second chapter the study presents the critical literature review on domestic violence and efforts to minimise it using the legal approach. The purpose of this chapter is to provide a review of the literature upon which the discussion on the clash between culture and the law in Africa is explored in this study. Definitions of key terms that are central to the discussion are provided in this chapter. The key terms include definitions of gender-based violence, domestic violence and intimate partner violence. The chapter reveals that fighting to end all forms of gender-based violence, including domestic violence or intimate partner violence, is not a new thing in African communities since African have had traditional ways of resolving family-related conflicts. This is expressed by Joyce Maluleke (2012) where she claimed that civil law should not be the only approach to deal with the domestic violence in African communities.

Chapter two also provides an exploration of the literature on legislation on domestic violence as a legal approach to deal with the problem of violence in intimate relationships in Zimbabwe. The general impression about the Domestic Violence Act (Chapter 5: 16) is that it is a noble law, except for a few provisions that present ethical challenges at their implementation. One of the problems with the DVA lies in its mandatory reporting requirement of cases. A number of scholars that have discussed the impact of civil laws such as the in the lives of the local people have argued that the law has not been effectively used. Overall, the chapter presents the DVA as a legal intervention strategy that requires modification to make it more useful to the local people, especially women and girls, experiencing domestic violence in their lives.

The third chapter deals with the theoretical underpinnings of the study. In this chapter, focus is on the three theories that inform the study. The three theories are legal paternalism, feminist jurisprudence and feminist ethics. It is maintained that the first two theories are clearly anchored in Western cultural traditions and this makes it imperative that a third theory, which speaks to African women's experiences, be introduced. African feminist ethical theory is thus presented as a preferred version of Feminist ethics as it relates to African women's experiences.

Chapter four focuses on the Ndaus and their traditional beliefs and cultural practices. The chapter begins by presenting the historical background of the Ndaus and explain their origin, movement and present-day location. It describes area that the Ndaus occupy in the south-eastern districts of Chipinge and Chimanimani in Zimbabwe and that they are concentrated along the border with Mozambique. The background information about the Ndaus and their strong culture is meant to prepare the reader to appreciate the Ndaus people's apprehension with the DVA as an appropriate intervention to the domestic violence problem among them.

It has been pointed out in the section on the background to the research study in this first chapter that domestic violence is an international problem. This is the main concern of chapter four as it begins by acknowledging the prevalence of domestic violence in most African communities before focusing on Ndaus communities in Zimbabwe. It goes on to explore the Ndaus people's experiences with domestic violence in their culture. It is argued that the current legislation on domestic violence in Zimbabwe has not really helped Ndaus women and girls disentangle themselves from patriarchal traditions.

The fifth chapter of the study focuses on the prevalence of domestic violence among the Ndaou in detail. It argues that domestic violence is a social problem that is not only prevalent among the Ndaou but throughout the country. The chapter is constructed from the third objective of the research study, which is to explore the prevalence of domestic violence among the Ndaou people within the context of their traditional beliefs and cultural practices. The chapter shows that domestic violence is particularly persistent among the Ndaou because it arises mainly from customary processes attached to the marriage institution. The chapter further acknowledges that domestic violence also occurs between people who are in different social relationships. However, this chapter specifically focuses on the prevalence of domestic violence among married heterosexual Ndaou couples, emphasising that Ndaou women and girls are most affected. The chapter therefore proceeds by explaining the marriage institution and the Ndaou people's perception of marriage first. It also explores the related violent issues pertaining the marriage processes and practices.

Chapter six presents the Domestic Violence Act (Chapter 5: 16) as the state's legal response to the domestic violence problem in post-colonial Zimbabwe. This reflection is done within the wider context of the Southern African Development Community (SADC) region's legal response to the domestic violence problem. All in all, chapter five claims that the idea of a regulating human contact is good and not new to the African people. It also maintains that the DVA needs to be revised if it is to contribute meaningfully towards ending domestic violence among the people it seeks to help. These key issues about legislation on domestic violence are used to analyse the DVA in chapter six of the thesis.

The seventh chapter of the study critically analyses the DVA using the three theories preferred. In this chapter, an analysis of the DVA focusing on Ndaou women's experiences with intimate partner violence is done to evaluate its efficacy. The chapter explores the extent to which the DVA is a suitable response to domestic violence among Ndaou people. At the same time, the chapter argues that domestic violence in general and intimate partner violence in particular deprived women of their opportunities to achieve their full participation in society by threatening and affecting their safety. Thus, the DVA presents some ethical issues for the women who end up trapped between observing their culture and using the law.

The chapter also observes that the DVA is a radical intervention strategy which poses a threat to community cohesion and thus risks being ignored by the people it seeks to protect. This point is emphasised by the African ethics of *hunhu/ ubuntu* which upholds communal

existence instead of emphasising individual preferences and rights. Fainos Mangena's (2012:11) rendition of African feminist ethics is critical in this chapter, especially where he explained that the concept of African feminist ethics works through what he referred to as "the Common Moral Position (CMP)". For him, it is very difficult to dislodge an African person who operates at the CMP level within the community from their communal attachment. Basing on this point, chapter seven argues that the DVA faces challenges where it tries to dislocate Ndau traditional beliefs and cultural practices accusing them of perpetuating violence against women and girls.

Chapter eight presents the study's small but perhaps unique contribution to the domestic violence discourse. It is the study's contribution towards a new trajectory on legislation against domestic violence among the Ndau in Zimbabwe. In this regard, the chapter proposes and presents African feminist jurisprudence theory as a new theory which can be used to improve the DVA and make more acceptable among the Ndau. The chapter explains how the new theory is drawn from African feminism and feminist jurisprudence. It is shown in this chapter that the current legislation on domestic violence needs to be improved as it often runs into conflict with the local people's culture. The chapter thus reflects on what happens when culture and the law meet.

Chapter nine is the last chapter of the study. This final chapter serves to bring the study to an end by outlining the findings of the entire research. The chapter summarises the concerns addressed in the study and it also provides a conclusion. The major thrust and overarching objective of this chapter is to provide a summarised connection of the issues that the entire study engaged in and then demonstrate that the issues dealt with throughout the study have answered the research question.

1.6 Conclusion

This first chapter has introduced the reader to the background to the study and the main issues to be dealt with. It has introduced and defined key terms in the problem to be studied. The Domestic Violence Act (Chapter 5: 16) has also been outlined as a national legal response to the domestic violence problem in Zimbabwe. It was argued in this chapter that since the introduction of the DVA in 2007 the prevalence of domestic violence, especially intimate partner violence, has not significantly been minimised. At the same time, it was mentioned that some societies such as the Ndau have strong traditional beliefs and cultural practices.

The chapter has outlined the theoretical foundations for the study. It was shown that the study informed by legal paternalism, feminist ethics and feminist jurisprudence. The chapter provided groundwork for the presentation of a discussion on what it implied to insist on enforcing the provisions of the DVA in communities that have strong traditional beliefs and cultural practices. In the final part of the chapter the structure of the study was laid down. Brief synopses of the chapters of the study were provided in this first chapter of the study.

The next chapter is a review of literature related to the interplay between culture and law.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This study is situated in the discipline of ethics and normative Applied Ethics in particular. Ethics is understood as the study of morality, what is right or wrong in a society. Normative ethics deals with difficult moral questions and controversial moral issues that people face in their lives. The study uses the principle of paternalism as it relates to how government's interventionist policies affect the people they seek to protect. The normative applied ethics question that arises is whether it is morally justified to breach people's safety and confidentiality for their own sake. This comes from the observation that there is a proliferation of legislation which is meant to protect and advance the cause of women and children in Africa. However, although many African countries are increasingly introducing policies which cater for the interest and welfare of the citizenry, particularly those of women and children, some government policies are attracting controversy at implementation.

What seems to be the biggest challenge is that the laws are enforced in cultural specific contexts where they clash with the local people's ways of life. In this way, the government becomes paternalistic and refuses to acknowledge that, though there is need to protect vulnerable persons in society, it is equally important to allow them to live within their own preferences and interests. This is in line with Douglas Husak's (2003: 26) position where he said institutions such as governments or even churches "should not be given the power to restrict people's liberty, even for the people's own good because these institutions are much more likely to misuse or abuse that power". By this statement, Husak meant that if governments or churches were allowed to act paternalistically to protect the citizens, there were chances that these institutions would end up imposing policies and disregard local people's cultural preferences.

The argument is not that paternalist legislation is always bad and controversial. Instead, the point of departure is that some paternalist pieces of legislation create problems when they are being implemented because they clash with local people's strong cultural practices. One of the most controversial provisions of the DVA is that anyone suffering domestic violence should report such abuse to the police so that the abuser can be arrested and prosecuted. This requirement clearly infringes on the ethical principles of privacy and confidentiality which, from a cultural relativist perspective, the survivor may not want to compromise or share with anyone outside family. The survivor may prefer mediation from family members thereby avoiding the police or social workers. This approach to the domestic violence problem is

viewed as more communal and acceptable than taking the problem to the police and the courts. Thus, such an attitude towards the Domestic Violence Act makes the implementation of its provisions among the Ndaus problematic. Before looking at the nature of the challenges involved, it is necessary that key terms are defined.

2.1 Defining violence

Domestic violence is a form of gender-based violence (GBV)⁵. It can be defined as violence that is confined to a limited number of related persons. According to Kumaralingam Amirthalingam (2003: 1), “[d]omestic violence includes many forms of violence and affects various parties, including partners, parents, children and extended family.” The definition shows that domestic violence usually happens between people who live together in a family set up and that it cuts across gender, culture, ethnicity or social status. From a sociological point of view, Emily Burrill, Richard Roberts and Elizabeth Thornberry, (2010: 23) also defined domestic violence as “household-based violence”. Their definition further points to the fact that domestic violence is the kind of violence that happens between family members who live together. However, it is important to mention that this study concerns itself with domestic violence as it happens between intimate partners, particularly between husband and wife, and how this particular kind of domestic violence can be minimised.

From a legal point of view and with reference to the Domestic Violence Act (Chapter 5: 16) of Zimbabwe, domestic violence is understood as “any act, omission or behaviour which results in the death or direct infliction of physical, sexual or mental injury to any complainant by a respondent”. This is a general definition of domestic violence as a social problem in Zimbabwe. However, Cynthia Grant Bowman (2003), Nancy Chi Cantalupo et al (2006) and the World Health Organisation (2009) maintained that domestic violence is better defined within the context of GBV which differs from one culture to another. This is the approach that Luckson Mashiri and Primrose Mawire (2013:98) adopted where they defined domestic violence as “a form of gender-based violence which takes place among people who are close to each other or may be living together in a family setting”. This means that domestic violence occurs in different social contexts in which people find themselves.

Mashiri and Mawire (2013) further pointed out that among the Shona people in general, domestic violence is commonly not unusual. This is expressed in a Shona statement which

⁵ Gender-based violence (GBV) is a broad term that refers to physical, sexual, emotional or psychological violence directed at any person because of that person’s gender. Usually, GBV affects women and girls because of their sex.

says, “*Mombe dzirimudanga rimwe chete dzinotungana*”. This can be translated to mean that cattle in one kraal always fight. The statement implies that conflicts and disagreements between people who live together as a family in a home are inevitable. It also suggests that violence that occurs among family members is sometimes supported by cultural practices and customs which the family members observe. In this context therefore, domestic violence can also be understood as violence that is closely linked to people’s traditional beliefs and cultural practices. This is the reason why some cultural practices have been criticised and condemned for perpetuating domestic violence. Such cultural practices include a wide range of customary marriages and practices such as the payment of bride wealth (*roora/ lobola*) which are presented later in this chapter.

From their research study, Tom Tom and Maxwell Musingafi (2013: 45) also defined domestic violence as ‘hostility that is perpetrated on a member of the family by another close family member’. This means that domestic violence is any aggression that is perpetrated by a family member on another member of the same family. This definition implies that domestic violence should be understood as violence that occurs in a relationship where the perpetrator and the survivor are in a close relationship and may even be living together. It further suggests that domestic violence can happen to people in a close relationship such as dating, cohabiting or marriage. It can also happen between persons who are separated or divorced.

The definitions given above have varying and significant implications. The most apparent implication is that domestic violence often takes place between people who are closely related to each other or people who are in an intimate relationship. This means that domestic violence occurs in relationships where the perpetrator and the survivor know each other well. The definitions also imply that, apart from violence between intimate partners, domestic violence can occur in different relational settings such as between parents and children (child abuse) and among siblings in child-headed families. The definitions also suggest that domestic violence can happen between heterosexual or homosexual partners who are dating, cohabiting, married, separated or even divorced. The intimate relationships mentioned here could be short-term or long-term and heterosexual partners may or may not have biological children in common. Therefore, domestic violence can occur in virtually all settings which involve relationships between persons who know each other closely or may be living together.

When domestic violence occurs between intimate partners it can precisely be understood as a pattern of coercive and assaultive behaviours that someone wields to effect control over his or her intimate partner. With reference to this kind of violence, authors such as Carmen Cusack (2013: 24) referred to domestic violence differently as “intimate partner violence (IPV) which disproportionately affects women.” From this definition Cusack implied that domestic violence is more than violence that takes place between family members. In her opinion, domestic violence goes beyond conflict between family members as it can also refer to violence which takes place between intimate partners. This means that the definition of domestic violence should extend to include the violence that takes place between men and women in intimate relationships. Such a definition therefore would suggest that violence between intimate partners is also a matter of concern for the public because its effects are available for all to see. There is therefore need to define intimate partner violence in the context of the broad corpus of gender-based violence.

2.2 Intimate partner violence

Intimate partner violence is a form of domestic violence that directly involves persons in a marital union or those in an intimate relationship. In the case of polygamous marriages, it is violence between a husband and his wives. Madison Mellish, Susan Settergren and Henry Sapuwa (2015: 17) defined intimate partner violence as “...the pervasive and methodical use of threats, intimidation, manipulation or physical/ emotional/ economic assaults” by anyone who seeks to exercise power and control over their intimate partner. This implies that anyone in an intimate relationship can be a survivor or a perpetrator of intimate partner violence regardless of their social status. Intimate partner violence can take place among people from different walks of life, whether rich or poor. Thus intimate partner violence can happen to people of any tribe, race, religion or socio-economic status. It can happen between persons who are in any form of intimate relationship, be it marriage or cohabitation.

It is proper to mention at this stage that this study is limited to one ethnic group, the Ndaou people of south-eastern Zimbabwe. The reason for focusing on this ethnic group of people is that domestic violence is prevalent among the Ndaou in spite of existence of the Domestic Violence Act as a legal instrument to minimise interpersonal conflicts. It is the purpose of this study to find out why the Domestic Violence Act has not been able to minimise or end domestic violence among the Ndaou people. But before embarking on the task, there is need to reflect on how the concept of domestic violence is conceived in Africa in general. The next

section presents critical literature that explored the problem within the African conception of domestic violence.

2.3 Domestic violence in Africa

This section provides information on how pervasive domestic violence has been on the African continent. Writing on the prevalence of domestic violence and the subsequent introduction of legislation on domestic violence in Africa, Burrill, Roberts and Thornberry (2010), argued that domestic violence is not a new problem in African communities. The authors' use of the term "domestic" suggested that any violence experienced by people who shared the same living space or were in an intimate relationship was nothing unusual in most African communities.

To further expand on their idea, Burrill, Roberts and Thornberry (2010: vii) pointed out that "domestic violence is not a new phenomenon in African communities and that effort to end it did not start recently either". The authors' contention is that domestic violence is an old relational problem and that the African family and kinship institutions have been critical in handling any domestic violence cases. Burrill et al (2010) therefore provided the essential historical and contextual background information about domestic violence in Africa.

Furthermore, some African feminists such as Nicola Rohland (2009:4) argued that domestic violence has been persistent in southern Africa because "[w]omen are seen as the property of men and thus female sexuality is owned and regulated by men." This presentation of the state of domestic violence in Africa is also highlighted by Fatima Sadiqi (2006:49) where she made reference to domestic violence in the African North and said:

One can understand that the issue of domestic violence is generally eschewed by the policies promoting gender equality in the region as such policies are blind to what is undertaken in the private sphere, generally considered not political because not economically productive.

It would appear that despite a strong global dialogue on domestic violence, the international community seems not to succeed in stopping violence against women particularly in Africa. Thus the study builds on this background and goes on to focus on the efficacy of the existing legislation on domestic violence in Zimbabwe within the context of the local people's traditional beliefs and cultural practices.

2.3.1 Fighting domestic violence in African communities

The fight against domestic violence in African countries using the legal approach is complex because of the dual legal systems created and sustained during the colonial period. As a result, most African governments have crafted laws which tend to follow Western models of fighting domestic violence at the expense of local traditional customs. These models are based upon respect for individual rights and most African countries have ratified many international conventions which treat domestic violence as a violation of human rights. Despite the adoption of Western-oriented legal reforms in African countries' constitutions, domestic violence has remained a big problem in Africa. Cynthia Bowman (2003: 850) noted that one of the reasons for the continued prevalence of domestic violence in Africa is that almost every traditional African society is patriarchal. It is also from the fact that in most traditional African communities, the place of women in the patriarchal scheme of life is subordinate. This means that even when legal reforms suggest equality between men and women, the subordination of women remains widespread in African communities. In fact, it is institutionalised through a myriad of traditional beliefs and cultural practices which have remained in full force.

Regarding the relevance of traditional beliefs and cultural practices in solving social problems, Maluleke (2012) observed that some cultural practices are still useful while others are harmful, particularly to women. She further argued that while there have been legal reforms in Africa to protect women from harmful traditional beliefs and cultural practices, most of the reforms have, among other outcomes, imposed Western legal practices which have worsened the plight of women instead of ameliorating it. In view of this, Maluleke (2012: 16) concluded that there is need to incorporate the African culture and customs, which have "...infinite capacity for the pursuit of consensus and reconciliation as opposed to being individualistic and competitive". This perspective builds well into the purpose of the present study which seeks to argue that the enforcement of paternalistic legislation on domestic violence clashes with traditional beliefs and culture practices of the intended beneficiaries. In the next section the domestic violence problem is explored with reference to Zimbabwe.

2.4 Domestic violence in pre-independent Zimbabwe

As in most African communities, domestic violence has remained one of the most pervasive relational problems Zimbabweans have been living with. It has been happening among the various social groups of people in the country. With reference to Zimbabwe's ethnic

communities, Michael Bourdillon (1976)⁶ presented a detailed account of the various Shona⁷ people's traditional practices in most facets of their lives. With regards to dealing with domestic violence, Bourdillon (1976: 127) observed that "... family disputes [were] never brought before public courts; they [were] solved within the family". Bourdillon (1976:135) further pointed out that the traditional courts were there "...to reconcile disputing parties within a family or community and to restore social harmony..." From Bourdillon's observations and arguments it can be concluded that the Shona traditional courts, though predominantly patriarchal, always managed to bring about social justice as they were flexible to accommodate discussion, leading to amicable solutions agreeable to the disputing parties.

Bourdillon's observations are supported by Tsitsi Nyoni (2013: 2) who argued that resolution of intimate partner conflicts involved methods and processes of negotiation and arbitration which promoted the peaceful ending of differences between. What Tsitsi meant by this is that intimate partner disagreements were often dealt with by close members of the feuding parties and not by 'outsiders'. This is further supported by Mikateko Joyce Maluleke (2012) where she pointed out that civil law is only one component of a multidisciplinary approach to ending domestic violence in Africa. By this point Maluleke implied that there have always been traditional ways of resolving disputes between intimate partners. This view further suggests that the civil law should just be part of a holistic approach to end the problem of domestic violence in African communities.

2.5 Domestic violence in traditional communities

Given the broad background to the domestic violence problem in Africa in general and in Zimbabwe in particular, it is clear that most ethnic groups in Africa had traditional ways of dealing with domestic violence within their communities. Thus, enforcing the observance of some provisions of civil legislation on domestic violence upon them naturally leads to ethical challenges of allegiance. Given the clash between civil law and the local people's cultures, most women are faced with an ethical dilemma as to which way to choose. On this dilemma, Lynette Manzini (2016: 52) noted that even when many women were aware of the Domestic Violence Act and that the law can protect them, they would not make use of it for fear of the adverse consequences that may befall them.

⁶ This is a dated source which is useful in providing the traditional context of the domestic violence in Zimbabwe.

⁷ The Shona people constitute the largest population in Zimbabwe and can be grouped into six different ethnic groupings namely, *Karanga, Korekore, Kalanga, Manyika, Zezuru and Ndau*. (See Mangena, 2012: 63-64 for details).

The result is often that most abused women fail to make use of the new law, resorting to their traditional methods and institutions of dealing with the problem. This is the position that Michael Gelfand (1973: 99-101)⁸ postulated where he said that “...the teleology of Shona cultures is to ensure that traditional practices and customs endure being obliterated by external forces or influences”. For Gelfand, there is, in the various Shona cultures, a strong force compelling unyielding allegiance to a particular culture and this higher imperative is “...hinged on the complexus of beliefs, practices, taboos, social conventions and so on...” The important point expressed by Gelfand is that most Shona people such as the Ndaus observed their strong traditional beliefs and cultural practices. It is necessary therefore to explore Ndaus culture to find out how it affects the implementation of the DVA as a new law among the people.

On the basis of the above observations by Gelfand, culture becomes an important way of life that cannot easily be replaced especially when it is strong and influential in the lives of people who observe it. On the importance of understanding why local people continue with their customary laws and cultural practices in the face of new laws, Lilian Siwila (2012:108) pointed out that “...the centre core of culture where people’s ideological perceptions about culture are located...” has not been interrogated enough to explicate the people’s continued adherence to cultural practices that outsiders perceive as harmful. Her observation is very important for this study in that it helps in the evaluation of the relevance of culture in intimate partner conflict resolution despite the existence of paternalistic laws such as the Domestic Violence Act which is meant to protect them from domestic violence.

As has already been pointed out, the Ndaus are the focus of this study. They belong to the large group of the Shona people of Zimbabwe. Other Shona groups include the Zezuru, Karanga, Manyika and Korekore. Arguably, the Ndaus are well-known for their traditional ways of life, upholding cultural beliefs and practices in the face of modernity. To date, several authors such as Perman (2011), Konyana and Mutigwe (2011), Konyana and Konyana (2014), Muyambo and Maposa (2014) and Muyambo (2015) have written on the Ndaus people of Zimbabwe. The author invariably observed that the Ndaus have a strong cultural approach to life which influences most of their interpersonal relationships.

It must be mentioned that the Ndaus people are located on both sides of the Zimbabwe-Mozambique border, with the larger population situated in Mozambique. However, the Ndaus

⁸ I am aware that Michael Gelfand’s book is dated but it is another important source on the ethnic groups of Zimbabwe.

from both sides of the Zimbabwe-Mozambique border share the same traditional beliefs and cultural practices. As mentioned earlier on, the authors cited above concurred on the Ndau people's strict observation of strong traditional beliefs and cultural practices. For example, Konyana and Mutigwe (2011) looked at the Ndau people's perspectives on legal contestations around ways of handling terminally-ill and dying persons (known as 'euthanasia', meaning 'good death' in Western medical terminology). The authors observed that the Ndau had always been practising 'euthanasia' in their communities without referring to it by any name. Thus, even though euthanasia is illegal in Zimbabwe, the Ndau had cultural practices that they discreetly performed which ensured that their terminally-ill persons passed on with dignity. In this regard, the Ndau insisted on performing cultural practices that allowed them to freely decide on how a terminally-ill person's life ended, even when the law prohibits the practice. This underscores the argument that implementing paternalistic legislations among certain ethnic groups such as the Ndau often brings clashes between the people's culture and the legal expectations. In the next section, a brief review of the Domestic Violence Act of Zimbabwe is presented.

2.6 Introduction to the Domestic Violence Act (Chapter 5: 16)

The Domestic Violence Act is a law that has both the criminal and the civil elements. As a criminal law, the DVA complements the Criminal Law (Codification and Reform) Act (Chapter 9: 3), especially Part III Sections 65 (Rape), 66 (Aggravated Indecent Assault), 67 (Indecent Assault) and Part IV Section 89 (Assault). All these sections carry custodial sentences. However, the DVA has a civil component to it which allows for mediation between disputing parties and this does not carry a custodial sentence. This distinction is not clear to most people since the DVA also involves the police in the implementation of its provisions.

Admittedly, the Domestic Violence Act is Zimbabwe's latest legal strategy to minimise or end all forms of gender-based violence, including domestic or intimate partner violence. This approach to the domestic violence is in line with the requirements of international conventions which obligate all United Nations member states to put strategies to end domestic violence on their national agendas. In response, many countries, including Zimbabwe, introduced legal reforms to minimise or end domestic violence. In the case of Zimbabwe, the Domestic Violence Act was gazetted into law on 26 February 2007. Its major focus is to protect citizens against living in violent relationships.

In its effort to protect persons in intimate relationships from violence, the DVA recognises two kinds of related acts of domestic violence. On one hand, it refers to physical acts of violence, which include any form of bodily or sexual assault as described in Section 3 (a) (1) (a-p) of the DVA), in the same manner as other criminal acts such as theft, murder, extortion, arson, etc. Like in all other criminal acts, perpetrators of domestic violence shall be arrested and be brought before the courts for prosecution leading to either imprisonment, fine or both imprisonment and fine sentences. This means that domestic violence acts are also covered by the wider scope of the Criminal Law (Codification and Reform) Act of Zimbabwe.

On the other hand, the Domestic Violence Act also refers to non-physical acts such as emotional, verbal, economic and psychological attacks as acts of domestic violence as well. These acts of are captured and listed in Section 4 of the Domestic Violence Act as “Offence of domestic violence and acts excluded from its scope”. In this Section the Domestic Violence Act surprisingly leaves non-physical acts of domestic violence to be handled by the traditional or customary courts. However, traditional or customary courts have neither jurisdiction nor capacity to mete custodial sentences on perpetrators of domestic violence. It becomes imperative therefore that the DVA’s paternalism and ambivalence in the way it is supposed to deal with domestic violence perpetrators be subjected to an academic interrogation because, clearly, those whom it seeks to protect are not effectively making use of it.

It is important to point out that in Zimbabwe criminal laws are clear regarding the procedures of exposing criminal acts and what the consequences are. However, with reference to legislation on domestic violence in Zimbabwe, the crux in ending the domestic violence problem is twofold. First, the law requires the survivor or a representative to report certain incidents of domestic violence and at the same time leave out other instances of the same problem. In this regard, Section 4, sub-section 2 (a) and (b) states that “emotional, verbal, psychological and economic abuse” are offences and acts of domestic violence that are excluded from the scope of the Domestic Violence Act (Chapter 5:16). This creates problems for the domestic violence survivor as to which acts of violence really constitute acts of domestic violence for which the perpetrator can be prosecuted. The ambivalence of the Domestic Violence Act further creates problems of reporting intimate partner violence because the law criminalises some acts while excluding other of domestic violence from the criminal bracket.

Second, the Domestic Violence Act requires that reporting a case of domestic violence to law enforcement agents becomes mandatory if a survivor is to be protected from further abuse. This means that the survivor or his or her representative has to report domestic violence even without the survivor's consent. Thus, the fact that the Domestic Violence Act requires mandatory reporting of domestic violence cases raises concerns related to autonomy and confidentiality. For example, in their research on the effectiveness of civil legislation on domestic violence in Zimbabwe, Tom Tom and Maxwell Musingafi (2013) noted that since the Domestic Violence Act was enacted in 2007, there has been very little knowledge about it and what its provisions are. The same authors alleged that there has been poor public knowledge of several Domestic Violence Act provisions which survivors can make use of particularly in traditional communities. They further argued that the knowledge gap about the existence of the Domestic Violence Act and it can help prevent violence in intimate relationships has led to the continued prevalence of domestic violence in Zimbabwe. Thus, according to Tom and Musingafi (2013), the public's awareness of the existence of legislation on domestic violence and its provisions was supposed to go a long way towards minimising or ending domestic violence in Zimbabwe.

However, Tompson Makahamadze, Anthony Isacco and Excellent Chireshe (2011) observed that even survivors who are aware of the existence of the Domestic Violence Act and its provisions do not use it to deal with intimate partner violence in their homes. On this point, Makahamadze et al (2011: 25) pointed out that the Domestic Violence Act is very clear where it says "[A]ny person who commits an act of domestic violence . . . shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment". The authors noted that many domestic violence survivors do not make use of this provision precisely for the reason that the culprit may be sent to jail. For example, Manzini (2016) noted that women who live in traditional communities do not make use of the DVA fearing that if the perpetrator is jailed they have no one to look after them and the children. This also shows that the Domestic Violence Act is packaged in conditions beyond the comprehension of the people who should benefit from it.

Makahamadze et al (2011) further noted that survivors of domestic violence are usually not willing to share their 'private' experiences with the police and, therefore, they do not report intimate violence cases to them. The authors also contended that given the insignificance of the amount set out as the highest fine chargeable (Z\$250 000.00 equivalent to US\$4.00 in Zimbabwe in 2007), most domestic violence survivors are not encouraged to report by the prescribed level

of fine set as punishment. As a result, most domestic violence survivors believe that the fine and prison sentence are not deterrent at all. At the same time, survivors are not keen to insist on custodial or jail sentences for perpetrators who, in some cases, are either influential family members or family bread winners. Thus the fear of losing out on the source of livelihood may prevent survivors, who are mostly women, from reporting domestic violence to the police.

The local people's negative attitude towards the Domestic Violence Act suggests that survivors end up turning to indigenous ways of dealing with domestic violence. The indigenous ways are embedded in the traditional beliefs and cultural practices of the local people. Thus, avoiding the Domestic Violence Act can be regarded as an indication that paternalistic laws often evoke ethical issues that affect their implementation. This dimension is missing in the literature on domestic violence legislation in Zimbabwe and this study seeks to focus on it and make a contribution towards the construction of a legal theory grounded in the local people's culture.

2.7 Conclusion

This chapter has provided the literature review of the domestic violence issue covering all aspects to do with its prevalence in many parts of the world. The chapter has outlined that domestic violence is pervasive worldwide problem that affect women and girls more than men and boys. From the literature reviewed above it is clear that domestic violence has been a social relational problem from time immemorial and that at the moment, many African governments have instituted paternalistic legislation against domestic violence in response to the continued prevalence of violence in intimate relationships. However, as has been pointed out already, the effect of enforcing the provisions of legislation against domestic violence among people living in traditional communities with strong culture requires a critical ethical appraisal.

The next chapter presents the theoretical underpinnings for the study. It introduces the three theoretical frameworks which are legal paternalism, African feminist ethics and feminist jurisprudence before discussing how the three theories work together to inform the study. Each of the theories is presented so as to show its relevance as a basis for the present study.

CHAPTER THREE: THEORETICAL FRAMEWORK

3.0 Introduction

The second chapter presented a critical review of the literature consulted in the process of constructing the present thesis. The literature that was consulted provided the basis upon which critical discussions in this study are to be done. It emerged from the literature consulted that domestic violence is an international problem and that it cuts across cultures, races, regions and religions. The international context of the domestic violence problem was quite informing as it demonstrated that many nations have also been struggling to deal with the problem of violence in intimate relationships. The chapter also consulted literature from within Africa in general and the Southern African Development Community (SADC) region in particular. What persistently came out of the critical dialogue with the wide range of literature was that domestic violence is a menace to society and that it has far-reaching effects which disproportionately affect women and girls. The literature also revealed that many countries have been trying to minimise the prevalence of domestic violence in their communities through legal reforms. The chapter explained how the government of Zimbabwe came up with the Domestic Violence Act (Chapter 5: 16) as a legal response to the intimate partner violence problem. It also went on to illustrate that, despite Zimbabwe utterly criminalising domestic violence as espoused in the Domestic Violence Act, the problem of domestic violence has not diminished particularly within traditional communities with strong culture.

The main concern of this study cannot be dealt with without making reference to theoretical foundations on the domestic violence discourse. Thus, the third chapter of the study largely presents the theoretical foundations upon which the thesis is constructed. In three sections, the present chapter introduces and discusses the three theories that guide the entire study. Apart from defining and contextualising the theories, the chapter explains how the three theories work together to direct the study in the construction of the entire thesis.

The first section presents paternalism in general and especially legal paternalism in particular as a theory that is used to justify state intervention in the private affairs of its citizens with the view to extricate them from harm either by self or harm by others. This theory is very important to the study because it provides the underlying principle upon which policies and laws such as the Domestic Violence Act are proposed, passed by the legislature and implemented by law enforcement agents. The section shows that most national policies and laws are usually promulgated in response to people's unconventional behaviour, particularly

where vulnerable people such as women and children are at risk. In this section, paternalism and legal paternalism are defined before the advantages and disadvantages of legal paternalism are presented. The section also looks at how the concept of legal paternalism works to protect citizens before discussing how the theory can be used to justify the Domestic Violence Act. Overall, the section presents the Domestic Violence Act of Zimbabwe as a case of state paternalism in response to rising incidences of violence among people in intimate relationships. It shows that legal paternalism is meant to protect vulnerable persons or groups of persons from abuse.

The second section of the chapter looks at feminist jurisprudence. This is a theory that focuses on the formulation and effects of legal policies that are meant to unshackle women from male or chauvinist domination. Feminist jurisprudence is therefore brought in the study as a liberation theory for women. Its main agenda is to advance the developmental causes of women from a legal point of view. It is a theory which, according to Patricia Cain (2013:195), maintains that the best way to deal with women's problems is to carefully "listen to women when they describe the harms they experience as women..." and this, she believes, will allow authorities to "...perceive the problem correctly and propose the right solutions". It is from this perspective that the Domestic Violence Act, being a new law in Zimbabwe, is viewed as the state's interventionist law directed at disentangling women from discriminatory traditional beliefs and cultural practices. However, feminist jurisprudence is specifically used in this study as a lens to evaluate the extent to which women make use of the Domestic Violence Act as a legal reform that focuses on improving their wellbeing.

In the third section, the chapter looks at the feminist ethical theory both in general and from an African perspective. It explains how feminism, as conceived in Western ideologies of women emancipation, can be used to discuss women's rights and freedoms. However, since the study focuses on an African people (the Ndaou), there is need to ground the study in a theory relative to African women's experiences and approaches to domestic violence. In this section therefore, African feminist ethics is presented as the third principal theory for the study. Discussion focuses on African feminist ethical theory because the Domestic Violence Act is a law that was introduced to address gender and power imbalances brought by culture whenever there is violence between men and women in intimate relationships. The theory also provides the lens through which to identify and analyse the cultural structures and practices which prevent Ndaou women in particular from making deliberate use of the domestic violence law whenever they experience intimate partner abuse. However, it is

important to reiterate that the Domestic Violence Act cannot escape being labelled as paternalist as explained in the next section.

3.1 Paternalism

Paternalism is understood as any intervention by a person, group of persons or by the state in a person's freedom with the aim of furthering that person's own good. In his understanding of paternalism, David Shapiro (1988) concluded that any action taken at any time in order to benefit the action's target of intervention constitutes paternalism. This means that paternalism focuses as well on the degree of consent expressed by the target emphasising, for example, that a paternalistic act towards *B* is one that would be pursued by *A* if *A* acts for *B*'s benefit and would do so even when knowing that *B* did not consent. Additionally, according to Anthony Kronman (1983), an act of paternalism is seen as any action by one party that interferes with another person's freedom, with the goal of furthering the latter's own good. The person whose own good is the interest of a paternalist agent is deemed incapable of protecting himself or herself from harm. This is how the Domestic Violence Act can be understood as paternalist because it aims at protecting intimate partners, especially women, from intimate partner violence, which they seemingly cannot do on their own.

By way of definition, the term 'paternalism' has both a general and a specific meaning. In its broad sense, Ronald Dworkin (2005:25-31) observed that 'paternalism' refers to "government as by a compassionate parent". He further pointed out that the term is derived from the Latin word '*pater*' which means 'father'. With reference to state intervention, paternalism implies that, just as a kind father protects his children against harm and danger, the state has an inviolable responsibility to protect its citizens not only against harm inflicted on them by other citizens, but also against harm which individuals might inadvertently inflict on themselves. This means that paternalist intervention refers to the notion that those in positions of power have, just as in a parent-child relationship, the right and commitment to overrule the preferences of persons deemed incapable of or uncertain about knowing their preferences. This suggests that paternalism is commonly used in a broad sense as an intervention strategy in decision-making especially in politics and public policy formulation and implementation. In its outlook therefore, paternalism can be described as elitist on the part of governments or any other powerful authorities in that it appears to patronise the people whom it claims to protect.

The above broad context and application of paternalism is used in this research. The main contention is that acts of paternalism, in the broad sense of the term, have a normative

expressive content which makes them objectionable. Paternalist action expresses the idea that the actor knows better than the person upon whom action is done, suggesting that paternalists have the capacity to know all the preferences and interests of persons upon whom they act. The implication of paternalism therefore is that persons upon whom actions are carried out are not capable of making good judgment or decisions for themselves. This is a condescending attitude towards persons and it is generally unethical.

3.2 A Historical overview of paternalism

Paternalism is an old practice that dates back many centuries. According to Joel Feinberg (1971: 105)⁹, paternalism has some historical connection with patriarchal theories of political power. This is linked to the suggestion that the patriarchy knows and approves of all that which is good for the family and the society at large. For example, in the seventeenth century, Robert Filmer¹⁰ defended the divine right of kings to rule by invoking the “right of fatherhood” which, he claimed, had passed down from the first man of Creation, Adam, to the kings and princes of his own time. The theory was widely criticised by John Locke¹¹ when he invoked individuals’ natural right to life, liberty and property claiming that they were independent. Thus, from John Locke to John Stuart Mill, the emphasis was on the limited right of the state to interfere in individuals’ private lives, particularly homes. In Mill’s mid-nineteenth century work, *On Liberty*, the individual’s choice or freedom is defended not mainly against monarchs but explicitly against democratic governments as well as against liberal societies. According to Alan Fuchs (2001), Mill’s position in his work concerning state intervention was that personal autonomy is a fundamental principle that cannot be overridden by anyone, including the state through the laws it puts in place. This approach places a limit on how far paternalism can go. John Stuart Mill, as cited by Alan Fuchs (2011:231), argued that:

The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (for intervention). He cannot be compelled to do or forbear because it will be

⁹ Feinberg’s submissions in this section, though dated, are quite relevant to this study. They carry the idea upon which, the Domestic Violence Act of Zimbabwe is premised and this makes the DVA morally objectionable.

¹⁰ Robert Filmer was the main ideologist behind paternalism. He argued that the Sovereign (State) has power over the people just as a father has power over his children. In his book *Patriarcha*, Filmer made great efforts to trace the lineage of kings to Adam and the Biblical patriarchs in order to prove that rulers are in a certain way parents of their people and therefore have natural paternal rights over them.

¹¹ Locke’s criticism is documented in "Paternalism". In R. A. Wasserstrom (Ed). *Morality and the Law*, Belmont, California: Wadsworth Publishing Co., 1971: 134- 45.

better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right.

From the quotation above, the main point against paternalism is that in matters that concern only consenting rational individual persons, the state has no right to intervene. Mill (1986) was mainly concerned with state paternalism as opposed to individual paternalism, though not only with the law but also with public opinion which, as he argued, can be very intrusive. What is wrong with paternalism, according to this view, is that it denies individuals the ability to make choices about their own lives and experiences.

The greatest point of concern about the Domestic Violence Act of Zimbabwe is that it displays tendencies towards what Mill argued against in the above quotation. While the Domestic Violence Act can be said to be focusing on preventing perpetrators of domestic violence from harming their perceived victims, the argument in this study is that the Domestic Violence Act is paternalistic in the sense that it compels survivors of domestic violence to report or seek legal intervention for their own good. The study also argues that the state, through the Domestic Violence Act, assumes that survivors of domestic violence would live happy lives if only they report cases of domestic abuse and get protection orders against their abusers. Thus, the Domestic Violence Act can be regarded as particularly intrusive because it requires that domestic violence survivors report abuse for their own good.

The above short historical background on paternalism shows that paternalism is a topic that engenders deep philosophical issues in normative ethics and political philosophy. This is the case because paternalism is generally regarded as a theory that encourages the violation of people's right to choose. It misrepresents the significance and nature of individual freedom and autonomy, and the relationship between individuals and the state. The implications of paternalism on legislation against domestic violence are given in detail in chapter 7 of this study where a critical analysis of the DVA is presented. However, in order to evaluate the Domestic Violence Act in the context of paternalism, the difference between two major types of paternalism is explained in the next section.

3.3 Types of paternalism

It is important to note that the furore on the moral status of paternalism has led to two major types of paternalism being identified. They are 'hard' and 'soft' paternalism. The distinction is meant to separate the extent of state interference that is permissible in order to evaluate paternalism.

3.3.1. Hard paternalism

Hard paternalism is considered to be morally unacceptable as it refers to any form of prohibition that involves coercion or force in preventing an individual from causing harm to self. Feinberg (1986: 104) noted that, in application, hard paternalism completely and deliberately ignores a person's sufficiently voluntary choice for the reason that the interference is taken to be for the agent's own good. In Feinberg's view, hard paternalism is morally impermissible as it violates the doctrines of personal autonomy and sovereignty which are fundamental commitments to liberal political philosophy.

The problem posed by hard paternalism affects how domestic violence can be dealt with. The main concern is to interrogate the conditions and reasons under which it is morally acceptable for state laws to coercively direct an individual to act in a particular manner when faced with domestic violence. For Mill (1986: 143), hard paternalism is morally objectionable on two related claims which he put as follows:

- The paternalist, as an external party, lacks sufficient knowledge of a potential recipient's own chosen structure of values and preferences to make an informed decision to coerce the recipient;
- The person interfered with, as the creator of his or her own structure of values and preferences, is in the best position to know what is good for oneself.

To this end, Mill (1986) argued that hard paternalism is unjustifiable because it does not respect the individual's own feelings and circumstances. Furthermore, he maintained that the most ordinary man or woman has knowledge that surpasses that can be possessed by anyone else who may want to act to protect them. This serves to illustrate that hard paternalism may not be justified for purposes of improving the welfare of the person being interfered with.

3.3.2. Soft paternalism

Paternalism may not necessarily involve coercion or the violation of a person's freedom of choice, as in the case of 'hard' paternalism explained above. That is, conduct may in fact be paternalistic even when it apparently is done with the target's consent. When this happens, paternalism is said to be 'soft'. As Kalle Grill (2010) suggested, if a person gives his or her genuine consent to some action that interferes with his or her initial choice or preferences for the good of that person, the person is a target of 'soft' paternalism. In such cases the target

person's competence is not recognised, at least not as a decisive consideration.

The implication of 'soft' paternalism, though not morally unproblematic, is that it uses incompetence as the reason for interfering with the person affected and assumes that the person will appreciate the interference and be happy with it in the long run. For this reason, Govert den Hartogh (2015) argued that the objections that can be made against 'hard' paternalism therefore simply do not apply to the 'soft' paternalism variant. However, Gebhard Kirchgässner (2015) disagreed with this position and argued that there is no clear-cut distinction between 'hard' and 'soft' paternalism. He further contended that the same objections that can be raised against hard paternalism can also be raised against soft paternalism since both override the target person's competence.

3.4 Legal paternalism

Feinberg (1971), as cited in John Hospers (1980: 2) defined legal paternalism as a theory that maintains that the state is required, at law and at all times, to act in two main ways, that is, to coercively protect people from self-inflicted harm and to guide people, even against their will, for their own good. This is done always to protect citizens from the undesirable consequences of not only their own actions but also their inaction. Thus legal paternalism seems to imply that the state often knows the interests of individual citizens better than the citizens know themselves. In effect, the state stands as a permanent guardian of all the interests of all citizens as the great compassionate parent. However, this role often brings more suffering than relief for the citizens affected.

3.4.1 Strengths of Legal paternalism

The principle of legal paternalism justifies state coercion or intervention to protect individuals from harming others or from suffering self-inflicted harm. In its practical application, legal paternalism serves to guide citizens, whether they like it or not, towards acting for their own good. Most people agree that it is the state's responsibility to prohibit certain actions that would indisputably inflict harm on self, other individuals or on society as a whole. Without restrictive laws passed on and implemented by the state through its various organs, citizens are invariably made vulnerable to various forms of abuse and harm. One such area in which legal paternalism has worked immensely in Zimbabwe is in dealing with various forms of inequality between men and women as well as in the area of resource distribution.

Thus, when laws are passed, people's rights are guaranteed and equality is mandated. In view of the role of legal paternalism in removing inequalities between men and women, Joan May (1987: 24) noted that:

Most governments today have pledged themselves to remove inequalities between the sexes. It has become not only a matter of political expediency but, through the United Nations, an international obligation. The principal instrument the state uses to effect reform is the law...The law and its administration is a key factor and the means whereby governments proceed by persuasion or enforcement in their plans for social change.

From the above quotation it can be concluded that the functions of the law can be divided into three overlapping categories: governance, conflict resolution and resource distribution, all of which serve to protect citizens. However, this study is limited to the use of the law to resolve conflicts between intimate partners. It focuses on the ethical implications arising from the use of the law to end intimate partner violence in a traditional society.

3.4.2 Limits of Legal paternalism

The question to ask is: How far should the law interfere with the people's choices or preferences? The extent to which state laws should go in limiting and restricting the actions of individuals is a controversial one that has profound implications. Joel Feinberg (1971) opposed the doctrine of legal paternalism by arguing that it infringes upon individual freedom of choice. For him, when an individual's sufficiently voluntary choice causes harm or risk of harm to that individual, the prevention of harm-to-self as justification for interfering is never a good reason to support the imposition of various laws prohibiting certain types of conduct. This comes from the observation that paternalism in general and 'hard' paternalism in particular overlooks or disregards ethical principles such as autonomy, competence, sovereignty and liberty.

Another limit of legal paternalism, as noted by Glen Douglas (2007), is that civil laws tend to operate in a top-down linear fashion instead of taking into account the experiences of the people they seek to protect. This means that the approach of the criminal law, particularly that of the Domestic Violence Act falls, is paternalistic because rules and responses used during prosecution are generalised rather than sensitive to refer to particular experiences. The implication is that individual experiences are not given chances to influence individual expectations and choices. Thus, it is this aspect of the DVA which makes it difficult to

implement, especially in a community where traditional beliefs and cultural practices are strong. To this end, May (1987: 19) said that, “[I]f legislation is too radical and appears to be in direct conflict with traditional value system, it can pose a threat to national cohesion and stability which is a priority in any developing country”. By this statement, May meant that civil laws that directly infringe on the local people’s culture risk causing more harm than good for the intended beneficiaries.

The same line of thinking is expressed by Heidi Boas (2006) who pointed out that when an African community does not widely support a particular civil law such as the DVA at the time of its promulgation, individuals may continue to handle cases of violence through the traditional means rather than turning to the provisions of the law in question. Thus, the full implementation of provisions of the law which implicitly or explicitly clashes with the local people’s culture suffers constant vigilance when the intended beneficiaries ignore it.

3.5 Legal paternalism in Africa

The scope and magnitude of legal paternalism as defined and explained above has not always existed. This means that legal paternalism is a foreign idea in African communities. But this is not to suggest that paternalistic approaches to governance are entirely new in African societies. A number of authors including Benjamin Sansom (1974) and Paul Maylam (1987), as quoted by T. W. Bennett (1991) observed that paternalism also existed in most parts of Africa where communities ruled by chiefs. In these communities the chiefs acted as custodians of all customary laws and administered them to protect their territories and people.

Furthermore, David Chalcraft (1997) pointed out that in pre-colonial Africa, most social functions such as legislative, the executive and the judicial were confounded in one office; the chief-in-council. In other words, there was no separation of powers and an independent judiciary, which is a pre-requisite for protecting individual interests, simply did not exist. This means that instances of legal paternalism in pre-colonial Africa existed. However, it is important to note that the paternalism in pre-colonial Africa did not lead to the imposition of rules on the people as W.D. Hammond-Tooke (1975: 65) noted where he said that:

The African chief did not enjoy a continuing unquestioned right to command... his authority had to be continually recreated situationally, in specific contexts. This is expressed in the formula that chiefs could not rule on their own, but only in constant consultation with their councillors and people.

The above citation means that rules in African communities, though not necessarily perfect and gender sensitive were made from wide consultations.

However, the current legal system in most African countries, which is quite wide in both scope and influence, was brought by the colonialists who came, conquered and controlled indigenous people. There is a whole history of colonial occupation and subjugation of Africa and its people that comes into the discussion of the existence of legal paternalism in Africa today. This is maintained by Beatrice Okyere-Manu (2011), citing Saule (1996) where she observed that the advent of colonialism in most parts of Africa saw the complete destruction of structures upon which the roots of African jurisprudence were anchored completely destroyed. This happened because, upon taking over control, colonialists instituted laws and regulations that were to be used to govern and control indigenous people. In this regard, Okyere-Manu (2011: 53) brought our attention to Saule's concerns where he said that:

Colonialism, wherever it sprung, did not only bear political expedience but more fundamentally the pollution and destruction of traditional practices of the indigenous people. The values and cultures of such people were profoundly disturbed and confused. It divorced itself from the traditional needs of the people.

The above quotation can be used to describe what happened in Zimbabwe immediately after colonial occupation in the 1880s. In their book, *The Law in Zimbabwe*, Otto Saki and Tatenda Chiware (2007: 14) also drew our attention to a graphic description of the process of colonial takeover of the local people's legal system that followed the colonisation as follows:

29 October 1889 marked the commencement of formal colonial takeover for Zimbabwe. A company known as the British South Africa Company (BSAC) was given a Charter on 29 October 1889 by the British government. The company was the brainchild of Cecil John Rhodes, a British businessman and politician. The colony of Zimbabwe was renamed Rhodesia, after John Cecil Rhodes. The charter was a semi-permanent instrument of government until such time as any settlers could take over the administration of the colony. According to the charter, the British South Africa Company was to administer the colony for at least twenty-five years before the contract was tampered with.

Following the colonial takeover as described in the quotation above, the colonialists then started putting in place all kinds of Western-oriented rules and regulations to control the people they had subdued. It can be argued that this development marked the beginning of the existence of civil laws in Zimbabwe.

3.6 Legal paternalism in Zimbabwe

In the case of present-day Zimbabwe, there is hardly any law that is entirely free from the influence of the English and the Roman-Dutch laws. Instead, Zimbabwe has been operating on a dual legal system that also recognises customary laws as indispensable. For this reason, Saki and Chiware (2007) argued that Zimbabwe's law, even after several years of independence, still exhibits residual traits of the process of transplantation, the historical disempowerment of the local people and British colonial takeover. They further contended that the colonial and legal history of Zimbabwe is interconnected and interrelated to the history of South Africa's legal developments and colonial Apartheid activities.

In agreement with the above-stated observation, Claire Palley (1966)¹² claimed that prior to the arrival of the first British settlers in the then Rhodesia in the 1880s, the area now known as Zimbabwe was occupied exclusively by the Shona¹³ and Ndebele¹⁴ peoples whose chiefs exercised sovereign powers over their people. The Shona people occupied the northern part of the country now known as Mashonaland, while the Ndebele people occupied the southern part known as Matabeleland. Lobengula, the Ndebele King, was the most powerful king at the time of British occupation of the land between the Limpopo and the Zambezi rivers. However, it must be mentioned that the law in force before British occupation was the traditional or the customary law of the tribes living in Zimbabwe. Even though traditional laws were not written and were not administered throughout the country, they saved the local people's interests. On this note, Saki and Chiware (2007) pointed out that chiefs and their village heads administered the law, with chiefs being the judges who had the final say in the settlement of disputes. The authors further maintained that chiefs had the power to issue decrees and these would become law.

Regarding the British colonial take over, Saki and Chiware (2007) also observed that, at colonisation, the traditional legal system was sidelined and replaced by the colonial system of administration through the British Royal Charter. In itself, the Charter was the first legal document which outlined how the British colony of Rhodesia was to be governed and

¹² This is a dated source but essential on the history of legal reforms in Zimbabwe.

¹³ The Shona people constitute the largest population in Zimbabwe, and the Shona can be grouped into six different ethnic groups namely, *Karanga, Korekore, Kalanga, Manyika, Zezuru and Ndau*. (See Mangena, 2012: 63- 64).

¹⁴ At the time of the British colonial occupation of Zimbabwe, the Ndebele were more powerful than the Shona, and they always raided the Shona people mainly for cattle and grain. (For a full history of the Shona-Ndebele relations, visit: archive.lib.msu.edu/DMC/African%20Journals/pdf/...)

administered. It also defined legislative and judicial issues. Palley (1966: 58) cited Article 10 of the Charter which decreed that:

...the company shall to the best of its ability preserve peace and order in such manners as it shall consider necessary and may with that object make ordinances govern the colony to be approved by [the British] Secretary of State, and may establish and maintain a force of police to enforce the ordinances.

It is clear from the provisions of Article 10 of the British Charter, that the company had been vested with legislative, administrative and judicial powers and this was the beginning of the imposition of the English and Roman-Dutch laws upon sovereign people of Africa. In this regard, it can be argued that the Domestic Violence Act of Zimbabwe becomes has residual colonial law characteristics that reflect the colonial disregard and condemnation of African traditions and cultural practices. This calls for the consideration of another theory to inform the study focusing on the impact of legal reforms for women and girls. Thus the next section looks at Feminist jurisprudence.

3.7. Feminist ethics

The core of Feminist ethics is an exposure of women's oppression by men and the formulation of strategies to free women from male domination. The history of Feminist ethics dates back to the seventeenth century and shows that ever since the seventeenth century some men and women have been challenging both the Church and political authorities by pointing out the hypocrisies and injustices of men against women in society. Feminist ethics therefore is an attempt to revise, reformulate or re-think about the aspects of ethics that depreciate or devalue women's moral experiences.

In describing feminist ethics, Okyere-Manu (2011: 45) drew our attention to Alison Jaggar's (1992) observations and aptly summed up the feminist ethics agenda as follows:

On a practical level, then, the goals of feminist ethics are the following: first, to articulate moral critiques of actions or practices that perpetuate women's subordination; second, to prescribe morally justifiable ways of resisting such actions and practices; third, to envision morally desirable alternatives that will promote women's emancipation. On a theoretical level, the goal of feminist ethics is to develop philosophical accounts of the nature of morality and of the

central moral concepts that treat women's moral experience respectfully, though never uncritically.

This means that Feminist ethics approaches women's problems from the conviction that the subordination of women is morally wrong and that the moral experience of women is as worthy of respect as that of men.

Given the Feminist agenda as outlined above, Alison Jaggar (1992) found fault with the traditional Western feminist ethics for failing women in five related ways which she pointed out as follows:

1. It shows little concern for women's as opposed to men's interests and rights.
2. It dismisses as morally uninteresting the problems that arise in the so-called private world; the realm in which women cook, clean and care for the young, the old and the sick.
3. It suggests that, on the average, women are not as morally developed as men.
4. It overvalues culturally masculine traits like independence, autonomy, separation, mind, reason, culture, transcendence, war and death, and undervalues culturally feminine traits like interdependence, community, connection, body, emotion, nature, immanence, peace and life.
5. It favours culturally masculine ways of moral reasoning that emphasise rules, universality and impartiality over culturally feminine ways of moral reasoning that emphasise relationships, particularity and partiality.

Jaggar's (1992) criticism of Western ethics in view of its failure to recognise women's social space and bring women's experiences and concerns on board is quite in order as this observation led to a search for an ethic that encompasses women's individual experiences. This gave birth to Feminist ethics which, according to Okyere-Manu (2011:45), "...assumes a criticism of the historical roles of women in society, or a complaint about those roles." This is the approach that contemporary feminists such as Carol Gilligan (1982) assumed in their efforts to carve Feminist ethics that spoke to and brought to the forefront different women's experiences. For example, Gilligan's Feminist ethics was born out of a critique of Lawrence Kohlberg's (1963, 1970) studies of models of maturation of moral agents. Kohlberg's studies invariably led him to conclude that women were inferior to men in terms of their moral maturation levels.¹⁵

¹⁵ A full summary of Kohlberg's studies outcome is given by W.C. Crain (1985:118-136).

Gilligan's (1982) reply to Kohlberg's studies was to assert that women were not inferior in their personal and moral development, but that they merely were different from men. They developed in a way that focused on connections among people (rather than separation) and with an ethic of care for those people (rather than an ethic of justice). She further demonstrated empirically that the moral development of women was significantly different from that of men. Fischer (1987) claimed that females tended to fear separation and abandonment while males, by contrast, tended to perceive close attachment to women as dangerous. He also observed that girls and women often construed moral dilemmas as conflict of responsibilities rather than of rights. It is from this perception that women seek to resolve intimate partner violence in ways that would repair and strengthen webs of relationships. Furthermore, Gilligan (1982) described females as less likely than males to make or justify moral decisions by the application of abstract moral rules.

Gilligan went on to claim that girls and women were more likely to act on their feelings of love and compassion for particular individuals, especially children and the elderly persons, than boys. Gilligan (1982) concluded that, whereas men typically adhered to a morality of justice, whose primary values are fairness and equality, women often adhered to a morality of care, whose primary values are inclusion and protection from harm. In view of Gilligan's approach, some of the concerns of this study which revolve around the difference between men's and women's attitudes towards the morality of the domestic violence are addressed.

However, Gilligan's feminist ethics was not without censure. One of the criticisms Gilligan's version of feminist ethics attracted was that her study was limited to white middle class European women. This criticism has come from African feminist philosophers who maintained that Gilligan's feminist ethics is racially biased. For example, Fainos Mangena (2009) concluded that Gilligan's ethic of care was suitable for a Western (white) possessive individualist ethical framework. He went on to note that Gilligan's feminist ethics made very little impact in an African society where the community comes first and the needs and desires of the individual, especially (married) women, are secondary and also frowned upon.

In view of Mangena's observations about the shortfalls of Western feminist ethics, it is clear that the Domestic Violence Act is inadequate as a strategy to deal with intimate partner violence because it blatantly condemns intimate partner violence within cultural practices, particularly within an African family setup that includes the extended family. There is need therefore to bring in a feminist ethics that appeal to the African woman's experiences and

preferences. In the next sub-section an African feminist ethics derived from *hunhu/ ubuntu* is presented.

3.7.1 African Feminist ethics based on *Hunhu/ Ubuntu*

African women's experiences can only be evaluated meaningfully from an African feminist perspective. African feminist ethics therefore can be understood as a theoretical framework that focuses on African women's experiences in different parts of Africa. Mangena (2009), as cited in Okyere-Manu (2011:57), defined feminist ethics in general as "a field of philosophical inquiry which seeks to examine ethical issues relating to women's experiences and their everyday association with men in society." Mangena (2009: 19) further pointed out that:

Feminist approaches to ethics are distinguished by an explicit commitment to correcting male biases they perceive in traditional ethics, biases that may be manifest in rationalisations of women's subordination, or in disregard for, or disparagement of, women's moral experience.

In his view, Mangena (2009: 14) believed that a feminist ethics in Africa, particularly Southern Africa, cannot be fully understood outside the African ethics of *hunhu/ ubuntu* because, according to him, "...*ubuntu* determines both the norms of conduct and criteria for success, and it is characterised by a deep sense of corporate life, which expresses itself in an intricate network of social and kinship relationships." This observation is deeply rooted in the essence of the Southern African ethics of *ubuntu* about which a number of Southern African philosophers and scholars have written. Writing on the essence of *ubuntu*, Augustine Shutte (2009) argued that *ubuntu* is best understood from the meaning of the traditional African expression: *Umntu ngumuntu ngabantu* as expressed in Zulu and *Motho ke motho ka batho*, expressed in Sotho. In Shona (one of the local languages spoken by about 90% of Zimbabweans) the saying goes *Munhu munhu nokuda kwavanhu* which, in all the Bantu languages, invariably means that a person is a person through other persons. The Shona word corresponding in meaning to *umuntu and motho* is *munhu*. Thus, *ubuntu* is the same as *unhu/ hunhu* in Shona.

Additionally, according to Okyere-Manu (2011: 50), an interpretation of the philosophical expression in the named languages points to the fact that the philosophy of *ubuntu/ unhu* is based on the understanding of interdependence: the need for one another to achieve life's desired goals. It is from this understanding that Shutte (2009), as cited in Okyere-Manu (2011: 52), said that:

Ubuntu is the name for the acquired quality of humanity that is the characteristic of a fully developed person and the community with others as a result. It thus comprises values, attitudes, feelings, relationships and activities, the full range of the human spirit.

A number of Southern Africa authors defined *ubuntu/unhu* in an effort to unpack the essence and significance of *ubuntu/unhu* to Africans in general. Okyere-Manu (2011:51) appropriately identified a definition of *ubuntu/unhu* from Stanlake Samkange and Marie Samkange which serves our purposes in this study. She said:

The attention one human being gives to another: the kindness, courtesy, consideration and friendliness in the relationship between people: a code of behaviour, an attitude to other people and to life; is embodied in *Unhu* or *Ubuntu*. *Hunhuism* [sic] is, therefore, something more than humanness, deriving from the fact that one is a human being.

The definition of *ubuntu/unhu* given here emphasises the core of human relationships. It implies that a relationship that does not have *ubuntu/unhu* as its guiding principle is barbaric and therefore, not worth being into. This view is further expressed by Johann Broodryk (2004: 4) as cited in Okyere-Manu (2011: 51) who defined *ubuntu* as a principle that encompasses “a comprehensive, ancient worldview which pursues primary values of intense humaneness, caring, sharing and compassion and associated values, ensuring a happy and quality community life in a family spirit or atmosphere”.

Broodryk’s definition implies that *ubuntu/unhu* encapsulates the essence of being a human being among other human beings. This is supported by Mogobe Ramose (2003: 36) where he explained the *ubuntu/unhu* concept as a humane, respectful and polite attitude towards others. This description of *ubuntu/unhu* fits very well with the main concern of this study. The DVA’s approach to domestic violence lacks *ubuntu/unhu* in that it does not take into cognisance the object of mending relations from within the source of the conflict. Its tendency to involve ‘strangers’ in the name of police officers and legal practitioners gives the impression that all hope is lost and therefore survivors must adequately be compensated.

Thus, the Domestic Violence Act seems to be failing in bringing harmony within families as it often leaves feuding parties without *ubuntu/ unhu*. In this regard, Okyere-Manu (2011: 52) took us back to the point that Michael Mnyandu (2005) made about the core principle of *ubuntu/ unhu* where she said:

Ubuntu is not merely a positive human quality but the very essence itself, which ‘lures’ and enables human beings to become ‘abantu’ or humanised beings living in daily self expressive works of love and efforts to create harmonious relationship in the community and the world beyond.

The quotation implies that *ubuntu/ unhu* is mainly concerned with harmonious communal human relationships and that it demands that all members of the community be held accountable to uphold values such as respect and dignity as shared and communal values.

The observations and inferences drawn from the philosophy of *ubuntu/ unhu* demonstrate that the African ethic of *ubuntu/ unhu*, according to Okyere-Manu (2011: 51) “... expresses itself not only in individual or communal acts but also in their very being, making each individual an important part of the community.” This means that every human action, whether done by an individual or group is subject to scrutiny through *ubuntu/ unhu* lenses. In this regard, acts of domestic violence, being human acts, cannot escape being subjected to *ubuntu/ unhu* and this study argues that turning to *ubuntu/ unhu* in dealing with violence in intimate relationships is still appropriate notwithstanding the Domestic Violence Act.

3.7.2 A critique of *ubuntu/hunhu*

Ubuntu/ Unhu is not without its share of problems. One of the issues with *Ubuntu/ Unhu*, as Bennett (1999: 31) observed, is that *Ubuntu/ Unhu* has been overly glossed. *Ubuntu/ Unhu* and much about African culture are often argued to belong in the distant pre-colonial past. According to Bennett (1999), it has been argued that *Ubuntu/ Unhu* claims that African people suffered no systematic discrimination or oppression before colonialism. But, as Desmond Tutu (1931-), as cited in Gade (2011), put it, the biggest challenge of *ubuntu/unhu* is that it has been characterised as a ‘manly’ virtue. This masculinist strand has not presented *ubuntu/ unhu* favourably. In other words, *ubuntu/ unhu* has always been presented from the cultural perspective, which itself is predominantly problematic because of patriarchal issues.

One of the most fervent criticisms of *ubuntu/ unhu* comes from Mangena (2009) who drew our attention to the manliness ethos embedded in this Southern African approach to life. In

his reflections on *ubuntu/ unhu*, Mangena found out that paying uncritical homage to it was worrisome, particularly as *ubuntu/ unhu* exposed women to many problems associated with HIV and AIDS. For example, married African women are expected by community elders to take care of their sick husbands who have HIV and AIDS by appealing to the spirit of *ubuntu/ unhu*. In this manner, *ubuntu/ unhu* becomes paternalistic as it prescribes what it regards as appropriate duties women have towards their male counterparts. In fact, Mangena (2009) concluded from his field research that many African women did not receive any reprieve from *ubuntu/ unhu* ethics as they claimed that it was only meant to entrench patriarchy. This is further supported by Munyaradzi Mawere (2012: 15) where he argued that most of the traditional beliefs and cultural practices that subscribe to *ubuntu/ unhu* are generally abusive of women. Thus, there is need to re-look at the far-reaching effects of *ubuntu/ unhu* with the view to separate the good from the bad, without biased. This is the stance that Molly Manyonganise (2015: 1) took where she said that:

Ubuntu as an African ethic has been embraced in Africa as one that defines an individual's African-ness. Its influence has gone beyond the African borders with other continents pondering how it can be embraced in their contexts. Scholars from Africa and beyond have eulogised the indispensability of *ubuntu*. However, it is a fact that most academic writings on the concept by various scholars have neglected to look at *ubuntu* and how it intersects with gender –especially with a particular focus on its ambivalence in the lives of women in Africa.

Clearly, Manyonganise's position in the above quotation is that *ubuntu/ unhu* does not in itself provide a panacea to African women's social problems because it is anchored on patriarchy. This implies that *Ubuntu/ Unhu* patronises patriarchy and therefore does not liberate women from male domination and abuse.

3.8 An overview of Feminist jurisprudence

It has been mentioned that this study's main focus is on an ethical exploration of the impact enforcing the Domestic Violence Act upon a traditional society. This means that the study is interested in impact of the Domestic Violence Act as a legal response to the domestic violence problem among the Ndaue people in Zimbabwe. As such, there was need to ground this study in legal theories as well. Thus, the second theory used is Feminist jurisprudence which reflects on legal reforms and critiques how these reforms affect all people in general and women in particular. In their book entitled *Feminist Jurisprudence: Women and the Law*, Betty Taylor, Sharon Rush and Robert Munro (1999) argued that legal reforms often

disenfranchise women disproportionately. By saying this, the authors meant that legal reforms that are introduced to protect vulnerable groups such as Ndau women often ended up exposing them to more abuse. This usually happens when the reformed law takes time to be known and used by the intended beneficiaries. It can also happen when there is no political will on the part of law enforcement agents in implementing the new law. All the circumstances affecting the effective implementation of the laws need to be critically evaluated from a woman's perspective. Feminist jurisprudence is the theory which can be used to do that.

In view of their observation, Taylor et al (1999: 23) pointed out that "the main thrust of feminist jurisprudence is to evaluate and critique legal reforms by examining relationships between gender, sexuality, power, women's rights and the judiciary system". The implication of this broad aim of feminist jurisprudence is that its purpose is to subject legal responses to a feminist scrutiny in order to determine how the reforms are set to benefit vulnerable groups of people: women and children first and foremost. The reason for grounding this study in Feminist jurisprudence is inspired by the fact that the Domestic Violence Act is a legal response to the domestic violence problem and it is meant to protect survivors, especially women and girls, from intimate partner violence in Zimbabwe.

With reference to the DVA, feminist jurisprudence claims that there are ethical challenges that arise in the course of implementing its provisions among people whose traditional beliefs and cultural practices are strong and influential. The ethical predicament emanates from the fact that, while the law is supposed to contribute towards minimising and subsequently ending domestic violence, it also presents implementation challenges as it raises incompatibility issues in the face of local people's traditional beliefs and cultural practices associated with intimate partner relationships. The current study therefore used feminist jurisprudence to critique the efficacy of the DVA among traditional Ndau community. Ultimately, an analysis of the DVA using feminist jurisprudence lenses served as a guide in the quest to find an appropriate legal approach that could be used to deal with domestic violence among the Ndau without exposing women to more intimate partner abuse. In doing this, the assumption was that the current legal approach to the domestic violence problem in Zimbabwe is paternalistic as it assumes that its provisions such as mandatory reporting and separation are what all women experiencing domestic violence want. The next section looks at paternalism in detail and explores how it works to the disadvantage of women experiencing domestic violence.

3.8.1 Feminist jurisprudence

Pascal Mwale (2002:14) pointed out that the conceptual framework of Feminist jurisprudence as a whole “is a reactionary ideology that basically focuses on investigating and analysing concepts such as ‘power’, ‘women’, ‘rights’ and ‘equality’”. He further observed that Feminist jurisprudence is a growing school of legal thought that encompasses other theories and approaches to the law and legal issues using different strains. Each strain of Feminist jurisprudence evaluates and critiques the law by examining the relationship between gender, sexuality, power, individual rights and the judicial system as a whole affects women.

By definition, Feminist jurisprudence is a theory that studies the law and analyses its practical and concrete impact on women’s lives. In practice, Feminist jurisprudence raises fundamental questions about the meaning and effect of the law on women’s lives. In this regard, Smith (1993: 10) pointed out that:

Feminist jurisprudence challenges basic legal traditional categories, distinctions or concepts and rejects them if they imply the subordination of women. In this sense, feminist jurisprudence is normative and claims that traditional jurisprudence and law are implicitly normative as well.

What Smith (1993) implied in the quotation above is that, as a legal theory, feminist jurisprudence serves to scrutinise the law from a feminist perspective because it sees the workings of the law as thoroughly permeated by political and moral judgments about the worth of women and how women should or should not be treated by their male counterparts. The assumption being made here is that the political and moral judgments that are found in most legal policies are patriarchal. This position is supported by Bennett (1993: 30) where he said “patriarchy is an established feature of all southern African systems of law, and to a lesser extent of Islamic and Hindu law.”

Using the above mentioned observation, I maintain that the Domestic Violence Act of Zimbabwe is one such law that spells out how intimate partner violence should be dealt with, particularly in Section 3, sub-section (l) (i-vii), where it proscribes the abuse of women emanating from traditional beliefs and cultural practices. Thus, feminist jurisprudence is a useful theoretical framework from which the meaning and impact of the DVA among the Ndaou people of Zimbabwe is explored.

3.8.2 A critique of Feminist jurisprudence

Feminist jurisprudence is an appealing theory for the purpose of analysing legal reforms from a feminist point of view. According to Patricia Cain (2013), what makes any theory particularly feminist is that it is derived from women's lived experiences or from a point of view contrary to the dominant male perceptions. Feminist jurisprudence, as a legal reform theory, is derived from a feminist method informed by critical women's experiences. However, in the case of legal reforms in Africa, feminist jurisprudence argues that some laws face ethical challenges at implementation in African communities.

One of the ethical challenges is that discriminatory and gender insensitive laws instituted during the colonial period need to be revised so as to accommodate previously marginalised vulnerable groups. However, one of the reasons why it has been difficult to have the reforms take immediate effect has been the existence of strong cultural environments. Mutandwa (2012) aptly noted that the criminal justice system, which is also referred to as the formal justice system in Zimbabwe responsible for all handling criminal offences, does not have the monopoly to deal with domestic violence cases. For example, in most Shona communities, people use traditional institutions such as the family and, in the case of rural areas, village heads, to resolve their disputes. With reference to the domestic violence problem, Matavire (2012) also argued that the criminal justice approach has not been fully taken on board in most traditional communities of Zimbabwe as most people are either unaware of the DVA or are reluctant to use it.

The reluctance in using civil laws such as the Domestic Violence Act to solve family conflicts is also highlighted by Ephraim Gwaravanda (2011). He claimed that several anthropological studies done in Zimbabwe so far have revealed that the traditional family court (*dare romusha*) is the first court of appeal in the Shona traditional justice system. The use of the traditional family court, which is not generally sanctioned by the contemporary criminal justice system, has persisted across Africa in spite of criminal law reforms such as the Domestic Violence Act in Zimbabwe. However, the traditional family court or the entire traditional justice system does not occupy substantial space in the contemporary criminal justice system and is therefore regarded as an informal justice system. For this reason, the traditional justice system does not fall within the ambit of feminist jurisprudence, rendering the theory as a foreign legal framework to inform the Domestic Violence Act of Zimbabwe. This therefore requires that the three theoretical frameworks be integrated in order to provide

a credible analysis of the DVA and propose a holistic legislation against domestic violence in rural communities.

3.9 Integrating the three theories

It is important that the three theories be engaged in so that the DVA is analysed effectively. To begin with, paternalism is used because policy makers claim that legislation against domestic violence is necessary as an intervention. Furthermore, proponent of paternalism such as Kalle Grill (2010) and Govert den Hartogh (2015) argue that paternalist policies such as the DVA may be considered justifiable under circumstances where certain sections of the society are at risk of abuse, the decisions being made by individuals are irreversible and it is possible to identify failures in people's reasoning. It is further argued that if paternalist interventions are able to be justified in terms of people's own values and preferences, then this adds weight to their acceptability given that they do not undermine people's autonomy.

However, the acceptability of paternalist policies is highly contentious. An investigation into the permissibility of paternalism in respect of the DVA calls for a theory that focuses on women's freedom of choice. For this reason African feminism is employed as a tool with which to interrogate the suitability of the current legislation against domestic violence in Zimbabwe. It is expected that African feminism as a theory of investigation will allow the researcher to explore the DVA from the point of view of women as vulnerable members of the society. The theory is further expected to expose the weakness of the current paternalist legal framework on the prevention of domestic violence in the country.

Furthermore, the need to find out how best to formulate an indigenous legal system that can be used to end domestic violence in rural African communities requires an African-oriented legal theory. African jurisprudence comes handy as a gender theory. Feminist jurisprudence is the theory that is best able to explore issues of ethical challenges raised from the interplay between the DVA and local cultures such as Ndau. Ultimately, the three theories used in this study lead to the proposed African feminist jurisprudence that is presented and explained in detail in section 8.6 in chapter eight.

3.10 Conclusion

It has been the aim of this chapter to outline and explore the theoretical frameworks upon which this study is undertaken. The first section of the chapter has demonstrated that the principle of paternalism is an appropriate launching pad for understanding and evaluating ways to deal with the problems of domestic violence legislation in Africa. It has

demonstrated that paternalism has a contentious and controversial principle from the classical period to the present-day. The different types of paternalist interventions were explored in order to demonstrate that though controversial, paternalism is not always impermissible. However, in view of the Domestic Violence Act, the first section of this chapter submitted that the DVA is a legal reform which subscribes to paternalism. As such, the chapter has argued that legal paternalism is morally objectionable, particularly ‘hard’ paternalism. Thus legal paternalism was seen as an appropriate theory from which to explore the moral impermissibility of the DVA as a legal approach to the domestic violence problem among people in intimate relationships.

The second section of the chapter was devoted to Feminist jurisprudence as advanced by Smith (1993). The main idea raised in this section was that all legal reforms should be scrutinised in terms of how they affect women in general. The point was raised by Saki and Chiware (2007) from the understanding that most of the legal reforms in Africa are alien and discriminatory against African women. Thus, Feminist jurisprudence was presented as a useful theoretical framework from which to undertake a gendered critical analysis of the meaning and impact of the Domestic Violence Act among the Ndaue people of Zimbabwe.

The chapter also pointed out that the success of Feminist jurisprudence heavily depends of the use of a feminist ethical analysis of the Domestic Violence Act in Zimbabwe. This requires that the thesis makes use of the Feminist ethical theory in general and African feminist ethics in particular to analyse the Domestic Violence Act. Thus, the third section of this chapter focused on the Feminist theory from both the Western and African perspectives. From the Western worldview, Alison Jaggar’s argument that the Feminist ethics project served to achieve three key objectives was explored.

The objectives of Feminist ethics were identified and explored in the context of Carol Gilligan’s critique of Lawrence Kohlberg’s argument on the moral development of women. Notwithstanding the impact of Gilligan’s objections to Kohlberg’s research outcomes, this chapter also presented Feminist ethics from the African perspective. Thus, the last section of the chapter was therefore devoted to a discussion of the reasons why the African feminist ethics of *ubuntu/ unhu* is an appropriate tool to analyse the Domestic Violence Act. Mangena’s (2009) argument that issues affecting African women can only successfully be dealt with by engaging the Southern African ethic of *ubuntu/ unhu*, was highlighted and linked to the major concern of the study. With this theoretical background, the next chapter

proceeds to explore the traditional beliefs and cultural practices of the Ndaou people of Zimbabwe.

CHAPTER FOUR: NDAU PEOPLE OF GAZALAND, SOUTH-EAST ZIMBABWE

4.0 Introduction

The previous chapter laid down the theoretical frameworks that inform this study and discussed the suitability and relevance of the three theories preferred. Legal paternalism, Feminist jurisprudence and (African) Feminist ethics were presented and discussed in this chapter. It also clearly demonstrated how the three theoretical frameworks complement each other to inform the study. It showed how legal paternalism aims at protecting vulnerable people from harmful practices while feminist jurisprudence looked at how legal reforms affected women. The chapter also presented and critiqued African feminism as an ethic that defines relationships among Africans in general and the Ndaou people in particular. Thus the three theories were presented as the basis for an analysis of the interface between culture and the law.

The present chapter focuses on the Ndaou people of Zimbabwe. It presents the historical background information on the history, origin, migration and present-day location of the Ndaou. The objective of the chapter is to explore the cultural beliefs and traditional practices of the Ndaou people of Zimbabwe, focusing on the beliefs and practices that have direct implication on the family and family relationships. The chapter also aims at illustrating how the Ndaou are a unique ethnic group of the Shona people of Zimbabwe through their adherence to their strong culture. It further explains how the Ndaou people of Zimbabwe share a large community of culture, traditional beliefs and practices with their Mozambique counterparts along the border between the two countries. The historical background and the traditional beliefs and cultural practices outlined in this chapter provide the necessary information for the exploration of the Ndaou people's apprehension with the Domestic Violence Act of Zimbabwe. It must be mentioned at the onset that this study does not directly refer to the Ndaou located on the Mozambique side of the border. However, the interaction between the two groups of Ndaou people is recognised as explained in the next section of the chapter.

4.1 History of the Ndaou ethnic group

According to David Beach (1980: 190) the Ndaou people have a considerably long history that dates back to the times of the Rozvi Empire which existed from c1684 to about 1833/4. This means that the Ndaou people are one of the ancient people of Zimbabwe who used to live together with others in one large group. Marta Patricio (2011: 675) also pointed out that Ndaou identity is deep-rooted in the Monomotapa Empire and that their identity as a distinct group

dates back to the pre-colonial period before the Zimbabwe-Mozambique border was established during the partitioning of Africa in the 1880s.

Concerning the origin and use of the name *'Ndau'*, Canisius Mwandayi (2011: 49) observed that there is no clear-cut information regarding its origin. He maintained that the Ndau people did not identify themselves by such a name. However, Mwandayi's contention is contestable because Posselt (1935: 19)¹⁶, a linguist who studied the Shona people of Zimbabwe, also claimed that the name *'Ndau'* was coined by the Gaza-Nguni invaders in the second half of the nineteenth century from what the Nguni observed about how the people in the south-eastern parts of Zimbabwe greeted and responded to other people's greetings. The same account was given by Beach (1980: 190) who maintained that the Ndau displayed a unique way of humbleness and respect for other people in the area. It is assumed that the Ndau people's modesty probably came from the belief that they held any politically stronger groups highly in order to avoid any attacks.

Regarding the relationship of the Ndau and other people, Bulpin (1986: 45) further reiterated the above-stated position. He opined that the name *'Ndau'* was used by the raiding Gaza-Nguni "as a derogatory epithet to refer to the people of the eastern frontier who knelt and clapped hands when greeting their superiors." It is therefore possible that the Ndau adopted a survival strategy of displaying complete submission so as to avoid persecution. Elizabeth MacGonagle (2009: 548) also argued along the same line with Bulpin and Beach where she said that the term *'Ndau'* "was a nickname used by others in the nineteenth century to describe the people who said *'Ndau-wee, Ndau-wee'* as their customary unassuming greeting when they entered a homestead or received any strangers in their homesteads." Thus, from these submissions about the possible origin of the name *'Ndau'*, it can be concluded that Ndau people crafted a unique identity of who they were by displaying downright submission and allegiance to their superiors.

Still on the origin of the Ndau, Duri and Gwekwerere (2007: 1) claimed that the Ndau did not call themselves by the name *'Ndau'*. The authors maintained that no name was widely used to designate a specific Shona-speaking group until the nineteenth century. Their observation was that the use of specific names such as *'Ndau'*, *'Zezuru'*, *'Karanga'*, *'Manyika'* and *'Korekore'* to differentiate the Shona people only became prevalent after 1900. This was done largely through the efforts of Christian missionaries and colonial administrators who

¹⁶ This is a dated but relevant source on the history of the origins of names of different ethnic groups resident in various parts of Zimbabwe.

desperately needed such linguistic references for administrative purposes. From then onwards, the name Ndaou came into existence and use to identify people found along the eastern border with Mozambique.

4.1.1 Ndaou migration

Having established how the name 'Ndaou' came to be used to refer to the people who had settled in the south-eastern parts of Zimbabwe, it is important to explain where the Ndaou came from. Rennie (1979: 257) claimed that Nyakuimba is generally credited by both historians and anthropologists such as Posselt (1935) Gelfand (1973) and Bourdillon (1976) as founder of the Ndaou dynasty. It is believed that in the Rozvi Empire, Nyakuimba was responsible for the sacred charm (*gona*)¹⁷ for Shiryedenga, the Rozvi King. Joel Marashe and Richard Maposa (2010: 2) further stated that the Ndaou people broke away from the Rozvi Empire under the leadership of a daring and charismatic figure, Nyakuimba who connived with his sister, Chapo, to steal the sacred rain-making charm (*gona remvura*)¹⁸ from Murimo, who was the Rozvi King at that time. Together with two of his brothers, Chikanda and Chimoto, his sister Chapo and a sizeable number of followers, Nyakuimba fled into the deep forests of Gazaland which covers the present-day geographical area known as Chimanimani and Chipinge.

Later in the years, the three brothers allegedly separated and Nyakuimba and his sister moved and settled close to the present-day Mt. Selinda Ngungunyana Forest. He is said to have conquered the people he found living there and his influence stretched as far as the southern parts of Mozambique. The other brothers led separate groups of the Ndaou people and settled in areas along Save River. The people who occupied the area along Save River regarded themselves as the Ndaou of the valley (*gowa*).

4.2 Present day location of the Ndaou

The present day Ndaou people occupy a vast region and live on both sides of the Zimbabwe-Mozambique border. According to Bourdillon (1976: 14-15), the Ndaou are found in the south-eastern parts of Zimbabwe and in some regions in the south-western parts of Mozambique. Their location indicates that during their migration, the Ndaou moved across the region and spread into the present-day south-west Mozambique well before the two countries

¹⁷A sacred charm (*gona*) (plural: *makona*), is a very important item that a traditional leader, diviner healer or head of family may possess. It is usually an animal's horn filled with a mixture of powdered and liquid traditional medicine.

¹⁸Sacred charms are possessed for different purposes. Some are for dexterity in war (*gona rehondo*), rain-making (*gona remvura*) or witchcraft (*gona reuroyi*). It is up to whoever desires to have it to choose what they want to be famous for. Thus no traditional leader reigns without a *gona* for a particular purpose, lest his or her authority is regarded as hollow and can easily be challenged.

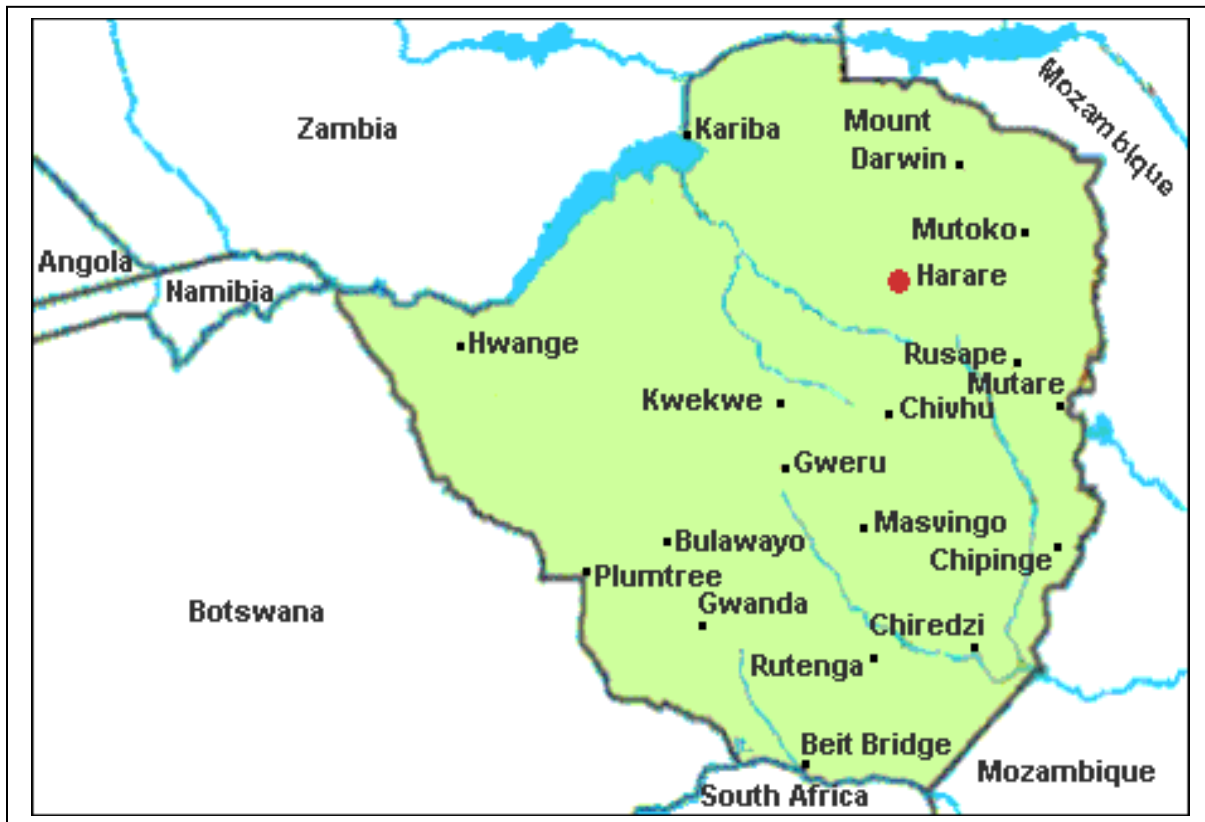
were separated by the colonial border in the nineteenth century. This is reiterated by Duri and Gwekwerere (2007:2) where they observed that:

By the time of the Nguni incursions during the first half of the nineteenth century there were a number of Ndau chieftaincies in south-eastern Zimbabwe. These included the northern dynasties of Mutambara and Muusha, north and south of the Nyanyadzi River respectively. The others were Mapungwana, Saungweme, Garahwa, Chikukwa, Mafuse, Ngorima, Musikavanhu, Mutema, Saurombe and Gwenzi.

What Duri and Gwekwerere said about the present location of the Ndau shows that the Ndau people have been in the area of study for many centuries. It is also clear that some of the chieftaincies mentioned have socio-political control over the Ndau people of Mozambique. Munyaradzi Mawere (2012: 7) also noted that the Ndau people occupy a vast region spreading across the two countries. He further specifically indicated that the Ndau of Zimbabwe are found in Chimanimani and Chipinge districts whereas those in Mozambique are in the south-western parts of that country which shares a long border with Zimbabwe.

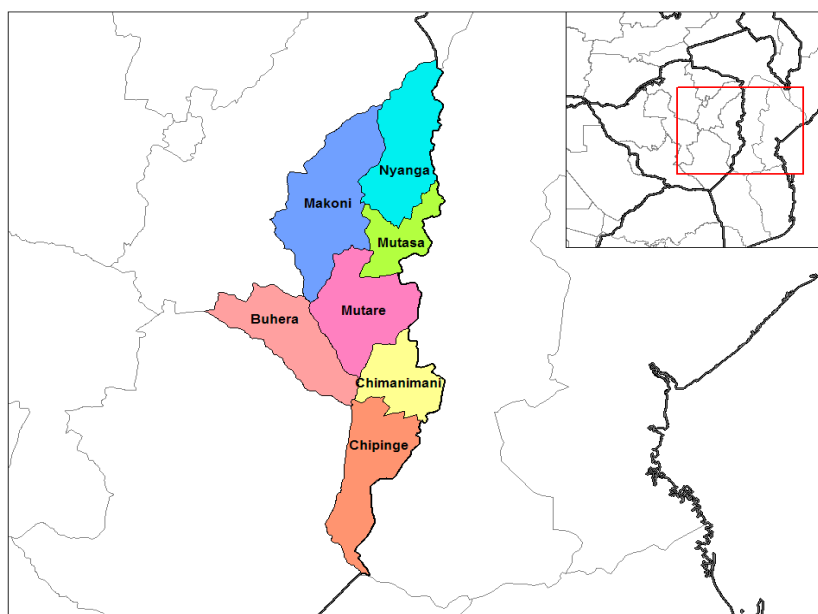
The geographical area mentioned by Duri and Gwekwerere (2007: 2) in the above reference is popularly known as Gazaland and it covers Chimanimani and Chipinge districts in Zimbabwe and spreads into south-western Mozambique. The whole area is separated by an international border between the two countries and is predominately inhabited by the Ndau people, although people from other tribes such as the Karanga, Manyika and Zezuru have come to settle among them especially in urban areas. Generally, Gazaland is predominantly a rural community to the extent that Mapuranga (2010: 49) aptly described the area as “one of the less developed regions in the country of Zimbabwe occupied by the Ndau people who are generally looked down upon and are often labelled as traditional, backward and uneducated”. Mapuranga’s description of the Ndau people and the area they occupy gave credence to the general belief that the Ndau are a people whose culture is strong and unaltered by modernity. For this reason, Chipinge and Chimanimani districts are highly regarded as places where traditional remedies for many social problems are still found in abundance. Figures 1 and 2 below show the location of the Ndau people in Zimbabwe. In particular, figure 2 below shows a map of Zimbabwe and emphasis is on the long border between Zimbabwe and Mozambique. The **figure** points to the area of study which encompasses the two districts of Chimanimani and Chipinge.

Figure 1: Zimbabwe major cities and towns as well as surrounding countries.



Source: Munowenyu, E. *Geography Today*. Harare: Longman Publishers, 2001:38.

Figure 2: Map of Zimbabwe's eastern districts that share the border with Mozambique, showing Chipinge and Chimanimani (Gazaland) as the area of study.



Source: Adapted from O. Rusinga & R.S. Maposa, *Traditional religion and natural resources: A reflection on the significance of indigenous knowledge systems on the utilisation of natural resources among the Ndaу People in South-eastern Zimbabwe*, 2010: 203.

4.3 The Ndaou community

As indicated above, Ndaou community is quite extensive because it spreads between two countries, cutting across the border between Zimbabwe and Mozambique. About the Zimbabwe-Mozambique border, Marta Patricio (2011: 677) observed that it is one of the longest international boundaries in Southern Africa as it runs for about 765 miles dividing eastern Zimbabwe and western Mozambique. She also mentioned that the size of the borderline pauses cross-border movements control challenges for administrators from both countries, particularly where the border simply separates people of the same culture and community. Thus, the Ndaou community referred to in this study cuts across an international border in practice while in principle there is hardly any difference between the Ndaou from both sides. This is confirmed by Jeffrey Herbst (1989) as cited in Anderson (1996: 1) who noted that Ndaou community always refers to same group of people separated by the colonial borderline between the two countries. He further argued that before the partition of Africa, eastern Zimbabwe and south-western Mozambique were part of the pre-colonial Zimbabwe Plateau that was occupied by the Shona people of various ethnic languages, including the Ndaou.

The claim made Anderson above serves to underscore the point that the Ndaou people of Zimbabwe are culturally, socially, linguistically and religiously closely linked with the Ndaou of Mozambique despite the international border between them. Bhila (1982: 35), an historian from Gazaland, also argued that the colonial border between the then Southern Rhodesia (Zimbabwe) and Portuguese East Africa (Mozambique) never managed to divide the Ndaou people over the years during and after the colonisation of the two countries. This means that the international boundary separating Zimbabwe and Mozambique runs through large and expansive Ndaou community dividing kin, culture and speakers of the same language into two parts. Thus, the border is of no effect to the Ndaou. It is inconsequential in the sense that it does not really hinder them in their day-to-day social interactions which usually require them to move across the border in consultation of each other as members of one large community.

It is interesting to point out that throughout history, the Ndaou have never been disturbed in their daily lives by the colonial border because they have always crossed it at will to fulfil various family and social obligations on either side of their partitioned community. A number of researchers who have studied borderlands including Elizabeth MacGonagle (2007) and Martha Patricio (2010) have argued that for many centuries the Ndaou have remained undisturbed by the border. They have maintained close links and are united in all spheres of

social, economic and political lives to the extent that they are identified as one large community that extends from one country to the other across the international boundary. This serves to illustrate that the current border control authorities in both Zimbabwe and Mozambique, like their colonial predecessors, have not been able to sever ties between the Ndaus of Zimbabwe and the Ndaus in Mozambique as they continue to move across the border in response to the socio-economic and political developments. For example, if there is political or economic instability¹⁹ on one side of the border, some Ndaus move across the border to the safe zone provided by the other side of the border without going through relocation processes. In other words the Ndaus have had uninterrupted *de facto* dual citizenship status of being Zimbabweans as well as being Mozambicans. Patricio (2011: 678) aptly summarised this situation where she said:

So the Ndaus of Mozambique continue to cross the border like they did in the past and go to Zimbabwe to visit their family, to consult healers and traditional authorities, to go to school and to take part in ceremonies. It seems these people don't feel the impact of the international boundary demarcation in their daily lives-not in colonial times, not even today.

This quote clearly demonstrates that the Ndaus from both sides of the border have a long-standing and deep-rooted communal life which has never been interrupted or hindered by the existence of the international border. In the same vein, Beach (1980: 34) also noted that the Ndaus from both countries maintained their interactions during the colonial period and that they still interact even after independence in much the same way they used to do during the pre-colonial period. They are linked together by bonds of inter-marriages between families of different totems, the distinct Ndaus dialect and the cultural beliefs and practices which they have always shared.

Thus, the Ndaus community is a partitioned area with a large ethnic group of people that has always been sharing common social and cultural activities for many years before and after the existence of the border. These ties have contributed to the emergence of a sense of belonging which has seen Ndaus taking pride in owning and belonging to a whole region that colonialism and globalisation have almost failed to extricate from traditional beliefs and

¹⁹ The Ndaus from both sides of the border have always moved onto either side of the border for personal and family safety in times of political and economic problems. During the armed struggle for the independence of Zimbabwe in the 1970s, the Ndaus on the Zimbabwean side moved to safety on the Mozambique side of the border because Mozambique had gained its independence in 1975. But in the 1980s, there was a bitter civil war in Mozambique (which recently broken out again at the beginning March 2015) and the Ndaus from the Mozambique side flocked to the Zimbabwean side of the border for safety.

cultural practices associated with marriage, spirits, death-related ceremonies and healing. As a result of the unique identity of the Ndau, civil laws introduced in Zimbabwe such as the Domestic Violence Act take long to find relevance among them. A close look at the Ndau as a people becomes necessary in order to explore their culture and this is done in the next section.

4.4 The Ndau: family, traditional beliefs and cultural practices

The Ndau people have a wide range of traditional beliefs and cultural practices which they have been practising from time immemorial. In this section however, I present the beliefs and practices that focus on Ndau family, religion and marriage. The idea behind this presentation is that an outline of the Ndau family, religious beliefs and marriage would help us to appreciate the extent to which the Domestic Violence Act, as a family conflict resolution strategy, has been received and how it has impacted on the lives of the Ndau people in Zimbabwe. Thus the presentation also outlines the necessary insights into the Ndau people's apathetic perception of the Domestic Violence Act as a criminal justice system approach that is meant to minimise or end violence in intimate relationships.

4.4.1. The Ndau family

Writing on the concept of family, Ekanem Okon (2012: 378) noted that there are many types of family in Africa an institution. The Ndau family is patrilineal and the word for family in Ndau language is *mhuri*. The same word is generally used by all Shona-speaking people in Zimbabwe. Sociologically, the word family (*mhuri*) refers to a group of people who are related to each other by blood. In the case of the Ndau, *mhuri* refers to the whole clan or patrikin (*dzinza*) because the Ndau family is generally big in size. This is in line with what Liveson Tatira (2010: 14) pointed out where he stated that a family (*mhuri*) "is a big cluster of relatives who belong to the same clan." Using my family as an example, a typical Ndau Konyana family consists of my wife and children, my parents and my siblings, my father's siblings, my grandparents and their siblings, and so on. This is to illustrate that the Ndau concept of family is rather all-embracing and includes all members of the extended family. To this extent, Tatira (2010:14) suggested that the term 'extended family' should be replaced with the term 'connected families' in respect of the size and membership of the African family in general.

Regarding how African families live, Oswell Rusinga and Richard Maposa (2010: 47) maintained that as far as it is possible, members of the same family stay together in the same

community, especially in the rural areas. This is the case with the Ndaou people who believe in unity and communal existence. Given their location which is along the Zimbabwe-Mozambique borderland, the Ndaou live close to each other and maintain very close family ties.

4.4.2 Ndaou patriarchy

Another important feature of the Ndaou family is that it is predominantly patriarchal and hierarchical. Patriarchy refers to rule or control by fathers as family elders. Quoting Lerner (1989:239), Abeda Sultana (2010:3) defined patriarchy thus:

Patriarchy, in its wider definition, means the manifestation and institutionalisation of male dominance over women and children in the family and the extension of male dominance over women in society in general. It implies that men hold power in all the important institutions of society and that women and children are deprived of access to such power.

This means that patriarchy is a system of social structures and practices in which men dominate, oppress and exploit women and children.

In the case of Ndaou, patriarchy is structurally visible. The grandfather (*sekuru*) is the revered head of the connected family. Tatira (2010: 36) maintained that in most patriarchal families in Africa, the grandfather is the family leader whose major responsibility is to advise the family on all matters of life, along with the assistance of his wife. He is responsible for linking the family with its ancestors (*vadzimu*). In respect of this important role, Charles Pfukwa (2001:27) claimed that the Ndaou affectionately refer the family grandfather as ‘the great one’ (*musharukwa*) in reference to his central role as the family advisor and rapporteur between the living and the living-dead. The grandmother (*mbuya*), though not as influential as her male counterpart, is an important member of the connected family. She is responsible for advising all the female members of the clan to keep their homes and look after their children and husbands. Below the grandparents are the eldest son and his siblings who, according to Tatira (2010: 30), may continue to stay with their parents even when they marry and have families of their own. The grandparents are always in the company of their children and grand children.

Rusinga and Maposa (2010: 18) further pointed out that the Ndaou people in general value their blood relatedness to the extent that most of them endeavour to remain attached to their connected family members despite changing location in search of sustainable livelihoods. For

example, in towns and cities, the Ndaus, unlike the other ethnic groups in Zimbabwe, have managed to stay close to each other on kinship lines. To this extent, Gelfand (:1973: 105) concluded that “the urge to live together is not something that took its effect, or was imposed, only with the beginning of colonisation. It is traditional and the contention is that it is a survival imperative of the culture”.

Gelfand’s observations implied that the Ndaus do not easily abandon their family relations when they change location. This is in line with what Chirozva (2013:42) maintained when he said “the concept of the African traditional family is premised on an expansive kinship network.” This extent of family relatedness is premised around what Munyaradzi Murove (2005: 151) referred to as *Ukama* (kinship). *Ukama* is the concept which touches on family relatedness and communal belonging which has kept the Ndaus family much the same as it was before colonisation. Murove (2005: 151) further described the concept of kinship (*Ukama*) as “a communal ethic” which is the linchpin of African family relationships. This suggests that kinship (*Ukama*) makes the Ndaus people live close to each other and share in everything, be it good or bad.

It has been suggested in this section that the Ndaus family is patriarchal and hierarchical. In Ndaus family arrangements, the surviving eldest male member is the head of the family. Seniority, which is accorded by age and not by wealth, education or any other outstanding individual possessions or achievements, is strictly observed and respected among the Ndaus.

4.5. Ndaus traditional beliefs and cultural practices

The Ndaus people have a wide range of traditional beliefs and cultural practices which they are still practising in the face of modernity. Writing on Ndaus culture, some authors such as Mapuranga (2010), Mudavanhu (2010), Mawere (2012) and Dodo (2013) have described Ndaus cultural beliefs and practices as outdated and harmful to women. However, this description does not mean that the beliefs and practices have completely been ignored by the Ndaus people. In this section, traditional beliefs and practices that are closely related to family life and communal existences are also presented. Most of the cultural beliefs and practices find expression and reverence in areas such as religion and marriage and they go on to influence the way the Ndaus interact and respond to civil laws that affect them.

4.5.1 Belief in the God (*Mwari*) and ancestors or guardian spirits (*vadzimu*)²⁰

In his review of Nda culture, Pfukwa (2001: 34) noted that at the core of the Nda traditional beliefs and cultural practices is the belief in ancestors or guardian spirits (*vadzimu*) that are understood to be connected with the spirit world. The *vadzimu* are regarded as intermediaries between the living people on earth and God. According to Marashe and Maposa (2010: 51), the Nda invariably refer to God as *Marure* (the Omnipotent), *Nyadenga* (the Heavens) or *Musikavanhu* (the Human Creator). Stanislaus Mudenge (1988: 79) noted that “broadly speaking, all [Shona] communities have a concept of a High God known at different places by different names today in Zimbabwe”. Admittedly, there is a lot of debate around this topic and the matter is beyond the scope of the present study. However, it is important to note that an understanding of *Mwari* had a bearing on the understanding of life among the Nda. *Mwari*, as the Creator, is believed to have power over the ancestors, the dead and the living. Among the Nda, God is usually referred to as *varikumhepo* (those who are in the air), while ancestors are referred to as *varipashi* (those who are below) literally referring to the fact that they are dead and buried.

The Nda believe that God (*Mwari*) and ancestors (*vadzimu*) come together and look after the living members of the family. What is critical to note is that the belief in God (*Mwari*) and (*vadzimu*) is an important aspect of Nda religiosity. The Nda believe that their ancestors (*vadzimu*) continue to live among them in spirit. That is why Mangena (2012: 14), citing John Mbiti (1975), referred to the ancestors as “the living-dead” while Canaan Banana (1991: 122) called them the “living timeless” with reference to how the Nda regard the status of their ancestors. These references to the dead family members as “the living dead” and the “living timeless” imply that the Nda do not completely forget their ancestors.

The Nda maintain that their departed family members continue to provide guidance and protection. They also believe that the same ancestors may cause illness and misfortune among the living whenever they (the ancestors) become unhappy about anything done or not done to them by the living. Gelfand (1992: 14) emphasised this point where he stressed that the family ancestors (*vadzimu*) are expected to care mostly for those who are their own descendants. They are also believed to be responsible for causing misfortunes or even deaths of family members when they become angry with any of the living members of the family. In

²⁰ Each family is believed to have guardian spirits (*vadzimu*) responsible for its welfare. It is the responsibility of each family head to ensure that the family guardian spirits are worshipped and honoured regularly so that they do not get angry and bring misfortunes or death in the family.

this belief system, the ancestral spirits can cause and end sickness, disasters and misfortunes for their living family pointed out that the Ndaus believe that if their ancestors are not happy, that is enough cause to bring misfortune upon the entire family. As a result, the Ndaus always make sure that they occasionally hold ceremonies that are meant to keep their ancestors appeased at all times. According to Rusinga and Maposa (2010: 24), some of the traditional rituals in honour of ancestral spirits are *Doro rekufa* (traditional beer to commemorate the life of a dead family member) and (*Tsvisa/ Kusemendera guwa*) (a ceremony to settle or honour a dead family member's spirit).

The belief in the power and influence of ancestors means that everything that the Ndaus do is sanctioned and superintended by their ancestral spirits. To this extent, the Ndaus maintain that nothing good or bad happens without the ancestors' permission. This deeply entrenched belief in ancestors or what Rusinga and Maposa (2010: 202) referred to as "guardian spirits" implies that dead family members remain part and parcel of the living family members. In this regard, Gelfand (1992: 115) observed that this feature of the people's belief system forces them to frequently come together and share in all their problems and difficulties because they ought to constantly consult the *vadzimu* together for solutions to social problems including the appeasement of angered guardian spirits, if need be. During the performance of the rituals, the *vadzimu* are consulted on family problems and misfortunes of any kind such as barrenness, failure to secure jobs, failure to get married or having a series of miscarriages. All the ceremonies are important family gatherings which are actually announced to all members so that they are present on the day or days on which the rituals are held.

4.5.2 Honouring ancestors

It has been mentioned above that Ndaus believe in ancestors and honouring are demonstrated in the holding of ceremonies to acknowledge their presence and functions among the living. This means that the Ndaus actually honour the dead through holding traditional rituals. Two concepts are used for honouring ancestors namely *Kupira*²¹ and *Kudira*²², which have different meanings. Henry Moyana (1984: 87) described *Kupira* as giving the name of a deceased person to an animal, usually a bull or a new born child in the family. When the bull or child has been given the dead person's name, the bull or child is believed to have power to protect the people and animals in that homestead. After *kupira* has been performed, the

²¹ In *Kupira* a deceased person's name is given to an animal, usually a bull, in his or her honour. Sometimes the name is passed on to a new born child in the family.

²² *Kudira* refers to the practice of completing the process of *Kupira*, whereby beer is poured on the animal or child of honour to consecrate the honoured animal or child.

animal or person will be honoured and beer offering (*kudira*) is done. In the case of a bull, the beer of honour is poured on its head. Moyana further explained that *Kudira* offerings should be done from time to time so that the family ancestral spirits continue to guide, protect and assist the living in their day-to-day lives. In undertaking the practices, the Ndaus believe that if ancestral spirits are not honoured, they become angry and can cause illness or disputes that may lead to domestic violence in the family. Therefore, until the ancestors are appeased, domestic violence may continue in the family.

*Tsvisa/ Kusemendera guwa*²³ (settling a dead family member's spirit) is another ritual through which the dead are honoured. Tenson Muyambo and Richard Maposa (2013: 589) stated that settling a dead family member's spirit (*Tsvisa/ Kusemendera guwa*) is a ceremony that is organised and held a year after the death of a family member. The Ndaus believe that until this ritual is done, the dead member's spirit will be wondering about in the countryside. *Tsvisa/ Kusemendera guwa* becomes a ceremony that is meant to bring home the dead person's spirit so that it becomes an ancestral spirit and joins other family guardian spirits in looking after and protecting the whole family (*dzinza*). Muyambo and Maposa (2013:591) further observed that among the Ndaus the ceremony usually lasts three days. On the first day, family members pull together resources for the function and for consulting diviner-healers (*nyanga*)²⁴. The resources include money, food and beer. The second day is for the public hearings about who or what caused the death of the departed family member and this is done in consultation with two to three diviner-healers. This is done because, according to Gelfand (1992: 114), "death is not natural" among the Shona. This means that someone, human or spirit, should be held accountable for the death of a family member. This means that the family elders are mandated to consult the traditional diviner-healers to find out the cause of the death. On the third and last day of the ceremony the dead person's grave is cemented (*Kusemendera guwa*). The three days are filled with singing, dancing, honouring the spirits and beer drinking.

It is important to mention that while Bourdillon (1987: 209) argued that this ceremony is generally not performed for women among the Shona, this is different among the Ndaus. Tenson Muyambo (2013: 59) argued that it takes place for both sexes among the Ndaus because even the spirit of a deceased woman can provide protection as much as causing harm for its family. For example, when a married woman dies she is usually buried among her husband's family members' graveyard. This means that after the *Tsvisa/ Kusemendera guwa*

²³ This is another way through which the dead family members are honoured and 'brought back' in the family.

²⁴ The diviner-healers (*nyanga*) play an important role in determining the cause of the death as well as assisting the family in pacifying the dead member's spirit.

ritual she becomes a guardian spirit of the family, particularly of her children if she had any. Therefore, an Ndau woman, as a wife, can be a guardian spirit of the family into which she was married. However, a deceased unmarried Ndau woman is buried among her family and, as a daughter, she becomes a guardian spirit to protect her father's family. Similarly, the Ndau also believe that a deceased married Ndau woman's spirit can protect two families. Pfikwa (2001: 31) pointed out that if she had children with her husband, the woman's descendants her as *mai* (mother) or *mbuya* (grandmother) while at her place of birth her spirit will be worshipped as *atete* (aunt). Thus, if a dead Ndau woman is not properly honoured she may be a cause of family instability, including causing intimate partner violence.

4.5.3 Belief in bad spirits and witchcraft

The family guardian spirits or ancestors (*vadzimu*) presented above represented the good and bad spirits that the Ndau believe in. It has been mentioned that ancestors are believed to be capable of doing only the good for the family as long as they are honoured and that when the ancestral spirits are angry, they become bad ones. However, the Ndau also believe that there are outrightly bad spirits that negatively affect the living. According to Bourdillon (1987:242-247) bad spirits are called alien spirits (*mashai*) singular: *shai*).²⁵ These are spirits of animals or persons unrelated to the family who wander about in the community. Bourdillon (1987:242- 47) further explained what the alien spirits are by saying that:

Mashave are the spirits of strangers who have died away from home, or the spirits of young unmarried individuals. Such spirits will not have been laid to rest with the usual funerary ceremonies and therefore wander around restlessly. Having no living descendants, they seek to express themselves by taking possession of unrelated persons. Sometimes a *shave* is said to work through a medium to help him or her perform a particular task.

The Ndau also believe that some bad behaviour and certain temperamental attacks often displayed by people, including dispositions to cause violence are caused by alien spirits. For example, Moyana (1984: 91) claimed that there are several different kinds of alien spirits responsible for different behaviours among the Ndau people. Some are believed to be able to make the person they possess become a thief (*mbavha*), witch (*muroyi*), promiscuous person (*hure*), murderer (*gandanga*) or a violent and quarrelsome person (*munhu ane hashu, anongopopota*).²⁶ This belief makes the Ndau claim that being possessed by an alien spirit

²⁵ The alien spirits are known as *mashai* (singular: *shai*) in Ndau while other Shona groups such as the Zezuru, Korekore and Karanga call them *mashave* (singular: *shave*).

²⁶ This implies that the Ndau believe that domestic violence may also be caused by an alien spirit possessing one partner or both of them.

can make any person display despicable behaviours such as violence. It is clear therefore, that the Ndau attribute bad behaviour to being possessed by an alien spirit and this means that before they make someone accountable for his or her actions, it must be established, through consultation with a diviner-healer, if the person was not possessed by alien spirits at the time of committing unacceptable actions.

Along with the belief in good and bad spirits is the belief in witches (*varoyi*) and witchcraft (*uroyi*). A witch is understood as a person possessing supernatural power to bring or cause harm to other people. Bourdillon (1987: 173) noted that among all the Shona groups of people, disease and misfortune are always explained in terms of bad spirits and witchcraft. He further contended that even when natural causes for death or any mishap were evident, there is always the belief that some invisible power caused by witchcraft is behind the death or misfortune. In light of this belief, the Ndau attribute practically every misfortune, death or family disputes and violence to witchcraft and they always seek explanations from expert diviner-healers (*nyanga*) about why anything bad happened to a particular person at a particular time. Surprisingly, even when the cause of death or violent behaviour is given by a medical doctor as, for example, meningitis, AIDS or drug abuse, the Ndau would insist on finding the 'real' cause of the mishap. This approach to life implies that the Ndau strongly believe that every incident, good or bad, has a spiritual cause.

It is common practice among the Ndau that when someone dies, usually the relatives of the deceased immediately visit a diviner-healer to seek an explanation. This, however, is done in private and it is only for the family to know who/ what²⁷ caused the death and to receive medicine to be sprinkled on the goods of the deceased before they are distributed among the relatives. They move around in search of an expert diviner-healer for that purpose. If there is none close-by, they easily cross the Zimbabwe border into Mozambique in search of such an expert one in order to avoid making mistakes.

Ndau people also strongly believe in witchcraft and have access to diviner-healers who can assist them in getting solutions to counter the effects of witchcraft. They have earned a tag throughout the country as being knowledgeable in witchcraft operations. This has resulted in a mistaken belief among Zimbabweans in general that any Ndau person who comes from Chipinge or Chimanimani is either a witch/ wizard or a diviner-healer. Bourdillon (1987:174) observed that the label on the Ndau being 'witches/ wizards' comes from their unparalleled

²⁷ The Ndau believe that it is possible that one of the ancestors could cause death of a family member as a means of drawing the attention of the living so that they can meet the spirit's demands for appeasement.

knowledge and belief in witchcraft and how to counter its effects where he said that “to show too much knowledge of witchcraft is tantamount to admitting to being a witch.” Therefore, given the adverse effects of being labelled a witch, the Ndau rarely participate in witchcraft discussions or even display knowledge of the existence of witches and witchcraft.

The Ndau people also believe that bad spirits can be manipulated by witches and sometimes by diviner-healers. They identify two major types of spirits, namely avenging spirits (*ngozi*)²⁸ and bad spell or curse (*bvuri/ mweya/ mhepo*).²⁹ Gelfand (1992: 60) described *ngozi* as the spirit of a dead person which ‘wakes up’ (*kupfuka*)³⁰ to take revenge on the person or family member who killed him or her. The Ndau people believe that *ngozi* can only be stopped from taking revenge by the guilty person or family compensating or appeasing (*kuripa*) the spirit. Muyambo and Maposa (2013: 588) noted that when the Ndau say “*Mushonga wengozi kuiripa*” (The only way to make peace with an angry spirit is to appease it) they imply that nothing else can be done about an angry spirit except to meet its demands. In line with this belief, the Ndau always make sure that they do not go against the demands of an angry spirit if it manifests itself in their family through weird behaviours of family members.

Furthermore, the Ndau believe that there are two different kinds of *ngozi*. In his research on *ngozi*, Bourdillon (1987: 233) noted that *ngozi* can either be the spirit of a related person to the murderer or that of an unrelated person to the one who killed. If it is the spirit of a stranger to the murderer, it is called a goblin (*chikwambo*).³¹ Usually, goblins are bought from traditional diviner-healers for prosperity and other achievement-related purposes. The goblin does not seek revenge until its demands for the services it renders to anyone who buys it are no longer met. Bourdillon also claimed that a goblin is more terrifying and vicious than the other bad spirits because it attacks suddenly and very harshly.

With reference to appeasing *ngozi*, Gelfand (1992: 60) claimed that it is difficult to pacify it because it usually operates in many ways and does not manifest itself quickly. This means that it can take a long period of time before *ngozi* reveals that it is the cause of all the problems the family will be going through. In some cases, it can be the cause of a violent

²⁸ *Ngozi* is the spirit of a deceased person who was killed by an identified person and would want to revenge.

²⁹ This is a spell or a curse that a witch can cast on an innocent person.

³⁰ A traditional diviner-healer (*nyanga*) can assist in making the spirit of an aggrieved dead person ‘wake up’ (*kupfuka*) and revenge or get compensation for having been killed.

³¹ A goblin (*chikwambo*) is believed to be a kind of charm bought from a traditional diviner-healer (*nyanga*) for prosperity and other success-related purposes. It is also believed that the goblin will work to bring richness but makes demands that may end up getting beyond the reach of its owner. When the owner fails to meet its demands, the goblin becomes vicious and it can cause the deaths of relatives or children of its owner.

relationship between husband and wife. Meanwhile, the family may be throwing witchcraft accusations at each other and there would be confusion. All through the confusion, the *ngozi* could be waiting for the family to settle down and consult diviner-healers on how to appease it. When finally, it manifests, it may ask for a big compensatory fine in herds of cattle, money, or a young girl as a wife if the dead person was an unmarried man. In some instances, the fine could be beyond the reach of the culprit or the entire family, though it should be paid if the family needed to be spared the full wrath of the *ngozi*'s anger.

In their belief system, the Ndaus define a bad spell or curse as the spirit of a dead person that has been cast or sent (*kuphosa*)³² by a witch to inhabit and cause trouble to another person who is innocent. They explain that a bad spell or curse is thus different from an alien spirit and an angry spirit. They believe that alien spirits are inherited and they choose for themselves the person who will be their medium. Bourdillon (1987: 235) claimed that the term angry spirit (*ngozi*) may only be used when it is the spirit of a dead person known to the family of the murderer. A bad spirit, also known as a curse or spell, describes the spirit of a person whose background is not known. The Ndaus believe that such a spirit is sent by witches/ wizards to possess innocent persons and cause harm to them. Once this happened, the Ndaus seek the services of diviner-healers in whom they also strongly believe.

4.5.4 Belief in diviner-healers (*nyanga*)³³

As has been indicated above, the Ndaus' belief in ancestors, good and bad spirits as well as in witches is closely linked to their belief in the power and importance of a traditional diviner-healer (*nyanga*). Shoko (2011: 279) described a *nyanga* as a spiritually endowed person with the gift of healing and divining. This means that a *nyanga* operates with special powers bequeathed to him/her by the spirit of a departed relative (*mudzimu*) or by the spirit of an unrelated someone who had a talent for healing and divining). Shoko (2011: 279) further explained that among the Shona people in general, a diviner-healer (*nyanga*) uses a combination of herbs, medical/religious advice and spiritual guidance to help and heal people.

In Zimbabwe, *nyangas* are legally recognised and registered under the Zimbabwe National Traditional Healer's Association (ZINATHA).³⁴ However, this legal recognition of *nyangas*

³² In many instances innocent people are bewitched out of jealousy or fear of rivalry.

³³ The Ndaus use the word '*nyanga*' while other Shona groups such as the Zezuru, Karanga, Manyika and Korekore say *n'anga* to refer to traditional healers, diviner-healers and herbalists alike.

³⁴ ZINATHA is national organisation for traditional and faith-based healer which, *inter alia*, regulates all the healers' operations as well as their welfare.

somehow creates clashes between culture and the law, particularly when the law refuses to effect or even allow some of the pronouncement made by the *nyangas*. For example, in appeasing *ngozi*, a *nyanga* may recommend that the culprit or his/her family pledges a young girl to the family of the deceased man as a wife. However, the law treats such prescriptions as child-abuse or forced marriage. The law prohibits cultural practice that conflict with children's right yet culture looks up to the practices as solutions to social problems. This scenario is a cause for concern for researchers and the legislature alike.

In general, the Ndaus regard *nyangas* in high esteem and believe that they have powers to tell and change fortunes, heal, bless or curse and even kill people among a host of other competences. Thus the *nyanga* is the Ndaus' main source of help in all matters of social life. For example, since the Ndaus believe in witches and wizards as causal agents for various illnesses and misfortunes, they always seek help from traditional diviner-healers as well. When a diviner-healer diagnoses the cause of a particular problem and claims that bad spirits are responsible, he or she advises the affected people on the proper ways and rituals necessary to stop the causes of the social problems.

The belief in the powers and capabilities of the *nyanga* in Ndaus' lives has seen many other people regarding the Ndaus with both suspicion and admiration. This comes from the understanding that the best traditional diviner-healers and the most shrewd and malicious ones as well are found in Chimanimani and Chipinge areas in Zimbabwe. In this regard, many stories have been published in newspapers across the nation and beyond about the expertise of many diviner-healers from Manicaland in general and Chipinge in particular. For example, in *The Sunday News* of 9 August 2015, Peter Matika reported that the most powerful traditional healers who are found in Johannesburg, South Africa, came from Binga and Chipinge in Zimbabwe. His observations were confirmed by one of the beneficiaries of the services of a diviner-healer from Zimbabwe when he said that he had received healing and spiritual advice on how to keep problems away from his life from a renowned diviner-healer from Chipinge.

In another newspaper report, Edwin Mwase reported in *The Sunday Mail* of 12 April 2015 that diviner-healers from Zimbabwe were well-known for their extremely powerful medicines and divination abilities. He visited one famous *nyanga*, Sekuru Charles Ndunge, who lives and operates in Tamandai area in Chipinge and interviewed the *nyanga* and his clients. At Sekuru Ndunge's homestead, the reporter noticed various cars from different countries such as

South Africa, Botswana, Namibia and Mozambique parked in the *nyanga's* home. The people had come to consult one of the most powerful diviner-healers in Zimbabwe. They needed his services in various aspects of life such as getting back lost lovers, securing good jobs, being cured of various ailments, retaining influential political positions and getting charms for success in different lines of business. This serves to illustrate the point that traditional healers from Chipinge have made a big name for themselves due to their ability to help different people meet and fulfil various social expectations.

In the *Manicaland Bulletin* of 17 April 2013, Moses Sithole reported that he had a similar encounter with a traditional healer when he visited a renowned *nyanga* from Chipinge's low veld region (*gowa*), Sekuru Chigadzira Panganai Chirimambowa, of Manzvire Village in Chief Musikavanhu. The reporter later acknowledged that in Zimbabwe there are some places that are either positively or negatively known for various exceptional social issues or activities. He gave examples of Zaka in central Masvingo province which is said to be well-known for witchcraft, Chiredzi in south of Masvingo province which is renowned for upholding the cultural initiation practice for girls known as *Chinamwali* and Chipinge which is regarded as home to the most powerful diviner-healers in the country. The reporter was further told by Sekuru Chigadzira Panganai Chirimambowa that anyone who comes to Chipinge from anywhere would literally be walking in the midst of charms of all kinds. The *nyanga* claimed that witchcraft, various traditional medicines and charms were found easily from traditional healers in Chipinge. He further maintained that traditional healers of all abilities were actually born and nurtured in Chipinge from where they leave for other places.

From this background, it becomes clear that whenever the name 'Chipinge' is mentioned, images of witches/ wizards, charms of all kinds and powerful traditional medicines come into the mind of every Zimbabwean. This is the reason why Chipinge and Chimanimani districts are regarded as strongly traditional places in Zimbabwe. Beside the strong beliefs in traditional healers, the Ndaу marriage institution is still heavily influenced by strong cultural practices. The following section begins by giving an overview of the marriage institution in the whole country before presenting the various Ndaу marriages.

4.6 The Marriage institution in Zimbabwe

In order to understand the conditions in which the Ndaу marry and start families, it is important to look at the status of the marriage institution in Zimbabwe in general. The legal status of the marriage institution in Zimbabwe allows for the existence and practice of various

traditional beliefs and cultural practices among the Ndaus who take advantage of the dual legal system in the country. Mutandwa (2012: 18) pointed out that Zimbabwe has a dual legal system consisting of the general law, the Roman-Dutch Common Law and Statutes, and the African Customary Law which exist simultaneously but operate differently for the same group of people.

The dual legal system in Zimbabwe allows for two major types of marriage to co-exist. These are the civil marriage (monogamous) and the customary marriage (potentially polygamous). The first type of marriage, as outlined by Dube (2013: 3), falls under the Civil Marriage Act (Chapter 5: 11), formerly known as Chapter 37 in Zimbabwe. Civil marriage restricts any man or woman to have one spouse at any given time of his or her married life. For example, Dube (2013: 8) explained that if a man married under Chapter 5:11 goes on to marry a second wife he commits bigamy, which is an offence punishable by a jail term or a fine or both. Chapter 5:11 marriage ceremonies and processes can be presided over by a legally mandated marriage officer such as a Minister of Religion or a marriage officer at the Magistrates court.

It is important to point out that under the Civil Marriage Act, the payment of bride wealth (*roora*) is not a pre-requisite for a couple that wants to enter into this type of marriage to be able to marry. However, Tendai Mangena and Sambulo Ndlovu (2013: 473) observed that most Zimbabweans continue to recognise and practise paying bride wealth before they enter into a civil marriage as a way of soliciting for the full blessings of their parents, relatives and community.

Concerning the customary marriage laws of the country, Mutandwa (2012: 9) stated that two types of marriages are available. They are also referred to as potentially polygamous marriages because they permit a man to marry as many wives as he can take care of. The first type of a potentially polygamous marriage is the registered customary marriage approved under Chapter 5:07 of the Customary Marriages Act (Chapter 5: 07 of 2004). This type of marriage is entered into by a couple who can register their union at the Magistrates court. According to Maureen Sibanda (2011: 67) the registered customary marriage allows a man to choose to stay married to one woman but if he decides to have a second wife, third, fourth and so on, the law permits him to do so. However, Rukuni (2007: 44) argued that, in order to maintain peace between his wives, a man who wishes to bring another woman as a second wife is supposed to seek the permission of the first wife. In all instances of this type of

marriage, the man is also required to pay bride wealth (*roora*) for his wife or wives before he gets to register the marriage.

The second type of a potentially polygamous marriage is known as the unregistered customary marriage. According to the Zimbabwe Women Lawyers Association's report (2011: 39), unregistered customary marriages are prevalent in Zimbabwe particularly in the rural areas where about 70% of the population lives. For all customary marriages to be recognised as 'official', payment of bride wealth is mandatory. Once the man pays the bride wealth, he is allowed to live with his wife and start a family. The unregistered customary marriage allows a man to marry as many women as he can afford paying bride wealth for as well as having the ability to take care of the family. However, Dube (2012: 8) pointed out that the unregistered customary marriage has no pronounced legal acknowledgement as it is "only legally recognised under limited circumstances such as when a court has to decide on the protection or maintenance of children in the event of a divorce or death" of either partner. However, this has often disadvantaged many women. For example, Dube (2012:10) maintained that in the event of a divorce, there is no court that presides over the case as the woman just gets a token of divorce (*gupuro*) from the man to express that the marriage has been dissolved. This kind of divorce is often presided over by relatives of the married parties. Since most women married under the unregistered customary marriage stay in the rural areas as housewives, they stand to lose whenever they are divorced or widowed. This is the case because the courts cannot convert the women's non-monetary contribution towards the purchase of matrimonial property into monetary value for purposes of determining the value of her contribution.

Given this background about the dual law system in Zimbabwe, the Ndaus have the privilege of practising different types of marriage that allow them to practise their cultural practices without actually breaching the law. However, as Dube (2013: 8) indicated, it is important to point out that most of the people who live in rural areas marry under customary marriage laws which allow polygamy. With reference to the Ndaus, some of the most established customary marriages that they still practise in their communities are presented in the next section. It is critical to mention at this point that marriage is very important for the Ndaus because it allows the patrikin (*dzinza*) to grow as it creates children who provide the elderly with family security. Thus, from marriage, the Ndaus always wish to have both daughters and sons; the first to bring bride wealth at marriage and sons to extend the patrikin.

The next section presents some of the traditional marriages and practices that the Ndaus are still partaking in.

4.7 Types of marriages practised by the Ndaus

It has been indicated in section 4.3 above that the Ndaus community is predominantly traditional, rural and less developed than most of the communal areas in Zimbabwe. For this reason, most of the Ndaus people in the area are akin to observing some cultural practices which have strong influence in their lives. Marriage and religion are some of the institutions in which Ndaus culture practices find expression and relevance. Some of the marriages in which Ndaus culture plays significant roles are presented in the sub-sections below.

4.7.1. Mortgage marriage (*Kutema ugariri*)

Kutema ugariri is one of the oldest marriage practices that the Ndaus people are still practising. It is important to note that *kutema ugariri*, where a man stays and works at his in-laws for a wife, is a marriage practice that is not only confined to the Ndaus people. Tatira (2010: 22) referred us to the Jewish culture as cited in the Bible (Gen. 29.^{vs} 15-21) as an example of what *kutema ugariri* is like. This type of marriage is usually performed by poor but hardworking young men who may also be orphans or disadvantaged in one way or the other. Mandova and Chingombe (2013: 105) supported this view where they said “*Kutema ugariri* is a marriage type for the poor or underprivileged people who cannot raise the necessary bride wealth to be able to marry.” The young man identifies approaches and proposes to a girl whom he wishes to marry. Once the two have fallen in love, the young man approaches his elders and tells them about his intention to marry.

However, as Tatira (2010: 22) points out, in order to qualify for this type of marriage, the young man and his family should be so poor that there is no prospect of ever raising enough *pfuma/ roora* (bride wealth). The poor man presents himself to the woman’s father and offers to stay and work at his would-be in-laws for a period determined by the woman’s father as long enough to make up for the required bride wealth. Makaudze (2009: 120) also asserted that *Kutema ugariri*, which can also be described as ‘mortgage marriage’, “is a Shona custom in which a young and poor man works for his in-laws for a considerable period before he is given his wife.” This type of marriage serves to show that even poor young men have a chance to raise a family among the Ndaus. Thus this type of marriage can be understood as one that encourages young men to be industrious and self-reliant and ultimately, it

discourages the dependency syndrome. It offers poor young men opportunities to prove that they can achieve their goals through hard work.

4.7.2 Self-imposition (*Kuganga*) and Elopement (*Kutizisa/ Kutizira*)

Kuganga (self-imposition) and *Kutizisa/ Kutizira* (elopement) are a set of traditional marriage practised by the Ndaou people. In the case of *Kuganga* (self-imposition), desperation for marriage is the driving force behind a woman's decision to identify a man, usually one who is rich and appears capable of looking after a woman well. She packs her belongings and go to his home to impose herself as his wife. Mapuranga (2010: 51) described the circumstances leading to *Kuganga* (self-imposition) as the only marriage option available for some women where she quoted one of her informants saying that:

Mukadzi usikazi kuroorwa wakatodzana nebadza risina mupini. Haana basa raanoita. Kunyashata sei, unotoroorwa, haachembereri pamuzi, unofanirwa kubara. (A woman who is not married is like a hoe without a handle. She serves no purpose. Even if she is ugly, she must be married; she should not get old at her home but must be married and bear children).

This means that a woman who eventually gets married through *Kuganga* (self-imposition) is under communal pressure to get married and start a family of her own. The pressure involves name-calling and mere laughter from peers who would have married and had children. The woman becomes so desperate to be married and bear children in order to be respected by the community. It is this kind of anxiety that often pushes the woman to approach her aunt and tell her about her decision to impose herself as a particular man's wife.

On the other hand, in *Kutizisa/ Kutizira* (elopement) the girl runs away from her parents' home, usually upon realising that she is pregnant. This type of marriage is also very most common among the Ndaou. For example, girls as young as 12-14 years run away from parents' homes to the homesteads of their future husbands usually when fall pregnant. Tabona Shoko (2012: 117) explained that this is usually practised when a man impregnates (*kumitisa*) a girl before marriage. The man responsible for the pregnancy may not have prepared to live with the girl as a wife but once she runs away from her home, there is no going back; he has to formalise their staying together by marrying her. The man and his family are obliged to formalise the union by engaging the girl's family and sending in the requisite *pfuma/ roora* (bride wealth). Some boys' families may want to pay the first stage bride wealth before the birth of a child because they believe that if the girl dies during

pregnancy or delivery she may turn out to be an angry spirit (*ngozi*) to her husband's family. The belief in *ngozi* is, therefore, used as a means to ensure that at least the first bride wealth payment is made.

Furthermore, Holleman (1952: 123-124)³⁵ explained the distinction between two types of elopement (*kutizisa*) and flight (*kutizira*). "Flight marriage", he explained, "refers to the unilateral action of a girl, without the prior knowledge of, or arrangement with, her suitor". Elopement means that both families know something about the marriage and some arrangements are made. However, Holleman (1952: 109-115) explained that, in practice *kutizisa* and *kutizira* are very difficult to distinguish. *Kutizisa* means that the boy came and took the girl away. In other words, the boy would have caused the girl to 'run away' from her family home upon realising that she is pregnant by him. Sometimes she runs away to avoid shame. *Kutizira* means that the girl runs away to the boy. The Ndaou people usually say *kutizira*, as if it is always the girl who runs away. In practice, it may very well be that *kutizira* is actually *kutizisa*. However the practice is referred, the idea is that some young men and women get married in this manner as per Ndaou culture.

4.7.3 Girl child pledging (*Kuzvarira/ kuputsa*)

Girl-child pledging is a type of marriage which takes place when a poor family gives away (pledges) a girl child to a family who will provide bride wealth to enable the girl's family to survive. Holleman (1952: 115-121) calls this 'a credit marriage' and Bourdillon (1987: 44) refers to 'child marriage'. At the centre of this type of marriage is the young girl-child who is not consulted or listened to when she is married off.

Sometimes a girl is pledged as soon as she is born. If the girl is mature, she will immediately go to the family she has been pledged to marry into. If the man to whom the girl has been pledged is too old, then the girl will be given to one of his sons or his nephew. Mawere (2010: 16) noted that while this type of marriage still exists, it has been forbidden by State laws and is treated as a form of child abuse. However, it continues to be practised among the Ndaou due to a number of socio-economic factors such as droughts and poverty. This type of marriage increases or re-occurs when poor families are stressed. Among the Ndaou people, *Kuputsa* means to break. In the case of this type of marriage, *Kuputsa* can refer to the heart of the girl that breaks because she is given away without her consent. It can also refer to the in-laws relation that breaks if the girl runs away to a partner of her own choice. If the girl runs

³⁵ In this dated book, Holleman is credited for extensive research on traditional marriage practices among minority ethnic groups in Zimbabwe.

away, then members of the family to which the girl was pledged will claim their money or whatever material they paid for her. Thus such *kuputsa* cases are serious and can be taken to the traditional village court for arbitration.

4.7.4 Inheriting the fireplace (*Chigaramapfiwa / Chimusamapfiya*)³⁶

The Ndaube believe that once a man has married, he should remain married for all the days of his life until he dies. If his wife dies, the man should not go through the processes of looking for a suitable woman to marry all over again. Instead, the man is given his late wife's young sister or his late wife's brother's girl child as a wife to inherit the deceased woman's fireplace. In other words, this type of marriage also suggests how the deceased married woman's property, which include cooking utensils and the fireplace, is to be inherited. Holleman (1952:188-189) referred to this type of marriage as "substitution marriage". In Ndaube, the marriage is also called *chimusamapfiya*, which literally means keeping the fire burning. This implies that cooking for the husband and children should not stop because the wife has died. It can also be a wish of the deceased wife herself that, upon her death, her children should be looked after by her sister or niece, instead of another woman or one of the husband's wives taking care of them. However, the advent of HIV and AIDS saw this kind of marriage among the Ndaube becoming less popular as the Ndaube are realising that HIV and AIDS are prevalent.

4.7.5 Wife inheritance marriage (*Kugara/ Kugarwa nhaka*)³⁷

In the event of the death of her husband, the Ndaube widow is expected to be inherited by one of the deceased's brothers or nephews. This type of marriage means that when the husband dead, his wife is expected to be looked after by a brother (from the same father and same mother; or from the same father and different mother) or other of his male relatives. Holleman (1952: 234) referred to this type of marriage as "succession marriage" where the late husband is succeeded by a designated male member of his family at a ceremony. The ceremony usually takes place a year after the death of the husband. The Ndaube believe that the deceased man would turn into a very angry spirit and bring bad consequences upon the living if his family is neglected. For fear of the perceived bad consequences, the Ndaube believe that levirate marriage is a necessary cultural marriage practice that often guarantees the safety and continuity of the deceased man's family.

³⁶ This marriage only works where it is the wife who has died first and where the widower had paid all the bride wealth he was charge for his late wife. It also depends on whether the late wife had an unmarried young sister or niece.

³⁷ This type of marriage happens when the husband dies and the wife is still young. It is customary that the widow remains in the family and is inherited by the dead man's young brother or nephew.

4.7.6 Reparation marriage (*Kuripa ngozi*)³⁸

As explained in section 3.5.2.2, *ngozi* is an angry spirit of a person who was killed and comes back to seek revenge. The deceased person could have been killed accidentally or deliberately but not appeased or compensated afterwards. As has been shown above, the Ndau people believe that an angry spirit can cause illnesses and other misfortunes in the family until it is appeased. If the deceased was an unmarried man, the family suspected of killing him has to offer a girl-child to the family whose member was killed as compensation. According to Pfukwa (2001: 78), the girl is married off into the deceased man's family and becomes wife of the angry spirit (*mukadzi wengozi*). She is given to a male relative of the deceased so as to bear children for the dead man. The Ndau believe that through such a marriage, the wishes of the angry spirit to have a family of his own are fulfilled and therefore illnesses and other misfortunes are subsequently avoided. Although this type of marriages is forbidden by the government and is regarded as another form of child marriage, it still occurs extensively among the Ndau who strongly believe that abandoning the practice altogether leads to catastrophe for families affected by *ngozi*.

Although the Ndau still practise the aforementioned marriages within their traditional community, some of them have since abandoned them and taken on board the new or modern types of marriage. This has been in response to modernity as well as the new religions that have taken root in the country. The next section presents two of the most common contemporary marriage types that are also available to the Ndau.

4.8 Other types of marriages

Even though the Ndau community described in this study is traditional and rural, modernity has also caught up with the Ndau people. This has seen the Ndau also being involved in a number of untraditional practices such as going to church. With reference to marriage, the Ndau also have access to contemporary marriages such as the religious or civil marriage. At the same time, some Ndau people living in urban areas have also been affected by marriage trends such as cohabitation which has no place or likeness in traditional Ndau community.

³⁸ An avenging spirit (*ngozi*) is believed to be the spirit of a person who was killed which comes back to seek revenge. The deceased person could have been killed accidentally or deliberately but was not appeased or compensated afterwards. Ndau people believe that an angry spirit can cause illnesses and other misfortunes in the alleged murderer's family until it is appeased. If the deceased person was an unmarried man, the family guilty of killing him has to surrender a daughter in compensation.

4.8.1 Religious or civil marriage

Apart from the traditional marriages outlined above, the Ndaou people also marry under religious or civil marriages. A religious or civil marriage is a union between a man and a woman that is governed by statutes or the general law as derived from the country's constitution. According to Dube (2013: 4), most of the traditional marriages described above are governed by customary law as prescribed by tradition and customs while the civil marriage is directly administered by the general or civil law of the country. Dube (2013: 5) also explained that unlike the other marriages, the civil marriage (also called matrimony or wedlock) is defined as a legal union if and only if it occurs between two consenting adults of the opposite sex. In other words, the civil marriage only recognises and respects the wishes of the marrying adult individuals of the opposite sex. This dimension of the civil marriage is enshrined in the constitution under the Legal Age of Majority Act of 1982, which stipulates that anyone who is eighteen years old or above is an adult and can make their own decisions to marry or to be married without interference.

The issue of age at marriage is one of the differences between the traditional marriages described above and the religious or civil marriage. The traditional marriages described above prescribe no age restrictions, hence the accusations that some of the marriages suffer as cases of girl-child abuse. The other difference is presented by May (1987: 66) where she observed that a religious or civil marriage is monogamous and a marriage licence or certificate is issued to that effect. The civil marriage can be solemnised either at the Magistrate's court by a magistrate or in a church by a member of the clergy or a Minister of Religion. It is interesting to note that the Ndaou, like any other ethnic groups in Zimbabwe, have also embraced the civil marriage as an additional type of marriage available to them. However, this type of marriage is not common among the Ndaou who stay in rural areas. Usually poor couples avoid it possibly because they cannot afford the costs of registering their union. Those who stay in urban centres but are jobless and struggle to make ends meet prefer staying together or cohabitation which has become another option.

4.8.2 Cohabitation (*Kuchaya mapoto*)

Cohabitation refers to as an arrangement where a man and a woman mutually agree to stay together and share home facilities in common. Citing Carlos Arnaldo (2004), Okyere-Manu (2015: 53) defined cohabitation as "a relationship where persons of the opposite sex live together without going through the formalities of customary, religious or civil marriage." This means that partners in a cohabitation union simply agree to live together as husband and wife and share their lives without bothering themselves with any of the processes required by

the various types of marriage described above. Thus cohabitation can be understood as an intimate, non-marital relationship between two adults of the opposite sex. Depending on the interests the partners have in each other, the union can be for a short or long period of time and may even result in children being born.

It should be noted that cohabitation is not traditional marriage practice among the Ndaus. It is a new kind of 'marriage' arrangement that has emerged from the modern urban social living realities affecting most African communities. In other African traditions such as the Akan of Ghana, Okyere-Manu (2015: 53-54) observed that cohabitation is regarded as an abomination among Africans but it exists as a response to emerging social problems which affect the sacredness of the marriage institution. Tatira (2010: 25) also stated that in Zimbabwe, cohabitation is referred to as *Kuchaya mapoto*, which literally means that the partners are cooking for each other in a make-believe marriage relationship which is not recognised by their families and the entire community. This means that cohabitation is an aberration which does not take into account the purpose of marriage as an institution. The main reason for the traditional disregard for cohabitation is that no bride wealth would have been received by the woman's family. This means that cohabitation violates the traditional marriage practices of the Ndaus because partners decide to live together without the blessings of their parents or community. Cohabitants, nevertheless, find it difficult to seek the help of family and community whenever they are faced with intimate partner violence. This type of marriage is precarious because it is not even recognised at law and parties to it have no legal protection.

4.9 Conclusion

This chapter has provided the necessary historical background concerning the origin, movement and present location of the Ndaus of Zimbabwe. It emerged from the chapter that the Ndaus have a long history that dates back to the Rozvi Empire and that the origin of this ethnic group was associated with possession of a powerful traditional sacred charm that later became a source of further split and migration. The chapter went on to delineate the present-day location of the Ndaus, explaining that the Ndaus occupy a large region which is divided by an international borderline between Zimbabwe and Mozambique. It was explained in this chapter that the colonial borderline between the two countries has never impacted negatively on the close ties between the Ndaus from both sides. The chapter also demonstrated that the Ndaus are unique in the sense that they share the same community, culture, traditional beliefs and practices with their Mozambican counterparts.

The main objective of this chapter was to present the cultural beliefs and practices of the Ndaou people of Zimbabwe. The chapter presented the cultural practices that are embedded in Ndaou religion and types of marriage. With reference to their religion, the chapter explained how the Ndaou upheld the African Traditional Religion which recognises ancestral spirits, good and bad spirits, witchcraft as well as the role and place of diviner-healers in their lives. It also emerged from this chapter that the Ndaou strongly believe in spirits to the extent that they attribute the occurrence of every behaviour and event to be influenced by either the good or the bad spirits. Thus, for the Ndaou do not just behave anyhow since they believe that anyone can be possessed by alien spirits that may cause them to behave in an unusual manner. This can be used to explain violent behaviour by intimate partners.

It is for the reasons stated above that the Ndaou believe that alien spirits that are cast upon people by witches can be removed by traditional diviner-healers (*nyanga*). To this extent, the chapter has described how the whole Ndaou area is famous for being home to the most powerful traditional diviner-healers in Zimbabwe. The chapter has also showed how many newspaper reporters from across the country have literally descended on Chipinge to interview different expert traditional diviner-healers and their clients to confirm the general belief among Zimbabweans that Chipinge is famous for powerful traditional diviner-healers of various expertise.

Chapter 4 has also provided insight into the dual legal system operating in Zimbabwe which allows the practice of different types of marriages. It has been shown in this chapter that this duality permits the Ndaou, who predominantly live in rural areas, an opportunity to practise the various traditional customary marriages with relative legal impunity. It also emerged that a modern trend of intimate partner relationships has caught up with the Ndaou people as well because cohabitation has also taken root among them. Cohabitation has been described as a mutual consensual intimate relationship between two adults of the opposite sex and it is a new type of intimate relationship that is not recognised by both customary law and civil law. However, the chapter also indicated that the prevalence of cases of cohabitation among the Ndaou suggested that some Ndaou are challenging the marriage institution as a whole. This is evident when those who cohabit disregard the practice of bride wealth payment which has become commercialised and has risen beyond the reach of ordinary young and unemployed men.

The above historical background and the exploration of Ndaou cultural beliefs and practices outlined in this chapter provided the necessary background information for the appreciation of Ndaou people's apprehensive response to the enforcement of the Domestic Violence Act. The next chapter explores the pervasiveness of domestic violence among the Ndaou. The exploration is done in the context of the various traditional beliefs and cultural practices that have been outlined in the previous chapter.

CHAPTER FIVE: DOMESTIC VIOLENCE AGAINST NDAU WOMEN AND GIRLS

5.0 Introduction

Chapter 4 provided critical information about the Ndau people of Zimbabwe. It presented the historical background and the origin as well as movement of the Ndau people from the Munhumutapa Kingdom in central Zimbabwe to the present location in the south-eastern parts of the country. The historical background information served to explain who the Ndau are and where they came from. The chapter further explained that the Ndau people live in one large community which is divided by an international boundary between Zimbabwe and Mozambique. It also described the nature of the Zimbabwe-Mozambique borderline and how it has affected the Ndau on both sides. The complex nature of the partitioned Ndau community was also presented in the previous chapter. The author further alluded to the fact that the Ndau regard the Zimbabwe-Mozambique borderline as inconsequential because it hardly negatively affects their communal existence and movements across the border.

Ndau cultural beliefs and practices concerning family, religion and marriage were explored in chapter 4. The chapter went on to present the Ndau people as devoted believers in the power and influence of ancestral spirits and diviner-healers. This clearly showed that the Ndau people have a long-established religio-cultural perspective of communal life which is deeply entrenched in their traditional realities. The chapter further provided a brief review of the dual legal and marriage systems in Zimbabwe and explained how they accommodate Ndau people's wide range of cultural beliefs and practices which they practise in their communities. It was also revealed that, although the Ndau people are predominantly traditional, some of them have moved on to embrace modernity and contemporary practices. The areas of religion and marriage were singled out as institutions in which the Ndau have accommodated new trends.

The current chapter focuses on the prevalence of domestic violence among the Ndau. It argues that domestic violence is a social problem that is not only prevalent among the Ndau but throughout the country. The chapter is constructed from the third objective of the research study, which is to explore the prevalence of domestic violence among the Ndau people within the context of their traditional beliefs and cultural practices. The chapter shows that domestic violence is particularly persistent among the Ndau because it arises mainly from customary processes attached to the marriage institution. The chapter further acknowledges that domestic violence also occurs between people who are in different social relationships. However, this chapter specifically focuses on the prevalence of domestic violence among

married heterosexual Ndaou couples, emphasising that Ndaou women and girls are most affected. The chapter therefore proceeds by explaining the marriage institution and the Ndaou people's perception of marriage first. It also explores the related violent issues pertaining the marriage processes and practices. In the last part, the chapter provides an in-depth contextualisation of the Ndaou customary marriage practice of bride wealth (*roora/lobola*)³⁹ payment, discussing the impact of the practice on power relations within the milieu of Ndaou customary marriages.

However, as it has already been pointed out in Chapter 3 under the section on the marriage institution in Zimbabwe, this chapter focuses on domestic violence between heterosexual married Ndaou couples. It should also be mentioned that, since this study focuses on the Ndaou patriarchal society in which men dominate women, the assumption is that most men are perpetrators of domestic violence while in most cases women are the survivors. This is in line with what Steven R. Tracy (2007: 577) observed where she cited Rosemary Radford Ruether (1989) who noted that "domestic violence [against women]...is rooted in and is the logical conclusion of basic patriarchal assumptions about women's subordinate status". What this means is that in most patriarchal societies domestic violence is characterised by male violence as an expression of male dominance over their female counterparts. Furthermore, Justice Medzani (2013: 2) observed the same situation from a study on domestic violence in Zimbabwe. He also noted that although the Zimbabwean society is predominantly patriarchal and does not present male members as survivors of domestic violence men, particularly husbands, are also affected by domestic violence perpetrated by women. The next section presents the different types of domestic violence that often happen between intimate partners.

5.1 Types of domestic violence

Focusing on the patriarchy and its dominance of women, Samuel Maruta (2011: 3) observed that domestic violence involves a variety of patterns of abusive behaviours that a male intimate partner may use to gain or maintain power and control over the female partner. It is this understanding of domestic violence that Anne Ganley (2008: 16) also maintained where she said that domestic violence can be referred to by using names such as "wife abuse", "marital assault", "woman battery", "spouse abuse", "wife beating", "conjugal violence", "intimate violence", "battering" or "partner abuse". All the terms listed here point to the fact that domestic violence invariably affects women more than men. From the list, this study

³⁹ *Roora* (Shona)/ *Lobola* (Ndebele) is a customary payment that the groom's family makes to the bride's family at marriage.

focuses on intimate partner violence as the kind of domestic that affects women more than men and is difficult to minimise.

Furthermore, the United Nations' *Declaration on the Elimination of Violence Against Women* (DEVAW) (1993) report noted that the use of violence against an intimate partner involves exerting physical contact that is intended to cause feelings of intimidation, pain, injury or other kinds of bodily harm. It also observed that physical violence is often used by male partners to get female partners to participate unwillingly in disinterested sexual activities. On this point, Maruta (2011: 3) further explained that emotional violence, also known as psychological or mental violence, is the worst form of intimate partner violence where he said that emotional violence:

... includes embarrassing one's intimate partner, prescribing what the other partner can do and cannot do, withholding information from one's partner, isolating one's partner from friends and family as well as denying the partner access to money or other basic resources and necessities.

All the actions mentioned in the quotation lead to an intimate partner's emotional distress which amounts to domestic violence and has far-reaching consequences for women.

According to the Human Right Bulletin (2011), domestic violence can also be verbal when words are used by one partner to hurt the other. The *Human Rights Bulletin* (2011: 2) reported that verbal violence 'involves the use of language to make one's partner feel inferior and marginalised in the intimate relationship'. This kind of violence includes name-calling and use of disparaging words or phrases and statements that make one's partner appear insignificant at any point in their intimate relationship.

Domestic violence can also arise from cultural practices prevalent in the community. Some of the cultural practices from which domestic violence emanates are early and forced marriages, customary marriages and marriage-related practices such as the payment of bride wealth (*roora/lobola*)⁴⁰ as presented and discussed in the next section. This was pointed out by the World Health Organisation (2009: 4) where it said, "Different cultural and social norms support different types of violence". But before considering the different cultural norms that support domestic violence among the Ndaou, an overview of the causes of domestic violence in Zimbabwe in general is necessary and it is given in the next section.

⁴⁰ Some men use the payment of bride wealth as an excuse to dominant over their wives.

5.2 Causes of domestic violence in intimate relationships

Violence in intimate relationships arises from different situations. Wapula Nelly Raditloaneng (2013: 66) provided a general list of causes of domestic violence across cultures, races and people of different religions. Her list characteristically includes the following:

- infidelity by men and, to a lesser extent by women,
- men's desire to dominate,
- poor enforcement of the law,
- suspicions and lack of trust between partners,
- excessive alcohol abuse and using violence to silence women,
- poverty and dependency on intimate partners.

Raditloaneng's list indicated that domestic violence has a variety of causes which range from personal behaviour to socio-economic factors. Furthermore, according to Joseph Michalski (2004: 653), domestic "...violence has much deeper roots in the structural foundations of interpersonal relationships..." What this means is that, in most cases an intimate partner's dominance over the other can be emotional, physical or sexual in nature and it can start slowly as supported by gender stereotypes but surely becomes expressive. In some instances, violent behaviour is caused by an interaction of situational and individual factors. The general meaning is that in some cases abusers can learn violent behaviour from family members who are abusive or from other people in the community through observance of certain cultural practices. Abusers may have experienced violence often or they may have been survivors themselves. This makes domestic violence a trans-generational problem.

It can be argued that in most African communities domestic violence is rooted in patriarchy which has often treats women as subordinate to men in society. According to Lisa Aronson Fontes and Kathy McCloskey (2011: 155), "feminist theories of violence against women emphasise that patriarchal structures of gender-based inequalities of power in society are at the root of the domestic violence problem". The authors suggested that causes of domestic violence can be understood and explained in the context of causes of gender-based violence since domestic violence is just an aspect of the broad corpus of violence against women. It can be concluded that gender inequality, which is so widespread in African communities, is the main cause of domestic violence.

However, many factors can still contribute to the causes of domestic violence in intimate relationships. To add to the list proposed by Raditloaneng, Michalski (2004: 663) came up

with general trends or patterns of behaviour that supposedly trigger violence in intimate relationships. He suggested a number of key risk factors which lead to the occurrence of domestic violence and these include:

- Inequality between partners,
- Lack of relational distance, or a high degree of intimacy within a couple,
- The centralisation of authority, in other words, patriarchal dominance within a family,
- Exposure to violence and violent networks.

Although the list is not exhaustive but it is packed enough to show that domestic violence is a pervasive phenomenon that intimate partners have no choice but live with. Each factor in the list is linked to others in one way or the other. For example, where partners are treating each other as unequal, it means that one of them wields more power than the other and this often causes conflicts around control of resources and properties. At the same time, patriarchal dominance within a family would mean that authority is centred on the male partner at the expense of the woman and this may result in misunderstandings.

In the case of Zimbabwe, the *Zimbabwe National Gender Based Violence Strategy* (2012-2015:4) identified the following factors as contributory to gender based violence across the country:

- Societal norms on sexual rights, including denial of conjugal rights,
- Societal norms on manhood,
- Commercialisation of bride price (*roora/lobola*),
- Socialisation processes that condone abuse,
- Economic factors such as poverty, exploitation, access to and control over resources, for example, land,
- Variance between the modern and traditional/religious conceptions of love by men and women,
- Harmful traditional practices e.g. girl child pledging for purposes of appeasing avenging spirits, forced marriage, child marriage, forced virginity testing and forced wife inheritance,
- Infidelity and polygamy,
- Limited participation of women in decision-making.

The trends are general and do not completely represent all cases where domestic violence occurs. Given the diversity of causes of domestic violence, it means that each society has a specific set of causes of domestic violence that applies to it, although some causes cut across the social divide. The implication is that solutions to domestic violence cannot come from

policies drawn from outside the community where the violence is happening. This is what Nancy Chi Cantalupo et al (2006) suggested where they said that “[a]ny discussion of domestic violence within a particular society must address the factors that contribute to and complicate the problem”. This is why it was stated at the onset of this chapter that focus should be on addressing patriarchy as the major cause of domestic violence between intimate partners among the Ndau.

As has been pointed out in chapter 3, the focus of this section is supported by Kristin Anderson and Debra Umberson (2001: 363) where they argued that “domestic violence is gendered through social and cultural practices that advantage men in violent conflicts with women”. The implication of this view is that the roots of domestic violence and other types of violent intimate relationships are linked to the struggle for power and control between men and women. It also suggests that if one partner, more especially the man, feels the urge to dominate the other in any way, whether it is physical, sexual, emotional, economic or psychological, then it is significantly more likely that the intimate relationship will turn violent when the woman resists. Thus, intimate partner violence, particularly when it is perpetuated by men against women, can be supported by a number of cultural practices that male partners use to control women.

Mashiri (2013) further stressed the point that in most African communities domestic violence is socially sanctioned by patriarchy as it is deep-rooted in traditional belief systems and practices. This makes domestic violence a form of violence to which girls and women are subjected primarily because of their being female gender identity. To this extent, females face systematic discrimination from an entrenched and rationalised system of gender-based power relations. Thus, patriarchy exhibits an almost universal pattern of subordination that leaves girls and women highly vulnerable to acts of domestic violence from male members of their families and communities, including husbands, lovers, brothers and fathers. It can therefore be concluded that unless the systematic and salient inequality between men and women is attended to, the problem of violence in intimate relationships will persist in spite of well-meaning laws such as the Domestic Violence Act. The next section therefore serves to explain how patriarchy is generally the main cause of domestic violence between intimate partners among the Ndau.

5.2.1 Ndau patriarchy, masculinity and domestic violence

The previous section has highlighted how patriarchy discriminates against women and systematically makes them vulnerable. This section presents the causes of domestic violence

among the Ndau people and explores how traditional beliefs and cultural practices foment intimate partner violence. Since Ndau community is predominantly traditional, patriarchy has been identified as the main cause of systematic domestic violence. It is important to mention that a number of the authors have written about the patriarchal Ndau nature of Ndau society of Zimbabwe. Some of the authors such as Tapiwa Mapuranga (2010), Tenson Muyambo (2010), Jairus Hlatywayo (2012) and Oswell Rusinga and Richard S. Maposa (2013) studied Ndau communities and observed that patriarchy predominately discriminates against women in most of the social interactions between men and women. In particular, Mapuranga (2010: 40) referred to the Ndau society as “androcentric” which means that it is highly male-centred. She went on to point out that in practice, Ndau community supports men’s and boys’ interests and actions as being more important than those of women and girls and that the Ndau regard this as a normal way of life. Most of the discriminatory tendencies displayed in the everyday relations between men and women are not questioned. For example, some Ndau men are owners of family properties while their women do not have anything officially registered in their names. In some cases, women are never consulted on how family projects should be carried on. Overall patriarchy creates a dependency syndrome for women in order to control them. The dependency is cultivated by beliefs that girls only grow to be married and be looked after by their husbands while boys should always grow to be men who work to support their families.

The implication of the significance attached to patriarchy is that Ndau community presupposes that men and boys deserve preferential treatment at the expense of women and girls. Furthermore, Moses Dzimbashanu (2006: 49) maintained that in most cases men are regarded as heads of households and therefore they are responsible for making decisions that are binding for all members in the family. In the case of the Ndau, the institutions of marriage and family present themselves as platforms for the practice and display of androcentricism, which is centred on the cultural excuse of growing the patrikin (*dzinza*).⁴¹

Writing on the nature of Shona families and how children are differently treated depending on whether they are males or females, Bourdillon (1993) noted that male children are given first priority than girls because of the desire to grow the patrikin. In his observations, Bourdillon (1993: 26) also pointed out that patrikin (*dzinza*) refers to one’s father’s male relatives as the basis of the family’s growth. It is in view of the importance attached to the

⁴¹ *Dzinza* is a Shona word that is used to refer to a large family group of kins that includes the extended family. The Ndau people place great importance on the perpetuation of the family name through the birth of male children.

growth of the patrikin that the Ndaou believe that male children are more important than girls because they have the traditional responsibility to carry forward the family name. Thus, a family with female children only brings about anxious moments for the father and exposes the mother who may unfortunately be 'accused' for bearing girls only. Once the woman is blamed for failing to bear a male child, then she becomes a victim of male violent expression of frustration.

Furthermore, Chitando and Chirongoma (2012: 6) described this kind of patriarchy as displaying features of "hegemonic masculinities which invariably proffer men as authoritative and dominant members of the society". This is the general picture that patriarchal societies display. Chitando and Chirongoma (2012) further argued that in most cases religion and culture support the portrayal of men as powerful leaders whom society must treat as more important persons than women and children. In this case, the patriarchy is also resonates in all areas of society which include in the church and in politics. In the case of the Ndaou, male veneration is very visible in the family environment and it also finds unfettered expression through a number of traditional marriage practices upon which men demonstrate violent behaviours that are unfortunately supported by Ndaou cultural norms.

One of the most compelling customs imbedded in Ndaou patriarchy is what Jairus Hlatywayo alluded to as the 'honour-me' disposition that most Ndaou men demonstrate in their interaction with women. In connection with the domineering character of some of married men, which is based on Ndaou masculinity, Hlatywayo (2012: 116) claimed that some of these men actually think that masculine attributes such as power and courage can be expressed through domination of women. This is the kind of attitude that Ndaou married men display to the extent that most of them make women respect them for the sake of their maleness. This is demonstrated by Ndaou culture that respects male-honour and further upholds physical strength, toughness, courage and risk-taking as cultural benchmarks of manhood. Thus, honour-based violence occurs in Ndaou communities where male-honour is expected and respected. It is fundamentally bound up with the expected behaviour and superiority of males over females.

Furthermore, Hlatywayo (2012) referred to Ndaou masculinity as basically anchored on male dominance of women particularly in marriage settings. This is the view which maintains that masculinity is established, recognised and expressed through the husband's dominance over his wife. Hlatywayo (2012: 116) further argued that "in patriarchal societies, men occupy a place of honour on the basis of the extent of conquest which is assumed to make men define

themselves as dominant figures over women through the use of violence at times”. Such male dominance is often expressed through incessant and overbearing culturally-backed demands for male-honour from women and girls. The practice often leaves women and girls with no option but to give in to the pressure and accord honour to all males. On the basis of this male-honour, a boy-child in Ndau society is honoured as an important family member more than a girl-child. For example, a boy can be identified by a name or names of his father or forefathers so as to express the extent of his importance and influence in the family. Fontes and McCloskey (2011: 153) also pointed out that such a practice is meant to ensure that inheritance and the family name remain in the custody of male children.

Another equally compelling customary practice associated with Ndau masculinity is the perceived sexual potency of Ndau men which is often linked to various socialisation rites for boys and young unmarried men. In Ndau culture, boys are socialised to associate masculinity with competences in sexual matters or ways that prove that they are manly. This aspect of Ndau masculinity is aptly presented by Muyambo (2015) in his study of Ndau masculinity in the face of HIV and AIDS. In that study he observed that some young men take a kind of traditional medicinal porridge known as *shupa*⁴² in Ndau language to bolster their manhood. The medicinal porridge is believed to enhance Ndau men’s sexuality among other benefits. Muyambo further explained how the porridge is prepared and administered to men to enhance their sexual potency. To emphasise the general importance of *shupa*, Muyambo (2015: 65) went on to say:

Shupa has its masculine and feminine dimensions that double it as both a health asset as well as a tool of oppression. The porridge is often mixed with herbs that are said to enhance men’s virility. This dimension of *shupa* makes the porridge a source of problems. Once a young boy gets this porridge he brags that he is sexually strong and it creates the ‘*Macho image*’ in most boys.

From the above quotation, it is clear that some of the Ndau boys who take *shupa* porridge therefore, grow up with the mentality that it is their right to express dominant masculinity over girls through force during courtship and later when they marry. With that kind of thinking, most of the young men believe that if a girl turned down a boy’s proposal for marriage, the young man should insist or even use force to prove his worth. In many cases this often results in date rape and later on, marital rape, which are often not regarded as criminal acts as they are condoned by Ndau cultural practices.

⁴² *Shupa* is one of the many kinds of medicinal foodstuffs that Ndau men are socialised to eat in order to improve and maintain their sexuality.

It is important to note that male dominance over females in sexual relationships is not limited to Ndau culture alone. Writing about domestic violence in India, Lisa Fontes and Kathy McCloskey (2011: 155) noted that violence against women is clearly a cross-cultural problem in most cultures. The authors claimed that in most cultures, sexual relations are regarded as male-female struggles “in which men are always ready for sex while women should try to avoid it, at least outside marriage”. This suggests that in many cultures most men are culturally socialised to think that when a woman does not show readiness to engage in sex, apparently she is interested but too shy to show it to the man. Thus, if a young woman is sexually assaulted or raped after refusing a man’s advances, her resistance is culturally dismissed as insincere and the man’s action is seen as exactly what men always do to women who turn down male sexual advances. This is a misconception about the essence of masculinity. At the same time, it is clear that regulating sexual behaviours which have are accommodated in the people’s culture poses some challenges.

In Ndau culture therefore, it is the sex struggle narrative which makes male sexual violence appear as though tolerable and unexceptional when husbands sometimes force themselves upon their wives. This approach to male sexuality tends to rationalise men’s conjugal mastery over women, thereby making domestic violence acceptable and predicated upon a plethora of traditional practices. It can be inferred therefore that in Ndau culture it is the sex struggle narrative which makes male sexual violence appear tolerable. Thus, when some married men use violence upon their wives, they tend to base their behaviour on culture. As Fontes and McCloskey (2011: 155) noted, this approach to male sexuality tends to essentialise men’s conjugal mastery over women. In the case of Ndau culture, this makes domestic violence as predicated upon a plethora of Ndau cultural practices, relatively acceptable.

To furthermore explain the role of masculinity in domestic violence, Walker, Reid and Cornell (2004: 24) noted that in many cultures sexual violence takes place because many men go “under social pressure to behave in a domineering and sexually aggressive way” so as to be socially accepted among other men. Perhaps this is why some Ndau men who were socialised through traditional medicinal porridge (*shupa*) as young boys often brag about their sexual prowess and would want to express it at any given opportunity. For example, Muyambo (2015: 68) observed the same where he said that “sexual power purported to be enhanced by *shupa* puts men under pressure to demonstrate to peers that they ate *shupa* and therefore are *real* men”. Unfortunately, this perception leads to violence against women

involving sexual coercion resulting in date and marital rape of girls and women respectively. However, violence of this kind is typical of many marriage relationships among the Nda, thereby making domestic violence a culturally entrenched phenomenon found in most heterosexual intimate relationships among the Nda. This means that domestic violence among the Nda is essentialised and sanctioned by society whose men-women intimate relationships are deeply rooted in Nda culture. For this reason, intimate partner violence becomes pervasive in the lives of many Nda married women.

Apart from masculinity, some traditional marriages are responsible for intimate partner violence among the Nda. The problem comes from Nda marriage processes themselves. Writing about marriage in African in general, Arnaldo (2004: 146) pointed out that the African concept of marriage is diverse. He maintained that it is diversity which makes it generally difficult to have a common continental position on what marriage really entails. His point stemmed from the understanding that, in many African communities, marriage is a long and complex process and not an isolated social event limited to the marrying couple. This makes it difficult to determine the exact point where marriage begins to be recognised as official or accepted. In agreement with this understanding of marriage, Liveson Tatira (2010:45) also noted that marriage among the Shona is a long process that involves traditional rites, extensive dialogue and consultations that can sometimes stretch over long periods of time. This suggests that the marriage process among Africans does not involve the marrying couples only but everyone related to them, including the community at large.

The extent of family and community involvement in the marriage processes also makes it unclear to establish when exactly a couple becomes married. In some cases the marriage processes may take place without the participation of the marrying individuals. With reference to traditional marriage in Ghana, Okyere-Manu (2015:50) singled out the traditional “Head drinks (*tirinsa*)” ceremony among the Akans of Ghana which she noted can “proceed while the bride is not present and often the groom is absent as well”. This means that traditional marriage does not only involve the bride and groom as individuals who are preparing to live together and start a family. Instead, it suggests that traditional marriage is an institution that encompasses everyone from the families of the marrying parties, their relatives and the entire community. The marriage can proceed without making the marrying parties visible because in traditional marriage is marriage between families and not individuals.

In the case of the Ndaou, even though the marriage process is initiated by the bride and the groom before they approach the bride's aunt (*vatete*)⁴³, most of the events that ensue hardly require the presence of the marrying parties. Tatira (2010: 25) observed that once the bride and the groom have expressed and demonstrated their intention to marry by exchanging love tokens before the bride's aunt. It is up to that stage that the couple goes. Afterwards, customary or traditional marriage rites and negotiations follow and the whole community is also involved at that stage. Furthermore, the bride's aunt takes a leading role in the marriage negotiations till the bride is presented to her husband's home. The importance of the aunt in the marriage processes was reiterated by Aquina Weinrich (1967: 29) where he pointed out that the bride's aunt "has the final word to say, and if she is against the proposed marriage, it is unlikely that negotiations will be initiated". It means that if the aunt, in consultation with other members of the family and community, disapproved of the intended marriage, she advised her niece (the bride-to-be) not to proceed with the marriage.

Among the Ndaou people, the bride's aunt is an indispensable member of the family without whom the marriage processes may not proceed. Her importance is further reiterated by Moses Dzimbashanu (2006: 43) where he said:

The *vatete* has an influence on relations in general, and more specifically at the beginning of marriage, in bride wealth payments as a spokeswoman, in divorces as an advisor, in levirate as head and arbiter and in the relation between her 'brother' and his wife as negotiator and arbiter.

Thus, the aunt makes sure that everything goes well. When she is satisfied, the marriage negotiations and ceremonies can proceed till the bride is presented to her new family. It is this approach to traditional marriage which makes most Ndaou women and men completely engrossed in the cultural conditions of the marriage institution.

In their study of the Ndaou people's perception of marriage, Munyaradzi Mawere and Patient Rambe (2012: 3) observed that the Ndaou regard marriage as sacred and they believe that it should be respected by going through all the necessary traditional rites and ceremonies. Furthermore, the authors pointed out that the Ndaou believe that a woman's submission to her husband in marriage should be learned early in the girl's life as it can determine how long she

⁴³ *Vatete* refers to the bride's aunt (father's sister). In Ndaou customary marriage, she is the first family member to whom the bride presents the news of her intention to get married by bringing her would-be husband to meet the aunt. It is the aunt's responsibility to inform all the other family members and to lead in the marriage negotiations with the in-laws.

will stay in the marriage. They also maintained that in some cases it is difficult, if not impossible, for a married woman to refuse a husband's sexual demands simply because she is married to him. Thus, marital rape, for example, is generally not considered as a crime, and it is very difficult to find external support or intervention to stop this form of domestic violence. As a result, domestic violence can go on unabated because the law may fail to displace the core of cultural practices. The next section looks at the prevalence of domestic violence in Zimbabwe.

5.3 Overview of domestic violence prevalence in Zimbabwe

Gender-based violence is not a new problem in Zimbabwe. For many years efforts have been put in place to end it and the Domestic Violence Act is the latest government strategy to fight gender-based violence. However, since the inception of the DVA in 2007, there has been a rise in reported incidents of domestic violence in the media across the country. It is correct to say that, following the promulgation of the law against violence in the home, the media has been awash with reports of cases of domestic violence. This is an acknowledgement that domestic violence is a big problem in Zimbabwe and the media has become aware of this brutal reality. The rise in media coverage of domestic violence can be attributed to the realisation that domestic violence means any kind of infringement, however small, on the rights of another close person with whom one has an intimate relationship. Before the law came into effect, Cynthia Grant Bowman (2003: 477) pointed out that the media had always reported on domestic violence whenever it resulted in death. But since the law was pronounced, the Zimbabwean print media has gone on to uncover most of the cases of domestic violence as shown in some of the following storylines which signify the prevalence of the domestic violence problem in the country:

- *Man arrested for raping his wife, set to appear in court, (NewZimbabwe.com, 22 June 2015).*
- *Man (70) divorces over conjugal rights, (NewZimbabwe.com, 13 June 2010).*
- *Pregnant woman sentenced for hurling bricks at in-laws, (NewZimbabwe.com 24. June 2015).*
- *Man rapes sister-in-law at gun point, (Newzimbabwe.com, 24 June 2015).*
- *Man torches former lover's house, kidnaps baby, (NewZimbabwe.com, 24 June 2015).*
- *Jilted soldier sentenced for destroying lover's home, (NewZimbabwe.com 2 June 2015).*
- *Adulteress jailed 3 months for killing newly born baby, (Newzimbabwe.com, 24 June 2015).*

- *Man runs amok, brutally attacks family and neighbours, (Sunday News, 6-12 December 2015:2).*
- *Serial wife basher remanded in custody, (NewZimbabwe.com, 16 June 2015).*
- *Watsomba woman axed husband 11 times in the head, (Newsday, 20 June 2015:9).*
- *Insecure man abuses wife, children, (Newsday, 20 June 2015:6).*
- *Abusive hubby assents to protection order, (The Manica Post, 18-24 December 2015:w4).*
- *“I am tired of my violent wife”- husband tells court, (The Manica Post, 9-15 October 2015:w4).*
- *Kombi driver dumps wife over \$80 rentals, (The Manica Post, 9-15 October 2015:w4).*

The storylines highlighted above serve as evidence that domestic violence is a marital and relational problem that has reached unprecedented prevalence levels. Story headlines such as these have actually become a permanent feature in the Zimbabwean print media in recent times. Hardly a day passes by without a case of domestic violence being reported in the newspapers. In the majority of reported cases, women and girls are the most affected survivors of domestic violence. This does not mean that men and boys are not survivors of domestic violence. On this note, Justice Medzani (2013: 4) acknowledged that cases of violence against men are also on the increase in Zimbabwe because women are being violent as they defend themselves or retaliate against male violent attacks. Lynette Manzini (2016) also noted cases of men who are abused by women but the men prefer to remain silent about it because they believe that reporting being abused by a woman is tantamount to embarrassing oneself. Therefore, it is always violence against women that is often reported. However, in a patriarchal society such as Zimbabwe where men are perceived to be physically strong and influential to defend themselves, reports of men's abuse by women are few. In connection with this observation, the *Zimbabwe National Gender Based Violence Strategy* (2012-2015: 2) reported that:

Levels of gender based violence remain a concern and a major barrier to women's active participation in development. Despite the enactment of several gender responsive laws and policies, such as the Domestic Violence Act of 2007, women and girls in Zimbabwe continue to be the victims in 99% of GBV cases, especially within the private sphere.

The above report clearly shows that domestic violence prevalence is very high in Zimbabwe. It also explains that women are the most affected by it. This is further confirmed by the

Human Rights Bulletin (2011: 1) report on gender based violence in Zimbabwe. the report noted that, “as a result of the patriarchal nature of Zimbabwean society, women are affected more by gender based violence than men”. This shows that the domestic violence problem has become too big to be ignored. It also indicates that women are the affected because some legal reforms such the Domestic Violence Act inadvertently condone domestic violence.

It must be reiterated that although domestic violence is rampant throughout the country, this study focuses on the domestic violence problem among the Ndau people of south-eastern Zimbabwe. Studying domestic violence among the Ndau people is motivated by the Ndau people’s continued practise of customary marriages. This is happening at a time when Arnaldo (2004) noted that other ethnic groups across Africa have significantly moved away from observing customary marriage unions in response urbanisation and globalisation. However, with reference to the Ndau, Mapuranga (2010) noted that the Ndau have not been overwhelmed by globalisation and have not changed much since they are still practising customary marriages particularly in the rural areas along the border with Mozambique.

The reasons behind Ndau people’s continued practice of customary marriage unions and other cultural practices that are often condemned and criticised for violating women’s human rights have already been highlighted in chapter three under section 3.4 on the Ndau community. The section highlighted that certain practices which are perceived harmful to Ndau women survivors of domestic violence, are culturally permissible among the Ndau. Fontes and McCloskey (2011: 152) also opined the same position where they said that “certain forms of violence are deeply embedded in specific cultural contexts; that is, harm is inflicted in certain ways and supported by structures and ideologies that permit a specific form of violence to continue in its own precise context”. In line with this thinking, Muyambo (2012: 42) noted that Ndau married women can tolerate being slapped by their husbands as a culturally-approved way of demonstrating the husband’s affection. This is the context in which the next section presents the various customary marriage unions and discusses how each of the customary unions and related cultural practices contribute to the prevalence of domestic violence among the Ndau people.

It was noted in the presentation on the link between Ndau masculinity and marriage in section 5.3.1 above that domestic violence is an accepted cultural practice that is embedded in Ndau masculinities and patriarchy which support the subordination of women. This only serves to illustrate the fact that, in the absence of an assurance that the equality between men and

women takes precedence over culture, traditional practices that discriminate against women may be deemed lawful in some circumstances. The point of emphasis in this section is that, in Ndau communities certain levels of domestic violence are socio-culturally accepted practices, especially within marriage settings where women are expected to survive with under such conditions. Thus, the purpose of the following section is to present particular customary marriage practices from which certain levels of domestic intolerance arise and woman find nothing wrong with them. The section also shows that, in many cases marriage-related acts of domestic violence are supported by customary marriage unions that perpetrators and survivors are engaged.

5.4 Customary marriage practices and domestic violence

In this section Ndau customary marriage practices are presented as part of the wide range of cultural marriage practices in Zimbabwe. The section further explains how the different customary marriages foment domestic violence for married Ndau women. Lilian Siwila's (2012: 108) observation concerning the need to investigate why harmful cultural practices persist informs this section. The argument she advanced in her research is that it is not enough to state, discuss and condemn harmful cultural practices without interrogating "the centre core of culture where people's ideological perceptions about culture are located". By this statement, Siwila meant that it is in vain to expose cultural practices and condemn them as harmful, hoping that people who are affected may stop practising them on that basis. Thus, it is from Siwila's concern with just condemning harmful cultural practices that the next section presents Ndau customary marriages which exhibit aspects of harmful practices but are still being cultural practices does not mean they are abandoned by the people.

The next section also uses data drawn from a wide range of newspaper articles that documented domestic violence cases among the Shona people in general. For this section, the study found it prudent to use information from previous research studies done on harmful cultural practices among the Shona people. The data from previous researches was used in order to avoid replication of data collection procedures and processes on the same issues but with a different cultural group. This approach was also used with the understanding that since the Ndau are part of the Shona people of Zimbabwe, they do share most cultural practices with other Shona groups such as the Manyika and Karanga. The section therefore, focuses on domestic violence prevalence among the Ndau as it emanates from customary marriage unions and related cultural practices.

5.4.1 Girl child pledging (*kuputsa*)⁴⁴

Pledging a girl child (*kuputsa*) is one of the most common customary marriage unions that the Ndau people practise, particularly those who stay close to the border with Mozambique. This customary marriage practice involves the giving away of a girl child into a marriage union, without her knowledge and consent. Mawere and Rambe (2013: 5) pointed out that the practice can be understood as the pledging or ‘selling’ of a girl child by her parents into an arranged customary marriage. The marriage is usually initiated by the girl’s family as a response to poverty and other forms of socio-economic deficiencies. In most instances, the marriage is necessitated or induced by need. In support of this point, Mawere and Rambe (2013: 6) observed that, among the Ndau, the practice of *kuputsa* “continues unabated owing to a range of economic deprivation and aggravating social circumstances”. This is to say that the marriage arrangement cannot be completely abandoned for as long as there are conditions that cause family deprivation. Thus, for the Ndau, *kuputsa* is undertaken in response to life-threatening situations such food shortage.

Kuputsa marriage only takes place when there is a big family problem. The problem could be food-related or of a spiritual nature. The process of *kuputsa* begins when the girl’s father approaches the head of a rich family for assistance with grain, money or cattle in exchange for his daughter as a wife. Sometimes the pledged girl could be as young as eight years old or even less. In most cases, the girl’s family through the father enters into the arrangement either to avert hunger affecting the entire family or to settle a crime committed by the father. Once the agreement has been concluded between the two heads of families, the young girl can remain in her father’s home until she is grown up enough to leave for her husband’s home. However, in this customary marriage arrangement, the girl’s young age and lack of the capacity to consent to the marriage arrangement are not put into consideration. In some cases, once the girl is pledged, she is immediately taken away by her husband’s family.

A number of factors perpetuate the practice of *kuputsa* among the Ndau. Poverty is the major cause of the continued practice of *kuputsa* among the Ndau people. In a study of the Ndau livelihood strategies, Phillan Zamchiya (2011: 1095) observed that sometimes the Ndau people are affected by drought. He maintained that much of the Ndau region is generally arable land and is “in the high veld where most former white farmers and high value farms were concentrated” occupying large scale commercial tea and coffee farms and mission farmlands. This left the majority of the Ndau people living in communal areas with poor land

⁴⁴ The Ndau use the word *kuputsa* while other Shona people use *kuzvarira* to refer to girl child pledging.

for subsistence farming. During droughts, the communal people are impoverished and made to survive as farm labourers on tea, coffee and banana estates in Chipinge and Chimanimani. Thus, in times of drought, the communal people are hard-hit by lack of food provisions and they resort to selling or pledging girl children as wives in exchange for food.

Mawere and Rambe (2013) also concurred with the point raised about poverty as a push factor for the continued practice of *kuputsa* among the Ndaus. The authors pointed out that in cases where families are suffering abject poverty, the pressure is often upon such families to turn to the practice of *kuputsa* customary marriage in order to rescue their families from material inadequacies or starvation during drought. In this way, the practice of *kuputsa* serves to cushion poor families, which consider themselves fortunate to have one girl child or more, from the adverse effects of poverty and hunger. Thus, the prevalence of the customary marriage practice of *kuputsa* as customary marriage is culturally justified as a means to sustain poor families, especially during drought periods. However, the Domestic Violence Act does not allow the practice of *kuputsa* for the reason that it violates children's rights.

5.4.1.1 A case of *kuputsa*

In a *Manica Post* newspaper, Chrispen Zengeni (2008) wrote a story about domestic violence that arose from a case of pledging a girl child. In the news article, the author mentioned that in 2001, a girl of eight years old was handed over as a wife to a neighbouring family in exchange for cattle to settle a long-standing dispute between the girl's father and a neighbour. The dispute was over witchcraft-related deaths in the family and the girl's father accused his neighbour of causing the deaths using a goblin (*chikwambo*). When the goblin case brought before the local chief's court for settlement, several traditional diviner-healers (*nyanga*) were consulted and the accused neighbour was vindicated of owning any goblins. He then demanded a herd of five cattle as compensation from his accuser for defaming his name because being accused of witchcraft is a serious crime among the Ndaus. The traditional court accepted that the man who was wronged should be paid the fine but the girl's father had no herd of cattle in his home. For years, the girl's father failed to pay the fine until he decided to pledge one of his three daughters to a rich man in the area in 2001 in order to get the cattle for the fine.

When he was pushed to pay the fine, the girl's father approached a rich and polygamous man in the area and offered his daughter to him as a wife in exchange for a herd of five cattle. The rich man took the little girl as his fourth wife. The girl was received in her new family and a herd of five cattle was given to her father as initial bride wealth (*roora/ lobola*). She

continued with school up to secondary level when she impregnated by the man who had married her. Owing to her young age, the girl had pregnancy complications which resulted in a miscarriage. She fell sick but no one took her to hospital. It was when she became critically ill that she was taken to hospital for treatment and that was when her story came to light and was recorded by Chrispen Zengeni (2008).

5.4.2 Reparation marriage (*Kuripa ngozi*)⁴⁵

Another customary marriage arrangement that raises issues of domestic violence is the handing-over of a girl as a wife for the appeasement of an avenging spirit (*kuripa ngozi*). It was explained in section 3.4 above that Ndaou people strongly believe in the power and influence of spirits in their lives. The practice of appeasing an avenging spirit may require that the murderer's family hands over a young girl as a wife to the deceased's family. Pfuikwa (2001: 109) explained that, once the elders agreed on the appeasement arrangements, the girl is identified and sent off to the deceased man's family to become wife of the angry spirit (*mukadzi wengozi*). She is given to a male relative of the deceased man so that she can bear children who should be regarded as the dead man's children. The Ndaou believe that, through such a marriage arrangement, the deceased man's wishes to have a family of his own are fulfilled and therefore his spirit should not cause problems and other misfortunes.

Although *kuripa ngozi* type of marriage is forbidden by the government and is regarded as a form of child rights violation, it still occurs extensively among the Ndaou and other Shona groups who strongly believe that abandoning the practice altogether may lead to catastrophe for their families. This is evidenced by the case presented in the next section.

5.4.2.1 A case of reparation marriage (*Kuripa ngozi*)

In an article published by *The Sunday Mail*, Phyllis Kachere (2009: 6) presented a case of pledging a girl as wife to an avenging spirit (*kuripa ngozi*) that happened in 1999 when seventeen young girls from different families were pledged to marry different members of one family in order to appease the spirit of a murdered man who was murdered demanded compensation for the murder. The article was about three businessmen who murdered a man in 1995 for business-related rituals. The three businessmen hired several men to help them accomplish the task and the man was killed. However, when the dead man's spirit revealed itself to his family through a spirit medium four years later, a total of seventeen people from different families were identified to have taken part in the murder. The deceased man's spirit

⁴⁵ Refer to footnote 37 above.

demanded that every family whose member had participated in the murder had to surrender a virgin girl and a herd of ten cattle as compensation for the death of the man.

After extensive consultations with diviner-healers, the accused families agreed to hand over their daughters and cattle as compensation to the deceased man's family in 1999. The youngest girl pledged was ten years old. However, soon after the young girls were 'married' into the dead man's families, there was a national outcry against the practice of *kuripa ngozi* as the case was treated as one of clear and blatant child abuse. Girl-Child Network (GCN), a non-governmental organisation which fights for the respect of girl children's rights, and the Social Welfare Department, took leading roles in rescuing the girls. The organisations undertook a national campaign against the child marriages and other forms of child abuse.

The programme to rescue the seventeen girls became a national project which involved the police and civil courts as they intervened to rescue the girls from abuse. The result was the reclamation of all the seventeen girls and they were delivered back to their families. However, soon after the girls' release back into the hands of their parents, five of the families later approached the deceased man's family and made secret arrangements to have their daughters taken back as wives to appease the angry spirit. Their argument was that offering the girls as wives was the only way by which they could save their families from further calamities caused by the dead man's avenging spirit. In light of the effects of failing to appease an avenging angry spirit (*ngozi*), Bourdillon (1991: 235-136) aptly summarised what the five girls' families' concerns were where he said that:

...among all evil influences, an angry spirit (*ngozi*) is perhaps the most greatly feared because it is believed to be responsible for mysterious deaths and destruction in the wronging families.

It is clear from what Bourdillon noted that the responsibility to save the whole family from persecution rests on appeasing the angry avenging spirit in the manner it would have demanded to be compensated. This can only happen when the guilty family concedes to the dead person's demands for appeasement. In this case, the five families who went on to privately surrender their daughters as appeasement wives wanted to save their families from the consequences of ignoring an angry spirit. In connection with the fear of the consequences of failing to appease an avenging spirit, Kachere (2009: 6) reported that one of the men whose daughters had been rescued from the dead man's family said that:

We are in trouble. Although we are aware of the legal problems we may face, we have to do what tradition demands of us. We can't just watch the avenging spirit wiping us all out. There are mysterious deaths and strange happenings within our family caused by this angry spirit and we want to settle that once and for all.

This means that, given their desperate circumstances and the misfortunes and deaths suffered, the girls' families had to choose between tradition and modernity in dealing with their social problems. Thus the girls' families chose to observe the cultural practice of pledging a girl as wife of an avenging spirit in order to appease it and save the family from more calamities. This meant that the girls' families disregarded the legal and human rights issues associated with the cultural marriage practice. In the end, the cultural practice triumphed over the need to observe human and children's rights while suffering under the effects of vengeful spirits. This was a typical case of culture clashing with the law.

5.4.3 Wife inheritance marriage (*Kugara/ Kugarwa nhaka*)⁴⁶

Wife inheritance is another customary marriage which the Ndau still practice, though not as often as before the outbreak of HIV and AIDS. It is a customary practice among the Ndau that when a woman's husband dies, the woman is expected to continue living in her late husband's home and family. The widow is required to stay so that she can be inherited together with the deceased's unmarried children and property. It is usually the deceased's young brother (*munin'ina*) or sister's son (*muzukuru*) who is tasked with the responsibility to become the new husband to the widow, although in principle the widow can choose not to be inherited. The idea and belief behind this arrangement is that the deceased's family members would need a father figure to look after them. Gelfand (1992: 188) noted that generally among all the Shona people the practice of wife inheritance marriages is still being practised. However, he also noted that more men who inherit are now interested in looking after their late relative's property than taking the widow as a wife. The HIV and AIDS pandemic has led to this shift of the essence of inheritance marriages from taking over the widow to taking over the property. Tabona Shoko (2012: 102) aptly summarised the reasons why some men are changing from taking over the widow as a wife to being interested in the inheritance of property only, where he suggested that if the deceased man was infected with HIV, chances are that his wife may also be infected. As a result, many men agree to inherit the widow in order to have access to the property.

⁴⁶ Refer to footnote 36 above.

However, sometimes the new husband becomes reckless with the property inherited and may end up neglecting his responsibilities. He may even decide to sell the deceased man's property against the wishes of the inherited wife. When this happens, quarrels and fights may ensue between the inherited woman and her new husband. Bourdillon (1991: 135-136) claimed that cases of violence emanating from troubled marriages are often reported and heard at village head's or chief's traditional courts where they are often referred for arbitration. Thus, though the main concern of inheritance marriages is the welfare of the widow and her children, this marriage arrangement often leads to domestic violence around property misuse and mismanagement. Consequently, the widow may lose out and may become a destitute.

5.4.4 Polygamous marriage (*barika*)⁴⁷

Polygamy (*barika*) is a traditional marriage practice that is widely and openly practised by some men in Ndaou communities. Polygamy refers to a marriage arrangement in which a man has two or more wives. Under customary marriage unions, a man may choose to have more than one wife without breaking any law. However, Justin Medzani (2013: 27) noted that, while some women are agreeable to polygamy, others would prefer to be the only wife in the home. This particularly is the case where the wife realises that bringing another woman would mean sharing the few resources that her husband is struggling to get. However, in cases where there are two or more wives, they may compete for the love of their husband. In the process, jealousy may erupt and this often leads to various forms of domestic violence such as verbal, psychological or even physical fighting when the wives quarrel over different issues in the home.

According to Medzani (2013), some wives may resort to the use of love potion (*mufuhwira*).⁴⁸ In her study of the Ndaou people, Mapuranga (2010) concluded that some Ndaou women believe that they can keep their partners close to themselves through the use of love potion. This means that the knowledge and use of love potion is an important aspect of a woman's survival strategies in a polygamous marriage.

⁴⁷ This is one of the most common marriages among the Ndaou. However, in many cases and due to modernity, polygamy is no longer as pronounced as it was traditionally. Most of the men who practise it now do it 'unofficially' where they have more than one wife but keep the wives away from each other. In some cases the first wife may not even know about the second or third wives.

⁴⁸ Love potion (*mufuhwira*) is a mixture of herbs and traditional medicines prepared by a wife with the help of an expert herbalist/ diviner-healer. It is then administered to the husband by his wife or wives. The concoction is meant to secure the husband's love and enhance his desire for sex with the particular woman who prepared and administered the love potion to him.

In the majority of cases, polygamy contributes to the prevalence of domestic violence where a husband can be abused by his wife or wives. Sometimes the wives compete to be loved and some may approach diviner-healers (*nyanga*) for stronger love potion. A diviner-healer (*nyanga*), being an expert traditional herbalist or healer, may prepare strong but damaging love potion. According to Muyambo (2010), some Ndaou men believe that when a married man refuses to associate and discuss issues with others, preferring to be with one of his wives at home, it means he has been damaged psychologically by the strong love portion prepared by an expert traditional herbalist or healer. The damage may be so bad to the extent that the husband may fail to perform his manly duties or he may lose his sexual potency altogether. This is the extent to which the struggle for the husband's love and attention can become a form of domestic violence and the man may become a target of community ridicule. Thereafter, the man may be subjected to various forms of domestic violence by his wives which may range from being denied food and sex to verbal and physical assault.

Besides husband abuse by the wives, polygamy often leads to quarrels where the wives are staying together in one home with their husband. As mentioned earlier on, wives may fight over the meagre resources. They may also fight over the husband, especially when the husband prefers one wife at the expense of other wives. In any of these cases, polygamy has the potential to aggravate intimate partner violence.

5.5 The custom of bride wealth (*roora/lobola*) payment

Bride wealth (*roora/lobola*) payment is arguably one of the most common customary practices closely linked to the domestic violence problem among African couples. To emphasise the importance of culture in marriage arrangements, Joan May (1987: 37) concluded that the concept of African marriage as a whole, regardless of it being civil or customary, is influenced by traditional practices. The payment of bride wealth is one of the traditional practices that still influence marriages in Zimbabwe. For the Ndaou, a marriage that does not involve the exchange of bride wealth in one form or another is not respected and recognised. Furthermore, according to Chabata (2012:12), one of the arguments for the continued existence and observation of this practice is that bride wealth payment gives the woman the dignity and respect she is worth. This suggests that the payment of bride wealth makes the marriage a binding contract between the two marrying parties, their families and the entire community.

It is important to note that in many customary marriages across Africa, the marriage processes are witnessed and celebrated not only by the close family members and relatives but by the whole community as well. In this regard, Okyere-Manu (2015: 48) observed that most indigenous customary marriages in Africa are celebrated by a large number of people whose main function is to “cement the social and communitarian character of the community.” Thus, the coming together of the community in celebration of a customary marriage implies that the newly married individuals have been accepted in the society and as such, even if conflicts, disagreements or violence arise during the tenure of their marriage, the whole family and community would be responsible for the restoration of peace and harmony between them. This suggests that bride wealth payment is very important at least in two ways. One way is to express the husband’s appreciation of the work done by his in-laws in bringing up his wife. The other way is to demonstrate the husband’s family’s acceptance of the new woman in their family and community as well as to express the husband’s commitment to love his wife.

In view of the centrality of bride wealth payment in customary marriages, the Ndau insist that every man must pay bride wealth for the woman he marries. If a man stays with a woman for whom he did not pay bride wealth, then he can be subjected to domestic violence either by the woman’s relatives or by the woman he is staying with. Therefore, even if a man is unable to meet all his in-laws’ requirements for full bride wealth, he must pay at least a token of appreciation for the love of his wife.

However, the practice of bride wealth payment has also been responsible for the prevalence of domestic violence among married couples. Some of the problems raised by the practice are male infidelity and marital rape. In their exploration of the role played by of bride wealth in marriages, Kashiri and Mawire (2013: 98) maintained that some men and women do not believe that marital rape in customary marriage is a reality and an issue of concern. This comes from some men’s thinking that payment of bride wealth entitles them to have sex with their wives whenever they wish, even when the wife is not interested or in the mood for it. At the same time, the payment of bride wealth is often used by some men to justify their infidelity. Chabata (2012) argued that some men also claim that since they paid bride wealth for their wives, they can expect them to be faithful to them without the same applying about the men to their wives. This suggests that some men use the ability to pay bride wealth as an excuse to go out and engage with any other women, claiming that, traditionally, it is always men who propose to marry and not women. As such, the man can approach any woman

regardless of how his first wife feels about it. Apparently this behaviour causes emotional violence which may have adverse effects on the wife.

Bride wealth payment can also be responsible for making married men have control over sex matters in the marriage. This does not only violate women's rights to safe sex but it also exposes them to HIV infection. For example, a married woman may not be able to insist on the consistent use of contraceptives, particularly the condom, if her husband does not want to do so. Chabata (2012: 13) claimed that some married women find it very hard to negotiate safe sex since the husband can simply ask, "*Dzakaenda dzakapfeka macondom here?*" (Did the cattle (paid as *roora/ lobola*) go with condoms on them?) whenever the wife insists on using condoms. This implies that some men can demand to have sex with their wives without any protection claiming that they are making full use of the bride wealth they paid. On this issue, Kambarami (2006: 8) bemoaned the insensitivity of this attitude by some men where she resignedly concluded that "... all the same, bride wealth payment gives a man all rights while the woman is stripped of all freedom and rights". This means that the practice of paying bride wealth inadvertently encourages some men to effectively terrorise their wives, believing that they are doing the right thing of forcing them to have unprotected sex without negotiating with them.

But it appears that as long as bride wealth is culturally supported and expected to be paid, it always raises inequality issues between men and women, particularly when it is men who pay it. At the same time, the commercialisation of bride wealth by some in-laws has exacerbated married women's plight at the hands of their husbands. In this regard, Mpfu (1983: 17) observed frightening trend of domestic violence that stemmed from the traditional bride wealth payment practice where he said:

It stands to reason...that a man who has paid dearly for his wife will expect very high returns from her. This clearly gives him the right and power to be the judge of his wife's performance and productivity as well as reproductivity.

It is clear that the above-stated perception of the role of bride wealth has been reinforced by the commercialisation of the practice itself. Some families ask for huge amounts of money and related expensive items as bride wealth and this, in the eyes of the bridegroom, becomes similar to 'selling' the daughter, with him being the exclusive buyer.

The point raised by Mpfu in the quotation above has subjected many Nda women to domestic violence from their husbands. This made Hlatywayo (2012: 115) to conclude that

some Ndaou men “are driven by an uncontrollable sex drive that is biologically rooted”. This idea makes some men believe that, since they paid huge sums of money as bride wealth for such attitudes are not limited to Ndaou men only. According to Fontes and McCleskey (2011:156), the belief seems to come from most men’s socialisation which often includes the rape imperative script that misconstrues female lack of interest in sex as a way of encouraging them to force themselves upon the women. Therefore, apart from subjecting women to domestic violence, this belief also exposes women to HIV infection because they cannot successfully negotiate safe sex.

5.6 The DVA, traditional marriages and ethics

The interplay between the DVA and the traditional marriages outlined and explained in the previous section give rise to a number of ethical issues. According to Ellsberg and Heise (2002:1601), some major ethical principles that should be taken into account when implementing legislation against domestic violence or gender-based violence are non-maleficence, beneficence, respect for individuals and justice (balancing risks and benefits). This implies that care must be taken to make sure that the kind of legislation against domestic violence put in place does not infringe the rights and freedoms of the intended beneficiaries.

In the case of traditional marriage practices among the Ndaou, the major ethical concern is that of non-maleficence or minimising the harm that the practices cause using the DVA. Among the Ndaou, the DVA is more likely to be viewed as an intrusive intervention into the privacy of intimate partners. For example all traditional marriages outlined in section 5.4 above invariably require that disputes between married partners be settled within the family. The involvement of family members is guaranteed by the marriage arrangements which can involve the entire community. This means that whenever there are disputes, including domestic violence between the married couples, the feuding partners are expected to seek assistance from their families and communities. However, the DVA requires that all cases of domestic violence be reported to law enforcement agents for the protection of the abused and the prosecution of perpetrators. It has already been pointed out that the DVA is regarded as intrusive and foreign among the Ndaou. It is this approach in dealing with domestic violence that causes more harm to the intended beneficiaries of the law once their partners find out that they are turning to outsiders for protection. Thus there is need for the crafting of legal interventions or alternatives which can end domestic violence while minimising harm to survivors.

5.6 Conclusion

This chapter has focused on the institutionalisation of domestic violence as reflected in Ndaу marriage processes and practices. It explained the concept of marriage as understood in African communities in general and among the Ndaу people in particular. The chapter focused on the third objective of the study which was to explore the prevalence of domestic violence among Ndaу. It emerged from this chapter that an exploration of domestic violence could not precede without a contextual definition of the concept of domestic violence itself. Thus, domestic violence was defined, indicating that this is violence that is concentrated in the home environment. The chapter also delineated the focus of the study to be on domestic violence as it happens between intimate partners as manifested through the various Ndaу customary marriages.

The chapter went on to present Ndaу patriarchy as part of the root cause of domestic violence among the Ndaу. In particular, Ndaу conception of masculinity was singled out as being central to the prevalence of domestic violence among the Ndaу. As Hlatywayo (2013:115) pointed out, Ndaу misconception of masculinity responsible for fomenting intimate partner violence included “... the concept of an insatiable male sex drive, the notion of conquest, masculinity as penetration, males as risk takers and the notion of the idealised male body”. It also emerged that Ndaу masculinities regard girls and women are survivors of customary marriages that seem to serve the interests of men.

The chapter also presented cases of domestic violence arising from the Ndaу people’s adherence to various cultural beliefs and traditional practices entrenched in the Ndaу customary marriage institution. At the same time, a number of customary marriages were presented showing how the marriage practices make domestic violence uncommon for Ndaу married women. The chapter also considered the role of Ndaу customary marriage practices of polygamy and bride wealth (*roora/lobola*) payment in the prevalence of domestic violence. This chapter has therefore explored the pervasiveness of domestic violence in the context of the various customary marriages and related practices that make domestic violence commonplace among the Ndaу people.

The next chapter focuses on defining and contextualising the Domestic Violence Act (Chapter 5: 16) of Zimbabwe. Chapter 6 addresses the fourth objective of the study, which is to explore the Domestic Violence Act focusing on its pertinent and core features such as the police protection order and the mandatory reporting requirement. The chapter basically

examines the nature of the Domestic Violence Act and its capacity to regulate the behaviour of intimate partners towards each other among the people of Zimbabwe in general. The chapter begins by presenting an historical background to the gender-based violence (GBV) problem in Zimbabwe and explains how domestic violence is part of the broad GBV problem in the country. Thus chapter 6 presents the Domestic Violence Act as a national legal response to the domestic violence problem in Zimbabwe by exploring the meaning and scope of the Domestic Violence Act.

CHAPTER SIX: THE DOMESTIC VIOLENCE ACT (CHAPTER 5: 16) OF ZIMBABWE

6.0 Introduction

The previous chapter focused on how domestic violence has been institutionalised among the Ndau through traditional marriage unions, processes and related practices. It began by exploring the concept of marriage as understood by Africans in general and the Ndau people of Zimbabwe in particular. The objective of the previous chapter was to explore the prevalence of domestic violence among Ndau. How Ndau married women experience intimate partner violence was also explored. It emerged from chapter 4 that a contextual definition of the concept of domestic violence was necessary in order to ground the exploration of domestic violence among the Ndau within that context. Thus, a definition of domestic violence was proffered underlining the position that domestic violence is violence that takes place between closely related persons in the home. Thus, chapter also delineated the study focus on domestic violence as it happens between intimate partners.

Ndau patriarchy was presented as part of the root cause of domestic violence among the Ndau. In particular, Ndau masculinities were identified as being central to the prevalence of domestic violence among the Ndau. This was pointed out by Jairus Hlatywayo (2013:115) who argued that Ndau masculinity is misconstrued as a platform to display blatant abuse of women and girls using culture. Thus, it emerged that Ndau masculinities present girls and women as subordinated participants who find themselves in customary marriage practices that actually serve the interests of Ndau men. Furthermore, the chapter presented cases of domestic violence arising from the Ndau people's adherence to the various traditional beliefs and cultural practices entrenched in the Ndau customary marriage institution. At the same time, a number of customary marriages were identified. The chapter explained how the customary marriage practices make domestic violence uncommon among married Ndau people. The chapter considered the role of Ndau customary marriage practices of polygamy (*barika*) and bride wealth (*roora/lobola*) payment in the prevalence of domestic violence. This chapter has therefore explored the pervasiveness of intimate partner violence in the context of the various customary marriages and related cultural practices that make domestic violence apparently commonplace among the Ndau.

The present chapter presents an analysis of the Domestic Violence Act (Chapter 5: 16) of Zimbabwe. It explores the historical background to the broad gender-based violence (GBV) problem in Zimbabwe before focusing on the Domestic Violence Act. Furthermore, the

chapter explains how domestic violence is linked to the colonial legacy of subjugation and abuse of the Black population in general and how that exploitation became a source of double tragedy for Black women. The chapter goes on to present the Domestic Violence Act as a national legal response to the domestic violence problem in the country. It also explores the meaning and scope of the Domestic Violence Act which became the law specifically formulated to address the domestic violence problem throughout Zimbabwe. The objective of this chapter is to describe the Domestic Violence Act focusing on its pertinent and core features such as the provision for the police protection order and the mandatory reporting requirement on the part of the survivor or representative. Thus, the chapter basically explores the nature of the DVA and its capacity to regulate the behaviour of intimate partners towards each other with reference to the Ndaou people of Zimbabwe.

6.1 The scope of domestic violence

This section focuses on scope of domestic violence and how legislation against it can be improved. The United Nations Handbook for Legislation on Violence against Women (2010: 24) recommended that any national legislation on domestic violence should, among other issues, "...include a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence". This means that the legislature must clearly define domestic violence. It also means that the definition must be wide-ranging cover as wide as possible instances of domestic violence. Basing on this basic international prescription, the Zimbabwe Demographic and Health Survey (2010-2011: 251) claimed that domestic violence extends to cover "any unlawful act, omission or behaviour which results in the death or the direct infliction of physical, sexual or mental injury to any complainant by a respondent". This is the scope of domestic violence that the government of Zimbabwe adopted and made use of in coming up with the Domestic Violence Act (Chapter 5: 16). The scope covers quite a wide range of conditions that count as instances of domestic violence. It is also includes an all-encompassing range of acts that are specified in the United Nations Handbook for Legislation on Violence against Women. A look at Section 3 (1) (a) - (k) of the DVA reveals a wide range of behaviour traits which constitute acts of domestic violence as recommended and specified in the United Nations Handbook for Legislation on Violence against Women.

Among the various acts of domestic violence highlighted by the DVA are the physical and sexual aspects of violence as well as emotional, verbal, psychological and economic abuses. Physical violence involves beating, biting, pushing and any other corporeal direct contact

with the survivor. Sexual violence includes cases of rape and incest perpetrated by the abuser. Other acts of domestic violence referred to in the Act are intimidation, harassment, stalking and the damage or disposal of property which is of interest to the complainant without his or her consent.

Of great interest to this study is Section 3 (1), Sub-section (l) (i)-(vii) of the DVA (2007: 3). That section further defines domestic violence as any form of “abuse derived from cultural or customary rites or practices that discriminate against or degrade women”. Section 3 (1), Sub-section (l) (i)-(vii) of the Domestic Violence Act (Chapter 5: 16) suggest that indigenous people’s traditional beliefs and cultural practices should be abandoned. The major reason why the DVA outlaws traditional beliefs and cultural practices is that these traditional practices constitute acts of domestic violence because they are harmful to girls and women. Some of the traditional practices being condemned are forced virginity testing, female genital mutilation, pledging of women or girls for purposes of appeasing spirits, forced marriage, forced wife inheritance and child marriage. The DVA section in question further points out that most of the cultural practices are harmful and are ‘forced’ upon women and girls. At this point it is important to make a general and cursory survey of how other African countries in the same region have responded to the domestic violence problem.

6.2 An overview of on domestic violence legislation in selected SADC countries

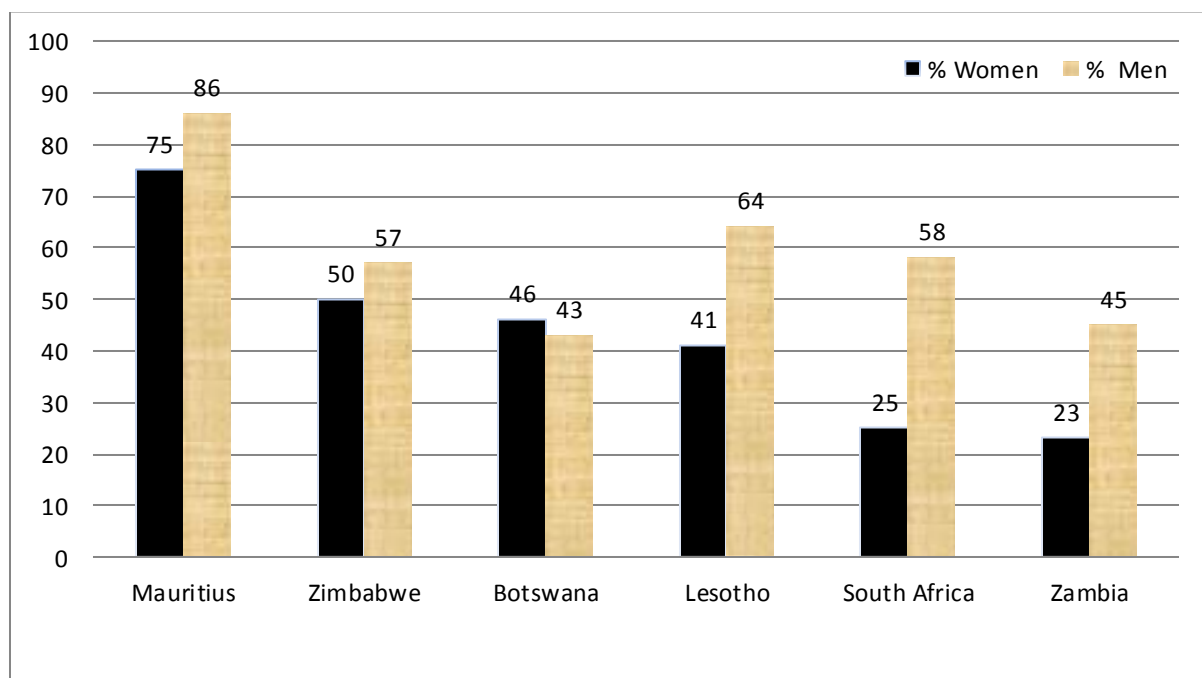
This section begins with an overview of the domestic violence problem in southern Africa and how selected states in the region have responded. Gaby Ortiz-Barreda and Carmen Vives-Cases (2013: 61) pointed out that internationally, a significant number of countries have enacted legislation on violence against women in order to minimise domestic violence. However, the authors observed that it is one thing to have the legislation in place and another thing to have it known and used by the intended beneficiaries. The argument behind this line of thinking is that local people’s awareness of the legal instruments that protect them against domestic violence perpetrators is very important as it indicates the extent of the use of legal resources that are meant to end the domestic violence problem in African communities. In general, the people’s knowledge of the existence of legal interventions in fighting violence between women and men is an important step towards using legislation on domestic violence to minimise and end domestic violence in any country.

In the case of Zimbabwe, Excellent Chireshe (2015: 263) noted that the knowledge and use of the provisions of the Domestic Violence Act since its inception in 2007 have been low owing

to what she identified as “religious, socio-cultural and economic” reasons. The reasons she aptly singled out also count as major factors behind the ignorance of the existence of the law for women who are survivors of domestic violence in the country.

However, local people’s awareness of the legal framework and its capacity to end violence against women is not only limited in Zimbabwe. Figure 1 below shows the general trend of women’s and men’s familiarity with the legal instruments at their disposal in the fight to end domestic violence in their countries. Six Southern Africa Development Committee (SADC) member countries that have functional domestic violence legal frameworks in existence are presented in the analysis. The *Southern Africa Gender Protocol 2014 Barometer*⁴⁹ (2015:190) pointed out that thirteen out of the fifteen SADC member countries have enacted domestic violence legislation. The thirteen countries are Angola, Botswana, Lesotho, Mauritius, South Africa, Zambia, Zimbabwe, Malawi, Mozambique, Madagascar, Swaziland, Seychelles and Namibia. The Democratic Republic of Congo (DRC) and Tanzania are still working to enact legislation to stop domestic violence. It is from this list that six countries that have fully operational legal frameworks on domestic violence in place have been represented in Figure 1 below.

Figure 3: Awareness of the Domestic Violence Act by women and men in six SADC countries.



Source: *Southern Africa Gender Protocol 2014 Barometer*, 2015: 190.

⁴⁹The Protocol projected that, by 2015, all member states should have enacted and enforced legislation prohibiting all forms of gender based violence. However, the target of all members enacting laws on domestic violence has not yet been achieved because, to date (2016), two SADC member states (DRC and Tanzania) are yet to legislate against domestic violence.

Figure 3 above shows that in general and among the selected SADC countries, more men than women, except in Botswana, are aware of the legal provisions put in place by their home countries to end domestic violence. The knowledge of the existence of the legal framework to end violence is high in Mauritius where three quarters (75%) of the women population and 86% of the men population are aware of the law against domestic violence. In contrast, awareness is low in Zambia where only 23% of the women population and 45% of the men population know about the existence of the legal framework to end domestic violence in their countries. In Zimbabwe, the level of awareness of the existence of the Domestic Violence Act between women and men is not very different, although more men (57%) than women (50%) are knowledgeable about the existence of the law on domestic violence.

However, it is important to mention that although awareness of legislation against domestic violence is relatively high for both women and men in Zimbabwe, the actual use of the same law is still low. On this point, Lene Bull Christiansen (2010: 429) observed that some women who know about the existence of the Domestic Violence Act in the country do not use it, believing that its mere existence has a deterrent effect on married men's tendency to physically or sexually abuse their wives. This seems to suggest that most women believe that men would stop being violent in their relationships with women from the moment the men become aware that there is legislation against domestic violence and that women can use the legislation to prosecute them. In the case of Zimbabwe, the implication of this assumption is that some women believe that whenever men know that women can turn the Domestic Violence Act for protection, they would stop intimate partner violence. However, evidence on the ground shows that there is no strong correlation between the existence of the Domestic Violence Act and its deterrent effect. In actual fact, it is this kind of thinking which has contributed to the underreporting or even non-reporting of domestic violence cases by women and men survivors in Zimbabwe.

The same position given above is reiterated by Ortiz-Barreda and Vives-Cases (2013: 61) where they argued that, "despite considerable efforts worldwide to strengthen violence against women (VAW) legislation, most women have not fully benefitted from domestic violence legal provisions available in their countries". The authors observed that even when many countries have put in place laws to end domestic violence, there still exist significant limitations which affect the implementation of the same laws to protected intimate partners. Culture has been identified as one of the limiting factors to the full use of the domestic violence law.

In support of the existence of limits to the application of legislation on domestic violence, Mary Johnson Osirim (2003: 154-158) singled out harmful cultural practices against women, especially the girl child, as the major impediment to the implementation of legal statutes to in place to end domestic violence in many African countries. Practices such as forced and child marriage, forced virginity testing and the pledging of girls as wives to appease avenging spirits were identified as the most prevalent forms of abuse against women and girls. The next section, therefore, presents a reflection on the prevalence of domestic violence in Zimbabwe.

6.3 An overview of gender-based violence in Zimbabwe

It has been pointed out in the previous section that domestic violence is a form of gender-based violence and that it is condemned worldwide. According to Festus Mukanangana *et al* (2014), gender-based violence is a broad term that is used to refer to violence which is directed at an individual based on specific gender role(s) ascribed to men and women in society. Specifically, Mukanangana *et al* (2014: 110) defined gender-based violence as follows:

... any act of violence that results in, or is likely to result in, physical, sexual, psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

This definition of gender-based violence suggests that even intimate partner violence, which is generally regarded as a private matter, can no longer be ignored because the effects of intimate partner violence are equally devastating on survivors, especially women survivors.

On the prevalence of domestic violence in Zimbabwe, the Southern Africa AIDS Dissemination Services (SAfAIDS) (2009: 18) report acknowledged that gender-based violence also includes “physical, sexual, emotional or psychological violence carried out against a person because of that person’s gender”. The report further claimed that domestic violence, which includes intimate partner violence, is usually gender-based and may be carried out by one or more family members against another member or by one spouse against the other. The same SAfAIDS report also noted that in the majority of cases, men are the perpetrators of domestic violence, particularly where physical and sexual forms of violence are involved. However, Justice Medzani (2013: 27) observed that, while domestic violence is generally known to be about male violence on females, there are instances of female violence

on males, although these are not as widespread as male violence on females. Nevertheless, he also noted that intimate partner violence is the leading form of domestic violence in Zimbabwe and that it is grounded in cultural practices which have deep roots in gender and power dynamics of intimate partner relationships. This means that domestic violence often occurs in situations where men and women involved in intimate relationships are in conflict with each other on the basis of the different specific social roles that culture expects them to perform. More specifically on this issue and with reference to the Ndau, Jairus Hlatywayo (2013: 115) argued that culture generally holds that married women have, among other duties, the responsibility to cook and take care of children in the home while men go out to find food and other needs for the family. However, where these gender roles are not fulfilled, particularly when women fail to do domestic chores, conflict arises and often leads to some men exerting physical violence against women. In this context, the term ‘domestic violence’ can also be used interchangeably with ‘sexual violence’ to imply that sometimes the violence may arise from conflicts that are based on masculine/ feminine roles ascribed to males and females respectively in society.

6.4 Scope and prevalence of domestic violence in Zimbabwe

From a recent national survey carried out by the Ministry of Women Affairs, Gender and Community Development’s National Gender-Based Violence Strategy (2012-2015: 1), the scope of domestic violence, which is has already been described as a form of gender-based violence, includes but not limited to the following:

- Intimate partner violence, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviour in the context of marriage or other intimate relationship.
- Rape and sexual assault
- Sexual coercion and harassment
- Child marriage
- Harmful practices such as girl pledging, widow cleansing, forced inheritance, forced virginity testing
- Trafficking and sexual exploitation.

The instances of domestic violence listed here indicate that women and girls are affected and exposed to abuse more than men and boys because of their incapacity to protect themselves.

Further to the above observations, Luckson Mashiri (2013: 6) stated that there are different types of gender-based violence acts and that these occur in different social settings such as

the home and community. He also referred to violence that takes place in the home as domestic violence and maintained that this is violence that occurs particularly when family members fight or when one member abuses the others. It is from this understanding that one can conclude that domestic violence is the most prevalent form of gender-based violence in Zimbabwe, more so because it happens between people who are closely related. This is what the Zimbabwe Demographic and Health Survey (2010-2011: 251) also underscored where it noted that in Zimbabwe “domestic violence is widely acknowledged to be of great concern, not only from a human rights perspective but also from an economic and health perspective”. This means that conflicts which happen between people who live together have far-reaching consequences.

Furthermore, a United Nations (1991) report entitled *The World's Women: Trends and Statistics* stated that all over the world, gender-based violence is particularly evident in acts of domestic violence where women's rights are violated because of their physiological make up and the roles that they are expected to perform in society. At community level, gender-based violence is expressed in the social structures of the society. For example, most African communities are arranged on patriarchal lines where males assume dominance over females. Mashiri (2013: 94) defined patriarchy as the control of social structures by men. He maintained that ideally, patriarchy in particular refers to the extent to which men wield and express their authority and control over women and children. Thus, in a patriarchal society men control social institutions such as the family. Bringing in the patriarchy at this point becomes necessary as it shows how women have been oppressed throughout history.

According to Elizabeth Schmidt (1992: 19) gender-based violence in Zimbabwe can be traced back in history. Basically, Schmidt maintained that domestic violence can be said to be rooted in the history of unequal power relations between men and women which was exacerbated during the colonial period. She further argued that violence against women and girls has always been the result of an imbalance of power between women and men which was further widened by the colonial policies that negatively affected how men and women related to each other. This suggests that the superiority of men over women is historically tied to colonialism, although its functions and manifestations have changed over time since independence. On this same note, Tichagwa and Maramba (1998: 21) also claimed that violence against women is linked to the traditional way of life where the patriarchy often viewed women as part of men's property with a gender role assigned to them to be subservient to men. The authors further claimed that among the historical power relations

responsible for violence against women were the economic and social forces which exploited female labour and the female body. This means that women suffered double tragedy as they were physically and sexually exploited during the colonial period.

In concurrence with the views expressed by Tichagwa and Maramba, Mary Johnson Osirim (2003:153) also observed that the gender-based violence problem in Zimbabwe has links with the historical colonial period. She maintained that domestic violence can be traced back to the long history of the Black people's experiences under colonialism and the subsequent socio-economic changes that colonialism brought in the country. However, this is not to suggest that African in general and Zimbabweans in particular did not experience gender-based violence or violence against women until it was colonised. Instead, the point being emphasised is that colonisation increased violence against women. The argument is further maintained by Val Kalei Kanuha (2002: 31) who noted that "in a hierarchy of oppressions, colonisation is the most important form of oppression". Accordingly, Kanuha maintained that the segregative colonial policies, which resulted in the enslavement and abuse of Black populations across Africa, exacerbated gender-based violence in African communities as some men misdirected their anger with the oppressor to women who were the weak target. This is further explained by Kanuha (2002: 30) where she observed that colonisation of African communities made gender power relations unfavourable for women. She also noted that colonisers used different strategies to subdue, dominate and eventually abuse their subjects and she went on to describe the colonial scheme as follows:

The strategy of colonisation is differentiating "the other." One of the ways colonisers keep us in our place is to say they are the centre of the universe and all the rest of us as people of colour are "the other". If you think about what happens with women and men, you will see that men use this very notion of women as "the other" to keep women marginalised and to keep themselves at the centre.

The quote above serves to illustrate that once they were colonised, some African men used the same strategy that the colonisers used on them in order to control women. This was despite the fact that colonisers controlled and abused the men and women they colonised. In the process of colonisation, colonisers also used all forms of violence such as physical, sexual, psychological, emotional and spiritual to control the colonised men and women. Thus, the subordination and oppression of women was doubled during the colonial period as they became subservient to Africa men as tradition required of them as well as to the colonisers in respect of the colonial discriminatory policies.

The argument from the historical context of gender-based violence therefore is that the total effect of the colonial discriminatory and abusive policies instituted by the White settler government in Zimbabwe increased the power imbalances between Black men and women. On the same point, Osirim (2003: 153) noted that it was under the discriminatory and frustratingly abusive policies of the colonial regime that “all too many men directed their anger against women”. From this observation it can be reiterated further that the general violence towards all Blacks affected women more than men because women had the White settlers and the Black men as their superiors.

From their study of domestic violence in Zimbabwe, Tompson Makahamadze, Anthony Isacco and Excellent Chireshe (2011: 25) concluded that domestic violence thrives on the desire by a family member. It happens particularly when a male family member begins to establish or exert power and exercise undue control over the other family member or members. The authors also noted because they often use physical force against their female counterparts. This is reiterated by Maxwell Chuma and Bernard Chazovachii (2012) in their research on domestic violence in rural Zimbabwe. The authors indicated that, in many instances, domestic violence is predominantly perpetrated by men against women particularly in household settings and that it is often regarded as a normal part of family and gender relations. This serves to underscore the extent to which domestic violence is a national problem in the country.

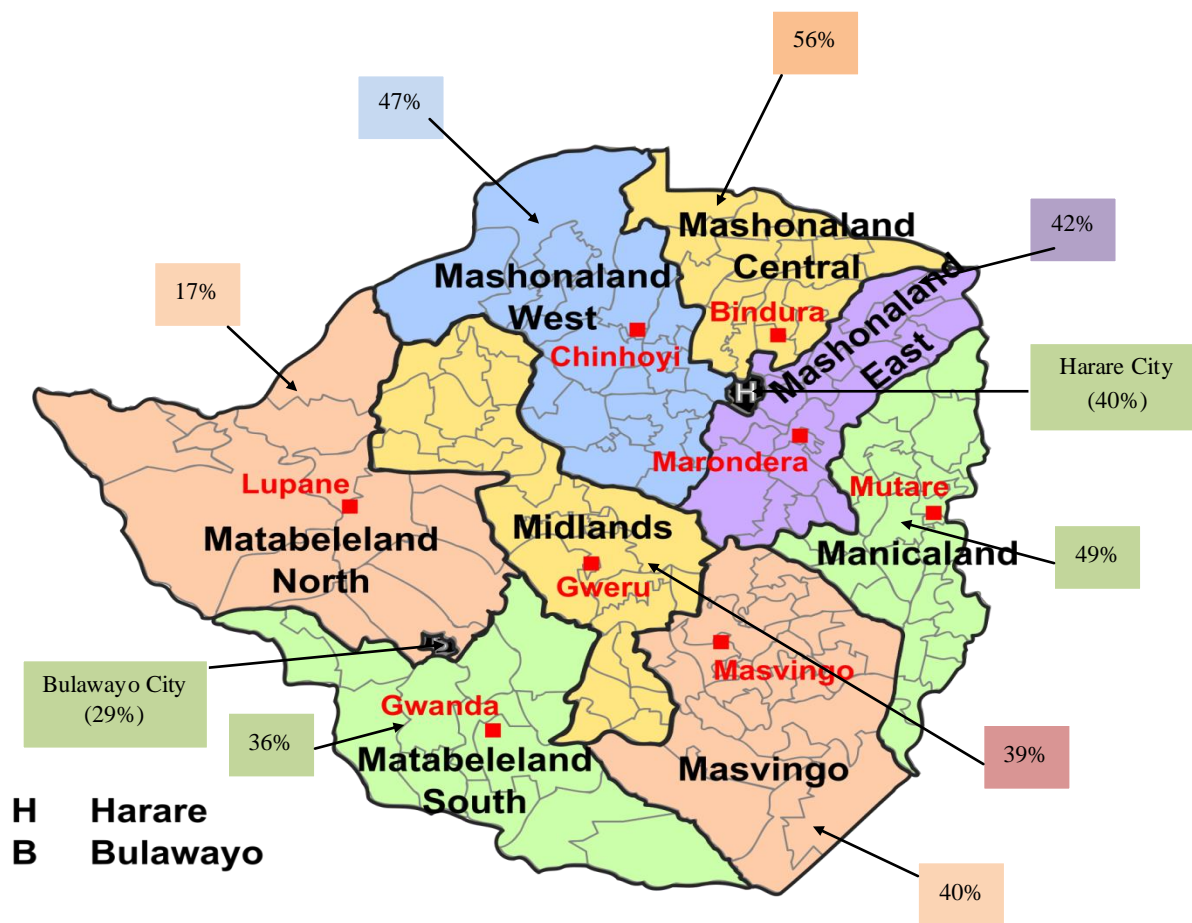
Statistical information on the prevalence of domestic violence in Zimbabwe is not the responsibility of one organisation to collect and analyse. At the moment, the information available comes from the national police, the Zimbabwe Republic Police (ZRP). However, it is important to mention that the ZRP has information pertaining to reported cases of domestic violence. For example, according to Osirim (2003: 160), the ZRP recently announced that domestic violence was the most prevalent form of gender-based violence in Zimbabwe. The police further stated that domestic violence alone was responsible for more than 60% of the murder cases that went through the High Court in the country. They also mentioned that most of the murder cases reported to them for prosecution involved husbands who killed their wives over disagreements in the home, thereby making the home a dangerous place for women and children to live.

Apart from the information obtained from the police, the Zimbabwe Demographic and Health Survey (ZDHS) also carries out research on domestic violence and other social issues

affecting the people. Recently (2012-2015), the Zimbabwe Demographic and Health Survey, together with the National Baseline Survey on Life Experiences of Adolescents (NBSLEA), conducted a national survey to determine the current level of the gender-based violence prevalence in the country. The survey was also done in conjunction with the Ministry of Women Affairs, Gender and Community Development together with two other non-governmental organisations namely, Musasa Project and Gender Links.⁵⁰ According to Virginia Muwanigwa (2015), the Zimbabwe National Statistics Agency (ZIMSTAT) provided enumeration area maps, guidance and assistance on the sampling of the women involved in the survey. The survey focused on women only because the study aimed at establishing how women were affected by gender-based violence by age and marital status. Data was collected from a survey of 3 326 women aged between 15 and 49 years from across the ten provinces of the nation. The age limits of the women were meant to keep the survey focused on samples of only the sexually active girls and women in the ten provinces. Older women aged above 49 years were deliberately left out of the survey for the reason that most of them will have become sexually inactive. The assumption is that most of the conflicts between men and women in intimate relationships are centred on sexual misunderstandings. **Figure 4** below provides the percentage prevalence of gender-based violence in Zimbabwe by province which came out of a national survey conducted by Zimbabwe National Gender-Based Violence Strategy.

⁵⁰ Musasa Project is one of the most outspoken and prolific non-governmental organisation (NGOs) in Zimbabwe. It has been involved in the fight against gender-based violence in the country since 1980.

Figure 4: Women’s Experience with Gender-Based Violence in Zimbabwe by province.

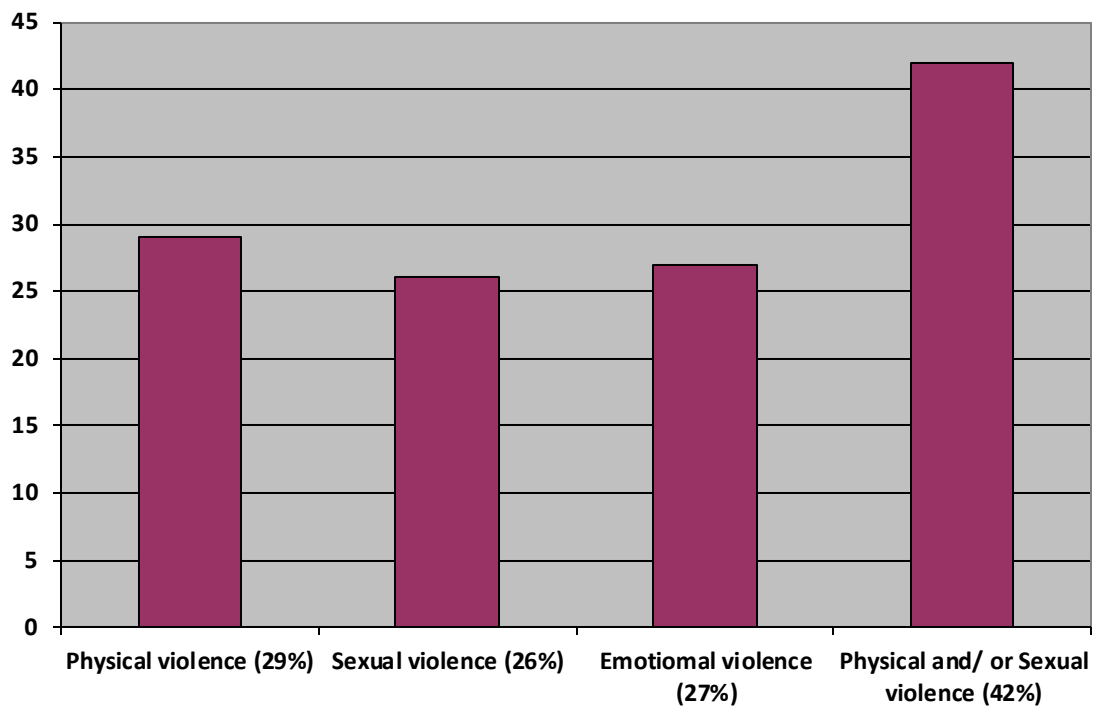


Source: Zimbabwe National Gender-Based Violence Strategy, 2012-2015: 3.

The national survey revealed that Mashonaland Central had the highest lifetime gender-based violence prevalence rate of 56 percent committed in the province. This was followed by Manicaland with 49 percent. Matabeleland North had the lowest gender-based violence prevalence rate of 17 percent. Of the two major cities of Zimbabwe, Harare had a higher prevalence rate of 40 percent while Bulawayo had 29 percent. The high prevalence rate of gender-based violence in the cities of Bulawayo and Harare could be attributed to the high concentration of people from different cultural backgrounds. It is also worth mentioning that Manicaland, which has the second highest prevalent rate in the country, is the province in which the Ndau people of Chipinge and Chimanimani are located. This is why the current study focused on Chipinge and Chimanimani to analyse why domestic violence prevalence is high despite the existence of the Domestic Violence Act in the country.

In the survey, focus was also put on the women’s experiences with different forms of domestic violence in their lives. Figure 5 below presents the result of that survey.

Figure 5: Women aged 15-49 who have experienced domestic violence committed by husband/ intimate partner.



Source: *Zimbabwe National Gender-Based Violence Strategy, 2012-2015:3.*

Figure 5 above shows the prevalence of some of the most critical forms of violence against women (VAW) in the country. As pointed out earlier on, all the violence takes place despite the country's legal framework that is meant to prevent gender-based violence and protect women and girls. Figure 5 therefore, presents a closer look at the various types of gender-based violence reported. It is also important to mention that all of the cases of violence against women indicated in the graph are clear instances of intimate partner violence as well. At the same time, it is important to note that the graph illustrates that the most commonly reported form of violence against women is domestic violence which is usually committed by a husband as an intimate partner. Close to two thirds of the women in the survey (29 percent) experienced physical violence while 42 percent experienced both physical and sexual violence.

Other forms of domestic violence committed by husbands or intimate partners are sexual violence experienced by 26 percent of the women and emotional violence accounting for 27 percent. These percentages show that most of the acts of violence against women come from the men who are close to them as intimate partners.

From Figure 5 above, it can be noted that sexual violence has the least percentage prevalence (26%) while physical and/ or sexual violence has the highest percentage (42%) of reported cases. These two percentages need to be explained. First, there are two highly probable possibilities for the low percentage of reported cases of sexual abuse of women. The first one could be that there is underreporting of sexual violence by women themselves. This may be due to the privacy that is often attached to sex and sex-related activities in many homes in the country. As a result, when sexual violence happens in private environments, very few women have the tenacity to break the silence and report the abuse to law enforcement agents. The second explanation could be that, from a cultural perspective, women fear being criticised for reporting sexual abuse such as date and marital rape. It has been explained in chapter 4 under section 4.4 that, from a cultural point of view, women are expected to be acquiescent to male sexual advances. This means that when a married woman is not interested in having sex, she is not expected to openly refuse to be intimate with her husband.

Thus, even if women are sexually violated by their intimate partners, sometimes it takes more than sexual violence itself for women to report abuses that take place in intimate circumstances. This therefore explains why reported cases of physical violence (29%) and physical and sexual violence (42%) against women have high percentages. It means that sexual violence may only be reported when physical violence accompanies it. However, the graph above shows that women of all age-groups have begun to significantly report physical violence though the percentage (29%) is still relatively low. The low percentage of reported cases reflects the subdued uptake of the current legal intervention strategies available to women in the country.

Nevertheless, the above statistical information serves to confirm that domestic violence, particularly husband or intimate partner violence, has been an ongoing issue of concern for the government of Zimbabwe. According to a report published by *Freedom House* (2010:14), although Zimbabwean “[w]omen enjoy extensive legal protection, societal discrimination and domestic violence persist”. The persistence of violence against women is further explained in a more recent *Freedom House* (2015: 6) publication which said that “women now encounter particularly vicious and gender-specific attacks ranging from smears and insults to graphic threats of sexual violence and the circulation of personal information” on the social media in spite of the existence of the DVA as a law that is meant to protect them.

The extent of the vulnerability of women and girls to domestic violence was also presented in a joint study on domestic violence in Zimbabwe by the Ministry of Women Affairs, Gender and Community Development (MWAGCD) and Gender Links (2013:41), which claimed that:

Over two thirds of surveyed women reported being victims of intimate partner violence (which includes physical, sexual or psychological abuse by a current or former spouse or partner) within their lifetime. At the same time, 41 percent of men surveyed admitted to abusing their partners in one way or the other.

This is a clear admission of the fact that although domestic violence has been recognised as a social problem that needs to be approached as criminal issues in Zimbabwe, the legal intervention has not achieved the desired levels of decline in violence against women in the country. It is this perceptible failure by the current legal approach to minimise the prevalence of the domestic violence problem in the country, particularly among the Ndaus, that has always motivated this study to find out why and propose a new approach.

It is also important to note that the joint Ministry of Women Affairs, Gender and Community Development and Gender Links (2013: 42) report specified that 56 percent of female respondents involved in the study experienced emotional abuse by their current or former partner while 33 percent suffered physical abuse and 31 percent endured economic abuse. It went on to state that 22 percent of the female respondents were also sexually violated. This is the information that shows that in general, domestic violence is not only highly prevalent but also widely acknowledged as a big social problem in the country.

Further to the presentation of the prevalence of different types of domestic violence shown in Figure 5 above, the Zimbabwe National Statistics Agency (2012: 257) provided statistics from the Zimbabwe Demographic and Health Survey carried from 2010 to 2011.⁵¹ The report draws our attention to the prevalence of physical and sexual forms of violence against women in Zimbabwe as shown in Figures 6 and 7 respectively below.

⁵¹ The Zimbabwean government, through the Zimbabwe Demographic and Healthy Survey, conducts a national demographic survey every five years to allow for comparisons over time. The survey usually has a large population sample size of between 5 000 and 30 000 households.

Table 1: Women experiences with physical violence in Zimbabwe

Background characteristic	Always experience violence in the home	Often experience violence	Sometimes experience violence	Experienced violence at any one occasion in life	Number of women in the survey/ age group
Age					
15-19	22.7	2.1	14.4	16.5	1,341
20-24	34.9	3.0	19.3	22.4	1,357
25-29	33.3	4.8	18.1	22.8	1,219
30-39	28.7	2.9	13.1	16.0	1,691
40-49	30.7	4.2	9.7	13.9	934
Average %	30.06	3.4	14.9	18.3	
Marital status					
Never married	18.2	1.1	7.6	8.7	1,526
Married/Living together	31.2	3.9	17.8	21.7	4,094
Divorced/ Separated/ Widowed	42.3	4.5	15.4	19.9	921

Source: *Zimbabwe Demographic and Health Survey Report, 2010-2011*: 254.⁵²

The information shown in Figure 6 above indicates that, on average, 30.1 percent⁵³ of the women aged 15-49 always experienced physical violence in their lifetime in Zimbabwe. At the same time, the percentages differ with the age differences of the women, with the highest being 34.9 percent of women who are aged 20-24 years old. It is important to note that women who never married experienced less physical violence than those who were married or cohabited with their partners. However, women who either divorced, separated or were widowed suffered more physical violence than those who were married or lived together with their partners. This may be an indication of the vulnerability of unmarried women who may have no social protection in cases of violence against them.

⁵²This is the latest full report I found on the domestic violence prevalence affecting women in the country and it shows a high prevalence trend. However, from this study it has emerged that the prevalence is not likely to decrease, given the socio-economic stresses that families are going through currently in Zimbabwe.

⁵³The 30.1 percent is calculated from the average percentage of the five age-groups of women aged 15-49 years.

With reference to sexual violence against women, the Zimbabwe Demographic and Health Survey, 2010-2011 Report also corroborated the Ministry of Women Affairs, Gender and Community Development (MWAGCD) and Gender Links statistics. Table 2 below provides the supporting statistics.

Table 2: Percentage of women who have experienced sexual violence in Zimbabwe by age group.

Background characteristic	% of women who experienced sexual violence	Number of women in the survey/ age group
Age		
15-19	18.0	1,341
20-24	30.1	1,357
25-29	32.7	1,219
30-39	28.8	1,691
40-49	26.3	934
Marital status		
Never married	12.1	1,526
Married/Cohabiting	30.7	4,095
Divorced/ Separated/ Widowed	36.8	921

Source: Adapted from the *Zimbabwe Demographic and Health Survey Report, 2010-2011: 257.*⁵⁴

The statistics in Figure 7 indicates that the average percentage of the female respondents aged from 15-49 who experienced sexual violence in their lifetime is 27 percent and that the percentage increased from 18 percent among women aged 15-19 to 32.7 percent among women aged 25-29 and then declined to 26.3 percent among women aged from 40-49. The high percentage of sexual violence against women who aged from 25-29 could be attributed to the fact that most women are sexually active at that age and some of them were already married or were in an intimate relationship.

Thus, it can be noted that the findings from the Zimbabwe Demographic and Health Survey (2010-2011: 255-257) highlighted the high prevalence of domestic violence in Zimbabwe. In this way, the survey presented the pervasiveness of sexual violence against women aged from

⁵⁴ This report though dated serves to illustrate that since 2007 when the DVA was introduced the domestic violence prevalence affecting women of different age groups in the country.

15-49 years. It also revealed that an average of 27 percent of all women involved in the survey reported that they had experienced sexual violence at some point in their lives.

Throughout the report, the Zimbabwe Demographic and Health Survey (2010-2011: 255) further maintained that most perpetrators of domestic violence against women in Zimbabwe are the former husband or intimate partner (36.8 percent) followed by the current husband or intimate partner (3.7 percent). However, sexual violence against women can also be perpetrated by close relatives who include the current boyfriend /former boyfriend, father/step-father, uncle or brother. Thus the statistics presented in the report indicated that domestic violence is a widespread social problem which calls for the attention of all concerned citizens. This is why it must be reinstated that the Zimbabwe Demographic and Health Survey (2010-2011) report and most other related reports acknowledged that violence against women is prevalent in Zimbabwe.

6.5 Need for the Domestic Violence Act (DVA) [Chapter 5: 16]

Given the prevalence of gender-based violence in general and domestic violence in particular in Zimbabwe, it was necessary that a law to curb the problem be promulgated. Thus, the DVA [Chapter 5: 16] was put in place as a legal response particularly to the domestic violence problem across the nation. It is a legal approach that is regarded as a response to domestic violence as a form of gender-based violence in Zimbabwe. According to Rebecca Magorokosho (2010: 27), the Domestic Violence Act came into existence from a series of international conferences and conventions that Zimbabwe has attended since attaining independence in 1980. One of the conferences, the World Conference on Human Rights held in Vienna from 14-25 June 1993, came up with the Vienna Declaration and Programme of Action (VDPA). The VDPA was adopted by representatives of one hundred and seventy-one United Nations member states. The Conference pledged to end gender-based violence as an infringement on human rights. In view of that resolution, Magorokosho (2010:27) went on to state that:

At the World Conference on Human Rights in Vienna, State parties were urged to provide an effective framework of remedies to redress human rights grievances or violations and emphasised the role of the law enforcement and prosecutorial agencies in the state's conformity with applicable international human rights standards.

This resolution implied that member states were mandated to introduce laws that specifically focused on minimising or ending gender-based violence in their respective countries. It also

meant that the laws, once promulgated, had to be enforced through the use of the police and the courts. In this way, the World Conference on Human Rights made an undertaking to promote and protect the rights of women, children and indigenous people by entrusting member states with the responsibility to create national legal mechanisms to end gender-based violence in general. Thus, Zimbabwe also undertook to minimise and eventually end gender-based violence through the Domestic Violence Act (Chapter 5:16). But the process of putting together a law against gender-based violence Zimbabwe took time and more conferences.

As a follow up to the 1993 World Conference on Human Rights, there was another conference, the United Nations Fourth World Conference on Women, which was held in Beijing, China, in 1995. It produced a report on the progress that had been made by member states on minimising gender-based violence in their countries. The Fourth World Conference on Women (1995: 58) report further pointed out that gender-based violence was still one of the critical areas of worldwide concern and the member states came up with the Beijing Declaration and Platform for Action (BDPA) as a way forward. The Beijing Declaration and Platform for Action identified twenty-eight strategic measures to be taken by member states' governments to prevent and eventually end violence against women in their respective countries.

In light of the concerns raised at the international conferences cited above, domestic violence in Zimbabwe came to be understood as a violation of women's human rights. It was also treated as a serious form of gender-based violence which has no place in society. On this note, Rebecca Magorokosho (2010: 27) further pointed out that legislation on violence against women became a national imperative in conformity with the United Nations General Assembly Declaration on the Elimination of Violence against Women (Resolution 48/104 of 1993), as read together with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women as well as General Recommendations No. 12 (1989) and 19 (1992) of the Committee on the Elimination of Discrimination against Women. To this end, a United Nations (2010: 2) report to the General Assembly on the intensification of efforts to eliminate all forms of violence against women also pointed out that:

In its resolution 63/155 of 18 December 2008 on intensification of efforts to eliminate all forms of violence against women, the General Assembly urged States to end impunity for violence against women, and to continue to develop their national strategy and a more systematic, comprehensive, multisectoral

and sustained approach in the fields of legislation, prevention, law enforcement, victim assistance and rehabilitation.

This quote above serves to illustrate the international pressure that the United Nations was exerting on member states to contribute to the fight to end all forms of violence including domestic violence in their countries. In this way, the international legal framework obligated and guided member states in the creation of specific laws to minimise the prevalence of violence against women. To conform to the international concern on ending violence against women, member states had to draw attention to the extent of their adherence to a wide range of international instruments, including the international human rights treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁵ and the Rome Statute of the International Criminal Court (RSICC). It can be concluded therefore, that it was on the basis of intense international pressure on member states, particularly African states, to minimise and subsequently end gender-based that legislation on domestic violence in Zimbabwe became a reality.

6.6 The Domestic Violence Act and other laws

Following the international conventions and conferences outlined above, the Domestic Violence Act (DVA) (Chapter 5: 16), which is also known as Act Number 14 of 2006 of the Parliament of Zimbabwe, was proposed and heatedly debated upon in parliament for about a year till it became law in February 2007. Thus, it can be argued that the Domestic Violence Act was a product of a constitutional process that saw Members of Parliament (MPs), government ministries and civil organisations contributing to legislation on domestic violence in place today in Zimbabwe. According to a report by the Women in Law Society of Zimbabwe (2008: 26), the Domestic Violence Act (Chapter 5: 16) was enacted into law on 26th of February 2007. However, it became fully operational on the 25th October 2007 and all its regulations were gazetted on the 20th of June 2008. In essence though, the Domestic Violence Bill was the legal foundation upon which the Domestic Violence Act was designed and promulgated into law.

The Domestic Violence Act can be argued to be in conformity with Strategic objective D.1. of the United Nations Fourth World Conference on Women held in Beijing, China, in 1995 which obligated member states to take integrated measures to prevent and eliminate violence

⁵⁵ Zimbabwe became a member to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 12 June 1991. Therefore, by signing the CEDAW protocol, Zimbabwe assumed the duty to eliminate all forms of gender-based violence which include domestic violence.

against women. According to the United Nations (1995: 83) report, Strategic objective 124 (c) requested that member states:

Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society.

This is the position that the government of Zimbabwe adopted in response to the international agenda to end gender-based violence in general and domestic violence in particular. The Zimbabwean constitution, from which the Domestic Violence Act was developed, is underpinned by the values and principles of gender equality which focus on the removal of all forms of violence and discrimination, be it in the public or private spheres, from all societies. In this regard, a recent Southern African Development Community (SADC) (2011-2012: 85) report on member states' efforts to end domestic violence, confirmed this where it said that "Zimbabwe's legal framework to prevent all forms of gender-based violence in the public and private spheres is relatively strong". This was to endorse what the country had done in its response to the call to end gender-based violence within the region.

However, it can be argued that although public violence has been dealt with satisfactorily, violence against women, especially domestic violence has persisted particularly among local people who have demonstrated strong adherences to traditional beliefs and cultural practices. Realising that domestic violence could not successfully be eliminated without addressing the issues of culture, the government of Zimbabwe has been fighting for the removal of harmful cultural practices particularly those which perpetuate violence against women and girls. To this extent, Sylvia Chirawu (2013: 15) drew our attention to Section 80 (3) of the Constitution of Zimbabwe which states that "[a]ll laws, customs, traditions and cultural practices that infringe the rights of women (including men and children) conferred by this Constitution are void to the extent of the infringement". This is in recognition of the fact that, despite the existence of well-meaning laws and policies, harmful cultural practices and gender inequalities and the discrimination of women still persist in most societies of Zimbabwe.

It is a fact that since attaining independence in 1980, Zimbabwe has enacted several laws that seek to implement the progressive and emancipatory principles enshrined in the country's Constitution. Some of the laws related to the Domestic Violence Act (Chapter 5: 16) are the Criminal Law (Codification and Reform) Act (Chapter 9:23), the Customary Marriages Act (Chapter 5: 07), the Deceased Persons Family Maintenance Act (Chapter 6: 03). In one way

or the other, all the laws mentioned here were enacted to preserve the integrity and dignity of all citizens. This is in recognition of the fact that it is the right of indigenous people to have customary laws accommodated within the communities they live as enshrined in the constitution. This comes from the fact that Zimbabwe, like most other African countries, continues to operate under a dual legal system. This legal reality is represented by the existence of laws such as Customary Marriages Act (Chapter 5: 07) and the Deceased Persons Family Maintenance Act (Chapter 6: 03) which still recognise the local people's cultures and traditions. In their application, the two laws reinforce the social order by determining the obligations of men, women and children, their entitlement to resources, property ownership, marriage and divorce. The Deceased Persons Family Maintenance Act further formulates such matters as the status of widows, child custody and inheritance in relation to traditional belief and cultural practices of the people. This means that in most parts of the country, some customary laws still have relevance in the area of family, marriage and inheritance because the majority of the people in rural areas still live a traditional manner of life. Even though some of the local people also live in urban areas, they do not leave behind their cultural practices.

However, it is important to mention that some of the cultural practices that customary laws condone are indeed harmful to the dignity of humanity of women and children and these are the practices that most civil laws have outlawed. Sylvia Chirawu (2013:15) noted that practices such as forced virginity testing, female genital mutilation, child and forced marriages, initiation rites that culminate in female and male circumcision and the pledging of women and girls for purposes of appeasing spirits or as compensation for a debt or any family obligation infringe on the rights of the persons who suffer them. However, these traditional practices are not the concerns of this study as it has been pointed out in Chapter 1. Instead, this study focuses on the implications of implementing the provisions of the Domestic Violence Act, which is a criminal justice approach to ending violence between intimate partners, among the Ndau.

It has been mentioned earlier on that the Domestic Violence Act is a criminal justice approach which operates on the same basis of the Criminal Law (Codification and Reform) Act (Chapter 9: 23), as specified in the criminal justice system of Zimbabwe. For this reason, the Domestic Violence Act involves penal custodial provisions. This is why the Zimbabwe Human Rights Forum (2013: 17) described the Domestic Violence Act as “a criminal justice strategy that has been promulgated as the appropriate legal response to control and deter

perpetrators of domestic violence”. Its inception therefore reflected the government’s commitment to deal decisively with the domestic violence problem at the national level.

The Domestic Violence Act has a number of objectives which it seeks to achieve, among which are to protect, advise and counsel both survivors and perpetrators of domestic violence. It also aims at prosecuting and rehabilitating all perpetrators of domestic violence across the nation. The next section looks at how the Domestic Violence Act functions to minimise and subsequently end the domestic violence problem in the country. However, implementing the provisions of the Domestic Violence Act requires help from the government, courts and law enforcement agents.

6.7 The Domestic Violence Act (Chapter 5: 16) (DVA) and the police in Zimbabwe

One of the most important functions of the Domestic Violence Act is to stop domestic violence as immediately as it happens. In other words, the Domestic Violence Act does not tolerate any level and extent of violence between people who stay together, including between parents and children. To ensure that no violence happens, it provides for the role of law enforcement agents -the police- and empowers them apprehend any perpetrators of domestic violence. In this way, the law would ensure that its provisions are adhered to. For this to happen, it is required, therefore, that every police station in the country has at least one police officer who is competent and experienced in handling domestic violence cases, any family-related matters as well as domestic violence survivors and perpetrators. At the same time, the Domestic Violence Act also states that the presence of such experienced survivor-friendly police officers at all police stations is only as far as it is practically possible to have such officers and resources available.

Having the powers to arrest, even without a warrant of arrest, is another key feature of the Domestic Violence Act. On the basis of this provision, the Domestic Violence Act empowers investigating police officers to arrest any person they reasonably suspect to have committed or threatening to commit an act of domestic violence which constitutes a criminal offence towards a complainant. It also should requires that the arresting police officer takes into account a number of other factors pertaining the complainant’s security, wellbeing and interests. In this case, the arresting officer has to determine the implications of his or her decision to arrest the domestic violence suspect and what it implies to the survivor and the child(ren) to have the suspected perpetrator arrested. Thus, all the arresting police officers are required to critically investigate the case of domestic violence and determine the seriousness

of the act of domestic violence committed before arresting and taking the alleged perpetrator to court within forty-eight hours of receiving a report from the complainant.

It is important to note that the whole idea of arresting the perpetrator of domestic violence is to ensure immediate safety of the survivor. When the offender has been arrested he is separated from the survivor, thereby ensuring that violence does not continue, at least for the period the perpetrator is in the custody of the police. What follows in the next section is a series of procedures through which the perpetrator and the survivor are supposed to relate to each other during the period the prosecution takes place up to the judge.

6.8 The police protection order

The safety of a domestic violence survivor is guaranteed by the issuance of a police protection order. By definition, a police protection order may be understood as a legal document that a domestic violence survivor or any of her representatives obtains from a competent court of law. It is served to the perpetrator through the police, specifying conditions or instructions that a domestic violence perpetrator should strictly observe or risk being re-arrested and imprisonment. Therefore, after receiving a domestic violence complaint the police investigate the case and then, if need be, arrest the perpetrator and send him to court for prosecution. This means that the Domestic Violence Act acknowledges that police authorities and court processes are very important in ensuring that perpetrators of domestic violence are identified, arrested and convicted. The police and prosecutors are important especially with regard to investigating acts of domestic violence, preserving evidence and issuing police protection orders.

It is provided in section 7 of the Domestic Violence Act that whenever domestic violence happens or is threatening to happen, a survivor or her representative should immediately report the domestic abuse to the police. It is only when the police have received a report from a survivor or her representative that the police can arrest the perpetrator. At that stage the survivor may approach a competent court for purposes of applying for a police protection order against the perpetrator. The police protection order clearly spells out the conditions which the domestic violence perpetrator ought to uphold in order to stay with and/ or relate to the survivor without committing further violence against the survivor.

In some extenuating circumstances, as may be determined by the arresting and investigating police officer, the Domestic Violence Act requires that an application for a police protection

order be made by the survivor's representative even without the survivor's consent. In some cases, however, the court may decide whether it is in the survivor's best security, wellbeing and financial interests that the police protection order be granted. Furthermore, Section 7, sub-section (4) (a) - (d) of the Domestic Violence Act explain how a domestic violence survivor who has no legal representation can be assisted by the clerk or registrar of court in the protection order application processes.

It is also provided for in the Domestic Violence Act that after the application for a police protection order at a court, the survivor waits for the court's determination for granting or denying the order. The Domestic Violence Act requires that the court approach for a police protection order should make a determination within forty-eight hours of the application. To make a determination, the court often calls for evidence from the survivor which may include a medical report on the injury sustained during the attack in the case of physical, sexual or even psychological abuse. The court may also cross-examine any witness to the alleged acts of domestic violence in order to ascertain the sincerity of the applicant and the extent of severity of the acts.

Furthermore, sections 9 and 10 of the Domestic Violence Act explain the processes of issuing and receiving the protection order and the conditions under which the complainant and the respondent have to co-exist following the violent acts between them. It is also important to note that the protection order is issued with a suspended warrant of arrest of the respondent attached to it. However, the suspension would be removed and an arrest made immediately if the respondent fails to comply with any of the accompanying conditions of the protection order.

The Domestic Violence Act also empowers the court to give the respondent or perpetrator an opportunity to present reasons for the refusal of a protection order against him. In the case of an objection to the granting of the protection order, Section 9 (5) requires that the court makes a review of the evidence presented by the applicant and the circumstances of the occurrence of the domestic violence before making a determination. This process means that further evidence and the examination of the respondent's witness becomes necessary. However, once the court is satisfied that a case of domestic violence occurred or is threatening to happen, it grants the protection order. The protection order is then served to the respondent by a police officer or a messenger of court. Once granted, the order remains in force for a minimum period of five years, unless the respondent challenges it and protests that

it be revoked or altered in his favour by a competent court. The next section explains the content of the police protection order.

6.8.1 The content of the protection order and its enforcement

Once granted, the police protection order plays a crucial role in protecting the survivor from further abuse by the perpetrator. It therefore guarantees the survivor's safety at least for as long as the perpetrator complies with the terms and conditions of the police protection order. The perpetrator is required to comply with all the conditions set out in the police protection order or risk being re-arrested and incarceration. It is interesting to note that one of the key features of the police protection order itself is that it is always accompanied by a suspended warrant for the arrest of a perpetrator who shows non-compliance with any of the conditions set out in the police protection order.

Furthermore, the police protection order provides a list of conditions which the respondent has to observe and fulfil during its tenure. The conditions include staying away from the same or any premises or places where the survivor resides. It also restricts the perpetrator from visiting any places where the survivor works or frequents at any time during the term of the police protection order. The order also directs the respondent to pay compensation for any physical injuries, pain, trauma or any loss of property that the survivor may have suffered from the act or acts of domestic violence she incurred. If a couple had a child or children, the police protection order awards temporary custody of any minor child (ren) to any person or institution and restricts the respondent's access to the child (ren) between them.

It is clear that in general, the police protection order is meant to achieve temporary separation between the perpetrator and the survivor which ensures that the survivor is safe from further abuse. In this regard, the police protection order requires that the respondent does not interfere or interact with the survivor for at least a period of five years or until the case is finalised. If the respondent breaches any of the conditions set aside in the protection order during the period it is in force, the domestic violence survivor or her representative may approach any police officer and ask him or her to evoke the suspended warrant of arrest and apprehend the respondent immediately. However, the arresting police officer has to be satisfied that, indeed a breach of the police protection order has been committed before he or she arrests the respondent. This means that the survivor must present the police protection order and indicate which of the conditions set out in it would have been contravened.

Apart from making it possible for the domestic violence survivor to obtain a police protection order, the Domestic Violence Act also provides for a committee to oversee the implementation of its provisions. The committee -known as the Anti-Domestic Violence Council- is explained in the immediate section below.

6.9 The Anti-Domestic Violence Council

In order to function well, the Domestic Violence Act calls for different stakeholders in the fight against gender-based violence in general and specifically domestic violence to come together and constitute the Anti-Domestic Violence Council. Section 16 of the Domestic Violence Act provides for the formation of a committee whose membership is drawn from representatives of the government, civil society, the church and the traditional leadership. Thus the Anti-Domestic Violence Council is a national board responsible for ensuring that the domestic violence problem is being addressed in ways that aim at minimising and eventually ending the domestic violence problem in the entire country.

The Anti-Domestic Violence Council is made up of one representative from each of the following organisations in the country:

- Ministry of Justice, Legal and Parliamentary Affairs,
- Ministry of Gender and Women's Affairs,
- Ministry of Health and Child Welfare,
- The Department of Social Welfare,
- The Zimbabwe Republic Police,
- Ministry of Education,
- The Council of Chiefs,
- The Council of Churches, and
- Three members from private voluntary organisations.

It is quite clear from its composition that the Anti-Domestic Violence Council is an all-inclusive body of persons who are drawn from various interested groups in the fight against domestic violence agenda within the country. Interestingly though, the Domestic Violence Act grants it that all members of the Anti-Domestic Violence Council should receive remuneration and allowances for the period they are serving as members of the Council. However, each period of appointment for all the members does not exceed three years.

The main purpose of the Anti-Domestic Violence Council is to review the progress made in addressing the domestic violence problem in Zimbabwe. It also disseminates information that

is meant to increase public awareness of the domestic violence problem itself as well as the Domestic Violence Act as a national legal strategy to minimise the problem. Moreover, it seeks to promote research into the domestic violence problem and make available services that are necessary to deal with all aspects of domestic violence as well as monitor their effectiveness.

Another purpose of the Anti-Domestic Violence Council is to promote the provision of psycho-social support services for domestic violence survivors where the respondent or the perpetrator, who was the source of support for the complainant and family, has been jailed or has skipped the country. Furthermore, the Anti-Domestic Violence Council is tasked to establish safe houses, in partnership with Non-Governmental Organisations (NGOs), for the purpose of sheltering domestic violence survivors or their dependents during the court processes. This is meant to effectively protect the survivor from further abuse in the event that the perpetrator is out of custody and threatens to attack the survivor at the slightest opportunity available.

Overall, the Anti-Domestic Violence Council is responsible for the application and enforcement of all the provisions of the Domestic Violence Act and any other laws relevant to issues of domestic violence in Zimbabwe. However, Section 18 of the Domestic Violence Act gives local courts the jurisdiction to deal with acts of domestic violence arising from emotional, verbal, psychological and economic abuses, leaving cases involving physical and sexual violence to the criminal courts. Where the survivor so desires that a settlement be made and reached between the feuding parties, Anti-Domestic Violence Counsellors come in and this is what the section below looks at.

6.9.1 The role of Anti-Domestic Violence Counsellors

Section 15 of the Domestic Violence Act (Chapter 5:16) makes a provision for the formation of a committee of Anti-Domestic Violence counsellors. The committee is led by the Minister of Justice, Legal and Parliamentary Affairs who, in consultation with different government ministries responsible for Social Welfare, Health, Child Welfare and Gender and Women's Affairs, appoints a panel of Anti-Domestic Counsellors. The committee of counsellors comprises social welfare officers drawn from government workers involved in community work and employees of private voluntary organisations that are concerned with the welfare of domestic violence survivors. It also includes local traditional leaders such as chiefs or headmen whose role, according to Obediah Dodo (2013:36), is to provide the cultural

dimension to the domestic violence problem. Thus, the traditional leadership is responsible for wide consultations of community elders and family members of both the perpetrator and the survivor in order to establish the cultural issues that would have led to the violent intimate relationship.

According to Magorokosho (2010), Anti-Domestic Violence counsellors have a number of responsibilities towards ending domestic violence in Zimbabwe. For one, they are mandated to advise, counsel and mediate in the resolution of any interpersonal conflicts that are likely to lead to or have led to the occurrence of domestic violence. Furthermore, Anti-Domestic Violence counsellors are also tasked to assist the police in the investigation of any domestic violence cases brought to court for prosecution. In this regard, they make all arrangements for the accommodation of domestic violence survivors during the survivor's application for a police protection order since, in some cases, the domestic violence survivor may have to stay away from the perpetrator for the period of the trial.

Sometimes a domestic violence survivor may get traumatised by the abuse, especially where the abuse involved physical contact such as beating. Thinking of treatment or getting help immediately could be difficult for the survivor and yet a medical report could be critical evidence that the court may require in order to make its own decisions. It is under such circumstances that Musasa Project (2005:10) claimed that, "it is the task of Anti-Domestic Violence counsellors to facilitate the medical treatment or examination of any domestic violence survivor to assist the court with evidence during trial". This is done by providing temporary shelter to domestic violence survivors and referring them to healthcare centres for clinical tests and treatment in the case of physical and sexual assaults. In all their functions, Anti-Domestic Violence counsellors are assisted by police officers who are always there to enforce the provisions of the Domestic Violence Act.

Before rounding up this chapter it is necessary that a critique of the Domestic Violence Act so far is done at this stage. The next section looks at how the Domestic Violence Act has managed to live up to the expectations that all the stakeholders in the fight against domestic violence have into the new law. This critique is not meant to dismiss the Domestic Violence Act but to appraise what it has achieved since its inception eight years ago.

6.10 A critique of the Domestic Violence Act

To date, quite a few concerns have been raised about the effectiveness of domestic violence law of Zimbabwe to end the problem in the country. To begin with, the capacity of the DVA

to succeed in the task of ending domestic violence was doubted at its inception. Zimbabweans received the Domestic Violence Act (Chapter 5:16) with mixed feelings of excitement and disappointment. The excitement was captured early by the Zimbabwe Women's Resource Centre Network in 2003 when the Draft Domestic Violence Bill⁵⁶ was tabled in parliament for consideration. At that time, the Bill was well received as people appreciated the need for a law that was specific about addressing all forms of gender-based violence including domestic violence in Zimbabwe. At the same time, non-governmental organisations (NGOs) lauded the government for recognising what civil organisations had been fighting for all along: to have a law that specifically aimed at fighting to end domestic violence in the country. On the one hand most of the people and NGOs believed that the enactment of the DVA was a way of demonstrating government's commitment to end domestic violence in the country.

On the other hand, disappointment with the DVA was registered as early as when the Draft Domestic Violence Bill was introduced in parliament. The biggest concern came from the fact that discussions for a new law were still taking place so many years after the proposal for that kind of law was made. That the Bill was being debated on at a time when people, especially women, were suffering from domestic violence, showed lack of seriousness on the part of the government to decisively deal with the domestic violence problem in the country. To date, a number of authors have observed that there is little change for the better in society with regards to the prevalence of domestic violence. For example, Robert Tapfumaneyi (2012) argued that when the Domestic Violence Act came into being in 2007 it was hailed as one of the most progressive laws for the advancement of women in the fight against domestic violence in Zimbabwe. He went to observe that by 2012, five years later, there was very little progress made by the law in minimising the problem.

Tom and Musingafi (2013:47) also appreciated the introduction of the DVA and the subsequent massive awareness campaigns carried out to publicise the new law. The same authors went on to observe that by 2013, six years after the law came into effect, there had been no co-relationship between the knowledge of the existence of the Domestic Violence Act and the rate at which violence in intimate relationships happen. They lamented that even though close to 92% of their respondents knew about the new law against violence in the home, violence was still going on in most communities in Zimbabwe. One of the major

⁵⁶ The Draft Domestic Violence Bill was the entry point for debate when it was introduced in parliament and thereafter taken up by all interested parties for discussion around the proposed new law on domestic violence in Zimbabwe.

reasons for the high prevalence of domestic violence was that the DVA seemed to be a law that targeted to save harm women even though in principle men and women can make use of it to protect themselves from violence. In their research, Tom and Musingafi noted that some women felt that reporting domestic violence was acting against their culture. This information was also captured by Lynette Manzini (2016:3) where she quoted a Member of Parliament making a contribution on the ineffectiveness of the Domestic Violence Act by saying:

Unreported cases are as a result of upbringing. Zimbabwe is a patriarchal society and naturally victims will not open up on domestic violence matters. If my mother was to be beaten by my father today she would not tell it to anyone, let alone report it.

The kind of noncommittal attitude towards ending domestic violence stated above has not helped in making the DVA as effective as it should have been since its inception in 2007.

It is clear therefore that some men's and women's attitudes towards intimate partner violence have adversely affected the effectiveness of the DVA. In a recent Zimbabwe Multiple Indicator Cluster Survey (MICS) (2014: x) report, high percentages of people of age 15-49 years (women at 37.4 percent and men at 23.7 percent) believed there was nothing wrong or criminal if a husband or partner were to beat his wife or partner. Some of the reasons associated with violence against women emanate from gender roles such as a woman failing to tell her husband where she would be going, failing to look after the children, arguing with him or refusing to have sex with him. These causes have already been covered in chapter 5 section 5.3 above.

Thus, gender-based violence has continued to happen despite the existence of the DVA. Ruth Butaumocho (2015) observed that since the inception of the DVA, prevalence statistics have actually increased. She further noted that legislative pieces such as the DVA that have been crafted and assented into law in many African countries in the last five years have not been able to end gender-based violence, including domestic violence. This means that the dilemma of gender-based violence has become a multifaceted problem which now requires concerted effort from every Zimbabwean. The overall impression about the DVA is that Zimbabwe is far from reducing gender-based violence and there is need to reconstruct it in such a way as to address the fundamental base of domestic violence in African societies: culture. This is what the present study has set out to contribute towards achieving.

6.11 Conclusion

The chapter has presented a historical perspective of the gender-based violence problem in Zimbabwe. It has argued that gender-based violence has been closely linked to the colonial period and experiences which saw Black people being oppressed and discriminated against by the White colonial rulers. In this regard, the chapter has pointed out that during the colonial period, gender-based violence was supported by the colonial government's discriminatory policies in pre-independent Zimbabwe. This was posited by Ester Rutoro (2012: 6) where she said that "[w]omen had no right at all under the colonial law and very little value was placed on the participation of women outside the home". Thus, the discrimination against women was not only coming from the patriarchal but it was also buttressed by the colonial policies which placed women at the lowest level of the social ladder.

In this chapter, domestic violence has been presented as the most prevalent form of gender-based violence in Zimbabwe. The chapter has also argued that domestic violence accounts for more murder cases than any other forms of violence. It was also argued in this chapter that domestic violence happens more often among married couples as the Zimbabwe Republic Police claimed that husbands were usually responsible for the murder of their wives. Thus, the thrust of the chapter has been to point out that domestic violence prevalence had reached alarming levels in Zimbabwe and that state intervention became necessary, hence the introduction of the Domestic Violence Act in 2007.

The government's response to the domestic violence problem has been presented in this chapter as well. The chapter outlined that the state instituted a number of legal instruments that are meant to curb the prevalence of gender-based violence in general. As a country, Zimbabwe also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) protocol which required that all member states made a commitment to end all forms of gender-based violence in their countries. In view of this responsibility, the chapter revealed that Zimbabwe moved from the general common assault laws as generalised in the Criminal Law (Codification and Reform) Act (Chapter 9: 23) to the more specific Domestic Violence Act (Chapter 5: 16). It was argued that the new law came into being as result of the international pressure to comply as responding to the escalating domestic violence problem in the country.

The Domestic Violence Act (Chapter 5: 16) was presented in this chapter as the Zimbabwe's legal response to the domestic violence problem in the country. The definition, meaning and scope of Domestic Violence Act were outlined. The various forms of domestic violence covered by the law were also presented. The chapter went on to outline the various provisions and committees provided for by the Domestic Violence Act and explained how these are meant to protect domestic violence survivors from further violence.

The next chapter focuses on analysing the Domestic Violence Act of Zimbabwe. It analyses the ethical implications of enforcement the Domestic Violence Act among the Ndau people. The chapter also explores the Ndau people's experiences with the Domestic Violence Act, drawing much from records of cases that were presented before and heard at local traditional as well as civil courts in Chipinge district. Thus Chapter 6 seeks to analyse the extent to which the DVA, which is a criminal approach to intimate partner violence, is a suitable and sustainable response to the domestic violence problem among the Ndau people in Zimbabwe.

CHAPTER SEVEN: CRITICAL ANALYSIS OF THE DOMESTIC VIOLENCE ACT

7.0 Introduction

The previous chapter revealed that Zimbabwe's justice system, including the existing criminal and civil laws, has proved insufficient to address the domestic violence problem in the country. The chapter outlined how the Domestic Violence Act (Chapter 5: 16) was passed into law partly in recognition of the reality of violence in families and partly in response to international pressure on countries to enact legal reforms to end domestic violence. In this regard, Zimbabwe became another Southern African country⁵⁷ to turn to the criminal justice system as a response to violence in the home front, particularly violence in intimate relationships. This means that the Domestic Violence Act became Zimbabwe's response to the Southern African Development Community's (SADC) call for gender equality and development legal reforms ratified in 1997. However, while this development was commendable, it remained to be seen how effective the DVA would be in ending domestic violence in Zimbabwe, particularly among ethnic groups situated in rural communities.

It was also explained in the previous chapter that domestic violence in Zimbabwe is rooted in patriarchy. The chapter further explained how violence, especially violence against women and girls, became institutionalised during the colonial period. In general, IPV was singled out as the most common kind of gender-based violence with devastating effects on women and girls in the homes they live with their spouses. Various aspects of the domestic violence problem which included the definition of the concept, meaning and its scope, were also presented. Some of the provisions of the DVA including the responsibility and mandate of the police and the application for police protection court orders were highlighted as core features of the Domestic Violence Act. The background information was important as it provided the necessary insight upon which the analyses of the Domestic Violence Act could be done in this chapter.

The present chapter addresses the fifth objective of the research study which is to present critical analyses of the Domestic Violence Act of Zimbabwe. The analysis is done through the lenses of the theories outlined in chapter 3 on the theoretical frameworks for the study. In addition, the analysis is done within the context of the issues that arise from enforcing the Domestic Violence Act among the Ndau people. This chapter therefore analyses the clash of the law with Ndau culture by exploring the impact of enforcing the provisions Domestic

⁵⁷ Other countries with fully-fledged and functional legislation on domestic violence in the region are South Africa, Mauritius, Botswana, Lesotho and Zambia.

Violence Act within Ndau communities. The claim in this chapter is that the enforcement of provisions of the Domestic Violence Act among the Ndau raises critical issues that draw our attention to reflect on how the law fares in meeting its mandate of protecting women from domestic violence. The chapter begins with a brief overview of how the Domestic Violence Act was received at its inception in order to provide the reader with information on the people's general response to the coming of the law and its provisions. Basically, the analysis focuses on the impact of criminalising domestic violence within Ndau cultural communities. It is argued in the chapter that the Domestic Violence Act has indirectly exacerbated male violence against Ndau married women. This situation happens because most Ndau women are individuals who are not only vulnerable to domestic violence but also dependent on the patriarchy. Most women in Ndau community have husbands who work in neighbouring SADCC countries or even overseas. The men's incomes are the only source of livelihood. In essence therefore the chapter maintains that Domestic Violence Act exposes married women to more abuse than protection. This is explained later in the chapter. In the last section the chapter dwells on Ndau women's attachment to their children (*kugarira vana*)⁵⁸ as a source of their determination to stay in abusive marriage. In this section, women's reasons for staying in abusive relationships are presented as lived Ndau preferences and ways of managing domestic violence.

7.1 A paternalist analysis of the Domestic Violence Act

From the onset of this chapter, it was mentioned that the Domestic Violence Act is arguably paternalistic. In support of this position is the contention that the Domestic Violence Act seeks to advance the same goals for all survivors from all walks of life. For instance, the law assumes that the concept of equal treatment of persons is shared by all cultures in the country. It also claims to protect survivors from perpetrators for the supposed good and best interests of all domestic violence survivors. In concurrence with this observation, Anna Stewart (2001) noted that internationally, the criminal justice approaches to the domestic violence problem adopt paternalism as the guiding principle. Stewart (2001: 447) further observed that the criminal justice systems are anchored on "Western democracy-aligned laws based on pro-arrest and mandatory arrest policies and mandatory prosecution which suggest that tougher penalties be proposed and implemented." This suggests that the legal basis upon which legislation on violence against women and girls in African countries is far removed from the

⁵⁸ *Kugarira vana* is an expression that is used by women to support their continued stay in abusive marriages, particularly when they have children born in the union. They use the statement as their major reason or excuse for staying in abusive marriages and intimate relationships.

living realities, needs and expectations of most women who experience domestic violence in Africa.

It is within the same context that the criminal justice approach to fighting domestic violence in Zimbabwe can be subjected to a paternalistic analysis. Using the same lens, Leigh Suzanne Goodmark (2009: 44) noted that “domestic violence is not a monolith explicable by a seamless, overarching theory” as assumed by most of the existing laws on violence against women across the world. By this statement Goodmark meant that most legal responses to the domestic violence problem are inadequate because they are based on the assumption that they can provide remedies for all the different instances of domestic violence occurrences that all survivors and perpetrators experience in different cultural settings.

In the case of Zimbabwe in general and among the Ndaou people in particular, it has become imperative to re-visit the criminal justice approach to ending domestic violence. The major reason for re-engaging the Domestic Violence Act is that, despite substantial legal reforms and efforts to end domestic violence in the country, domestic violence has remained a major social problem. Evidence can be drawn from the extensive media coverage which report astronomical rise of domestic violence cases in the country as shown in chapter 4 of this thesis. It can therefore be argued that the paternalist strategy to end domestic violence has far-reaching adverse consequences for domestic violence survivors.

To begin with, the criminal justice system’s response to the domestic violence problem in Zimbabwe is premised on the assumed that every perpetrator of domestic violence is a criminal. Furthermore, it assumes that the survivor may not want to continue living with the perpetrator during or after the occurrence of violence in their relationship. This is a misconception that the Domestic Violence Act (Chapter 5: 16) makes in Section 16, Sub-section 9 (f) where it says that the Anti-Domestic Violence Council shall, among other functions, seek “to promote the establishment of safe houses for purposes of sheltering the victims of domestic violence, including their children and dependents, pending the outcome of court proceedings under this Act”. This is a paternalist approach to the domestic violence problem. The implication of this provision is that perpetrators of domestic violence are dangerous social elements. It further assumes that all survivors of domestic violence hate their abusers, want to leave them and thus must be separated from perpetrators of domestic violence. In the majority of cases facilities and social services to accommodate survivors are not made adequately available and accessible for all survivors. It therefore means that the

paternalist Domestic Violence Act provisions are only grand and meaningful on paper while in reality they remain imaginary.

Section 6 of the Domestic Violence Act empowers the police to arrest suspected perpetrators of domestic violence even “without warrant” of arrest. The assumption in this provision is that the immediate arrest and subsequent prosecution of a domestic violence perpetrator is for the good of survivors. The law assumes that survivors’ best interests, needs and expectations are met through the arrest and prosecution of offenders. Contrary to this claim, Stewart (2001: 457) argued that no amount of “evidence of a domestic violence crime being committed in itself can be of use to the police in arresting and prosecuting a perpetrator” without the survivor’s cooperation. The problem of paternalism arises when the survivor’s cooperation is required in order to proceed with prosecution while this may not necessarily be in the best interest of the survivor. In this regard, Stewart (2001: 459) observed that “domestic violence *victims* often equivocate when it comes to charging the perpetrator and then proceeding with the prosecution”. This only serves to demonstrate that what the Domestic Violence Act’s assumption that survivors benefit from the arrest and conviction of perpetrators is not what survivors really wish for. At the same time, Stewart’s observation implies that most survivors are not prepared to abandon their matrimonial homes and end their intimate relationships even when they are living with violence. Thus, this attitude by survivors renders legislation on domestic violence ineffective as a response to the domestic violence problem in the country.

It has been argued in this section that cultural conceptions concerning social relations between men and women in intimate relationships make the current legislation on domestic violence difficult to implement. Since most domestic violence perpetrators and survivors believe that their cultural practices, though somewhat unpleasant at times, do not amount to criminal acts, survivors do not report to the police. However, Stewart (2001: 459) observed that in cases of severe and frequent physical abuse, some survivors report but then go on to withdraw their cases before the prosecution of offenders. Once a survivor has withdrawn her accusations, the police and the courts are left with no witnesses against the offender and the case may be declared withdrawn.

Apart from the law’s paternalist approach to the domestic violence problem, a closer analysis of it also shows that there are some assumptions around it which compromise its

effectiveness. In this regard, the next section looks at whether the law actually jeopardises intimate relationships between women and men.

7.2 The Domestic Violence Act and patriarchy

It was mentioned in chapter 6 that the high prevalence of domestic violence in the country gave birth to the Domestic Violence Act as a legal means to end the problem. The law was proposed as an instrument to end violence within the family, particularly violence in intimate partner relationships. However, it is important to note that the effectiveness of any law largely depends on the targeted people's awareness, acceptance and use of it. The Domestic Violence Act is no exception. This section focuses on how the law was received when it was introduced.

Concerning the general people's acceptance of the Domestic Violence Act, Lene Christiansen (2010: 423) observed that, at its inception, the law was viewed with suspicion. According to her, "... citizens expressed alarm over the law's interference into patriarchal authority over women". This means that most men became aware of the law only as a threat to traditional beliefs and cultural practices that they had known and observed over generations. It was no surprise then that some men openly opposed the Domestic Violence Bill, arguing that the Bill was interrogating the authority and social position of men in their homes. This only serves to show that the acceptability of a law that plunges society into heated debate along the male-female divide is always complicated. In the case of the Domestic Violence Act of Zimbabwe, the debates on the law became politically motivated, where personal opinions were misconstrued as political party positions.

A typical example of the anti-patriarchy impression of the Domestic Violence Act ⁵⁹ can be drawn from comments made by a Movement for Democratic Change (MDC) MP, Timothy Mubhawu, during a parliamentary debate on the Domestic Violence Bill on 10 October 2006 ⁶⁰ where he said:

I stand here representing God. Women are not equal to men... [this] is a dangerous Bill and let it be known in Zimbabwe that the rights, privileges and status of men are gone. I stand here alone and say this

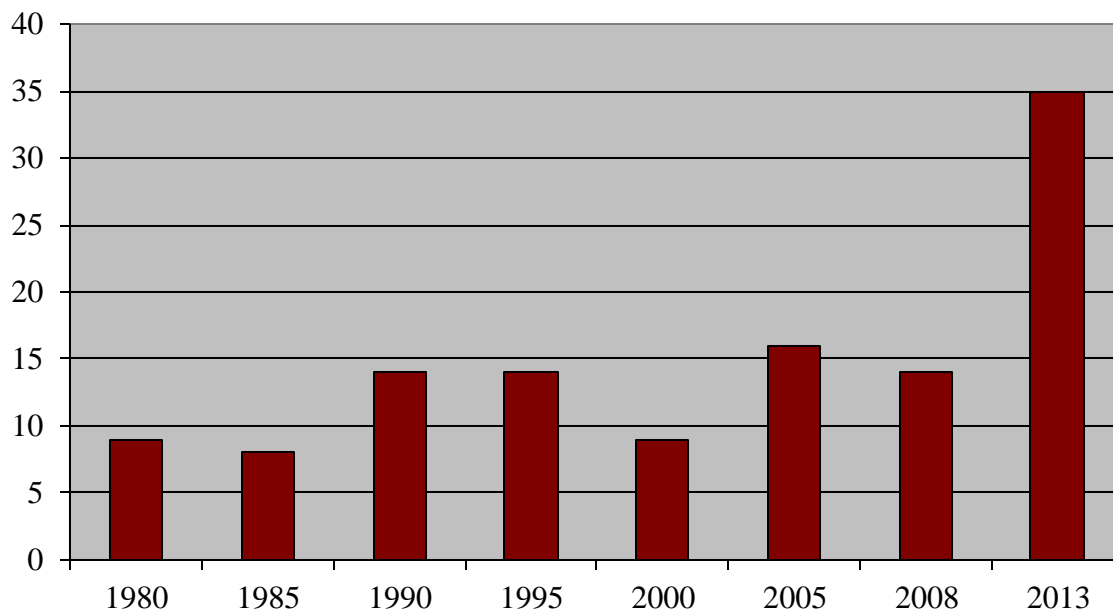
⁵⁹ The Domestic Violence Act began as the Zimbabwe Domestic Violence Bill which was tabled for discussion in Parliament from 2003.

⁶⁰ Timothy Mubhawu's comments were reported in *The Herald*, 11 October 2006. His comments were later misconstrued as the position of the Movement for Democratic Change (MDC-T) party led by Morgan Tsvangirai. The Overall effect of the MP's utterances was that the MDC-T party was then accused and presented by ZANU (PF) as a violent party which has no high regard for the women.

Bill should not be passed in this House. It is a diabolic Bill. Our powers are being usurped daylight in this House [sic].⁶¹

It can be argued that Mr Mubhawu's sentiments represent those of most men across the country considering the composition of the legislature in the Parliament of Zimbabwe then. Figure 6 below shows the trend of women representation in parliament from the elections in 1980 to the elections in 2013.

Figure 6: Chart Showing Trends in Women's Participation in Parliament in Zimbabwe from 1980-2013.



Source: Adapted from: Tulani Dube, *Engendering politics and parliamentary representation in Zimbabwe, 1980-2008*, 2013: 204.

The chart shows that there have been minimal representation of women in parliament from as small as 9% in 1980 with not much improvement in till in 2013 where there was a 35% representation. When the Domestic Violence Bill was introduced in 2005 there was 16% women representation in parliament and this meant that women's views were overshadowed by those of men.⁶²

⁶¹ This contribution by the MP attracted much controversial publicity and turned the debate on the Domestic Violence Bill into a 'men versus women' debate in the country. However, it is also clear that Mr Mubhawu's controversial comments helped in making people aware of the DVA as most organisations involved in gender issues sprang into action and undertook awareness campaigns.

⁶² In 2005, the Zimbabwean parliament had 120 seats and only 20 were taken up by women legislators, making up a paltry 16% female representation.

Thus, most of the men opposed the Domestic Violence Bill, dismissing it as having been crafted in a way that upheld and promoted occidental values at the expense of African traditions and cultural values. In this regard, the Bill was viewed as a direct affront to the local people's way of family conflict resolution because it clashed with their culture.

To underscore the centrality of men's response to the gender equality issue imbedded in the DVA, the Speaker of the National Assembly of Zimbabwe, Jacob Mudenda, recently urged women to respect cultural norms in spite of being well-educated and fully aware of their rights. He urged all organisations and institutions working to improve the status of women in society to contextualise their initiatives within local traditional beliefs and cultural practices. To this effect, Mudenda said:

If you do not walk with the (traditional) chiefs in your campaign, then you have not started anything, because in our daily lives we are creatures of culture. Our culture does emphasise the importance of women, but when some women get degrees they tend to be confused and they forget that even if you are educated, you are a cultural woman, and you are so important, particularly those that are married.⁶³

Throughout this study, patriarchy is considered within the context of familial principles such as the child-centred principle by Which Nda women in abusive intimate relationships live. This means that Nda women can endure certain types of domestic violence all for the sake of a child's needs or a child's development. According to the familial principles, the social organisation as well as the administration of justice takes a protectionist approach towards women and children in the family. The combination of patriarchy and familial principles not only presuppose the higher recognition for men, but it also considers women and children as weak and subordinate and thereby in need of protection. Thus the protectionist approach justifies the premise that women need to be treated differently in law because they are weak and less able to physically defend themselves than men.

It is clear that from the inception of the Domestic Violence Act, some men did not accept legislation on domestic violence as a remedy to the domestic violence problem in the country. The major reason was that the patriarchy is the author of domestic violence. To this extent, Steven Tracy (2007: 576) pointed out that, "domestic violence is a consequence of patriarchy, and part of a systematic attempt to maintain male dominance in the home and in society". What this means is that, most of the men felt threatened that the concept of male dominance

⁶³ Mr Jacob Mudenda was speaking at Parliament Building at the launch of the United Nations *He for She Campaign* on 5 October 2016. The campaign calls for the advancement of women in society through legal reforms.

was not only being scrutinised but also being re-written by the introduction of the Domestic Violence Bill.

The same can be said about most Ndau men. Among the Ndau, the introduction and existence of the Domestic Violence Act has not brought the much anticipated social change. The reality in Ndau society is that certain types of violence meted by married men on their female partners are generally considered 'normal' or 'acceptable' to the men and women. Mapuranga (2010: 89-90) alluded to this reality where she said:

Ndau culture instructs women to be submissive, kind, and tolerant to their husbands. Even in sexual matters, a woman should not deny her husband the sexual pleasure that he demands. Failure to compromise can result in sexual, psychological or physical violence.

This means that in intimate relationships, Ndau men wield more power than women and that most Ndau women do not seem to have problems with that as they can be more compliant in order to avoid domestic violence. In this case, some men have socially, culturally or even legally sanctioned power over women. However, this approach to the domestic violence problem compromises women's quality of life as discussed in the next section.

7.3 Ndau women's quality of life and the Domestic Violence Act

It has been outlined in section 4.4. 2 in Chapter 4 that Ndau community is primarily patriarchal and this has a direct bearing on how men and women relate to each other. As pointed out already, patriarchal communities uphold patriarchal family values where in a family the husband is the head and women and children are respectively second and third class members of the family. According to the Zimbabwe Demographic Health Survey's (2015: 44) key indicators on women's quality of life there is clear evidence that women who experience domestic violence lead poor and fragile lives. The same vulnerable women have a higher risk of having sexually transmitted infections since they can hardly resist male sexual supremacy over them. They cannot negotiate for safe sex and domestic violence also exposes them to a wide range of reproductive health problems such as suffering fractures, miscarriages, psychological trauma and contracting HIV. While this list of health consequences of domestic violence is far from complete, it is enough to illustrate how domestic violence affects the mental and physical health of women, thereby diminishing the quality of life they lead. It is equally important to mention that the adverse effects of domestic violence do not end with these or other health consequences for the present

generation of women. Thus what make domestic violence particularly insidious are its intergenerational effects.

As stated earlier on in this chapter, the assumption that domestic violence perpetrators are so dangerous that survivors need to leave their homes and stay at a “safe-house” is not only unrealistic but also far removed from the living realities of Ndau women. As has already been explained in Chapter 3 under Section 3.4.1 on Ndau family, it is highly unlikely that a Ndau domestic violence survivor would agree to be accommodated at a “safe-house” that is provided by the Anti-Domestic Violence Council for some reasons. In the first place, the Anti-Domestic Violence Council is a national body made up of ‘strangers’ to the domestic violence survivors. It is unlikely that any member of the Council could be related to the perpetrators or the survivors and this makes the Council’s intervention in the domestic dispute intrusive and unwelcome. This is the case because the concept of kinship (*ukama*) among the Ndau implies that any disputes, including violence between husband and wife, should be mediated by a close family member. This means that the DVA provision on separating the perpetrator from the survivor is the responsibility of the disputants’ close relatives, not ‘outsiders’ as stipulated by the Anti-Domestic Violence Council’s mandate.

The other critical point coming out of this paternalistic analysis of the DVA is the assumption that domestic violence survivors are a homogenous group of people who have the same needs and expectations. This is the problem with the legislation on domestic violence in Zimbabwe. In her studies on domestic violence, Stewart (2001) noted that survivors are different people who have different social, economic, emotional and sexual needs during and after experiences with domestic violence. For her, (2001: 457) domestic violence is a different crime from other crimes in that “the level of intimacy between the victim and the offender is high”. This evidently suggests that, in the case of husband and wife, the intimacy may not simply disappear because of the violence that has broken between them. Instead, intimacy may temporarily be suspended. Therefore, to suggest that the survivor must be separated from the perpetrator for her own good is likely to face resistance. Thus what comes out from this analysis is that, clearly, domestic violence is not a scourge that can easily disappear with the generation that is directly involved. Unfortunately, the scourge will be resurrected in every successive generation and this means that paternalist tendencies only work temporarily.

Stewart (2001) went on to note that in some instances, depending on the severity and how often the violence occurs, the survivor may continue to enjoy emotional and sexual relations

with the abuser. Stewart's suggestion implied that not all survivors understand or recognise acts of domestic violence in general and intimate partner violence in particular in the same manner that the DVA conceptualises them as criminal acts. It therefore means that some survivors may fail to comprehend why acts of domestic violence, most of which are culturally sanctioned, are regarded as criminal acts. At this juncture therefore, one wonders whether the DVA can succeed in helping women and girls challenge the patriarchy and its accompanying cultural practices. The question that needs to be asked is: Why is the DVA failing to end domestic violence among Ndaou women intimate relationships?

7.4 The Domestic Violence Act and the Ndaou culture

Concerning the existence of cultural and social norms that lead to domestic violence, the World Health Organisation (WHO) (2009: 7) indicated that in some instances of intimate partner violence, both perpetrator and survivor may find nothing wrong with acts of violence such as slapping or marital rape. Indeed, intimate partners may seem to understand that it is permitted in their culture that a man has a right to assert power over a woman and that a man is superior to a woman. In such cases, if a woman is beaten or pushed by her husband in a violent manner, that by itself may not amount to a criminal act at all. In this case, domestic violence may continue unabated because of the shared cultural perceptions between survivor and perpetrator. In such cases culture does not only maintain that women are inferior to men but also supposes that women are obliged to submit and remain subordinate to men at all times. The Domestic Violence Act challenges this cultural perception by condemning all forms of violence, however small or insignificant. This is why it is necessary that cultural practices be seriously interrogated to see how they interfere with the Domestic Violence Act.

Some ethno-cultural works have shown that in some cultures both perpetrator and survivor may accept that a man has a right to control, approve or condemn female behaviour. This is supported by Nancy Chi Cantalupo et al (2006: 540-541) who pointed out that in some African cultures male cultural privileges include the right to "discipline" or "chastise" women under male control. One wonders why it has to be the husband to restrain the wife as if she were a child. In some cases it would be the man in the wrong but claiming to be right for the simple reason that he is the head of family. From this perception, the family is regarded as a patriarchal unit within a patriarchal whole. Cantalupo et al, (2006: 541) claimed that some men and women regard wife beating as a culturally permissible practice through which husbands "train... and bring... [women] to order". This means that whenever domestic violence occurs, perpetrators and survivors do not easily recognise it as abuse and criminal.

For this reason, the survivor does reports such abuse to the police because she regards domestic violence as a way of family life that requires adjustment and resilience on the part of the woman. However questions can be raised about the way culture discriminates against women and exposes them to more risks such as HIV and AIDS.

For Ndaun married women, Tenson Muyambo (2010) claimed that some of the women he interviewed confessed that being beaten by a husband was an expression that the husband loved his wife. As a result of this traditional belief, domestic violence survivors suffer in silence, fearing that reporting culturally permissible behaviour is tantamount to challenging men's position and authority in society and the home.

Furthermore, the belief in some cultures that physical violence is an acceptable way of resolving conflicts within a relationship has been highlighted by authors such as Carmen Cusack (2012) and Wapula Raditloaneng (2013). The authors opined that in such communities where domestic violence seems acceptable, efforts to end it using the criminal justice system which requires survivors to report such abuse may actually drive domestic violence underground. This can happen when survivors feel that reporting a culturally permissible practice brings humiliation upon them as they stand to be condemned for not subscribing to their culture. On this point, Excellent Chireshe (2015: 264) concurred when she said "shame also prevented the abused from reporting to authorities". This means that most survivors are prepared to suffer in silence in order to protect themselves and their abusers' social standing as good, respectable and descent people. Thus reporting domestic violence, especially intimate partner violence, is not only regarded as shameful but also as being disrespectful of cultural norms and values by domestic violence survivors.

In Zimbabwe a number of critics have observed and concluded that the DVA generally interferes unnecessarily with local people's 'non-negotiable' cultural values and practices. For instance, Tom Tom and Maxwell Musingafi (2013) argued that some traditional cultures regard sex between couples as a practice that a husband does not negotiate in a marriage. In the case of the Shona people of Zimbabwe in general, Tom and Musingafi (2013:48) maintained that many men believe that sex is a man's right in a marriage. In support of their observation, the authors further said "men think that because they paid *lobola*⁶⁴, they have unbridled access to their wives even if the wife is not feeling well". It is from this perceived cultural entitlement to sex that many male intimate partners believe that their female partners

⁶⁴ *Lobola* is an IsiNdebele word for bride wealth and it can be used interchangeably with its Shona language equivalent, *roora* to refer to the same.

should not resist sexual demands from them. The World Health Organisation (WHO) (2009:7) also claimed that men's treatment of their wives is supported by cultures in which dowry or bride wealth is a sacred part of the marriage process. In such cultures, violence between the husband and wife may occur because bride wealth becomes synonymous with purchasing and owning the wife. However, African custom, particularly Ndaou custom, does not really regard the payment of bride wealth as tantamount to buying the woman. Bride wealth payment in itself places the woman in an advantageous position where she is respected for her worth. Thus, the Domestic Violence Act serves to check on culture where the latter fails to recognise the value of women as intimate partners. The next section provides an analysis of the Domestic Violence Act contribution towards the emancipation of women.

7.5 A feminist jurisprudence analysis of the Domestic Violence Act

Having seen that sometimes custom is abused by people, especially men who exploit it for purposes of controlling women, this section serves to look at the extent to which the Domestic Violence Act serves to disentangle women from cultural snares. Llana Carroll (2013: 220) used feminist jurisprudence to argue that the current legislation on domestic violence internationally is insufficient to emancipate women. She maintained that legislation on domestic violence "...is built on an antiquated theory of 'dominance feminism' which does not safeguard as many people ⁶⁵ as it might". This means that the scope of the current legislation on domestic violence encompasses all kinds of abused and affected people, especially women, as one large homogeneous group. This is a general approach to the domestic violence problem and it has not helped as much as it was expected. The argument is that legislation on domestic violence has assumed that all domestic violence survivors have the same needs and expectations which can be addressed in the same manner across cultures. This is a misconception which proved costly for the current domestic violence legislation because it inadvertently excludes some groups of women from benefiting fully from the Domestic Violence Act.

Realising this shortfall about current legislation on domestic violence, Goodmark (2009: 40) posited that the problem lies with what she called 'dominance feminism'. This is a theory that "assumes that, in a male-dominated society, women are viewed as sexual objects that exist for the gratification of men in marriage or even outside marriage". By this she meant that the principle upon which current legislation on domestic violence is built fails to extricate

⁶⁵ It is my conviction that by 'people' Llana Carroll (2013: 220) meant women, especially those located in communities with strong culture.

women from the being exploited in the name of culture. Thus, through the feminist jurisprudence lens, it can further be argued that few women participate in the drafting and interpretation of most of the laws and regulations on domestic violence in their different countries. This is explained by the limited number of female legislators in most African governments.

Catherine MacKinnon (1991) also argued that the equal status between men and women that the Domestic Violence legislation advances has been inefficient in terms of providing women with what they need. She maintained that even though such sex equality laws as the Domestic Violence Act were being promulgated, women lacked access to reasonable security, self-expression, individuation and minimal respect and the dignity guaranteed by these laws. For her, the greatest impediment for women's access to the benefits of legislation is patriarchy with its entrenched traditional beliefs and cultural practices. Thus, in order to overcome male dominance, she advocated that the state must improve on the way it tries to guarantee the safety of all women irrespective of their social background.

Feminist jurisprudence therefore exposes weaknesses of state legislation meant to bring equality between men and women. In the case of the DVA of Zimbabwe, Maxwell Chuma (2012: 10) said, "[t]he hybrid of the legal system where customary law operates alongside civil laws puts women in a disadvantaged position". This implies that the DVA has no capacity to cater for the vast, diverse and complex experiences of domestic violence survivors across the country. For example, two of the DVA's provisions face implementation challenges among the Ndau. These are Part II Section 6, on police mandatory arrest without a warrant and Part III Section 7, on the provision of police protection order. The two provisions communicate a clear message about the state's determination to detach the abused from the abuser in order to facilitate the relocation of the survivor to safety and restrict the perpetrator of domestic violence from interfering with the survivor. Thus, mandatory criminal interventions that force arrest and prosecution of violent partners reflect and reinforce this message. However, separation may not be to the best interest of the survivor whose culture demands that all family disputes be resolved within the family and by family members, not strangers.

Regarding the separation of the abused from the abuser, Goodmark (2012: 81) also observed that "the demand that women subjected to abuse separate from their abusive partners rewrites cultural norms about women's roles in relationships". Clearly, Goodmark's remarks indicated that the provision on separation violates the survivor's relational needs which are usually

dictated by the survivor's culture. Goodmark's observation also implies that both the perpetrator and survivor may find themselves disorientated as soon as they are made to live separately. Thus for many women, separation from the abuser is a new phenomenon that apparently challenges existing cultural norms.

Goodmark (2012: 82) further argued that current separation-based legal remedies to the domestic violence problem in African communities also bring insecurity and expose survivors to further violence. For women who stay in the rural areas and are highly dependent on their husbands, separation is unimaginable. On this point, Charles Ngwenya (2011) posited that most of the women fear becoming destitute and being ostracised by the husband's family or the entire community for using modern legal means to resolve domestic violence. As a result of this perceived retribution, women refrain from using the law to protect themselves from partner violence because some of the law's provisions are not in their best interest. There is need for women to participate in the formulation of laws that directly impact on their lives. They can do it from an *hunhu/ ubuntu* perspective, where they can express their expectations in their own terms.

7.6 Analysis of the Domestic Violence Act with *Hunhu/ Ubuntu*

It has been pointed out that the legal frameworks on domestic violence in most African countries are influenced by Western perceptions on how men and women relate to each other. However, there is a difference between Western and African approaches to relations between men and women, particularly when it comes to the legislation on domestic violence discourse. The argument is that the contexts in which domestic violence occurs in Africa are different in important respects from those in non-African countries. This makes the transfer of state interventionist remedial measures that are conceived and crafted from non-African settings to African communities not only inappropriate but also problematic.

To support the point stated above, Cynthia Grant Bowman (2003: 474) noted that "large numbers of women in Africa live in the countryside and are subject to African customary law, much of which reinforces the subordinate position of women within the family". Certainly, families as well as traditional customary courts remain very important informal justice institutions in African rural communities even today. Thus, for authors such as Bowman (2003), Cusack (2013), Raditloaneng (2013) and Venganai (2015), most of the existing legislation on domestic violence cannot be effective if it does not take into account the social settings of the people, especially women, who are intended beneficiaries. The authors mentioned here went on to argue that since traditional social settings continue to exist

in most African countries, it is imperative that domestic violence legislation includes locally-based remedies, however unbelievable and unrealistic they may be. However, this does not mean that cultural practices which are discriminator and subject women and girls to humiliation and suffering should be ignored.

The authors cited above are arguing that even though most African traditional communities have also been affected by urbanisation or globalisation as well as economic dislocations, there are some communities where traditional beliefs and cultural practices are still being respected. At the same time urban communities are also affected by cultural practices of their people because when people move to urban areas, they often move with their culture because the culture is deeply rooted in their lives. In such communities, legal responses to the domestic violence problem may not be effective because the local people hold on to their traditional beliefs and cultural practices which hinder effective implementation of certain legal provisions. This kind of behaviour is aptly described by Okyere-Manu (2015) as ‘gate-keeping’ where culture is used as an excuse for perpetrating dangerous practices. In fact, Okyere-Manu (2015: 56) went on to suggest that “Gatekeepers must be challenged not to turn a blind eye on issues of domestic violence, marital rape and other social ills found in the binding confinements of traditional marriages”. This is a clear indication that there is need to interrogate some cultural practices which disadvantage women and expose them to abuse in the name of observing culture. From this observation it can be argued that until traditional practices are cross-examined with the view to separate the good about them from the bad,, well-meaning legislation on domestic violence may not, in practice, achieve the desired goal of protecting survivors from relational violence.

From the above observation made by Okyere-Manu, it can be concluded that most African countries still have traditional communities which observe cultural practices that need re-visiting, especially within the institution of marriage. These practices have often made the implementation of laws against domestic violence difficult. With reference to Ghana, Nancy Chi Cantalupo (2006) pointed out that Ghanaian women are generally confronted with powerful obstacles in their efforts to report domestic violence. She argued that most of the obstacles stem from cultural beliefs that have maintained that domestic violence is a private, family matter that should be addressed outside of the criminal justice system. In some instances this has been worsened by other socio-economic challenges some African countries such as Zimbabwe are experiencing. Research such as that conducted by Cynthia Grant Bowman (2003) has shown that current economic problems in most African countries

increase stress on families and eventually prevent the effectively implementing of remedial legal strategies that they have been crafted to prevent domestic violence. Resources are hardly adequate for families and this often leads to disagreements on how to share them as dictated by the communal approach to life that *hunhu/ ubuntu* emphasises.

Besides inadequate resources to support families, there are hardly adequate human and material resources to enable the enforcement of the DVA in most African communities. For example in Zimbabwe the Zimbabwe Legal Resource Foundation (2014: 28) noted in its manual that some legal practitioners observed that effective law enforcement required adequate funding and accessible, well-resourced medical facilities to handle the physical, sexual and psychological damages that are caused by domestic violence. Thus, it can be concluded that at the moment the facilities for effective implementation of provisions of the law against domestic violence are not adequately available in most African communities, including Zimbabwe.

It must also be understood that legislation on violence against women requires a thorough consideration of the local people's ethical considerations. On this aspect about the way forward in fighting domestic violence, Fainos Mangena (2009: 19) argued that:

Feminist approaches to ethics are distinguished by an explicit commitment to correcting male biases they perceive in traditional ethics, biases that may be manifest in rationalisations of women's subordination, or in disregard for, or disparagement of, women's moral experience.

It is clear that, for Mangena, feminist ethics in Africa, particularly Southern Africa, cannot fully be understood outside the African ethic of *hunhu/ ubuntu* as moral imperative. This is the case because, according to him (2009: 19), "...*ubuntu* determines both the norms of conduct and criteria for success, and it is characterised by a deep sense of corporate life which expresses itself in an intricate network of social and kinship relationships." This observation is deeply rooted in the essence of the African ethics of *hunhu/ ubuntu* about which a number of Southern African philosophers and scholars such as Stanlake John Thompson Samkange and Tommie Marie Samkange (1980), Mongobe Ramose (1999), Munyaradzi Felix Murove (2009) and Thaddeus Metz (2012) have written. On the same subject, Augustine Shutte (2009: 2) argued that the philosophy of *hunhu/ ubuntu* is best understood from the meaning of the traditional African expression: *Umntu ngumuntu*

ngabantu as expressed in Zulu and *Motho ke motho ka batho* in Sotho. This means that a person is who and what they are through who and what others are.

It is important to note that the central theme in *hunhu/ ubuntu* conception of human intimate partner violence is the lack or the absence of *hunhu/ ubuntu* (humaneness) on the part of the perpetrator who does not treat the other with dignity. Thus the implication of *hunhu/ ubuntu* on human relationships is that intimate relationships play such a fundamental role in people's lives and that it is important that they function well. However, all too often, they do not. But, because *hunhu/ ubuntu* is premised on the idea of communal existence, being there for each other in good or bad times, lasting solutions to dysfunctional intimate relationships should be sort from familiar people. The DVA therefore fails to fit well into the *hunhu/ ubuntu* conception of sustaining intimate relationships, leading to more problems than providing solutions to domestic disputes.

7.7 Domestic Violence Act and the abused

One of the most prominent assumptions that the DVA makes is that separating the abused from the abuser is the most appropriate way to end intimate partner violence. It is from this assumption that legislation on domestic violence encourages women to distance themselves from their abusers through reporting the abuse so that the offender is arrested. In this way, arresting domestic violence perpetrators becomes a form of state-enforced separation response which, is assumed to be the best way to stop domestic violence. Raditloaneng (2013: 68-79) described state-interventions as more of "reactions" rather than responses to the domestic violence scourge. This means that the state believes that the survivor will get a chance to decide to leave an abusive relationship during the time the offender has been arrested and is held by the police. Thus arresting an abusive partner has always been the first reaction by the state to ensure that violence stops through the separation of the survivor from the perpetrator. Unfortunately, though, the stoppage is temporary because the perpetrator does not stay long in police custody. In most cases it is either that the police have no interest in the matter or the culprit pays bail and goes back home.

Rebecca Magorokosho (2010:24) also observed that in many instances survivors do not leave the abusive environment or home but continue to stay hoping that the abuser would eventually come back from police custody as a changed person. Regrettably for many survivors, perpetrators of domestic violence are not easily deterred or changed by the mere experience of arrest or detention by the police. Instead, police intervention through arrests

may even exacerbate the violence by infuriating the abusive man, making him more spiteful than regretful after experiencing forced separation from his partner. This serves to illustrate that, while arresting of perpetrators of domestic violence creates some form of relief for the survivor, it exposes the survivor to more abuse. In instances where perpetrators return from police custody to abuse their partner who decides to stay, Stewart (2001:9) concluded that some survivors completely disregard the chance to capitalise on state-enforced separation. She further said “survivors who choose to stay with their abusive partners make it extremely difficult for the criminal justice system to protect them from further abuse”. This implies that the decision to leave or stay in an abusive relationship does not lie with the law but with the abused individual. It also means that there is a limit to what the law can do for the survivor who decides to ignore or abrogate the provisions of the same law at any point of execution.

The provision of a police or civil protection order is also believed to be an effective way of separating and protecting the survivor from the abuser. As described above in Chapter 5 under Section 5.5.1, a police or civil protection order is a legal document that a domestic violence survivor or the survivor’s representative applies for and obtains from a court of law. The order, once granted, is served to the perpetrator by a police officer. The protection order clearly specifies that the offender should meet certain separation-related conditions or instructions that are meant to protect the survivor from further abuse. Thus, a police or civil protection order is widely believed to facilitate the smooth separation of the survivor from the abuser by protecting the survivor from further domestic abuse.

However, regarding the potentiality of police or civil protection orders to effectively protect survivors, Magorokosho (2010: 25) made a passionate appeal where she said that:

If protection orders were effectively enforced, women, who are the majority of victims of domestic violence, will be able to enjoy their fundamental human rights such as the right to life, dignity, protection from inhuman and degrading treatment or punishment in the same manner that their male counterparts do.

This call for the strict enforcement of police or civil protection orders suggests that legislation on domestic violence can hardly be successful without the state-enforced protection of survivors.

Nevertheless, it can be noted that Magorokosho’s use of “*if*” in the above quotation is not an accident but a deliberate expression of an unfulfilled condition because, indeed, police or civil protection orders are not effectively enforced. As with police arrests, protection orders also

increase abusive attacks on women who file or apply for them at the civil courts. In the first place, obtaining a police or civil protection order is a mammoth undertaking for many survivors. Goodmark (2012: 88-93) described how survivors who apply for protection orders are frustrated by court judges and officials who keep on postponing hearing domestic violence survivors' cases of protection orders application.

Reasons for the delay in granting protection orders range from lack of adequate manpower resources to sheer lack of interest in such matters on the part of male prosecutors and law enforcement agents. Goodmark further claimed that in some countries' legal institutions, protection order hearings are not held and expedited as frequently as applicants may wish to have them granted. In the case of Zimbabwe, although Section 7 (6) of the Domestic Violence Act (Chapter 5: 16) says that consideration of protection orders may be done "outside ordinary court hours or on a day which is not an ordinary court day", this is not always respected. The reality on the ground is that many courts have not been able to effect this provision of the Domestic Violence Act due to lack of manpower and material resources.

Apart from the inadequacy of both human and material resources to process protection orders, some law enforcement officials have attitudinal problems that make it difficult for survivors to obtain protection orders. In view of this observation, Magorokosho (2010: 30) also noted that in Zimbabwe, police or civil protection orders have always been regarded as "a Western remedy with a Western agenda". This conception of the role of protection orders in ending domestic violence has affected the manner in which they have been processed and granted by the courts. This is further pointed out by Cantalupo et al (2006: 537) where they observed that, "consistent with traditional beliefs, judges and police officers often legitimise domestic violence by reinforcing unequal gender roles". It is clear therefore, that law enforcers who are biased against women perceived to be challenging men by seeking legal protection, reluctantly process protection order applications for women who insist on having such orders.

However, the problem with state-enforced separation goes beyond law enforcers' attitudes. In instances where a protection order is successfully processed and granted, it requires that the abuser, usually the husband or male intimate partner, be physically removed from the home where he perpetrates domestic violence. He is also restrained from interfering in any way with the survivor. This means that a protection order, when granted, actually serves to evict the abusive man from the home or house, leaving his intimate partner and children, if there are any, behind. On account of this reality, Goodmark (2012: 90) concluded that most of the

delays in processing protection orders happen because judges find it difficult to grant orders that effectively evict abusive men from their houses.

In the case of the Ndaou people, it is taboo for a married woman to seek to evict her husband from the matrimonial home. This arises from the conception of marriage among the Ndaou where a woman actually joins her husband's family home at marriage. Even if the married couple moves away to stay in town, the woman is still regarded to have joined her husband's family home. As Tatira (2010: 43) put it, "girls were socialised to persevere in marriage and to tolerate insensitive husbands". This means that in Ndaou culture no amount of domestic violence entitles a married woman to invite the police and the courts, through the application for protection orders, to evict her husband from their matrimonial home. This traditional belief therefore makes it untenable for many Ndaou women to attempt to involve state institutions such as the police and legal instruments to protect themselves from domestic violence.

In any case, however, police or civil protection orders are successful to the extent that they are respected by the offenders and that the consequences of breaching restraining conditions actually deter abusers. In support of this point, Goodmark (2012: 93) observed that protection orders can effectively protect "women from further abuse if there is credible reason that men fear the ramifications that will result from their violation." The most apparent consequence of disregarding protection order conditions is immediate arrest and re-arrest since the order is served with a suspended warrant for the arrest of an offender who fails to comply.

Unfortunately for Ndaou married women, there is little evidence that Ndaou men are afraid of the consequences of breaching protection orders as most perpetrators can easily avoid arrest by leaving Zimbabwe and cross into Mozambique for some time. Unlike it is with other criminals such as murderers, rapists, drug and human traffickers who can be pursued even beyond national boundaries, there is no evidence that domestic violence perpetrators are ever reported to the international police (Interpol) organisation for arrest, repatriation and prosecution in their countries of origin. This means that most abused women, whose husbands can cross into neighbouring countries after committing domestic violence, find it worthless to even turn to the legal justice system in Zimbabwe in their efforts to end domestic violence. That is why it has been argued in this thesis that the DVA has not brought relief for married Ndaou women.

7.8 The Domestic Violence Act breeds resilience (*kugarira vana*)⁶⁶

The main contention has been that the Domestic Violence Act, as part of the criminal justice approach to ending the domestic violence problem, is not only inadequate but inappropriate in African traditional communities. This study has shown that the problem of the DVA lies in its focus on enforcing the substantial separation of the abused from the abuser for the supposed good or benefit of the abused. It has also shown that this approach creates difficulties for Ndau women who find that reporting domestic violence brings more trouble for them. For this reason, it can be argued that since its inception in 2007, the Domestic Violence Act has helped some women specifically in consolidating Ndau married women's determination to suffer violence in their married lives through resilience.

For argument's sake, resilience can be in two dimensions. On one hand, it can refer to resistance to destruction that relates to one's ability to protect their integrity under strong pressure. On the other hand, it can mean the ability to build or create a life worth living despite adverse circumstances. It can be stimulated, maintained and constructed by different social actors, and to this end, it is important to know and understand the various aspects that constitute resilience. Since reporting domestic violence is not an open option for Ndau women, many women have developed resilience as a management and survival strategy. This resilience comes from the position that Ndau women have a strong attachment with acquired property, particularly the children they bear in their marriages.

It has been outlined in chapter 4 of this thesis that, in general, Shona women are socialised to be long-suffering in preparation for several difficulties in their married lives. On this point, Chuma (2012) suggested that one of the marriage difficulties that girls anticipate in marriage is domestic violence or an abusive husband. Thus Ndau girls are prepared to marry, bear children and stay in a marriage, however abusive the marriage might turn out to be. In support of this point Chireshe (2015) noted that most of the participants she interviewed to find out why they remained in abusive relationships had children. She further claimed that most of them made a similar statement that underlined their commitment to remain in the marriage regardless of the extent of abuse they suffered. According to Chireshe (2015: 265), each of the women she interviewed invariably said, "I cannot imagine getting divorced and leaving my children behind. No one will be able to look after them as I do. *Ndinogarira vana vangu*."

⁶⁶ The bond between a Ndau mother and her child (ren) is very strong. Child bearing for a Ndau woman is synonymous with making an oath of allegiance and a commitment to stay in marriage for life. Thus most women in abusive relationships sacrifice their safety and comfort for the sake of their children, especially when the children are still young.

(literally translated to ‘I will stay for the sake of my children’). It is from this determination that many married women remain resolute to stay in abusive relationships. The study has maintained that Ndau women therefore stay in abusive marriages not on condition that their husbands treat them as equals but for the sake of their children.

Among the Ndau *kugarira vana* (staying for the children) is a common practice and survival dictum of most married women in Zimbabwe. The essence of the practice is predicated on two major aspects concerning a Ndau woman’s life: marriage and child-bearing. With reference to marriage, Mapuranga (201:50-51) observed that Ndau women attach a lot of importance to being married and staying in their marriages for the rest of their lives notwithstanding abusive circumstances. In support of this, she said, “[e]very woman in Chipinge is expected to get married some day, and her worth is measured through motherhood”. This suggests that it is every Ndau girl’s lifetime wish to grow up and get married and stay in that marriage for its own sake, as culture dictates. In addition to the information emphasising Ndau women’s resilience, one of Mapuranga’s informants cited in Chapter 3 Section 3.4.3.2 of this study confirmed that an unmarried (or widowed/ divorced) woman is virtually of no value in Ndau community. Family and community members all expect that all women be married and bear children. Therefore, once a girl remained single or unmarried beyond what Tatira (2010: 23) described as the “expected marriageable age”, she would be interrogated by anxious family and community members asking why she was not getting a suitor.

Apart from longing to get married, Ndau women also cherish being mothers through child-bearing. This is what Musa Dube (2003: 188) observed to be the general belief of most African women where she said “women are good only when they become mothers and even better esteemed when they give birth to sons”. Dube’s point is that once a woman is married that is not enough achievement until she gives birth. But even then, her life does not become worthwhile until she has given birth to children in that marriage. She then feels secure that she can stay in that marriage for life because of the child factor in the marriage. This is where the concept of staying in marriage for the sake of children (*kugarira vana*) comes from. Most women regard child bearing as an investment into their marriages. Therefore, however abusive the husband or intimate partner may become, most married women with children stay in the marriage, preferring to sacrifice their lives for the sake of their children. This attitude makes it difficult for abused married women to resolutely go out to the police to report abuse by husbands as required by the Domestic Violence Act. In the next section some of the

positive and negative ethical implications of enforcing DVA provisions among the Ndau are given.

7.9 Ethical implications of enforcing Domestic Violence Act provisions

It has already been mentioned that the Domestic Violence Act has some provisions whose implementation raise some ethical consideration. Ethical implications of enforcing the DVA refer to the implicit morality generated by implementing some of the DVA provisions among the Ndau. There are positive and negative ethical implications that arise from enforcing some the DVA provisions as explained below. In this section the ethical theory of consequentialism is used to briefly explore the implications of enforcing some DVA provisions. Consequentialism is a theory of normative ethics which holds that an act or policy is only moral if it results in good consequences. The DVA can be subjected to a consequentialist scrutiny in order to evaluate its moral worthiness and culpability.

7.9.1 Positive implication

One positive outcome of the introduction of the Domestic Violence Act in Zimbabwe has been the exposition of intimate partner violence as a crime of the same magnitude as common physical attack of one human being by another. Prior to the introduction of the DVA, domestic violence in general and intimate partner violence in particular was often treated as a private matter which needed no public attention. However, when the DVA was introduced, it made it clear that violence in intimate relationships deserved the same public attention as any assault cases. This is why most stakeholders in the fight against domestic violence have embraced the DVA. For example, the media in Zimbabwe has been instrumental in exposing cases of domestic violence that happen within different communities they can reach so that due legal processes are taken to punish perpetrators and protect survivors. The extent of media coverage of domestic violence cases has already been explained in chapter 5, section 5.4 of this study. However, the DVA has also brought some negative consequences upon society as explained in the next sub-section.

7.9.2 Negative implication

The Domestic Violence Act has had some negative consequences emanating from the implementation of some of its provisions. One of the provisions that has produced negative consequences is mandatory reporting of domestic violence cases leading to the arrest of perpetrators. The provision on the arrest of a domestic violence perpetrator has led to underreporting of domestic violence cases because abused women have not been able to live with the results. Some women may never disclose the abuse they suffer in intimate

relationships fearing that their abusive husbands may be jailed. In her research on why some women do not report domestic abuse, Manzini (2016) gathered that women's dependency on their husbands was the biggest hurdle. Invariably, dependent women interviewed said that they would not report domestic violence by husbands or partners because if the perpetrator were arrested and sent to jail, everything would crumble for the women and their children. This is why some experts in the field of domestic violence such as Arila Hyman (1997) noted that the requirement for mandated reporting is not in the best interests of the domestic violence survivor because it may lead to more violence and increase the survivor's reluctance testify against the abuser during prosecution in court.

Furthermore, concerning the negative consequences of reporting domestic violence to law enforcement agents, Hyman (1997:2) said:

Many survivors of domestic violence believe that calling the police is not a safe or preferred response to their situation. If they fear that reporting will place them and their children in greater danger, survivors may not seek needed medical care or may not tell their providers about the abuse.

This implies that most abused women may not be comfortable to turn to the DVA for protection. In the case of women in traditional communities, sometimes the facilities and manpower that should be in place to help them are not readily available. This means that most of the women in traditional communities become exposed and more vulnerable to abuse once they report domestic violence. Thus, mandatory reporting may create expectations of services and protection that cannot be met, thereby decreasing survivor trust in the legal system as it may diminish and compromise survivor safety.

7.10 Conclusion

The chapter has offered analyses of the Domestic Violence Act focusing on its suitability and sustainability as a response to the domestic violence problem among the Ndaou people. It has been argued in this chapter that legislation on domestic violence among the Ndaou has not met the goals it was set to achieve owing to a number of critical issues its implementation raises. Much of the inefficacy of the DVA comes from its 'one-size-fits-all' approach to the domestic violence problem across the country. This is because the diversity of women's experiences shows that the formulation of restrictive laws in consultation with the local people is an important step towards ending social evils such as domestic violence.

The analyses in the chapter have pointed out that if legislation on domestic violence is radical and appears to be in direct conflict with the cultural values of the people it intends to protect,

then it cannot only pose a threat to community cohesion but it also risks being ignored by the people it seeks to serve. This has been shown through claims that pointed out that different women have different goals, aspirations, concerns and priorities which are not necessarily catered for by the Domestic Violence Act. As a result of this diverse array of interests, multiple strategies and approaches that recognise the different interests, lived realities and contradictions among women of different classes, religions and cultural backgrounds need to be developed.

Regarding difficulties in using the DVA to end the domestic violence problem, the chapter has pointed out that Ndaupatriarchy, disguised as culture, makes it difficult for women to effectively use provisions from legislation on domestic violence to address intimate partner violence. The chapter has also argued that patriarchy often hides behind culture and exploits women. It has further shown that the DVA is paternalistic and that this paternalism makes it difficult for Ndaupatriarchy women to use the law to fight domestic violence in line with what the law emphasises should happen to culprits may not be what the abused women expect and need. Overall, this chapter has revealed that the quality of Ndaupatriarchy women's lives is compromised because they cannot make use of a law that seems to increase their vulnerability to violence. This comes from the fact that once a woman reports domestic violence to the police, she remains in the home thereby exposing herself to more violence from the abuser upon his release from police custody. The major impediment to the use of the law is lack of support services to ensure the survivor's safety during and after the prosecution of the abuser.

From the analysis made using different lenses in this chapter it emerged that traditional Ndaupatriarchy women value marriage as being more important than their personal safety and comfort, especially when they have children born in that marriage. This is demonstrated by the fact that Ndaupatriarchy married women prefer staying in abusive marriages for the sake of their children. Thus, some women may endure domestic violence in all its manifestations and not report such abuse in order to preserve their marriages. It also emerged that some abused women will have no option but to withdraw their accusations because of fear of more violence from the perpetrator as well as blame from family members if the perpetrator is prosecuted and jailed. In general, the Ndaupatriarchy believe that all domestic violence issues should be referred to family members for arbitration instead of involving the police and the civil courts. It is this attitude which makes it difficult to effectively use the DVA to end domestic violence among the Ndaupatriarchy. As a result, the DVA indirectly contributes to the poor quality of life for most Ndaupatriarchy married women.

Having analysed the Domestic Violence Act and coming out with the challenges outlined in this chapter, the next chapter focuses on the way forward towards overcoming or ending domestic violence among groups that uphold traditional beliefs and carry out cultural practices. The chapter presents the study's research contribution in the discourse on domestic violence and it can be overcome among people whose cultures are still strong and dominant over legal reforms such as the DVA of Zimbabwe.

CHAPTER EIGHT: TOWARDS AN ETHICAL TRAJECTORY FOR DOMESTIC VIOLENCE IN ZIMBABWE

8.0 Introduction

So far the thesis has argued that domestic violence is a problem that is prevalent throughout Zimbabwe and that patriarchy, though disguised as culture, is the biggest stumbling block in ending it. It has revealed that the high prevalence of domestic violence in Zimbabwe prompted the government to take action by introducing the Domestic Violence Act (Chapter 5: 16) as a law to end the problem. The thesis has also pointed out that domestic violence has numerous causes which are highlighted in the Act itself. It has been highlighted that in some communities, culture impedes the implementation of the Domestic Violence Act provisions designed to end domestic violence. Above all, the study has observed that Zimbabwe's legislation against domestic violence is a contested legal response to the domestic violence problem across the country. This view comes from how the law has been used and how it has not made significant differences within communities where the people still strongly practise their culture.

The major argument presented throughout this study has been that the current law on domestic violence needs improvement if it is to help all women who are entangled in the domestic violence snare. In this chapter the thesis proposes that one way, though not necessarily the only way, is to make the law more inclusive to accommodate different cultures as well as put into consideration women's preferred living experiences within their cultures. The way the current legislation against domestic violence regards culture makes it alien to the people. It would appear that the current Domestic Violence Act does not touch on the lives of women from different cultural environments in the country. As such, it has been argued in this study that the current legislation on domestic violence in Zimbabwe has not benefitted Ndau women. The suggested reason for failure was, *inter alia*, that the current legislation is based on theoretical frameworks drawn from occidental cultures to ending conflict in an African setup. This calls for a new paradigm on fighting domestic violence in Africa. Thus in the next section, this thesis proffers a new theory upon which legislation on domestic violence in Zimbabwe can be built.

8.1 Towards an African feminist jurisprudence in fighting domestic violence

Having shown that the current legislation on domestic violence in Zimbabwe has not adequately reached out to the ordinary Zimbabwean woman located in a strong cultural

environment, I proceed to propose a new paradigm. This section begins by conceding to the fact that the process of developing an African or specifically a home-grown Zimbabwean theory of domestic violence jurisprudence is not only complex but cannot also be done in isolation. For this reason, it is worthwhile to mention that already most African governments have drawn inspiration from the contributions of Western ideological movements such as feminist legal theory, critical legal theory and critical race theory to inform their legal systems to institute laws to protect women. For instance, Kumaralingam Armirthalingam (2003: 7) acknowledged that the feminist legal theory, though built on Western ideology on the rights of women in society, provided “a better understanding of the nature of domestic violence and how it is distinguished from other types of violence”. By this statement he meant that the feminist theory was used to identify and explain domestic violence as a problem that disproportionately affects women.

Still on the significance of feminist legal theory in the domestic violence discourse, Nancy Dowd (2008: 201) also noted that feminist legal theory managed to identify and expose the major causes of domestic violence in many societies. Interestingly, Dowd emphasised that “men, patriarchy and masculinity” are the major impediments in the implementation of legislation against domestic violence particularly in Africa. Thus this approach to legislation on domestic violence has made it possible for some African countries, including Zimbabwe, to embrace gender, power and equality issues in laws such as the DVA under review in order to improve the welfare of women.

However, Armirthalingam (2003: 7) was quick to point to us the limits of Western feminist theories with reference to legislation on domestic violence in African communities. He argued that, while the feminist perspective on domestic violence argued that violence between men and women is caused by imbalanced power relationships, it also demonstrated that “the legal response to domestic violence cannot always be based on procedural equality; rather, it has to promote substantive equality”. This means that in Africa, the Western feminist legal theory only succeeded in pushing for policies that focus on the equality between men and women in formal situations such as awarding equal employment opportunities for men and women. However, Armirthalingam noted that equality policies did not work in relational situations because they overlooked the centrality of culture in influencing the way African men and women relate to each other. Thus, the limits of the Western feminist legal theory indicated above call for a new feminist legal theory that

considers African women's preferences and lived experiences as part of the solution to the domestic violence problem in the communities they live.

On the same note, Yvonne Jooste (2011: 5) also argued that while the Western feminist legal theory applied in Africa made significant strides in reviewing discriminating laws in line with gender issues in Africa, it is inadequate. Her concerns are aptly captured and expressed where she said:

Part of the feminist legal project is the admittance of the limited ability of legal change to radically transform the lives of women as well as radically transforming gender relations. This includes the awareness of the law as a masculine and conservative system. Yet, the immense social power of law renders a feminist engagement with it necessary.

In the above quotation, Jooste (2011) admitted that the current feminist legal frameworks have failed to transform African women's lives in the best way African women would have wanted because masculinity and conservatism still influence most of these women's lives. This means that meaningful legal interventions on the way women and men relate in the home should be based on processes that recognise women's lived experiences and the consideration of local culture not entirely as problems but also as part of the solution. This is a clear admission that the feminist legal theory generally failed to create laws that effectively represent and cater for African women's experiences in their broad and substantially powerful cultural settings. In the face of such inadequacy, a feminist theory based on African women's lived experiences becomes necessary.

8.2 African feminism: the basis of African feminist jurisprudence

In Chapter 7 the study used feminist jurisprudence theory to analyse the Domestic Violence Act. That usage was merely descriptive as it served to illustrate that the Domestic Violence Act is somehow inadequate in addressing the needs of Ndau women. This came from the observation that the DVA does not fully subscribe to expectations of most Ndau women. In this section feminism, from an African perspective, is used to prescribe or propose a new theory. The proposed new theory is known as African feminist jurisprudence and the hope is that the theory upon which legislation against domestic violence in Zimbabwe can be based.

It is important to mention that African feminist jurisprudence is born out of two broad concepts which are 'Africa' and 'Feminism'. According to Rudo Gaidzanwa (2011:18), the term 'Africa' generally refers to the geographical concept which connotes and unites the

various people who share the continent as a location for living and working. This means that Africa is inhabited by people of different cultural environment and it also suggests that the kind of feminist legal theory for Africa should significantly differ from that of the West or any other parts of the world. This is why Tawanda Sachikonye (2010) avowed that African feminism should differ from other feminist approaches pertaining to women's issues across the world. He insisted that African feminism is a theory which successfully contested that the Western feminist theory was insufficient to influence achieve legal transformation in favour of African women from different cultural settings.

Furthermore, African feminism is credited for managing to disapprove the Occidental feminist approach which often regarded African women as a problem to be studied through Western feminist lenses. In contrast to this perception, African feminism sought to keep away from stereotyping African women as troubled persons who always required external rescue packages. This is to suggest that first and foremost African feminism acknowledges that African women are people capable of identifying their own priorities, preferences and can set their own agendas. Ultimately, African feminism portrays African women as strong, determined and innovative agents and decision-makers in their specific cultural contexts. It also advocates for the empowerment of African women so as to allow them to deal with their problems so as to live their preferred lives.

8.3 Defining African feminist jurisprudence

The limits of Western feminist theory when applied to different African contexts calls for the configuration of an African feminist theory which eventually becomes the basis for legal reforms that address African women's relational problems such as domestic violence. African feminist jurisprudence can be defined as a model of legislation on gender issues that is shaped by African women's contexts and lived experiences. The proposed theory is born out of two theories, that is, African feminism and feminist legal theory which have been highlighted already in Chapter 2 of this thesis. It is a theory which allows the legislature in any African country to come up with an African based legal framework that is less intrusive into and dismissive of the local people's culture. This is a theory which maintains that laws that are meant to benefit grassroots people in Africa but fail to involve the same intended beneficiaries at formative stages as participants, often face challenges at implementation levels. That is why this thesis proposes that African feminist jurisprudence be a new paradigm to inform legal strategies aimed at fighting domestic violence among traditional communities such as the Ndaou.

8.4 Characteristics of African feminist jurisprudence

The proposed theory for the re-construction of the DVA of Zimbabwe is African feminist jurisprudence which has the following characteristics; communal existence, compassion and harmony which are explained below.

8.4.1 Centrality of communal existence

One of the most important aspects of African feminist jurisprudence is the idea of members of the community being there for each other at all times. This is premised around the concept of *hunhu/ ubuntu* highlighted section 3.8 of chapter 3 above. In this context, communal existence implies collective thought and shared experiences. This is in line with what Leopold Senghor (1966: 5) pointed out long back where he maintained that traditional African society was based both on the community and on the person and was also founded on dialogue and reciprocity. By this Senghor meant that in as much an African could exist as an independent individual, he or she needed to exist within the context of his or her community. Thus, there is need for constant dialogue between the individual and his or her society. In the same vein, the DVA should be informed by the idea of open dialogue between individuals affected and the community in which domestic violence is taking place.

The African feminist jurisprudence theory suggests that various institutions such as legal, political, economic and others should all be set up in pursuit of certain commonly shared values and goals, that is, common goods which a human society desires to achieve for all of its members. With reference to the DVA, African feminist jurisprudence maintains that, instead of condemning traditional community social structures as causative agents of domestic violence, the DVA should engage these structures into dialogue for the benefit of survivors of domestic violence. This implies that African feminist jurisprudence is sympathetic to the plight of women survivors of domestic violence and aims at working to address the root cause of the intimate partner violence problem.

8.4.2 Compassion

African feminist jurisprudence focuses on understanding why African women living in communal areas are not readily accessing and using the DVA to protect them from intimate partner violence. In this regard, the theory places due attention on legal reforms that care to investigate women's plight. From that approach, the theory seeks to understand the vulnerable women's concerns, fears and anxieties in order to work out means by which to help the women live violence-free lives in their communities.

8.4.3 Harmony

The new approach to ending domestic violence embraces all cultural values and subjects them to scrutiny. This is an expression of harmony or togetherness which serves as the mainstay of most African communities. Gyekye (2010) stressed this point where he maintained that African social ethics emphasises harmony. Its cohesion is articulated in many proverbs that put more prominence on the importance of reciprocated cooperation, collective accountability and cooperation. African feminist jurisprudence therefore has the potentiality to bring together in harmony the views of different cultural groups on how best they can help in minimising and eventually ending domestic violence within their communities.

8.5 Engaging African feminist jurisprudence to end domestic violence

Having shown the limitations of the Western feminist legal theory, the study proceeds to present the African feminist jurisprudence as the proposed new theory for crafting a legal response to deal with domestic violence problem within traditional communities such as the Ndau. From this section onwards, the study prescribes how the theory works to keep incidences of domestic violence in traditional communities to the minimal levels. The first important aspect of African feminist jurisprudence is the recognition of the centrality of culture in crafting laws in order to avoid clashes between the two.

8.5.1 When culture and the law meet

The thesis has so far demonstrated that ending domestic violence in African communities is a complex task that cannot be left to African governments alone to achieve. It has argued that the biggest challenge in ending domestic violence comes out at the implementation of the provisions of the law in communities where patriarchy, using the guise of culture and tradition, controls local people especially women. Consequently, the study has maintained that legislation against domestic violence in Africa in general and in Zimbabwe in particular faces implementation challenges where its provisions fail to minimise domestic violence. This is the problem because whenever culture and the law meet, culture has always triumphed. Apparently, when faced with the choice between culture and the law people always choose culture ahead of civil law provisions. Though it is understood that culture constantly changes, the change is gradual. For this reason, it has been contended in this study that the Domestic Violence Act of Zimbabwe is therefore a grand piece of legislation which seems to work on paper but faces implementation challenges where it clashes with the culture of the people who are supposed to use it. For example, the Anti-Domestic Violence Council which is provided for in the DVA is inadequate in dealing effectively with the problem. Its major incapacitation arises from the fact that membership into the council is limited to at

most three years. This means that the council will always have new members, making it difficult to effectively engage traditional communities.

From the discussion of Ndau traditional beliefs and cultural practices presented in Chapter 4 of this thesis, it emerged that intimate partner relationships are deeply immersed in the local people's culture. With reference to marriage, it emerged that culture requires that the marrying parties' families and community members play indisputable roles towards the success or otherwise of such relationships. Furthermore, the analysis offered in chapter 6 of this study evidently showed that legislation on domestic violence is largely paternalistic. As a result, it has been argued that the paternalistic nature of the DVA makes it clash with the culture of the people it seeks to protect. The analysis showed that when culture and the law clash, it is culture which triumphs. The African feminist jurisprudence approach will allow women whose culture is strong and influential in their lives to be involved in the crafting of laws that directly affect them. In the case of the Ndau, it has been shown that Ndau women understand that they are differently equal to their male counterparts, yet the DVA does not recognise the significance of cultural differences between men and women.

8.5.2 Gender in Ndau community

What has been identified in this study as the major undoing of the Domestic Violence Act is its emphasis on the feasibility of achieving substantive equality of women and men before the law in a society where patriarchal values are dominant. Ndau culture has been described as strong and unyielding to modernity and this makes it difficult to achieve equality based on a law that has no roots in the culture of the people whom it is supposed to protect. For this reason the thesis prescribes that African feminist jurisprudence should present a clear distinction between the different rights and obligations of women and men in intimate relationships.

To explain the difference between women and men in traditional societies, the thesis is suggesting that social areas where equality of women and men is emphasised by the DVA should vary according to the cultural context in which domestic violence takes place. For instance, domestic violence among the Ndau has been identified to emanate from the marriage institution where women do not have much say. This means that in the area of marriage, particularly where culture requires men to pay bride wealth, it is expected that men work to meet that cultural obligation and respect women as worth the bride wealth they pay. In the event of a conflict between husband and wife, help to resolve the differences could be

sought from within the institution where the conflict has arisen. In this way, Ndau women have an opportunity to express themselves within the framework of the importance attached to them by their culture. In its present state therefore, the Domestic Violence Act falls far too short to recognise and accommodate the differences between Ndau women and men.

The reason for this deficit within the DVA is that it is based on the proposition that a law based on a theory of formal equality between men and women can ensure equal justice and expect equal outcomes. But the reality in some African communities is that women and men are different in the eyes of their culture. This means that gender discrimination of women by men in intimate relationships should be fought by addressing the gender differences recognised and condoned by the culture. This difference cannot be ignored if the law is to achieve its goal of bringing peace in families. Thus the legislature needs to do more than enacting a statute based on formal equality between sexes in a patriarchal society because it cannot be effective since the society in which it operates encourages and tolerates gender biases. This leads to the next section which prescribes how the new paradigm will approach the domestic violence problem among the Ndau.

8.5.3 Delineation of domestic violence in Ndau community

The study has argued that one of the problems with Zimbabwe's Domestic Violence Act is that it defines domestic violence broadly. For example, Section 4, sub-section (2) (a) and (b) of the Domestic Violence Act refers to what African feminist jurisprudence would refer to as 'non-violent issues'. The Domestic Violence Act extends the definition and scope of domestic violence to include the use of terms such as "emotional", "verbal", "psychological", "economic", "intimidation" and "stalking" to describe some actions as acts of domestic violence. But it has been shown in this study that the acts mentioned here are deeply imbedded in the traditional beliefs and cultural practices of the Ndau. It also emerged that within the broad milieu of Ndau cultural practices, the 'non-violent issues' that are included in the definition of domestic violence are regarded as minor or insignificant and do not constitute acts of domestic violence in Ndau culture at all.

Thus, when the Domestic Violence Act defines domestic violence so broadly, it makes every instance of partner conflict an act of domestic violence that should be brought to the attention of law enforcement personnel. The assumption is that publicising and reporting such incidents will eventually prevent the escalation of domestic violence in the country in general and among cultural groups in particular. However, basing on the analysis done in chapter 7 of

this thesis, the prescription being made in this regard is that the Domestic Violence Act should re-visit its definition of domestic violence since the broad definition has not been understood and accommodated by ethnic groups such as the Ndaou. This study therefore subscribes to the view that the current legislation on domestic violence muddles issues as it tries to come up with uniformity. Instead, if the proposed African feminist jurisprudence is adopted, a clear separation of acts of domestic violence which fall directly under the Criminal Law (Codification and Reform) Act (Chapter 9: 23) and those that do not, should be provided. The new Domestic Violence Act would not focus on criminalising all acts of domestic conflict that take place among ethnic groups. This would allow the Ndaou to separate acts of domestic violence in accordance with their cultural perceptions of violence in the home front.

The proposal being made with regards to the framework of which acts of domestic violence are criminal and which one are not is meant to allow the Domestic Violence Act to be effective as a criminal piece of legislation. The idea is to separate acts that involve contact such as physical and sexual violence, which are clearly criminal acts of domestic violence, from those that do not involve contact. Thus the law should prosecute physical and sexual violence perpetrators whoever they are under whatever circumstances. What is happening with the current Domestic Violence Act is that even cases that do not involve direct physical contact between intimate partners are treated as criminal cases and yet their prosecution is problematic. The study admits that ‘non-violent acts’ of domestic violence could be worse in terms of their overall effects on the survivor but they could be addressed through effective counselling using the institutional resources found in the culture in which such the domestic violence happens.

8.6 Towards a DVA informed by African feminist jurisprudence

It is important at this juncture to suggest what legislation against domestic violence should involve in view of communities with strong culture. This section recommends a DVA that is shaped by the theoretical framework of African feminist jurisprudence. These suggestions are directed at policy makers, gender activists and all players in the gender equality discourse.

8.6.1 Make the Domestic Violence Act less intrusive

The thesis has demonstrated that the Domestic Violence Act is, for the most part, paternalistic in its approach to dealing with domestic violence in Zimbabwe. This is to say that the Domestic Violence Act is intrusive. The implication of this approach is that actions that are meant to enforce it may lead to undesirable outcomes. Once this happens, the result is the

worsening of intimate partner or marriage conflicts. On this aspect, African feminist jurisprudence seeks to make the Domestic Violence Act less invasive in the lives of ordinary people so that they become comfortable to use it. The Ndau people, for example, have been described as apprehensive in using the Domestic Violence Act to fight domestic violence since they believe that their culture prepares them to live with domestic violence. The thesis therefore suggests that using African feminist jurisprudence as a foundation for the Domestic Violence Act would make the Domestic Violence Act less intrusive and allow people to make choices and to live by those choices. In other words, the Domestic Violence Act should be amended in such a way that it recognises that certain people, particularly married women, are persons who may choose to live with domestic violence in accordance with their culture. This recognition (and not the current denial) would be the entry point of the Domestic Violence Act to help women manage their living conditions without annihilating their traditional beliefs and cultural practices. This recognition would mean that women with domestic violence would be treated as ‘survivors’ mainly because they have their own surviving or coping strategies which need to be understood, scrutinised and improved on. Thus, the new paradigm means that the government needs to take the initiative to reach out to many parts of the country to solicit for people’s cultural perceptions on domestic violence. This would lead to a Domestic Violence Act that is understood and owned by the communities whose cultural practices foment the domestic violence problem among them.

8.6.2 Engaging men for positive masculinity

It was argued in chapter 5 that Ndau women and girls are disproportionately affected by domestic violence because their intimate relationship environment is predominately patriarchal. In a patriarchal community such as the Ndau, men are heads of families and institutions. Some men rule and lead their families and institutions under them by virtue of the power invested in them through tradition as cultural and religious leaders. This thesis therefore argues that through African feminist jurisprudence African governments should engage men together with women instead of isolating men and pitting them against women. This is very possible because by using African feminist jurisprudence, men can be involved or integrated in discussions that aim at changing their attitudes towards what it is to be male. Dowd (2008: 209) admitted the possibility of patriarchy to accommodate women’s experiences and preferences in the new domestic violence trajectory. In support of this positive engagement, she said:

Masculinity ... is not a thing that one has; rather, it is a set of practices that one constantly engages in or performs. In that sense, it is interactive: the

individual relates to the social/cultural construction, but the individual also remakes and changes it, potentially, rather than simply following the script. It is fluid, not fixed, neither universal nor timeless, but rather changeable and malleable.

This means that masculinity, which is the bedrock of patriarchy in most African traditional communities, is a social construction which can be re-constructed to effectively fight against gender-based violence. What is needed is to change the narrative of regarding gender-based violence as a women's issue. It probably comes from the tendency to view gender as synonymous with femininity and the issue of gender-based violence as a women's problem that men have been left out when they should be active in the campaign against domestic violence. In most campaigns such as the 16 International Days Against Gender-Based Violence, messages on gender-based violence come up strongly supporting women and are usually aimed at helping women change their circumstances when men should also be active participants. The reality on the ground shows that it is no longer a fact that women are the only group disproportionately affected by gender-based violence. Men also need to change the lethargic attitude they display whenever issues on gender-based violence are brought to the fore for discussion and become the game changers to ensure a violent free society. That is why in the quotation above Dowd (2008) suggested that African feminist jurisprudence can be used because it recognises that the success of any relational legislation depends on the involvement patriarchy in the country in order to make the agenda of ending domestic violence common to all. It becomes imperative therefore to involve masculinity as part of the solution instead of treating it as a problem to be eliminated.

The study has also revealed that domestic violence is widespread among the Ndaou, as shown in chapter 5. It has also been argued that the current Domestic Violence Act clearly blames traditional beliefs and cultural practices for perpetrating violence against women and girls, leading to an impasse on how the prevalence of domestic violence can be minimised. The problem arises from the failure by the Domestic Violence Act to recognise that traditional beliefs and cultural practices are inseparable from patriarchy which, in turn, is in control of society. As a result, the Domestic Violence Act assumes that men are the main perpetrators of domestic violence. On the other hand some men accuse the Domestic Violence Act for disregarding culture. In view of this scenario, this thesis suggests that the government should engage patriarchy in various parts of the country in order to meaningfully involve them in ending the domestic violence problem nationwide. It would mean that the strengths and weaknesses of patriarchy will be considered before new domestic violence legislation is

passed. In this way, the clash between culture and the law can be avoided. Once that has been achieved, the nation would be assured that the fight against domestic violence using legal means would not continue to haunt and disadvantage women. Through African feminist jurisprudence, ending domestic violence would be a national initiative premised on the government's understanding and appreciation of patriarchy as leading role-players in the fight against domestic violence across different communities in the country.

8.6.3 Establish survivor advocates and discourage prosecutor reluctance

Throughout the study, it has been observed that sometimes abused Nda women and girls report physical and sexual violence only to law enforcement agents. However, it was also noted that the same abused persons often recant their accusations before or during the prosecution of abusers. In the majority of cases, prosecutors are often exasperated when survivors withdraw their cases. As a result, prosecutors sometimes reject survivors' disavowals and pursue filed cases against the wishes of survivors. This often results in the collision of survivors' wishes and what the Domestic Violence Act requires from them. Since African feminist jurisprudence focuses on accommodating different women's experiences, it would allow domestic violence counsellors to consult women on what they really desire. Thus, the Domestic Violence Act should also make provision for what I refer to as 'survivor advocates'. These are people responsible for assisting survivors not only to cope with domestic violence but also comply with the provisions of the Domestic Violence Act on reducing undesirable aspects of domestic violence in the home.

With reference to the prosecution's reluctance to respect survivors' wishes to withdraw cases, this thesis recommends that thorough the consideration of survivors' feelings and desires whenever they so wish to drop charges against abusers should be respected. Forcing survivors to pursue cases they would have voluntarily decided to discontinue, preferring to have the violence case be dealt with within the family setup, amounts to treating domestic violence survivors with no respect. This, in itself, is a violation of domestic violence survivors' basic human right to autonomy and self-determination.

8.6.4 Handling of domestic violence cases should change

As pointed out earlier in section 4.5 of chapter 4 in this thesis, violence against women and girls in Nda communities frequently involves adherence to Nda traditional beliefs and cultural practices. At the same time, the legal system regards culturally sanctioned acts of domestic violence as criminal cases. This usually has the overall effect of pitting the abused

against the abuser as if they were strangers to each other. Whenever this happens, domestic violence survivors rescind accusation and express desire to go back and stay with the abuser to avoid further violence. But magistrates are not amused by this attitude and are often reluctant to accept withdrawal. Instead, they go on to pass judgments that appear to be in the interests of the abused. This thesis has argued that it is the lack of understanding of the local people's worldviews by civil courts that has led them to work within the criminal law framework for all domestic violence cases. In this regard, it is my suggestion that through African feminist jurisprudence magistrates can critically engage in dialogue with the traditional beliefs and cultural practices of the survivors. This will provide the missing link between the expectations of the Domestic Violence Act provisions and the lived realities and experiences of Nda women and girls.

8.6.5 The problem with radical overhaul

With reference to the DVA's provision on police arrests without warrants and the granting of protection orders, the government should note that most women and girls in marriage or intimate relationships are sometimes financially dependent on their male counterparts. As outlined in chapter 4 of this study, most men leave their wives or intimate partners behind as they seek employment in neighbouring countries. It has also been argued that many Nda married women stay in abusive relationships because they fear being homeless or cannot support themselves and their children if they leave. Given these circumstance and living realities of Nda women and girls, it has been suggested that African feminist jurisprudence would make the Domestic Violence Act drop the separation provision which is not in tandem with the local people's culture. The current separation provision of the DVA has been ineffective because, in reality, Nda women and children hardly agree to separate with the abuser for fear of losing alimony during separation. Thus, for Nda women to benefit from legislation on domestic violence, this thesis has suggested that the DVA should not radically overhaul Nda cultural practices by claiming to be able to look after survivors separated from their abusers. The settlement of intimate partner or marital conflicts among the Nda should not be exclusive to the DVA and its provisions. Instead, legislation on domestic violence should be inclusive and restorative in both theory and practice. The point of emphasis in this recommendation comes from the realisation that the current legislation on domestic violence is more reactionary to the abuses than correctionary. This approach further exposes Nda women and girls to domestic violence.

However, there are limits to what the law, even when amended along the recommendations of the proposed theory, can achieve in fighting domestic violence. It has been pointed out earlier

on in section 6.4 that domestic violence arises from a variety of situations ranging from culture, economic conditions to political climates. As a result of this multi-dimensional nature of the domestic violence problem, feminist jurisprudence is not necessarily a panacea to the problem.

8.6.6 Police agents need to understand culture

The thesis has already noted that the current Domestic Violence Act is inappropriate to settling domestic violence among the Ndaus mainly because the police indiscriminately use a 'one-size-fits-all' approach. Using African feminist jurisprudence would mean that the police need to be responsive in a culture-sensitive manner to the domestic violence situation they handle. Thus this thesis recommends that the Ministry of Home Affairs, under which the police department in Zimbabwe falls, should deploy culture-sensitive police agents to handle domestic violence cases. This means that there should be a domestic violence survivors' unit manned by police officers who come from the cultural environment or area in which the police post is situated. This is what the African feminist jurisprudence approach recommends as the best way forward because of the sensitivity of the wishes and expectations of domestic violence survivors from the Ndau culture.

In addition to training and deploying culture-sensitive police agents, the thesis also observed the need to avoid the use of force as represented by handcuffs on domestic violence perpetrators. For example, handcuffing a domestic violence perpetrator has a traumatising effect on the family. At the same time, it gives the impression that the government has protective masculine power which can be used forcefully to protect vulnerable women in the community. As discussed in chapter 6 of this study, when the police display masculine protective power by arresting perpetrators, it worsens the plight of domestic violence survivors as abusers often fight back government masculinity by becoming more violent on survivors. Thus the police should not use violence as a means to end domestic violence.

8.7 Conclusion

This chapter has outlined and presented the way forward in the fight against domestic violence in traditional African communities. It has proffered the African feminist jurisprudence as a basis for the construction of a new domestic violence trajectory in Zimbabwe. The chapter has outlined how the legislature and all stakeholders ought to adopt African feminist jurisprudence in all efforts to end domestic violence in communities with strong cultural influence. This is the study's small theoretical contribution to the domestic violence discourse. It has been suggested so far that African feminist jurisprudence should be

the grounding theory for understanding how the Ndaun conceive of and delineate domestic violence in their culture. The theory is preferred for being all-encompassing and capable of making the DVA less intrusive in the lives of the people it seeks to protect.

The chapter has also argued that African feminist jurisprudence has the advantage of engaging with the patriarchy nationwide so as to foster the possibility of achieving positive masculinity. The recommendations specifically focus on ways of integrating civil law with existing Ndaun traditional beliefs and cultural practices. All the suggestions made in this chapter acknowledge that Ndaun traditional beliefs and cultural practices cannot be wished away overnight. It is hoped that the new theory proposed in this chapter will help by improving the quality of policing and prosecution as well as changing the attitudes of law enforcement agents when dealing with domestic violence among the Ndaun. Overall, the chapter's contribution to the domestic violence discourse is conceived to constitute crucial elements in crafting legislation on domestic violence among the Ndaun.

The next chapter provides the summary and conclusion to the study. It revisits the issues covered throughout the study from chapter one to chapter eight for purposes of highlighting what they covered. In this way, the chapter wraps up the study as it has offered the thesis that came out of it.

CHAPTER NINE: SUMMARY AND CONCLUSION

9.0 Introduction

This is the final chapter and it marks the end of the study. It brings to an end discussion of all the issues the study was concerned with throughout. The chapter thus provides a summarised presentation of how the study proceeded from chapter one all through to chapter eight. The study aimed at offering an ethical analysis of the interface between culture and the law focusing on the Ndau culture and the Domestic Violence Act of Zimbabwe. Thus the study set to investigate how Ndau culture interplays with the implementation of the provisions of the Domestic Violence Act. The overall aim of the study has been to analyse how the enforcement of legislation on domestic violence impacts on the lives of women in a marginalised community with strong cultural preferences. In order to analyse the interplay between culture and the law, the study focused on the Ndau people of south-eastern Zimbabwe and the Domestic Violence Act (Chapter 5: 16) of Zimbabwe. The domestic Violence Act has been presented as Zimbabwe government's legal response to the domestic violence problem in the country. The study also focused on the Ndau people of Chimanimani and Chipinge districts. The area of study was chosen for the reason that domestic violence is rampant in Ndau traditional society. Thus, throughout the study the major concern has been finding out why domestic violence among the Ndau persist at a time when the country has a vibrant piece of legislation against gender-based violence. It was observed that domestic violence prevalence among the Ndau was high in spite of the existence of the Domestic Violence Act which is meant to minimise violence between people in a variety of interpersonal relationships, including intimate partnerships.

The thesis is a product of intense dialogue with a wide range of international, regional and national scholars on the interface between culture and received law and the interrogation of national statistical data. The thesis that emerged from the study is that ending domestic violence in general and intimate partner violence in particular within communities with strong culture requires a new paradigm. A critical ethical analysis of the Domestic Violence Act was done using paternalism, African feminist ethics as informed by the *Ubuntu/ Hunhu* and feminist jurisprudence. The three theoretical frameworks formed the foundation for the study and helped to establish some of the basic inadequacies of the current legislation on domestic violence in Zimbabwe. It was revealed through the analysis that the Domestic Violence Act is partly responsible for the resistance it faces in Ndau community because it summarily censures culture for perpetuating domestic violence. It also emerged that the radical approach in the fight to end domestic violence as a national problem

The proposal for a new theory to inform legislation on domestic violence was sustained throughout the study. The thesis has argued that legislation on domestic violence in general and intimate partner violence in particular should be informed by a theory which accommodates the experiences of women located in communities that have strong cultural exposure and attachment. In this regard Ndaou traditional community was methodically investigated and it emerged that some traditional beliefs and cultural practices of the Ndaou people inhibit the full implementation of the Domestic Violence Act provisions. The thesis therefore realised that there is an urgent need to make the Domestic Violence Act more conversant with the local people's culture so as to improve the implementation of its provisions in all communities in the country. To achieve this goal, the thesis has proposed that the Domestic Violence Act be grounded in a theory that has a deeper appreciation of the diversity and dynamic functions of African culture. Thus, the thesis has proffered African feminist jurisprudence as a theoretical framework to reflect on the ethical issues that arise from enforcing Domestic Violence Act provisions within traditional African communities such as the Ndaou. This theory is being proposed as a prescriptive legal framework to address the domestic violence problem in a manner that improves the impact and impression of the Domestic Violence Act in communities with strong traditional ways of life.

9.1 Summary

The first chapter provided the general introduction to the research study. It consisted of an outline of the background to the problem and the motivation for the study. The chapter also provided an overview of the major issues grappled with in the study. The first basically set the tone. It provided the entry point of discussion for the study and also served to acknowledge the idea that domestic violence is an international, regional and national social problem. The first chapter unveiled the research problem, key research question, the sub-questions and the objectives to be achieved. It also stated that the study was motivated by my desire to participate in the discussion on the impact of received law in communities that are generally regarded as traditional and less developed. The chapter also mentioned in the introduction that the current legal approach to the domestic violence problem in the country requires an ethical analysis from the point of view of relevant theories. In this regard, the chapter presented the theoretical frameworks that guided the study, including the methods and methodologies involved in carrying out the study.

In the second chapter the study presented the critical literature review on domestic violence and efforts to minimise it using the legal approach. The chapter provided the literature upon which the discussion on the clash between culture and the law in Africa was explored in this

study. It started off by laying down the definitions of key terms that are central to the discussion. The key terms included definitions of gender-based violence and domestic violence. It was revealed that fighting to end all forms of gender-based violence, including domestic violence or intimate partner violence, was not a new thing in African communities since African had traditional ways of resolving interpersonal conflicts. This was demonstrated by Joyce Maluleke (2012) where she claimed that civil law should be just a part of a multidisciplinary approach to deal with the domestic violence in African communities.

The chapter also provided an exploration of the Domestic Violence Act as a legal approach to deal with the problem of violence in intimate relationships. The general impression about the DVA was that the law is good but some of its provisions pose a few ethical issues at implementation. One of the problems with the DVA was identified to lie in its mandatory reporting requirement of cases. A number of scholars that have discussed the impact of civil laws such as the Domestic Violence Act in the lives of the local people have argued that the law has not been effective enough for various reasons. One of the central problems has been that most survivors of domestic violence hardly use the law in full to deal with the problem of abuse in the home. Overall, the chapter revealed that the DVA is a legal intervention strategy that requires modification to make it more useful to the local people, especially women and girls, experiencing domestic violence in their lives.

Chapter three presented three theories that informed this study: Legal paternalism, Feminist jurisprudence and African feminist ethics. Each of the theories was discussed in detail, explaining how each was suitable for the study. From Legal paternalism, it emerged that the DVA deserved a reviewing because the law displayed paternalist tendencies that made it unusable by all domestic violence survivors. The assumption that domestic violence survivors would report abuse to law enforcement agents was singled out. Legal paternalism therefore was used to expose the elitist nature of the DVA. Legal paternalism was however inadequate to provide the necessary reviewing of the DVA and there was need for a second theory. Feminist jurisprudence was preferred as the second theory because the DVA is a legal instrument meant to focus on improving intimate partner relationships. Feminist jurisprudence was used to focus on how the DVA enhanced women's lives. It was shown throughout the chapter that the DVA played a significant role in that regard except that its implementation was always hampered by a number of factors for which local women considered it unsuitable. For this reason, the study turned to African feminist ethics as the third theory with which to analyse the DVA from an African women's perspective. More

specifically, *hunhu/ubuntu* was used to engage more into the implications of implementing the provisions of the DVA within the context of the local people's culture. From a wide range of African philosophers, Fainos Mangena's (2010) version of African feminist ethics was preferred more so because of its reference and appeal to Zimbabwean women's experiences.

The fourth chapter focused on the Ndau people and their traditional beliefs and cultural practices. It presented the historical background of the Ndau and explained their origin, movement and present-day location. The chapter described Gazaland as the region occupied by the Ndau people of Chipinge and Chimanimani in Zimbabwe. It also explained that the traditional Ndau people are concentrated on both sides of the long border with Mozambique. The background information about the Ndau and their strong culture was meant to make the reader appreciate the consternations of Ndau people with the DVA as a legal response to domestic violence which was presented in the analysis of the DVA in chapter seven.

Chapter five of the study focused on the prevalence of domestic violence among the Ndau. It argued that domestic violence is a social problem that is not only prevalent among the Ndau but throughout the country. The chapter was constructed from the third objective of the research study, which focused on exploring the prevalence of domestic violence among the Ndau people within the context of their traditional beliefs and cultural practices. The chapter showed that domestic violence was particularly persistent among the Ndau because of customary practices as experienced in the marriage institution. It was also acknowledged in this chapter that domestic violence can occur between people in different intimate relationships, including cohabitation. However, this chapter focused on the prevalence of domestic violence among married heterosexual Ndau couples, emphasising that Ndau women and girls were most affected. The chapter therefore proceeded by explaining the marriage institution and the Ndau people's perception of marriage. It also explored the related violent issues pertaining the marriage processes and practices. In the last part, the chapter provided an in-depth contextualisation of the Ndau customary marriage practice of bride wealth (*roora/lobola*) payment. It was explained in the chapter that the impact of the practice bride wealth payment presented power relation complexes for women within the context of Ndau customary marriages. All in all, the chapter identified patriarchy and masculinity as the major causes of domestic violence among the Ndau.

Chapter six presented the Domestic Violence Act (Chapter 5: 16) as Zimbabwe's legal response to the domestic violence problem after independence. The chapter looked at how

Zimbabwe compared itself to other southern Africa countries in terms of the local people's awareness of the legislation against domestic violence in their countries. It emerged that in Zimbabwe not many local people, particularly women, know about the DVA. It was also discovered that those who knew about the law on domestic violence had problems with accessing adequate attention and services to effectively make use of the law. From the statistics presented, it showed that women in intimate relationships suffered more from a variety of domestic violence forms. Physical and/ or sexual violence was the most prevalent form of domestic violence experienced by women.

The chapter also explained that the high prevalence of domestic violence in the country as well as international pressure to deal with the problem forced the government to introduce the DVA. The chapter further presented the DVA and explored it in detail. However, the chapter concentrated on two of the DVA provisions which raise ethical questions at implementation. Thus, the police protection order and mandatory arrest (without warrant) provisions were regarded as the most attractive but contentious DVA provisions in that both seemed to be intrusive in the lives of the local people.

Chapter seven of the study critically analysed the efficacy of the DVA as a national response to the domestic violence problem. In this chapter, an analysis of the DVA was done using the three explored in the third chapter of this study. The chapter further reflected on the extent to which the DVA has been appreciated as response to domestic violence among Ndaou people. It was argued that while domestic violence in general and intimate partner violence in particular deprived women of their ability to achieve their full participation in society by threatening and affecting their safety, the DVA was not helping them when it emphasised separation and arrest of perpetrator. The reason for the ethical appraisal of the DVA was to show that the enforcement of a restrictive law often led to unintended effects which threaten the very people it sought to protect. Thus, the implementation of DVA provisions was presented as posing ethical challenges as it was difficult to ensure its general acceptability, even among women themselves. As a result, the analysis revealed that a new approach that recognised women's different interests, lived realities and even contradictions was needed.

The chapter also argued that if legislation was radical and appeared to be in direct conflict with the traditional value system, then it can not only pose a threat to community cohesion but also risked being ignored by the people it intended to protect. This analysis through the African feminist ethics lens of *hunhu/ ubuntu* revealed that the law needed modification so as

to allow it to appeal to women living in traditional communities such as part of Gazaland where the Ndau are located. At the same time, some ethical implications of implementing provisions of the DVA were highlighted in this chapter. Using the ethical theory of consequentialism, it emerged that the DVA has brought positive and negative consequences. One positive result of the DVA has been the exposure and publicity of domestic violence as a criminal issue. This has given abused persons access to reporting facilities for protection. However, it has also been pointed out that the DVA has brought some negative consequences as well. The mandatory reporting of domestic violence has been blamed for increasing domestic violence prevalence especially in traditional communities where most women are dependent on men.

Chapter eight presented the author's unique contribution to the domestic violence discourse. It marked the study's proposal towards an ethical legislation on domestic violence among the Ndau in Zimbabwe. It proposed and presented African feminist jurisprudence theory as a new theory upon which the DVA should be constructed so that it is acceptable in traditional communities such as the Ndau. The chapter began by explaining how the new theory was drawn from two theories: African feminism and Feminist legal theory. It was shown in this chapter that the current legislation on domestic violence is not only inadequate but also inappropriate as it runs into conflict with the local people's culture. The chapter reflected on what happens when culture and the law meet: culture always triumphs. How the proposed new theory would work to achieve an acceptable DVA was also explained in this chapter.

Chapter eight marked the end of the thesis. The chapter acknowledges that the domestic violence problem requires urgent attention as it is increasing. It also appreciates the government's effort to intervene through the Domestic Violence Act (Chapter 5: 16). However, the study has argued that the DVA could still be better formulated to appeal to people in traditional societies as well. It must also be mentioned that the study did not intend to condemn the current DVA but to suggest how it can be improved so that domestic violence survivors situated in traditional communities can make use of it without facing an ethical dilemma involving their commitment to culture.

The chapter provided the unique contribution of the thesis towards the construction of a legal response to the domestic violence problem in traditional communities. The major thrust and overarching objective of this chapter was to provide a prescription for the adoption of a theory to inform the DVA. The chapter proposed African feminist jurisprudence to be the

theory to form the basis for the DVA. How the proposed theory is set to help in the construction of the DVA was explained in this chapter. The chapter also presented the findings of the study as it prescribed the way forward in dealing with domestic violence in traditional societies.

Chapter nine marked the end of the study as it provided the summary and the conclusion to the study as a whole.

9.2 Conclusion

The study was conducted to answer the question: Why is domestic violence prevalent among the Ndaou people in spite of the Domestic Violence Act (Chapter 5: 16) in Zimbabwe? Throughout the study effort was made to ensure that the chapters addressed the impact of the DVA on the lives of people, particularly women living in traditional societies with strong cultural attachment. It emerged that various factors inhibit the effectiveness of the DVA. This study demonstrated that factors that inhibit the full implementation of the DVA are located in the local people's culture and in the DVA itself. The study has thus argued that, when culture and the law meet, culture always occupies the first preference. This was revealed by the prevalence of domestic violence among the Ndaou despite the existence of the DVA. In conclusion, it is my hope that this study has made a contribution towards finding a probable way of addressing the domestic violence problem without aggravating women's living conditions.

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