
**THE QUEST FOR GENDER EQUALITY IN ZAMBIA'S NURSING SCHOOLS &
COLLEGES OF EDUCATION: INSTITUTIONAL RESPONSES TO PREGNANCIES IN
SELECTED COLLEGES IN ZAMBIA**

**BY
Sam MWAPELA**

Supervisor: Rosalie Katsande

**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree in
Women's Law, Southern and Eastern African Regional Centre for Women's Law,
University of Zimbabwe
2012**

Abstract

In the quest for gender equality in Zambia's colleges of education and nursing schools, the exclusion of pregnant students from some of these training institutions has dealt a heavy blow to the advancement of women's right to education. Despite the existence of competent national laws, including the Constitution, which prohibit discrimination against women, this illegal practice is still perpetrated by *Zambian* nursing schools and some colleges of education. This study, conducted by a lawyer, used the Women's Law Approach as the core methodology, among others (including the Grounded Theory and Human Rights based Approaches), to investigate the affected women's lived realities and how they interact with the so-called law on the exclusion of pregnant students from certain learning institutions. It was carried out within a gender-centred theoretical context and draws upon a rich body of data retrieved from the relevant law and literature on the subject and interviews with male and female students and staff of several educational and nursing institutions, government and NGO officials. The study unearths the untold misery that female students suffer in *all* nursing schools and *some* education colleges when they get pregnant and face expulsion in breach of their Constitutional protection against discrimination on the basis of their sex and their right to education. The study also reveals that illegal exclusion from these institutions triggers other forms of trauma, including mental anguish and serious economic and material hardships emanating from social and cultural backlashes to their predicament. Although the Ministry of Education has a policy which allows pregnant students to continue learning while pregnant, some colleges of education, particularly missionary or formerly missionary-run institutions, still exclude pregnant students. In addition, Zambia's General Council of Nursing, the regulatory body of all nursing schools, prohibits them from admitting pregnant students into their colleges as a matter of policy. This blanket policy is at variance with national laws and, as a direct consequence, female students in these nursing schools suffer serious injustices. The author discovered that this blanket discriminatory policy is mainly justified on the basis that it prevents pregnant students from contracting diseases from their patients at attachment hospitals. Upon a thorough investigation of the state of affairs, however, he also discovered that by abolishing this policy and by following careful institutional guidelines under a new, more enlightened and non-discriminatory policy, such students could and should still be able to continue safely with and complete their studies despite their temporary vulnerable condition. As for colleges of education, the Ministry of Education has a policy in place that provides for pregnant students in all types of colleges of education (including, notably, the University of Zambia) to continue with their training, even if they are pregnant. In this regard, therefore, what this study recommends is the strengthening of the Government's framework which implements and monitors its policy of protecting pregnant students from illegal expulsions.

Declaration

I declare that this is my original work and has not been presented for any study programme in any university or college or for any thesis. The ideas and views except where expressly indicated are strictly my own and I take responsibility for them.

Signature

Date.....

Dedication

*To Amanda Mwapela, my beloved daughter
For understanding my persistent absence from home on study errands.*

Acknowledgements

I wish to express my appreciation to my dissertation supervisor Ms. R. Katsande for professionally guiding me through this piece of work. Admittedly, without her guidance this work would not have been a reality.

I further want to express my gratitude to the following:

NORAD, for sponsoring my study programme from beginning up to the end.

Professor Julie Stewart, Dr. A Tsanga, Sesedzai, Cecilie, Rudo, Blessings, Washington, Johnson, Primrose for your support.

My respondents in Zambia, without whom this work would not have been possible.

To all classmates at SEARCWL for the 2011/2012 in-take.

Acronyms

ACHPR	African Charter on Human and People's Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
NGOCC	Non Governmental Organisation Coordinating Council
SADC	Southern African Development Community
SRC	Students Representatives Council
UDHR	Universal Declaration of Human Rights
ZLDC	Zambia Law Development Commission

Statutes cited

The Constitution of Zambia. Chapter One of the Laws of Zambia
Education Act
Nurses and Midwives Act
Citizenship Act.
Termination of Pregnancy Act.

Human Rights Instruments cited

African Charter on Human and People’s Rights
Convention on the Elimination of All Forms of Discrimination Against Women
Convention on the Rights of the Child
International Covenant on Civil and Political Rights
Millennium Development Goals
SADC Protocol on Gender and Development
Universal Declaration of Human Rights

List of Figures

Figure A: Map of Zambia showing where the research was undertaken 7

List of Tables

Table 1: Showing Education Colleges’ Responses to Student Pregnancies38
Table 2: Showing Nursing Schools’ and General Nursing Council’s Responses to Student Pregnancies41
Table 3: Showing Individual Key Respondents and other Respondents interviewed.....48
Table 4: An Action Plan for Implementing Recommendations to curb the Exclusion of Pregnant Students from Colleges of Education74
Table 5: An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Nursing Schools78

Table of Contents

Declaration.....	iii
Dedication	iv
Acknowledgements.....	v
Acronyms.....	vi
Statutes cited.....	vii
Human Rights Instruments cited.....	vii
List of Figures	vii
List of Tables	vii
Table of Contents.....	viii
CHAPTER ONE.....	1
1.0 INTRODUCTION.....	1
1.1 Background of the Research.....	1
1.2 Statement of the Problem	3
1.3 Justification of the Study	4
1.4 Objectives of the Study.....	4
1.5 Research Assumptions.....	5
1.6 Research Questions	6
1.7 Overview of Research Sites	7
1.8 Presentation of the Study.....	8
CHAPTER TWO.....	9
2.0 LAW AND LITERATURE REVIEW.....	9
2.0 Introduction.....	9
2.1 Theoretical Framework of the Study	10
2.1.1 <i>The Sameness/Difference Approach</i>	10
2.1.2 <i>The Liberal Feminist Theory</i>	12
2.2 Review of National Laws and Policies	13
2.2.1 <i>The Constitution of Zambia</i>	14
2.2.2 <i>The Education Act</i>	17
2.2.3 <i>The National Health Services Act (1995)</i>	18
2.2.4 <i>The Nurses and Midwives Act</i>	19
2.2.5 <i>The National Gender Policy</i>	20

2.2.6	<i>The Education Policy</i>	21
2.2.7	<i>The Re-Entry Policy</i>	22
2.3	Review of International Human Rights Instruments.....	24
2.3.1	<i>The Universal Declaration of Human Rights (UDHR)</i>	24
2.3.2	<i>International Covenant on Civil and Political Rights (ICCPR)</i>	25
2.3.3	<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>	26
2.3.4	<i>The African Charter on Human and People’s Rights (“The Banjul Charter”)</i>	27
2.3.5	<i>SADC Protocol on Gender and Development</i>	27
2.3.6	<i>The Millennium Development Goals</i>	28
2.4	Case Law.....	28
CHAPTER THREE		32
3.0 RESEARCH METHODOLOGY AND METHODS OF DATA COLLECTION		32
3.1	Research Methodologies	32
3.1.1	<i>Women’s Law Approach</i>	32
3.1.2	<i>Grounded Theory Approach</i>	35
3.1.3	<i>Case Study Approach</i>	42
3.1.4	<i>Gender and Sex Analysis Approach</i>	44
3.1.5	<i>Human Rights Approach</i>	45
3.2	The Sample.....	47
3.3	Methods of Data Collection.....	49
3.3.1	<i>In-depth Interviews with Key Respondents</i>	49
3.3.2	<i>Focus Group Discussions</i>	50
3.3.3	<i>Ordinary Interviews</i>	50
3.3.4	<i>Secondary Sources of Information</i>	51
3.4	Evaluation of Methodology	51
3.5	Limitations of the Study.....	52
CHAPTER FOUR		53
4.0 FINDINGS AND ANALYSIS: COLLEGES OF EDUCATION		53
4.1	Colleges of Education’s Policy on Student Pregnancy and its Effect on Pregnant Students	53
4.1.1	<i>Private Colleges of Education</i>	53
4.1.2	<i>Missionary/Formerly Missionary-run Colleges of Education</i>	54

4.1.3	<i>Government-run Colleges of Education</i>	57
4.2	Ministry of Education Policy in Colleges of Education.....	59
4.3	The Interface between College Practice, Ministerial Policies and National Laws	60
CHAPTER FIVE		63
5.0	FINDINGS AND ANALYSIS: NURSING SCHOOLS	63
5.1	Nursing Schools' Policy on Student Pregnancies and its effect on Pregnant Students.....	63
5.2	The Interface between the Ministry of Health/General Nursing Council of Zambia exclusion Policy and National Laws.....	68
CHAPTER SIX		71
6.0	CONCLUSION AND RECOMMENDATIONS	71
6.1	Conclusion and Recommendations for Colleges of Education.....	71
6.1.1	<i>Conclusion</i>	71
6.1.2	<i>Recommendations</i>	72
6.1.3	<i>An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Colleges of Education</i>	74
6.2	Conclusion and Recommendations for Nursing Schools	75
6.2.1	<i>Conclusion</i>	75
6.2.2	<i>Recommendations</i>	76
6.2.3	<i>An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Nursing Schools</i>	78
Bibliography		79

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background of the Research

Discrimination against women remains an entrenched and institutionalised form of oppression that takes many forms in different set-ups. Female students in many institutions of higher learning in Zambia have not been spared this discrimination. One basis of discrimination against them is their reproductive capacity, i.e., they are discriminated against simply for bearing children. That is to say, some institutions of higher learning have entrenched policies and practices that prevent candidates from registering as students and sending on maternity leave those students who become pregnant. This practice has resulted in female students being discriminated against in institutions of higher learning. This study focuses on the institutional responses of selected Nursing Schools and Colleges of Education in Zambia to student pregnancies.

I was motivated to do research into this topic following an experience in my family when my cousin was excluded from a school of nursing in Zambia. She was sent on maternity leave after she became pregnant and advised only to return after two years. Being a lawyer, my family sought my guidance in the matter. I sought to understand the source of authority of the principal that gave him power to discriminate and send my cousin away from the nursing for the “*offence*” of getting pregnant. Due to time factor among other constraints, I was unable to follow up the matter beyond the preliminary enquiries that I made.

Zambia, like other countries in the international community is seeking to attain gender equality between males and females in all sectors, including education. According to the *2010 Census* statistics (Census of Population and Housing, 2010:2) in Zambia, out of a population of 13 million people, 51 percent are female and 49 percent are male. However, in all sectors of society in Zambia including decision-making positions, women are under-represented. Therefore, having

realised this fact, government has come up with affirmative action measures in favour of women with a view to raising the status of women in all areas of human endeavour. In the education sector, the affirmative action measures include lowering the cut-off marks for female students' entry into secondary schools and higher institutions of learning; through the *Re-entry Policy* which allows students who get pregnant to get back into school after going on maternity leave. Some institutions of higher learning like the University of Zambia allow pregnant students to continue their learning and allow them to leave in order to deliver and later return to class. However, other institutions of higher learning, in particular nursing schools and some colleges of education, do not allow pregnant candidates to register as students and for those already in the training institution, if they get pregnant, they are sent away on maternity leave for varying periods of time.

In the process of the leave, some of the students fail to return and complete their programme of study for different reasons. Thus the policy of excluding pregnant students in nursing schools and colleges of education adversely affects female students and undermines government effort in ensuring gender equality in institutions of higher learning and ultimately in formal employment and women in decision-making positions.

The Constitution of Zambia [in terms of Article 23(3)] prohibits discrimination on the basis of sex and prohibits the making of laws that are discriminatory in themselves or in their effect. It further provides that a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. Although the Education Act, the Health Act and the Nurses and Midwives Act give power to respective ministers to make regulations for the smooth running of institutions under them, by virtue of being subordinate to the Constitution, the law does not allow them to make policies or regulations which are inconsistent with provision of the Constitution. Where such policies or regulations are made, they are invalid to the extent of their inconsistency with the Constitution. Hence the policies in nursing schools and colleges of education which exclude pregnant students from enrolling and learning in these institutions are invalid at law. They are also at variance with international and regional human rights instruments to which Zambia is a State Party.

It is assumed in this study that government authorities in Zambia are aware of these policies or rules in the colleges. So, the question is: *'Why have such discriminatory policies or rules in nursing schools and colleges of education been allowed to exist in the face of affirmative action measures which have already been adopted in other similar institutions, such as the University of Zambia?'*

This study sets out to investigate what informs this discriminatory practice of excluding pregnant female students from nursing schools and colleges of education, their lived realities and how this results in discrimination against female students and inequality in the institutions of learning. It ends by making recommendations on how the discriminatory practice of excluding pregnant students in nursing schools and colleges of education can be eliminated.

1.2 Statement of the Problem

Nursing Schools and some Colleges of Education in Zambia have a policy of not allowing pregnant candidates to register as students at the learning institutions until they have delivered. For female students who are already studying at these institutions, once they get pregnant, they are sent away from the institutions for varying periods of time. This policy affects female students only, by virtue of their reproductive role as women. These exclusions cause mental, physical and financial stress for affected students and their families.

The formal sector employment in Zambia favours men more than women. According to the 2010 Census (Census of Population and Housing: 2010) there are 500,000 jobs in the formal sector of which 68 % are occupied by men and the rest by women. Most professions appear to be the preserve of men. Nursing and teaching are the fields that are easily accessible to women. If discriminatory policies of excluding pregnant students follow female students to the few sectors that are available to them, then the quest for gender equality becomes a far-fetched dream.

Further, in view of the realization of the serious gender disparity between men and women in the education sector, government has put in place affirmative action measures which include lowering the cut-off marks for female students' entry into higher institutions of learning; introduction of the Re-entry Policy which allows students who get pregnant to get back their school places after going on maternity leave, among other measures. However, under the nose of the same government, a blind eye appears to be turned against colleges of education and nursing schools which continue to exclude pregnant students from their training institutions.

It is therefore the purpose of this study to investigate what is informing this practice; understand how concerned female students are affected; interrogate the laws and their implementation in this area and come up with appropriate recommendations to eradicate this discrimination against female students. My argument in this study therefore is that there is no justification for excluding pregnant students from nursing schools or colleges of education. It is possible for female students to be pregnant and continue with their education.

1.3 Justification of the Study

This study sought to find a solution to a mischief that is perpetuated in nursing schools and colleges of education regarding the policy or practice of excluding pregnant students in these institutions of higher learning. Other than the practice itself being discriminatory, its implementation or lack of implementation is characterized by inconsistencies and lack of uniformity. This study attempted to understand what informs this practice, the extent of the effect of this practice, especially its effect on women, and ultimately it discovered that the practice is indeed discriminatory and ought to be eradicated through the use of the law and a healthy change of attitude on the part of society.

1.4 Objectives of the Study

In this study, the following objectives were identified as the purpose of the research:

1. To examine the legality or otherwise of the practice of excluding pregnant students from enrolling and continuing with schooling in nursing schools and some colleges of education.
2. To investigate what informs nursing schools and some colleges of education's policy on pregnant students and the source of their authority for excluding pregnant students from registering and attending classes.
3. To find out and understand how excluded pregnant students are affected by the policy of disallowing pregnant students from registering and the sending away on leave of those who get pregnant.
4. To examine and compare the institutional response to pregnancies of nursing schools and some colleges of education, with that of the University of Zambia.
5. To identify and recommend ways in which the discriminatory practice of excluding pregnant students from nursing schools and some colleges of education can be eliminated in line with national laws and international human rights instruments.
6. To influence the strengthening and implementation of legislation to eliminate discrimination of pregnant students in institutions of learning based on their gender and reproductive roles.

1.5 Research Assumptions

1. Students who get pregnant in nursing schools and some colleges of education in Zambia are excluded from school.
2. The practice of expelling pregnant students from these training institutions is not grounded in national laws but in policies and school rules informed by moralistic and prejudicial value judgments.

3. The policy and practice of excluding pregnant students is illegal and discriminatory as it violates national laws and international human rights instruments on gender equality and women's right to education.
4. Most of the pregnant students who are excluded from nursing schools and some colleges of education find it difficult to come back or do not come back at all after delivering.
5. There is an inconsistency or gap in law, policy and implementation thereof in the treatment of pregnant students in nursing schools and some colleges of education in Zambia, resulting in the discriminatory policies against the advancement of the education of pregnant students.

1.6 Research Questions

1. Are female students who get pregnant in nursing and teacher training colleges expelled or excluded from school?
2. What is the rationale for excluding female students who fall pregnant while in nursing and teacher training colleges in Zambia?
3. Does the expulsion or exclusion of pregnant college students violate national and international human rights instruments, thereby making the practice illegal and discriminatory against female students?
4. Do most of the students who drop out because of pregnancy in nursing and teacher training colleges find it difficult to come back to their college after delivering?
5. Is there a gap or weakness in legislation or its implementation pertaining to the treatment of pregnant students in Zambia's nursing and teacher training colleges that results in discrimination against pregnant female students?

1.7 Overview of Research Sites

The field research in this study was undertaken in Zambia. As shown in the map below, Zambia is a land-locked country covering an area of 752,614 square kilometres, with 8 neighbouring countries. It has a population of 13,046,508 people (Census of Population and Housing; 2010). Data was collected in colleges of education and health training institutions in three provinces namely; Lusaka, Central and Western Provinces. The country has 21 colleges of education and three public universities. I chose to do my field research in Zambia because that is my home country with whose institutions of learning I am conversant and also due to my prior knowledge of the practice of excluding pregnant students in some of the institutions of higher learning.



KEY

- Areas where research was undertaken

Figure A: Map of Zambia showing where the research was undertaken

1.8 Presentation of the Study

The study is presented in six chapters. Chapter One gives the introduction to the research. Chapter Two reviews the law and literature pertaining to the practice of excluding pregnant students in colleges of education and nursing schools, including the theoretical framework informing the study. Chapter Three presents the methodological approach used in the research and the methods of data collection. Chapter Four discusses the findings and analysis of the research in colleges of education. Chapter Five discusses the findings and analysis in nursing schools, *vis-a-vis* the practice of excluding pregnant students. Chapter Six presents the conclusion and recommendations in respect of the two areas of the study, that is, education and health training institutions.

CHAPTER TWO

2.0 LAW AND LITERATURE REVIEW

2.0 Introduction

Female students in nursing schools and some colleges of education in Zambia face discrimination and gender injustice in the pursuit of their studies when they get pregnant. Most of these colleges have rules which entail the sending of pregnant students on maternity leave for varying periods of time, ranging from one to two years. According to the *Education Statistical Bulletin* (2010; 75), there are 77,362 teachers of which 49 percent are women and 51 percent are men. The policy of excluding pregnant students in training institutions has its origins in the colonial educational system which was influenced by the Christian moralistic values enshrined in the Bible (Ncube;10). The first schools and colleges in Africa and Zambia in particular were established by the missionaries.

From the days of colonialism, right through Independence from the United Kingdom of Great Britain (1964) and into post-Independent Zambia the harshest form of the practice of expulsion took place in that all pregnant students were automatically expelled from all learning institutions (i.e., nursing schools, colleges of education, secondary and primary schools) (Times of Zambia Newspaper, 13th April 1997). This meant that they would not be re-admitted into the learning institutions again. It was not until 1997 when government through the Ministry of Education introduced the *Re-entry Policy*. The *Re-entry Policy* entails that a student who gets pregnant would still be entitled to a school place after going away on maternity leave. It is worth noting that the *Re-entry Policy* does not solve the discrimination that pregnant students face: the ideal situation would be to allow them to continue learning during their pregnancy, give them leave to deliver and then let them return later and re-enter the learning institution. Male students are not affected by the exclusion or the *Re-entry Policy*. The University of Zambia and the Copperbelt University being the highest government institutions of learning in the country allow pregnant

students to continue with their education until they decide to go and deliver and return to continue with their lessons shortly afterwards.

Zambia, being a member of the international community, is striving to attain gender equality in all sectors, including training institutions like nursing schools and colleges of education. The quest for gender equality in Zambia is seriously undermined by the practice of excluding pregnant students from these institutions. Hence this study set out to investigate the reasons why this practice is still being perpetrated by these learning institutions with the government's full knowledge. There is a need to remove all barriers to equality of opportunity for both male and female students, such as discriminatory laws, customs and institutional practices.

In order to achieve the foregoing objective, I analysed the following topics: relevant law and literature on the subject; Institutional responses to pregnancies in nursing schools and colleges of education in Zambia and the quest for gender equality. In doing so, the theoretical framework informing this study was reviewed followed by the national laws and policy framework on gender and education. This chapter also reviews the human rights implications of this practice, as well as other writers' work on the subject.

2.1 Theoretical Framework of the Study

In order to inquire effectively into the practice of excluding pregnant students from nursing schools and some colleges of education in the context of the government's quest for gender equality in all sectors including institutions of higher learning, two theoretical frameworks inform this study. The first one is the Sameness/Difference Approach to gender equality. The second one is the Liberal Feminist Approach.

2.1.1 The Sameness/Difference Approach

This theory analyzes the issue of sex equality and treatment of women vis-a-vis men in the framing of laws and policies. It looks at the issue of discrimination of women particularly in the

context of pregnancy and maternity leave. One of the writers on the Sameness/Difference Theory Catherine MacKinnon (1979;106) discusses the approach by looking at the question of whether or not women are the same as or different from men. In other words, in this theory, she is addressing the position which the law should take, that is, should it give women equal treatment with men, implying that women are the same as men; or should it give women special treatment, thereby implying that women are different from men.

In this study, an effort is made at understanding the position of the law and policies in nursing schools and colleges of education in response to the phenomenon of students getting pregnant. What this means is that, through the Sameness Approach, if the law accords equal treatment to female and male students in nursing schools and colleges of education, then the law will not take into account the special circumstances of women of getting pregnant. Whereas the laws and policies at theoretical level may not be discriminatory, in terms of their application, it will result in female students being disadvantaged and discriminated against. This is because it is only women who get pregnant by virtue of their sex/reproductive role. The policy of excluding pregnant students from colleges of education and nursing schools can be said to be premised on the assumption that women are the same with men as it does not take into account the special position of women by virtue of their reproductive role.

The second strand of the Sameness/Difference Approach to analyzing treatment of women by the law is that women are different from men, and also that pregnancy is unique and requires particular laws which are different from the laws for general sickness or disability. In the context of this study, this strand of the theory implies that in order to eliminate discrimination against pregnant students, college authorities should recognize that female students are different from male students and should therefore not apply the equal treatment model as it uses men as the standard norm for laws or policies.

In other words, the second strand which is the Difference theory recognizes the fact that women have different and special needs and the law should take into consideration these differences. Hence in relation to the study, the question is that do the policies in these nursing schools and

colleges of education take into account the special needs of female students and are they couched in such a way as to take into consideration the reproductive roles of female students.

Against this theoretical framework, I was able to scrutinize the policies and practices of nursing schools and colleges of education as regards treatment of pregnant students. The framework was used to analyze the policies in these colleges on whether or not they are made to treat female and male students similarly or differently. I found out that because the college policy of excluding pregnant students treats women the same as men, the first assumption in this study that colleges exclude pregnant students was confirmed. Where there are same laws and policies with uniform application to male and female students in these colleges, which result in exclusion of pregnant students, the laws are discriminatory in their application. Secondly, if the laws and policies afford special treatment to female students, taking into account women's reproductive roles, the result would be allowing pregnant students to continue with their training.

A critique of the Sameness/Difference Theoretical framework reveals that the theory has a built in philosophical double standard in that it calls for women's equal treatment based on being the same while at the same time requesting special rights on account of biological differences. It also goes without saying that this theoretical framework uses men as the standard reference category, which subordinates women to men. When the underlying law is that for equal treatment, it makes it difficult for women to argue for special treatment under the law. Hence this theoretical framework creates the picture that demands for equality will appear as wanting it both ways.

2.1.2 The Liberal Feminist Theory

In investigating the quest for gender equality in Zambia's nursing schools and colleges of education, and institutional responses to pregnancies in selected colleges in Zambia, the Liberal Feminist Theory also informed the study. Liberal feminist scholars espouse that female subordination is rooted in a set of customary and legal constraints that block women's entrance to and success in the so-called public world. Liberal feminists emphasize that since the inequality between men and women is entrenched in the customary and legal constraints, the solution to the

inequality between men and women which results in discrimination against women lies in political and legal change (Tong;136). Liberal feminists argue that our society holds the false belief that women are, by nature, less intellectually and physically capable than men. Hence women are discriminated against in the academia, the forum and the marketplace.

In relation to this study, this Liberal Feminist theoretical framework informed the research throughout. In this study, the exclusion policies are interrogated against the backdrop of the law being couched to influence societal perception that women are inferior to men. Further, through this theoretical framework, the impact of customary perception of women as being subordinate to men and how this has influenced the treatment of students who get pregnant is analyzed. In fact, the study established that the practice of excluding pregnant students and thereby infringing on women's reproductive rights, was rooted in the policies informed by moralistic and customary values and not in national laws. This theory lead to the finding that, for the policy of excluding pregnant students from nursing schools and colleges of education to be eradicated, not only should the laws be changed but also society's customs and perceptions of women require transformation. This must take place against the background of society's perception that women are weaker than men.

2.2 Review of National Laws and Policies

In reviewing the national laws and policies relating to the practice or policy of excluding pregnant students in nursing schools and some colleges of education, I started with the review of the Zambian legal framework. This is then followed by a review of individual statutes and policies with relevance to the subject of study in this paper, being Institutional responses to pregnancies in nursing schools and some colleges of education.

Zambia operates a dual legal system. This comprises the customary law of the indigenous people of Zambia and the received English Law inherited from the British by virtue of colonization. Customary law of Zambia comprises the indigenous people's traditions and customs received by oral transmission from their ancestors. Many of the indigenous ethnic groups were kingdoms that

existed separately and independently in the pre-colonial era. The distinctions in their customary laws are still evident but there is an apparent trend of copying from each other. This has given rise to a slow, but definite harmonization of common principles of customary laws in Zambia.

Relations of a public or criminal nature were governed by English Law regardless of which parties were involved. In this regard, at independence in 1964, both customary law and common law became applicable side by side. Article 91 of the Constitution recognizes customary law as a parallel system to civil law. It has to be noted here that the exception of the applicability of British personal law to Africans has thus continued even after independence, culminating into the current Article 23(4)(c) and (d) of the Republican Constitution. The dual legal system is further recognized in section 12(1)(a) of the Local Courts Act which provides for administration of African customary law in so far as it is not repugnant to the principles of natural justice or morality or incompatible with any written law.

2.2.1 The Constitution of Zambia

The Constitution of Zambia is the supreme law of the land and thus any law that is inconsistent with it is null and void to the extent of the inconsistency. It endows upon all people in Zambia basic rights which must be respected and are inalienable (with exception of any derogations provided for).

Part III of the Constitution which caters for “*The Fundamental Rights and Freedoms of the Individual*” provides for:

- The right to life, liberty, security of the person and the protection of the law;
- Protection from servitude and forced labour;
- Protection from torture and inhuman treatment;
- Protection from discrimination on the grounds of race, tribe, sex, place of origin, marital status, political opinions, colour or creed.

Despite prohibiting discrimination, Article 23 does exclude from its application, areas of personal and customary law in that Article 23(4) states in (c) and (d) as follows:

“(Article) (1) shall not apply to any law so far as that law makes provision-

- (c) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;*
- (d) For the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.”*

Effectively, this Article allows for discrimination in customary and personal law since customs may promote discrimination and violation of victims’ human rights. Hence this provision allows such violations to continue so long the perpetrators of the violation plead custom as the reason for undertaking the discriminatory act. Thus in this study, in order to understand why discriminatory tendencies are being perpetrated against female students by excluding them when they get pregnant, the Liberal Feminist theoretical framework informed the study. This theory interprets the oppression of women as being rooted in society’s customs which perceive women as being inferior to men.

This societal perception of women as being inferior to men as espoused by the Liberal Feminist theory entails that society’s values feed into the legal system of the country which in turn enact laws that discriminate against women. Since laws reflect the values and moral judgment of society, the practice of excluding pregnant students in nursing schools and some colleges of education is a reflection of what is expected of a female student, i.e., that an unmarried female student is a role model and is therefore not expected to get pregnant while in college. Eventually this societal conception of women using the male standard results in an attempt to control the reproduction role of women by customs and the law. Since the derogations clause in the Constitution ‘allows’ discrimination in matters of custom as provided for under Article 23(4) (c) and (d) leave a loophole in the Constitution through which discrimination against women may be perpetuated.

Further, in this study, by invoking the Sameness/Difference Theoretical framework, as regards the first assumption of this study on practice of excluding pregnant students in nursing schools and colleges of education, the issue of whether or not the Constitution treats women as equal to men was assessed. Whereas Article 23 of the Constitution aspires to proscribe all forms of discrimination, thereby affording equal treatment to all, it falls short of recognizing the special treatment which women need by virtue of their reproductive role as they alone get pregnant and not men. The situation is not helped by the derogation clauses as they ‘permit’ discrimination so long it is based on custom. Women are usually victims of many harmful cultural practices that are discriminatory and which hinder them from entering and succeeding in the public world. Whereas government on one hand is aspiring to promote women empowerment through affirmative action measures, by ‘allowing’ policies of excluding pregnant students in colleges it (i.e., the government) actually negates the quest for gender equality in institutions of higher learning. (This will be discussed in detail under the review of the National Gender Policy and the Re-entry Policy). The central argument that I am making under Article 23 of the Constitution of Zambia is that, in order to effectively eradicate all forms of discrimination against women, including exclusions from college when they get pregnant, the Constitution should not give with one hand and take away with the other by ‘allowing’ discrimination through derogation clauses.

Further, women’s right to education as provided for in Article 112(e) is very fundamental in the advancement of women’s rights. If the right to education is indeed appreciated as a fundamental right, it would supersede college policies of excluding pregnant students from learning institutions. My argument here is that, even if the pregnant students are not banished from these colleges for life, they could have been left to continue with their education as is the practice at the University of Zambia and the Copperbelt University which are government institutions of learning that I have used in this study as reference institutions. It suffices to mention that the Constitution of Zambia does not have the right to education in the Bill of Rights. It is provided for in Part IX of the Constitution under Directive Principles of State Policy and the Duties of a Citizen. Although not enforceable against the State, the Directive Principles of State Policy guide the executive, the legislature and the Judiciary in developing making laws and national policies, including their implementation. It suffices to mention that the Directive Principles may be observed only in so far as State resources are able to sustain their application.

In relation to the topic of study, considering that the right to provide equal and adequate educational opportunities is provided for in the Constitution, the question that begs an answer in this study is: *'Why should nursing schools and colleges of education have policies that are discriminatory in their effect against female students who get pregnant?'* If there is equal treatment of male and female students, why should there be college policies which specifically target female students who get pregnant? Further in line with the Sameness/Difference Theory, in order to achieve equal and adequate educational opportunities, shouldn't colleges be giving special treatment to female students in line with the Constitution in this regard? The foregoing and many other are what this study attempts to understand and offer an explanation or recommendations thereto.

2.2.2 The Education Act

In the quest to understand the practice of excluding pregnant students in nursing schools and some colleges of education, the Education Act, Chapter 134 of the Laws of Zambia was reviewed. Whereas the Act does not discuss institutional responses to students who get pregnant, under Section 32(1) of the Act, it gives powers to the Minister responsible for education to make statutory instruments and regulations for the progressive development of institutions of learning that are devoted to providing education. According to research conducted at the Ministry of Education, the Minister has not used these powers to make statutory instruments which are oppressive to women. The Act does not have a discriminatory tone in the manner in which it is couched or in its application. Thus colleges of education which send pregnant students away on maternity leave do not derive their authority from this Act. Further, the Act does not refer to differential treatment of male and female students. In other words, in line with the theoretical framework informing this study, i.e., the Sameness/Difference theory, it is apparent that the Act affords equal treatment to male and female students. Thus there is no discrimination in theory or in its application. However, considering the sexual difference between men and women, in order to have practical equality between men and women in education, the Act must take into account the special needs of women in education.

The review here notes that, as the policy of excluding pregnant students is interrogated further, colleges of education that exclude pregnant students are reluctant to break with past tradition which is premised on moralistic values and standards of using men as the norm. This customary subordination of women to men, as seen from the Liberal Feminist standpoint, is the one that feeds into the policies and rules of the colleges of education that exclude pregnant students. It is also noted in the review of this Act particularly Section 32 which gives the Minister responsible for education powers to make statutory instruments that, this power if used positively, this may provide an entry point to eradicate the discriminatory practice of excluding students who get pregnant in colleges of education.

2.2.3 The National Health Services Act (1995)

The National Health Services Act of 1995 was repealed in 2005 to pave way for reforms and restructuring in the health sector which included the dissolution of the Central Board of Health. Since that time, this Act has not been replaced thereby creating a major gap. This was the principal Act of Parliament regulating the health sector in Zambia including health training institutions. A perusal through the repealed Act revealed that there are no provisions relating to the treatment of pregnant students in nursing schools. It gave the Minister responsible for health powers to make statutory instruments and regulations for the smooth operations of the health sector. Consultations with one senior officer at the Law Development Commission revealed that the Government is in the process of developing a National Health Policy and a new National Health Services Act which will provide a comprehensive policy and legal framework for this sector.

However, there are various health related pieces of legislation which address specific aspects of the health sector. One piece of legislation which is related to this study is the Nurses and Midwives Act No. 31 of 1997.

2.2.4 The Nurses and Midwives Act

Despite the limitation of this study in not being given express permission by the Ministry of Health to conduct interviews in nursing schools pending clearance of the Ethics and Research Committee of the University of Zambia, a study of this area reveals that operations of all nursing schools in Zambia are regulated by the General Nursing Council of Zambia. The General Nursing Council of Zambia is a statutory board established through the Nurses and Midwives Act No. 31 of 1997. Under section 18 of the Nurses and Midwives Act, the General Nursing Council of Zambia (herein referred to as the Council) has powers to make rules by statutory instrument for the proper running of institutions and other places where training of nurses is undertaken. The Council exercises the power to make rules with the approval of the Minister responsible for health.

The General Nursing Council of Zambia has guiding regulations in place which nursing schools have to comply with in their training programmes. These include regulations on the character of students to be recruited and the requirement to be examined by a qualified medical doctor to ascertain the fitness of students to undertake a course in nursing. *The regulations prohibit nursing schools from recruiting pregnant candidates as students, and make it mandatory for all students in nursing schools who get pregnant to be sent away on leave and only return after they have delivered.*

Considering that no rules made by the Council have the force of law until they have been approved by the Minister, it is therefore apparent that the rules made by the Council disallowing pregnant students in nursing schools are known by government. Invoking the Liberal Feminist Theory in understanding this scenario, it is clear that the discrimination of women or in this case female students is rooted in the rules that guide the operations of these nursing schools. Hence in order to end this discriminatory practice, there is a need to reform the laws and/or rules that do not allow pregnant students from carrying on with their education due to this harsh policy against female students. Reference to the adequacy of the Re-entry Policy as alluded to by nursing school authorities interviewed (to be discussed in full under Chapter Four) does not address the concerns of this study. The fact that the practice of excluding pregnant students is not enshrined

in an Act of Parliament vindicates the first, second and third assumptions in this study which say that pregnant students are excluded; the practice is not grounded in law; it is illegal and discriminatory as it violates national laws and international human rights instruments.

2.2.5 The National Gender Policy

The Government of Zambia is concerned about the barriers that prevent equal and effective participation of women and men in the education and employment sectors. Being part of the international community where these concerns are shared and following the Fourth World Conference of Women held in Beijing China in 1995, the government began to implement the resolutions of this conference, known as Beijing Platform for Action. Numerous affirmative action measures were embarked upon to uplift the status of women. In order to coordinate these efforts aimed at systematically attaining gender equality in all spheres including the education sector, government passed the National Gender Policy in the year 2000.

Under Clause 4.3 of the National Gender Policy, which is on Education and Training, the policy outlines strategies meant to redress the gender imbalance and inadequacies in promoting women's right to education and training. It emphasizes enforcement of a 50:50 enrolment policy for training colleges and the need for exercise of positive discrimination in favour of women, including the lowering of the pass mark for the admission of girls in institutions of learning and, facilitation of the re-admission of girls who get pregnant, among other measures.

Looking at this policy through the lens of the two theoretical frameworks informing this study, namely, the Sameness/Difference and the Liberal Feminist Theories, this policy acknowledges that there is gender inequality between men and women as the latter have been down-trodden by the former in all sectors. The gender inequality is what drives the policies of exclusion of pregnant students in nursing schools and colleges of education. Hence there is an acknowledgement of the importance of introducing this policy in order to correct the imbalance. In particular, the policy acknowledges that men and women are different and that women have special needs due to their reproductive roles, thus they need to be treated in a special way.

Further, and in line with the Liberal Feminists, the National Gender Policy acknowledges that the discrimination of women is rooted in society's customary perception of women as the weaker sex and the discrimination is expressed in laws. Thus the position is taken in the National Gender Policy to guide and inform the legislative processes on the need to reform laws in order to eliminate discrimination against women.

Accordingly, despite the policy direction which the country is taking on the women's question, nursing schools and some colleges of education are working in the opposite direction by excluding pregnant candidates from registering in their colleges and also by sending on leave those who get pregnant. This study therefore attempts to understand why this practice of excluding pregnant students is perpetuated with the full knowledge of government and despite the abundance of laws and policies which run counter to it. Since the National Gender Policy is a pointer of the direction in which government wants to move in order to improve the situation for women, the practice of excluding pregnant students is not only discriminatory but it is illegal and against public policy.

2.2.6 The Education Policy

The Government of Zambia adopted the current National Education Policy in May 1996. The policy identifies the Ministry of Education as being responsible for colleges of education, the University of Zambia and the Copperbelt University. Whereas the policy does not dictate institutional responses to pregnancies in colleges of education and the universities, it recognizes the basic right of every Zambian, regardless of their sex, to good quality education in terms of access, equity and equality on the right to education. And in recognition of the centrality of women's contribution towards national development, the policy gives high priority to the education of girls and commits the Ministry of Education to the elimination of all gender disparities in the education sector.

The policy further indicates that, in colleges of education, 49% of the student population is female. It also states that in Zambian primary schools, women comprise 44% of trained teachers.

The policy attributes the low female representation in colleges of education and in the field of trained teachers to social cultural hindrances including the low value placed on educating a female child and personal factors like pregnancies and early marriages. The causal factor of the inequality between women and men is as explained in the theoretical framework informing this study, in particular the Liberal Feminist Theory which attributes the discrimination of women as being rooted in customary and legal constraints. Therefore to attain the necessary gender balance in colleges of education, there is a need to reform the laws as well as to change the customary attitude of society towards women as being inferior to men.

In its quest to attain gender balance in institutions of higher learning, one of the priorities of the Ministry of Education as provided for in the National Education Policy (1996;66) is to ensure that none of its regulations discriminate against the participation, progression or performance of girls in education. In other words, the regulations will ensure that girls and women are not discriminated against and that in order to ensure this equality, affirmative measures policies will be put in place to give girls and women in the education sector special treatment. Affording special treatment to women is the thrust of the Difference Theory which informs this study. It recognizes that women are different from men and that the laws and policies should be framed in such a way as to take cognisance of the pregnancy of women. However, despite the clear position of the Education Policy in this regard, research findings indicate that there are colleges of education which *still* exclude pregnant students from school. It is therefore the purpose of this study to get to the bottom of this practice in order to understand where this apparent resistance to government policy is emanating from and to offer recommendations on how to eradicate this discriminatory practice against pregnant students in institutions of higher learning.

2.2.7 The Re-Entry Policy

In Zambian schools, it was considered an expellable offence for girls to get pregnant while in school. It was not until October 13, 1997 that Government through the Ministry of Education launched the Re-entry Policy (Times of Zambia Newspaper; 15th October 1997). This was upon realization of the widening gender gap in education between men and women which was

resulting in gender inequalities in national development. The Re-entry Policy takes cognizance of the fact that everyone has a right to education.

The policy is meant to accord girls who drop out of school owing to early pregnancy an opportunity to be re-admitted into school six months to one year after delivery. The policy was meant to be used in primary and secondary schools initially. However, due to the lack of corresponding policies in institutions of higher learning, the *Re-entry Policy* is used in institutions of higher learning like nursing schools and colleges of education with some modifications. In other words, even in these institutions, when a student gets pregnant, she is not expelled but sent on maternity leave and can only be re-admitted after varying periods of time. According to the *2010 Educational Statistical Bulletin*, whereas this policy has scored a number of successes as some girls have gone back to school and successfully completed their secondary education, albeit at an age older than the age they initially would have done so, statistics also indicate for instance that in 2009, out of a number of 13,634 pupils who got pregnant, only 5,517 returned to their studies.

As stated in the foregoing paragraph, the *Re-entry Policy* is also used in the institutions of higher learning. From the interviews held with respondents in nursing schools and some colleges of education, they state that when they exclude pregnant students, the students will still be entitled to their college place after delivery. However, this practice results in gender inequalities between male and female students since it is only females who “benefit” from this policy as they are the only ones who get pregnant and suffer the detriment of exclusion. Further, as assumed in Assumption number four of this study that most students who drop out of these colleges find it difficult to come back or do not come back at all, there are various factors that hold them back. These include, but are not limited to, pressure from the family to withdraw and concentrate on child minding; lack of financial support to cover both the baby and its mother; maternity leave being too long. The Re-entry Policy therefore has shortcomings in its quest to ensure gender equality in educational institutions which include nursing schools and some colleges of education. In order to effectively curb discrimination against female students in nursing schools, colleges of education and other institutions, the answer lies in allowing pregnant students to be able to enrol in these colleges and for those who get pregnant later to be allowed to continue in

class until or unless they take a few days leave to go and deliver. This calls for reforms as espoused by the Liberal feminists.

2.3 Review of International Human Rights Instruments

In researching the gender inequality in nursing schools and colleges of education arising from the practice of excluding pregnant students from training, a review of international and regional human rights instruments is undertaken. By virtue of being a member of the United Nations and the international community, Zambia is party to several international and regional human rights instruments which have a bearing on the subject of this study. These instruments are not self-executing and require legislative implementation before they can take effect. However, the conventions, treaties and protocols are legally binding which means that once Zambia has ratified them, she is under an obligation to domesticate them. The declarations on the other hand, although not legally binding, provide a standard to which States Parties must actively seek to meet in terms of its laws and policies.

Through the human rights instruments discussed in this chapter, the practice of excluding pregnant students in nursing schools and colleges of education is assessed for compliance with standards in international and regional human rights instruments.

2.3.1 The Universal Declaration of Human Rights (UDHR)

The UDHR has guiding principles for the conduct of national and international affairs. In its preamble, it affirms the United Nations' commitment to respect for fundamental human rights, the dignity and worth of the human person and the equal rights of men and women in order to better standards of life for all. In respect of the subject for this study, other than the emphasis on the equal rights of men and women, under Article 26, the UDHR promulgates the right to education by everyone and places emphasis on the importance of having higher education equally accessible to all on the basis of merit. Equality of access to education by men and women is the thrust of the Liberal Feminist theorists. In other words, states must have in place

laws that eliminate all forms of discrimination in terms of access to education by both men and women.

By having policies that exclude students from nursing schools and colleges of education is clearly at variance with the spirit of the UDHR. And by invoking the Sameness/Difference Theory to assess this practice, it is noted that the UDHR focuses on the need for laws that accord equal access to education and employment opportunities between men and women. Therefore by having policies in nursing schools and colleges of education which exclude students who get pregnant from learning institutions is clearly at variance with the spirit of the Universal Declaration of Human Rights.

2.3.2 *International Covenant on Civil and Political Rights (ICCPR)*

By virtue of being a State Party to the ICCPR, Zambia is obligated to guarantee protection to its citizens against all forms of discrimination. The practice of excluding pregnant students from nursing schools and colleges of education is a form of discrimination based on sex. Article 26 of the ICCPR provides as follows:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion..... “

This provision has been domesticated into Zambia’s laws and it is the current Article 23 of the Constitution of Zambia. Against this background, any form of discrimination against either sex is prohibited and it violates national laws and international human rights instruments like the ICCPR. Therefore, having policies that exclude students from college for getting pregnant violates the national laws and the ICCPR.

2.3.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Zambia is a State Party to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW obligates States Parties to take action to prevent discrimination on the basis of sex by any person. Article 1 of CEDAW defines “*discrimination against women*” as follows:

“...any exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Articles 1 to 5 of CEDAW enjoin States Parties to eliminate discrimination against women on the basis of sex or gender and to put in place affirmative action measures in favour of women until the playing field is levelled. Article 4(2) of CEDAW calls on States Parties to take cognisance of women’s reproductive role by protecting their right to maternity leave. From the point of view of the theoretical framework informing this study, the Sameness/Difference theory, when invoked, urges the law to treat women differently from men and to afford them special treatment in respect of pregnancy. Also, the Liberal Feminist theoretical framework is in line with the position of CEDAW particularly under Article 5(a) where CEDAW enjoins States Parties to eliminate prejudices and customary practices which are based on the idea of the inferiority of women.

The practice of excluding pregnant students from nursing schools and colleges of education when measured against the yardstick of CEDAW is clearly discriminatory both in theory and application. If States Parties are to implement affirmative action measures to raise the status of women in education among other sectors, exclusion policies are at variance with the spirit of CEDAW. They are in fact perpetuating discrimination against female students.

Further, Article 10 of CEDAW promulgates the elimination of discrimination against women in order to ensure equal rights with men in the field of education. This provision confirms the third

assumption in this study which says that the practice of excluding pregnant students is discriminatory as it violates international human rights instruments on the right to education.

The question here then is, *“How does it come about that Zambia, which is a State Party to CEDAW, have discriminatory practices of excluding female students who get pregnant from nursing schools and colleges of education?”* In the same breath, government is putting measures in place to bridge the gender gap between men and women in education. It is the purpose of this study to investigate and understand this practice in the named institutions of higher learning against the yardstick of CEDAW.

2.3.4 The African Charter on Human and People’s Rights (‘The Banjul Charter’)

Article 17 of the African Charter on Human and People’s Rights (ACHPR), also known as the Banjul Charter, promulgates the right of every individual to education. Zambia by virtue of being a State Party to this Charter is obligated to uphold its citizens’ right to education. Therefore, any law or policy that attempts to take away citizens’ right to education would be in violation of this instrument. The practice of excluding pregnant students from nursing schools and colleges of education takes away the students’ right to education. Therefore the State as the duty bearer in upholding citizens’ right should not be seen to allow policies or practices that deny citizens their right to education, regardless of the excuse for doing so. In other words, the Charter places a duty on the Zambian Government to revoke policies which deprive pregnant students of their right to education.

2.3.5 SADC Protocol on Gender and Development

Article 5 of the SADC Protocol on Gender and Development enjoins States Parties to put in place affirmative action measures to promote women’s participation in the academia and labour market. And Article 14 of the SADC Protocol urges States Parties to enact laws that promote equal access to education between men and women. Zambia is a signatory to this protocol. Member countries consulted one another and came up with this protocol in order to address the

low participation of women in public life and the discrimination and domination they have suffered at the hands of men. In order to attain equal access to education between men and women, there is a need for government to make a deliberate effort to develop policies which promote women's access to education. Having policies which work towards reducing the number of women having access to education by excluding those who get pregnant violates the spirit of the protocol.

2.3.6 The Millennium Development Goals

Zambia is part of the international community and it is committed to achieving Millennium Development Goals (MDGs), including MDG Number 3 which aspires to promote gender equality and empower women, by eliminating gender disparity in primary, secondary and tertiary education at all levels by 2015. MDG Number 3 proceeds from the understanding that women are not on the same level with men in terms of opportunities in life and that their education is cardinal towards attainment of all MDGs. There are nearly 800 million illiterate adults worldwide of whom 64 per cent are women (Sheila, 2007: 39). Education of women is very essential for achieving the MDGs. Thus exclusion of pregnant students from nursing schools and colleges of education is not only retrogressive towards attainment of MDGs, but it is a form of discrimination and injustice.

2.4 Case Law

Non-discrimination on the basis of reproductive and sexual rights is guaranteed in international and regional human rights instruments as well as in domestic laws. However such guarantees are often not recognised in institutional policies and practices. Courts are the *fora* in which women's rights are affirmed or denied. In many African Commonwealth countries, educational policies restrict pregnant women's access to education. In the few cases where policies which exclude pregnant students from continuing with their education were challenged, the courts have found such policies or regulations to be unconstitutional and contrary to the public interest.

In this study, I did not find any Zambian cases in which the practice of excluding pregnant students from institutions of learning was challenged in the courts of law. I did find, however, relevant cases from other jurisdictions which are of persuasive value in Zambian courts.

In Zimbabwe, in the case of *Wazara v The Principal, Belvedere Technical Teachers College & Another 1997(2)ZLR508(H)*, the High Court held that it was discriminatory to expel students who fall pregnant while still in college and that the practice of expelling pregnant students was in violation of section 23 of the Constitution of Zimbabwe which prohibits discrimination on the basis of one's sex.

In another Zimbabwean case decided by the Supreme Court, *Lloyd Chaduka and Morgenster College vs. Enita Mandizvidza Supreme Court Judgment No. SC 114/2001*, the court held that a clause in a student college contractual agreement that requires women to withdraw from the college if they get pregnant is contrary to public policy and the constitution. The brief facts of the case are that the respondent Ms. Mandizvidza was a student at Morgenster College Teachers Training College while the appellant, the College was a private institution run by the Reformed Church in Zimbabwe. Upon enrolment at the college, the respondent signed a contract stipulating that *students who fall pregnant or cause another student's pregnancy* must withdraw from the college. After the respondent got pregnant following her marriage, she was asked to withdraw from college on 9th July 1999 in accordance with the contract she signed. The respondent applied to the High Court for interim relief to sit for her final examinations which the court granted on the grounds that clause 7(a) of the college contract contravened section 23 of the Constitution (which prohibits discrimination). The High Court held that the respondent should continue to pursue her studies at the college.

The College appealed to the Supreme Court arguing that section 23 of the Constitution of Zimbabwe which prohibits discrimination does not apply to a private contract and therefore the case ought to be governed by the law of contract. In rejecting the appeal, the Supreme Court held that even if the college is not a public body, falling within the meaning of section 23 of the Constitution, the expulsion of students who become pregnant while attending the college

constitutes gender-based discrimination and is therefore contrary to public policy. The clause in the college contract was found to be null and void.

In a South African Supreme Court decision in the case, *Mfolo and Others vs. Minister of Education, Bophuthatswana [1994]BCLR136*, the applicants were four pregnant women who were suspended from pursuing their studies and sitting for their final examinations pursuant to regulation 13(2) of the Teachers Training College (promulgated pursuant to section 10(1) of the Bophuthatswana Education Act No. 2 of 1979). This regulation provided for the suspension of female students who become pregnant during the academic year. The question before the court was: ‘Does a regulation that suspends pregnant women from pursuing their studies contravene section 9 of the Constitution which grants all persons equality before the law?’ The Supreme Court held that a regulation that prohibits pregnant women from pursuing their study programmes is unconstitutional.

In another case, *Student Representative Council of Molepolole College of Education vs. The Attorney General [1995](3)LRC 447*, before the Court of Appeal in Botswana, the appellant who was the Student Representative Council (SRC) challenged the constitutionality of regulation 6 of the Teachers’ Training College which required female students who got pregnant to immediately inform the college authorities and were obliged to leave the college or miss the next semester. The regulation further provided that, where the female student got pregnant for the second time, the college could permanently expel her. The SRC argued that regulation 6 contravenes section 15(3) of the Constitution which prohibits discrimination on the basis of sex. The Court of Appeal held that regulation 6 is unfairly discriminatory because it unreasonably and without justification denies pregnant students the opportunity to continue their education. The regulation that expels students who become pregnant while enrolled at a college was thus held to be unconstitutional.

In a Zambian case, *Longwe vs. Intercontinental Hotels (1993)4LRC*, the applicant, Sara Longwe who is a gender activist won a case against the Lusaka Intercontinental Hotel which had policy that prohibited women from entering the hotel premises without being in the company of a man supposedly to curb prostitution. The High Court found that the hotel’s exclusion policy

amounted to discrimination and declared it unconstitutional as it violated women's autonomy and freedom of movement.

From my research so far, I have not come across a *Zambian* case where an excluded pregnant student has challenged the decision of a college for being unconstitutional. However, from the foregoing decisions of the superior courts of several other countries, it is evident that if exclusion policies or practices of pregnant students in nursing schools and colleges of education in *Zambia* were challenged in court, they would most likely be found to be unconstitutional and/or against public policy.

CHAPTER THREE

3.0 RESEARCH METHODOLOGY AND METHODS OF DATA COLLECTION

In my quest to ascertain the institutional responses to pregnancies by nursing schools and colleges of education, within the theoretical framework of Sameness/Difference and Liberal Feminism, five research methodologies were utilized in the course of this study.

3.1 Research Methodologies

3.1.1 Women's Law Approach

In the struggle for gender equality in learning institutions and the quest to understand institutional responses to pregnancies in nursing schools and colleges of education, there was a need for me to identify a methodology to bring out the lived realities of female students and how the existence or absence of certain laws or policies in this area affected them. The Women's law approach, thus, emerged as the core methodological framework relevant in this study. This methodology takes women as the starting point and relies on empirical data collected on the ground focusing on women's lived realities and experiences as a starting point for analysing the position of women in law and society (Bentzon, et al, 1998).

Using this approach, I interviewed female students affected directly by exclusions from colleges for getting pregnant. Through the women's law approach, the interactive process in which data from the field, the theories informing the study and the lived realities about the perceptions and norms are constantly engaged were understood (Bentzon, et al, 1998). It became clear to me as to which data to collect in terms of laws to interrogate, i.e., those which had a bearing on the topic of discrimination of pregnant students in learning institutions and the appropriate respondents to interview. For instance, having confirmed that some colleges of education and nursing schools do in fact exclude pregnant students from continuing with their studies, I set out, using the

Women's Law Approach, to find out how the exclusion policy affects the concerned female students. It turned out that exclusion policies not only disrupted their studies but affected them mentally and financially to such an extent that in some cases that they were devastated by them. This approach also led me to enquire into the laws the college authorities rely on in deciding to exclude pregnant students. I found out that the exclusion practice in nursing schools is not grounded in law but policy, thereby confirming the first and second assumptions of this study which assume that exclusions occur and their basis is policy and not law. It therefore followed that, in order to ameliorate or eliminate the discriminatory practice of excluding pregnant students, there was need to review the concerned policy.

Further, since the Women's Law Approach looks at the interaction of laws or lack of laws and how the same affects the lives of women, the approach was useful as it was in line with the theoretical framework that informed this study, being the Liberal Feminist Theory and the Sameness/difference Theory. The Liberal Feminist Theory focuses on understanding the oppression of women by looking at the customary constraints and laws that block women's advancement and success in the public world. The latter theory (Sameness/difference) focuses on whether the law should treat women and men in the same way or whether women should be given special treatment due to the fact that they get pregnant and whereas men do not. From the study, it emerged that the exclusion of pregnant students in nursing schools was embedded in institutional policies. As a result of applying women's law approach, the impact of these policies on female students who got pregnant was critically analysed and found to be detrimental to women and reversing the quest for gender equality in nursing schools and colleges of education. This is what one of the female students who got expelled from Livingstone School of Nursing in Southern Province of Zambia (and preferred anonymity) had to say about the exclusion policy:

“When it dawned on me that I was pregnant, I was very frightened and blamed myself...the rules in the nursing school were very clear that once a student got pregnant, they needed to proceed on a two-year maternity leave.my boyfriend who is a married man told me to terminate my pregnancy by abortion. My conscience did not allow me to kill... In January 2008 after I had delivered, I went back to the nursing school to secure my re-admission into training. The Principal said there was no school place for me and told me to return in January 2009.”

The foregoing respondent was consequently forced to apply to a college of education and became a teacher, despite the fact that she wanted to be a nurse.

The Women's Law Approach was therefore useful in my quest to understand how female students were affected by the college policy or practice on pregnancy. The use of the law or rules by college authorities to exclude pregnant students was best understood in the study against the backdrop of the Liberal Feminist Theory. The interplay between the women's Law Approach and the Liberal Feminist Theory lies in the fact that the latter focuses on laws and the factors which lie beyond them which give rise to the perception that women are inferior to men. This investigation reveals the lived realities of women in society. In understanding the lived realities of female students in this study, I found out that the policy of excluding pregnant students was informed by the uniform application of policies that did not take into consideration the differences between men and women. Theoretically, the laws or policies may not be discriminatory but their application resulted in discrimination. I was therefore able to analyse the lived realities of female students using the Difference Theory which recommends different treatment of male and female students in such a situation.

Using the Women's Law Approach, within the framework of Sameness/Difference theory and the Liberal Feminism, I investigated and ascertained that nursing schools and some colleges of education exclude pregnant students and that the practice had its origin in the Christian religion and that the practice was enshrined in institutional policies and not national laws. Thus by obtaining the lived realities of excluded pregnant students, I was able to ascertain the extent to which female students were affected by the exclusion policy. This finding, among many, became one of the bases for my recommendations regarding the need to revoke the policy of excluding pregnant female students in nursing schools. It suffices to mention here that for colleges of education, the exclusions were found to be an inherited practice not supported by any policy.

Here, one of the female discussants at Mongu College of Education narrates how the decision of Mongu College of Education to refuse four pregnant students from registering was contested and upset by the Provincial Education Officer:

“During our registration in January 2011, four students who reported to college while pregnant were denied registration and told to come the following year after they had delivered. They felt unfairly treated and appealed to the Provincial Education Officer who directed that they be registered. They were registered as day scholars but later they all withdrew.”

The foregoing shows how female students are affected negatively by the policy or practice of excluding them for getting pregnant. It further indicates that the rules which the colleges apply are not enshrined in law but in school rules which can be upset or set aside with relative ease. These rules when viewed against the backdrop of the Sameness/Difference theoretical framework treat male and female students similarly. They do not take into account the fact that female students get pregnant and therefore their reproductive role has to be taken into consideration in order to avoid discrimination. Therefore, through an enhanced understanding of the lived realities of female students, the solution lies in recognising that male and female students are different and that they have to be treated differently in order to attain gender equality in nursing schools and colleges of education.

3.1.2 Grounded Theory Approach

In this study, grounded theory was one of the approaches I used in my field research. One of the authors on grounded theory, Hellum and Stewart (1998:18), describe it as a repetitive process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. This approach to research entails developing a theory to explain a phenomenon which is the subject matter of the research out of the data collected from the field study. It entails that as a researcher, I had to approach my research without preconceived theories so that my findings and analysis thereof could be properly grounded in the data. Accordingly, in the pursuit of investigating institutional responses to pregnancies in nursing schools and colleges of education using this methodology, I closed myself to the influence of the earlier perceptions I had about the topic and allowed the data I was collecting to inform and determine the subsequent sources of information. For instance, after interviewing the Principal for Mongu College of Education on the response of the college to pregnant students, on the basis of the data that I got from that interview, it became

imperative that I had to interview the students who were affected by the practice of excluding pregnant students. And in a focus group discussion with 12 students at the Mongu College of Education, I learnt that the college does not admit candidates who come to register for the first time as students while pregnant. I was also informed that students who get pregnant during the subsistence of the academic year are excluded from the college and could only be admitted back the following year after delivering. This is what one of the female discussants in a focus group discussion said about the college practice of excluding pregnant students:

“This college sends away students who come to register for the first year while pregnant.... Students who get pregnant during the term are also sent away until the following year, unless the pregnancy is noticed at the end of the academic year, in that case they are allowed to sit for their examinations and if they are not finalists, they have to stay away until they have delivered. This practice is inconveniencing to female students.”

The discussants in the focus group discussion further stated that, in that year’s in-take, four students were denied registration for reporting to the college while pregnant. The discussants revealed that the pregnant students appealed to the office of the Provincial Education Officer, who intervened and directed that they be allowed to register. The college registered them but as day scholars. I learnt that later, they were unable to continue for unknown reasons and they all withdrew.

In line with the grounded theory methodology, one of the authors on this research methodology, Ghosh B.N. (2011:285) explains the goal of the theory as not pursuit of truth but formulation of hypothesis or theory and to discover participants’ main concern and how they continually try to resolve it. It was in line with that objective that I set out to locate pregnant students who withdrew from college. The voices of affected female students regarding the exclusion practice are captured in later paragraphs of this chapter.

After analysing my findings from Mongu College of Education using Grounded Theory methodology, it became apparent to me that neither the Principal nor the students were clear about what was informing the practice of excluding pregnant students from college. It became imperative that I had to find out further from higher authorities on the matter. However, before

moving on to interview other sources on the practice of excluding pregnant students from Colleges of Education, I found out how female students in private colleges were also affected by this practice. The importance of this was that I needed to compare and analyse both public and private colleges of education and to ascertain the theory that would best explain the situation in both types of colleges. In this regard, I interviewed a senior member of staff from Lyambai College of Education which is a private college in Mongu District of Western Province. I was informed that as a private college, they admit students regardless of their pregnancy status and that they do not send pregnant students away on maternity leave. At the time of the interview, the college was closed for the December 2011 holiday and there were no students on campus. From that interview, another category of analysis had emerged.

Proceeding from there, I had a discussion with the Provincial Education Officer who said that it was no longer the policy of the Ministry of Education to exclude pregnant students from colleges, despite not having a copy of the document to that effect. The question then was. *'If that was the policy of the Ministry of Education, why then do some colleges continue to exclude pregnant students?'* Inevitably I had to pursue the information at the Ministry of Education headquarters in Lusaka.

The interviews I had with senior members of staff at the Ministry of Education headquarters reviewed that the colleges of education were in three categories, namely, (1) government colleges, (2) private colleges, and (3) missionary or formally missionary colleges. I was informed that the Ministry of Education had changed its policy on pregnancies of college students, from excluding to allowing female students to carry on with their education while pregnant. I was further told that, despite the change in policy, the Ministry of Education was aware that missionary or formerly missionary colleges up to now do not admit pregnant students and also that those who got pregnant while in college were excluded until they delivered. The officers also told me that private colleges do not exclude pregnant students and government colleges of education were not supposed to exclude, although some still do so.

Using Grounded Theory methodology, I analysed my data at this stage in order to understand institutional responses to pregnancies in colleges of education. The categories which emerged are summarised in the table below.

Table 1: Showing Education Colleges' Responses to Student Pregnancies

TYPE OF EDUCATION COLLEGE	STUDENTS' EXPERIENCE ON PREGNANCIES	PRINCIPAL'S STATEMENT ON EXCLUSION PRACTICE	MINISTRY OF EDUCATION POLICY ON PREGNANCIES
Government	Colleges do not register pregnant students & those who get pregnant while in college are sent on leave or removed from boarding facilities.	Colleges do not exclude pregnant students at registration or later, but give them leave & allow them back.	According to the new policy, pregnant students should be allowed to register & continue learning. If they opt out voluntarily they can come back later.
Missionary/Ex-missionary	They do not allow pregnant students to register. If pregnant later, they are sent away until they deliver.	They do not admit pregnant students at registration & send students away on leave if they get pregnant later.	Ministry of Education Policy is the same as in government colleges above
Private	They do not refuse to register pregnant candidates at first registration & students allowed if pregnant later	They do not exclude pregnant students at first registration or later.	The policy is the same as in government colleges.

Using the grounded theory methodology, after the foregoing categories had emerged, my analysis was that, whereas it was the policy of government through the Ministry of Education to send away students who got pregnant colleges of education, this policy has since changed to that of allowing pregnant students to register in colleges of education and carry on with their education. I also realised, as confirmed by Ministry of Education that, whereas the official policy of government in treatment of pregnant students had changed, some government colleges and missionary colleges exclude pregnant students from college until they have given birth. Further, I

learnt that female students are adversely affected by this practice as they suffer material and emotional anguish whenever they get pregnant. I also arrived at the finding that, despite the harsh treatment on pregnant students by this practice, they continually try to resolve this challenge by, among other means, appealing to the Provincial Education Officer. However, despite being allowed back into college as was the case with Mongu College of Education pregnant students in the 2011 in-take, they still could not carry on with their training as they eventually all withdrew. My conclusion here was that the impediment to pregnant students' education did not lie in the policy or practice of excluding pregnant students but way beyond that. It may lie in the cultural perception of what an ideal student ought to be, and what a pregnant woman was allowed or not allowed to do in society.

However, from the change of policy by the Ministry of Education to allowing pregnant students to continue learning, I deduced that it was an acknowledgment of the inconvenience and suffering which pregnant students undergo and that it is in fact possible to be pregnant and carry on with one's education.

I further used grounded theory methodology in my research on the practice of excluding pregnant students in nursing schools. In the interviews I held at Chainamana College of Health Sciences in Lusaka District, which is a government college, female students stated that the practice of denying pregnant candidates to register as students and sending away of pregnant students on maternity leave was inconveniencing and discriminatory. The following was stated by one of the students (who preferred to remain anonymous) who was sent on maternity leave for getting pregnant:

“Some day in March 2010, I gathered courage and went to see the head of department to tell him about my pregnancy. I also wanted to explore the possibility of continuing with my education while pregnant because I am a married woman. When I got to his office, immediately I began explaining, I broke down crying because I could see my whole career go down the drain...I was advised that I had to proceed on a two-year maternity leave.”

Pursuant to grounded theory, I interviewed more respondents who also got pregnant and found out that they were all similarly treated and that they all felt unfairly treated and discriminated

against. I thus set out to find out what the practice was like in private and missionary nursing schools. In an interview with a senior member of staff (who was not cleared to give me the interview) at Rufunsa School of Nursing, he indicated that according to the regulations which guided the operations of the nursing school as issued by the General Nursing Council of Zambia, the training institutions was not allowed to recruit pregnant students and that those who got pregnant while in college had to be sent away on maternity leave immediately. Rufunsa Nursing School is a missionary training institution that is run by Reformed Church in Zambia. In order to understand what the policy in private nursing schools was, I spoke to a senior member of staff at Lusaka Health Institute situated in Lusaka District. I was informed that, all nursing schools in Zambia were regulated by the General Nursing Council of Zambia, including Lusaka Health Institute. She said that they are not allowed to register pregnant students or to allow students who are pregnant to continue learning. She said this was in line with the nursing ethics as directed by the General Nursing Council of Zambia.

Since the General Nursing Council did not grant me an interview, from section 18 of the Nursing and Midwives Act, I learnt that indeed the nursing council regulated operations of all nursing schools in Zambia and that, with the approval of the Minister responsible for Health, they issued regulations guiding the operations of nursing schools. According to the regulations, pregnant students are not allowed to learn in schools of nursing. In view of the foregoing, categories of analysis emerged from the information that I gathered. The categories are summarised in the table below:

Table 2: Showing Nursing Schools' and General Nursing Council's Responses to Student Pregnancies

TYPE OF NURSING SCHOOL	FEMALE STUDENTS' EXPERIENCE	NURSING SCHOOL POLICY/GENERAL NURSING COUNCIL POLICY
Government	Pregnant students sent away on maternity leave for up to two years. Pregnant candidates not allowed to register as students.	Pregnant candidates not allowed to register as students in nursing schools. Nursing students who get pregnant to be sent on maternity leave and only be allowed back after delivering.
Missionary	Same as above.	The policy on pregnant candidates and students in missionary nursing schools same as in government schools.
Private	Same as above.	The policy is the same as in government and missionary nursing schools

From the data collected pertaining to responses of nursing schools to pregnancies of students, it was clear that the training institutions, government, missionary and private ones exclude pregnant students from their institutions with leave to return after delivering. The General Nursing Council of Zambia is the body that regulates the nursing schools and originates the regulations pertaining to exclusion of pregnant students. Further, due to the exclusion policy in nursing schools, female students who get pregnant are adversely affected by the policy, including their families. I also noted from interviews with students who were once excluded for getting pregnant that they are very concerned and always try to resolve the problem by either engaging the college authorities to allow them to carry on with their learning or to contemplate terminating their pregnancy, among other options. As it is the goal of Grounded Theory to discover the participants' main concern and how they continually try to resolve it and ultimately come up with a theory based on the conceptual ideas, I arrived at the understanding that the policy of

exclusion of pregnant students in nursing schools is rooted in the policies of the General Nursing Council of Zambia.

After arriving at the foregoing understanding of the phenomenon, using Grounded Theory methodology, it was clear that the practice has its roots in society's customary conception that teachers and nurses as role models in their professions should not get pregnant during their training. This was followed by formalisation of this conception by government into policies both in education and health training institutions. However, the education sector has since done away with the practice and it is only the health sector that still has the policy. Therefore having analysed this phenomenon through the Grounded Theory methodology, it became apparent to me that the findings fit in the Liberal Feminist theoretical framework which explains women subordination as rooted in a set of customary and legal constraints that block women's entrance into and success in the public world. This theoretical framework espouses that in order to normalise the situation, there is a need for law reform as well as a change in the way society perceives women as sex weaker than men.

Further, the analysis of the findings from the Grounded Theory methodology show that the law does not accord women special treatment in view of the fact that they get pregnant and men do not. Hence invoking the Sameness/Difference Theory, pregnancy is not a sickness or disability and therefore pregnant students and women in general need to be treated differently from men. And since it is not a sickness or disability, the policies of training institutions should allow women to carry on with their reproductive roles (by getting pregnant) and continuing with education. It should not be a question of picking one or the other.

3.1.3 Case Study Approach

As indicated later in this Chapter under Limitations of the study, the Ministry of Health did not give me express permission to carry out research in their institutions, referring me to the Research and Ethics Committee of the University of Zambia. This Committee did not get back to me on my application to conduct research in Ministry of Health institutions. However Chainama

College of Health Sciences administration allowed me to conduct my research there. After consultations with my supervisor, I was advised to include a Case Study Approach as part of my research methodologies as it appeared that Chainama College was the only health institution where I could carry out my research.

According to Yin, a case study is defined as follows:

“A case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used.”

(Yin 1984)

In other words, case study is an intensive analysis of an individual unit. Since Chainama College of Health Science was the only health institution where permission was fully granted for me to carry out my research, I collected data from respondents at the institution, analysed the information and ultimately gained a sharpened understanding of the policy in nursing schools pertaining to exclusion of pregnant students. For instance, I became conversant with the legislative framework regulating the training schools for nurses, and how the General Nursing Council of Zambia regulates nursing schools by issuing regulations including the regulation that no pregnant student is allowed to be registered in nursing schools and that when a student gets pregnant, they have to be sent away on maternity leave and only be allowed back after they have delivered. I came to understand how excluded students experience and interpret the effect of this policy against them. One of the discussants at a focus group discussion held at Chainama College had this to say:

“There are pregnant nurses in hospitals who attend to patients and do all functions which other nurses who are not pregnant perform. Similarly, what is wrong with a pregnant student (nurse) remaining in college and going to do practicals in the hospital? I think this policy is just discriminatory against female students.” (Emphasis added)

Through the case study approach, I came to understand that pregnant students feel discriminated against by the policy of excluding them when they get pregnant and that they are against this

policy. This was expressed by nearly all the students interviewed as they kept drawing comparisons with the University of Zambia where pregnant students are not excluded. This is what a third-year Clinical Medicine student (who requested to remain anonymous) who was excluded for getting pregnant, had to say about the college policy on pregnancies:

“It is not a crime to be a woman... My appeal to the college authorities is for them to stop sending pregnant student on their so called “leave” because it is discriminating against us. Let them copy what their neighbours at the University of Zambia are doing where there academic freedom and pregnant students are allowed to continue learning.”

(Emphasis added)

Therefore, through the case study approach, I was able to gain a detailed understanding of the policy of excluding pregnant students from college and the policy in the health sector training institutions. This approach helped me to confirm my first assumption that nursing schools exclude pregnant students from college and the second assumption that the practice is not enshrined in national laws but in policies and school rules.

3.1.4 Gender and Sex Analysis Approach

In studying the institutional responses to pregnancies in nursing and colleges of education, there was a need for me to establish the sex which is most affected by the policy of excluding pregnant students. In my research through gender and sex analysis, I was able to choose the relevant respondents in given situations. For instance, when I wanted to ascertain the extent to which pregnant students who got excluded were affected by the policy of sending them away on leave, I certainly was informed by this approach to interview female respondents. This is because they are the only ones who were affected directly by the policy and not male respondents. For example, in an interview with one respondent who is a teacher at Libala High School in Lusaka, the following was what she said about how the exclusion policy at a college of education she attended affected her:

‘I got depressed when I realised that I was pregnant. Despite the support from my husband, I knew it was me alone to suffer the stigma of

dropping out of college... Quite alright I was entitled to my school place afterwards, but I felt as if my world had come to an end... Because of the exclusion I suffered, I perpetually remained junior to my in-take mates... Later on in life, when we applied for residential school at University of Zambia, I was not granted study leave because I had not clocked two years in the system like my first in-take mates.”

Further, I was able to use this approach in disaggregating information from the field in terms of male or female sources. This was important for me to be able to understand how the two sexes perceived the policy of excluding pregnant students from nursing schools and colleges of education. In the two focus group discussions I had with students at Mongu College of Education and Chainama College of Health Sciences, I carefully included more female discussants than male. It turned out that, at the beginning of the discussions in both focus group discussions, male participants did not feel that the policy of sending away pregnant students was discriminatory. Later in the debates, that is when they realized that the policy was in fact discriminatory against their female colleagues.

3.1.5 Human Rights Approach

In order to assess the effect of the practice of excluding pregnant students from nursing schools and colleges of education on concerned students, I had to invoke comparison standards and principles of practice in this regard at international, regional and national levels as the norm. Zambia is a State Party to most international and regional human rights instruments.

For instance, Articles 1 to 5 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to which Zambia is a State Party, enjoins states parties to eliminate all forms of discrimination against women. Assessing the practice of excluding pregnant students in nursing schools and colleges of education against these provisions, the practice of excluding pregnant students was found to be discriminatory. Further, Article 10 of CEDAW enjoins states parties to promote equality between men & women in the field of education. The study found out that this objective cannot be achieved by excluding pregnant students from institutions of learning. In one of the focus group discussions I had with students at Mongu College of

Education, female students felt that excluding pregnant students was discriminatory against them. The following is what one of the female discussants said about the exclusion practice:

“All female students in this college are potential victims of this policy. Some of us are married. Even when we are at home, we are tormented by this policy. It is highly discriminatory. Where is the gender equality government sings about? Today this exclusion policy is affecting us; tomorrow it will be affecting our children. Let government do away with it so that we can be free to live normal lives.”

In using the human rights approach, I found out that Article 5 of the SADC Protocol on Gender & Development enjoins states parties to put in place affirmative action measures to promote women’s participation in the academia and labour market. In this regard, the Government of Zambia is implementing affirmative action measures, including the Re-entry Policy by allowing female pupils and students who get pregnant to be able to return to their learning institutions and continue with their studies after they return from maternity leave. In pursuit of the objective of promoting women’s participation in education, institutions such as the University of Zambia allow pregnant students to carry on with their education. Through this approach therefore, I was able to understand the common international practice in matters of pregnancies and compare that with practices nursing schools and colleges of education in order to have an informed position on the matter.

Provisions of some international human rights instruments are replicated in domestic law. For instance, the Bill of Rights draws heavily from the UDHR. Article 23(3) of the Constitution of Zambia for instance prohibits discrimination on grounds of sex. Therefore, the practice of excluding pregnant students in nursing schools & colleges of education amounts to discrimination. Further, since the practice is at variance with the Constitution, it is thus illegal. Further, the laws and policies upon which this practice is based are in contravention of the Constitution of Zambia. The fact that an Act of Parliament, like the Nurses and Midwives Act, gives powers to the Minister responsible for health powers to pass statutory instruments to regulate nursing schools does not mean that the Minister can make any regulations which may violate the Constitution or international human rights instruments which the State has acceded to. Hence the human rights approach was very instrumental in this study in assisting me to

scrutinize national laws, policies & regulation and rules in nursing schools and colleges of education against the yardstick of human rights instruments.

3.2 The Sample

In investigating institutional responses to pregnancies in nursing schools and colleges of education, the following institutions were consulted for information on this research:

- | | | |
|-----|---|------------------------------------|
| 1. | The Ministry of Education | Lusaka District |
| 2. | The Ministry of Health | Lusaka District |
| 3. | The Ministry of Gender and Child Development. | Lusaka District |
| 4. | The Zambia Law Development Commission. | Lusaka District |
| 5. | The General Nursing Council of Zambia. | Lusaka District |
| 6. | The University of Zambia. | Lusaka District |
| 7. | Nkhrumah University College | Kabwe District |
| 8. | Chalimbana National In-service Teachers College | Chongwe District (Lusaka Province) |
| 9. | Mongu College of Education | Mongu District |
| 10. | Lyambai College of Education. | Mongu District |
| 11. | Chainama College of Health Sciences | Lusaka District |
| 12. | Lusaka Health Institute of Nursing. | Lusaka District |
| 13. | Rufunsa School of Nursing | Chongwe District |
| 14. | Non-governmental Coordinating Committee | Lusaka District |

The following table shows individual key respondents and other respondents interviewed in the study:

Table 3: Showing Individual Key Respondents and other Respondents interviewed

KEY RESPONDENTS	SEX		TOTAL
	MALE	FEMALE	
Students who got pregnant &excluded	0	5	5
Students in nursing schools	8	9	17
Students in colleges of education	4	8	12
College Principals or Registrars	7	1	8
Ministry of Education Hqs staff	1	2	3
OTHER RESPONDENTS	MALE	FEMALE	TOTAL
Gender & Child Care Ministry	1	1	2
Zambia Law Development Commission	0	1	1
NGOCC	0	1	1
Traditional leader	1	0	1
Community members	2	0	2
TOTAL	24	28	52

3.3 Methods of Data Collection

3.3.1 In-depth Interviews with Key Respondents

One of the data collection methods I used in the study was in-depth interviews with key respondents identified in Table 3 above. This method of data collection proved to be ideal since it is a method based on the life stories and other detailed information concerning past and present experiences, including perceptions and attitudes which can only be accessed through interviews (Ncube 1986:22). Hence in ascertaining institutional responses to pregnancies in nursing schools and colleges of education, the respondents were identified by virtue of being the focus of the study and affected rights holders (that is, female students in nursing and education colleges) as well as the rest of the respondents who deal with the policy or practice of excluding pregnant students and/or are conversant with the subject of the research. The interviews were unstructured.

For instance, in one in-depth interview with a second year female student at Chainama College who had been excluded for getting pregnant, she explained how she felt and how her mother reacted to the news of her exclusion for two years after getting pregnant:

“When I discovered that I was pregnant, I felt very devastated but I had to maintain my composure since we were about to sit for our examinations... When I broke the news of my pregnancy to my mother, she was so angry with me.... We tried to find a private nursing where I could continue with my studies while pregnant....., to no avail... I am appealing to Government to allow students who get pregnant to continue with their education”.

Through the in-depth interviews, I was able to collect first-hand information from those who had experienced the exclusion policy and what they feel should be done about it.

3.3.2 Focus Group Discussions

I held two focus group discussions with male and female students at Mongu College of Education and Chainama College of Health Sciences. I briefed the discussants about the research topic and allowed them to express their views and experiences on the institutional response to pregnancies in their training institutions. Through this method of data collection, students were able to articulate the college practice of excluding pregnant students and also what they feel should be the ideal way of handling the matter, with the majority saying that the practice was disadvantaging female students and that pregnant students ought to be allowed to continue with their education. These are the words of one female discussant in the focus group discussion held with students at Mongu College of Education:

“My sister got pregnant and had a child in 2008 while she was studying at the University of Zambia. She was not excluded while pregnant. She only stayed away from class for two weeks after she delivered. She still passed and even did better than some male students and graduated at the same time with her in-take mates. What is special about this college for them to have such discriminatory policies?”

The focus group discussions were very instrumental in my data collection as they revealed to me the perceptions, values and experiences of the students and what it is they would like to be done by government regarding the policy of exclusion of pregnant students from studies. The majority of the discussants were of the view that the policy or practice of excluding pregnant students in colleges must be abolished by government.

3.3.3 Ordinary Interviews

I used this method to interview one parent whose daughter was excluded from a nursing school in Livingstone for getting pregnant. His views were that government should step in and stop the practice. I also interviewed a traditional leader in Mongu to get his views on the policy of excluding pregnant students. Although he was not aware of the practice, he said (once I informed him about it) that it was discriminatory and should be abolished.

3.3.4 Secondary Sources of Information

In this study, I read other writers' work relating to this topic of excluding pregnant students from nursing schools and colleges of education. I reviewed and took note of the provisions of a number of Zambian statutes with relevancy to the study. For instance, the Nurses and Midwives Act is the principal Act of Parliament which creates the General Nursing Council of Zambia, a statutory body that regulates the operations of nursing schools in the country. This Act confers power on the Nursing Council to formulate regulations and a code of ethics to be followed by nursing schools. It is pursuant to this power that the Nursing Council prohibits all nursing schools from enrolling and allowing pregnant students in their colleges.

Other than the domestic laws, I also read international and regional human rights instruments; surveys and statistical data; on-line publications; books by other authors and decided cases on the policy of excluding pregnant students from training institutions. For instance, in the case of *Mfolo and Others v Minister of Education, Bophuthatswana [1994]BCLR136* the Supreme Court in South Africa held that a regulation that prohibits pregnant women from pursuing their study programmes is unconstitutional. The foregoing and many other works have been useful in this study in the investigation of institutional responses to pregnancies in nursing schools and colleges of education. The secondary sources of data I used are discussed in Chapter 2 of this study called Law and Literature Review.

3.4 Evaluation of Methodology

The methodology and methods of data collection employed in this study proved to be effective in capturing the information which addressed the concerns of this research, that is, to investigate institutional responses to pregnancies in nursing schools and colleges of education. Through the use of the Women's Law Methodology, I was able to carry out an effective study of the lived experiences of pregnant students in colleges of education and understand how this policy affects them. Also, the use of Grounded Theory approach raised the level of the objectivity in

undertaking the research as data was collected systematically without influence of my pre-conceptions on the topic. The other methodologies were equally very useful.

However, I noted that the use of focus group discussions influenced the responses I got in instances where I intervened to put the discussion back on track. For instance, in a focus group discussion at Mongu College of Education, my interjection caused male discussants to change their position and start saying that exclusions were discriminatory in order to please me. One has to be cautious in using this tool to avoid influencing respondents.

3.5 Limitations of the Study

The limitation that I faced in the study was lack of clearance from the Ethics and Research Committee of the University of Zambia to allow me to conduct research in nursing schools. Despite writing to the university on the advice of the Ministry of Health, I got no feedback. It suffices to mention that I was eventually able to carry out interviews in the health institutions listed in paragraph 3.2 of this study.

CHAPTER FOUR

4.0 FINDINGS AND ANALYSIS: COLLEGES OF EDUCATION

4.1 Colleges of Education's Policy on Student Pregnancy and its Effect on Pregnant Students

This study revealed that the origin of the practice of excluding pregnant students from colleges is to be found in the days of Zambia's British colonial history (Ncube; 11). The practice permeated the educational system in Zambia and has continued to persist in many institutions of learning. What it entailed then was that, once a female student was confirmed pregnant, she was expelled from school or college. And if the man responsible for the pregnancy was a teacher, he was dismissed from employment. If it was a fellow student responsible, he was also expelled from the learning institution. This study has established that since the introduction of the Re-entry Policy by the Ministry of Education in 1997, students who get pregnant in institutions of learning are no longer expelled; rather, they are sent on maternity leave and later return to their school and continue with their education.

According to the Education Statistical Bulletin (2010;73), there are 23 colleges of education in Zambia. The colleges are run by either government or missionaries, or are privately run. In the study, it emerged that response to student pregnancies varied according to whether the college of education in issue is government run or missionary run/formerly missionary run, or privately run.

4.1.1 *Private Colleges of Education*

This study established that private colleges of education allow pregnant students to register and carry on learning while pregnant. In an interview with the Principal for Lyambai College of Education in Mongu District, the pregnancy status of the student was immaterial. Of importance to the college was for the student to meet the entry requirements in terms of having a full Grade Twelve School Certificate with a minimum of five credits and payment of school fees. He said

that the pregnancy status of students is a purely personal matter which the college does not delve into. In a later interview with senior staff at the Ministry of Education headquarters, they reiterated that private colleges do not exclude pregnant students. Therefore, I concluded that private colleges of education do not exclude students who get pregnant.

4.1.2 Missionary/Formerly Missionary-run Colleges of Education

I carried out interviews and focus group discussions with students and the Principal of Mongu College of Education. The college of education was previously run by the Catholic Church before it was transferred to government. In a focus group discussion held with 12 students (8 female, 4 male), what emerged was that the college denies registration to pregnant students and that those who get pregnant in the course of the academic year are excluded. They said that it is only those students who got pregnant at the end of the academic year who are allowed to sit for their examinations.

I learnt from the focus group discussion that female students were quite unhappy with the practice of excluding pregnant students as they felt it was very inconveniencing and discriminatory against them. They said that they did not see any problem with a pregnant student carrying on with her education until she goes to deliver. This is what one of the female discussants said about the practice of excluding pregnant students from college:

“All female students in this college are potential victims of this policy. Some of us are married. Even when we are at home, we are tormented by this policy. You can never really be free. This policy has affected us directly or indirectly. Today it is affecting us and tomorrow it will be affecting our children. Let government do away with it so that we can be free to live normal lives.”

(Emphasis added)

They further argued that, being pregnant was not a disease and that even pregnant students could excel in their studies despite their status. One of the female students gave the following example:

“My sister got pregnant and had a child in 2008 while she was studying at the University of Zambia. She was not excluded while pregnant. She only stayed away from class for two weeks after she delivered. She still passed and even did better than some male students and graduated at the same time with her in-take mates. What is special about this college?”

After a stormy argument on the matter, the group arrived at the position that being pregnant is not a disability and that even pregnant students can concentrate on their studies in the same way other students do. The discussants were also unanimous in observing that if pregnant students voluntarily wished to withdraw for that year, they must be allowed to do so.

In an interview with the Principal for Mongu College of Education, he told me that the college always maintains gender balance between male and female students during enrolment. On the issue of the institutional response to female students who come to register while pregnant and those who get pregnant during the course of the academic year, the Principal stated that the college followed the Ministry of Education *Re-entry Policy*, which entails that pregnant female students who leave their studies on account of pregnancy are assured of their places after delivering. He said that those who report while pregnant are advised to go and deliver first and return later to join the next in-take.

The Principal explained that students who get pregnant towards the end of the academic year are allowed to continue learning and sit for their examinations. For those who get pregnant in the middle of the academic year, they were required to withdraw and come back later. He added however that this position is changing in line with the new Ministry of Education Policy of allowing pregnant students to register and continue with their studies while pregnant. He did not, however, have a copy of the new policy he alluded to. He indicated that the practice of sending pregnant students on leave disadvantaged female students, and hence the more reason that the Ministry of Education has moved away from the exclusion policy. He said that the *Re-entry Policy* only addresses a part of the whole challenge. He stated that the college does not have statistics about the numbers of students who fell pregnant and got excluded and those who managed to return. He said that from his experience, most of the students who had been sent on maternity leave returned to complete their course. He said that the excluded students have limited choice other than returning to the college.

In a later interview with the Gender Focal Point Person at the Ministry of Education, she confirmed that some colleges including a few government colleges still send away pregnant students on maternity leave despite the policy change. She stated that the practice of excluding pregnant students was still prevalent in missionary or formerly missionary-run colleges. She stated that the Ministry of Education has launched a new policy which states that pregnant students should be allowed to register and learn in all colleges of education.

What emerged from my findings in missionary-run or formerly missionary run colleges of education confirmed the first assumption of this study that students who get pregnant in colleges are excluded. It also came out clearly that the practice of excluding pregnant students in colleges of education was not premised in law but was previously based on a policy that had since been repealed. The majority of the respondents interviewed in this regard felt that the policy was discriminatory against female students in colleges of education. Despite the change in government policy, the missionary-run colleges are still continuing to exclude pregnant students from college.

This illegal practice (which is based on a policy) violates Article 23(3) of the Constitution of Zambia which prohibits discrimination by public bodies of affording different treatment to different persons on the basis of their sex, among other grounds. The argument that private or missionary-run colleges are not amenable to this provision cannot stand. This argument was settled by the Supreme Court of Zimbabwe in the case; *Morgenster College vs. Enita Mandizvidza Supreme Court Judgment No. SC 114/2001*, where the court held that a clause in a student college contractual agreement that requires women to withdraw from the college if they get pregnant is contrary to public policy and the Constitution. The College had appealed to the Supreme Court arguing that section 23 of the Constitution of Zimbabwe which prohibits discrimination does not apply to a private contract and therefore the case ought to be governed by the law of contract. In rejecting the appeal, the Supreme Court held that even if the college is not a public body, falling within the meaning of section 23 of the Constitution, the expulsion of students who become pregnant while attending the college constitutes gender-based discrimination and is therefore contrary to public policy. The clause in the college contract was

found to be null and void. This holding though not legally binding as a precedent, is persuasive to the Zambian courts.

Furthermore, the Constitution of Zambia [under Article 112(e) on Directive Principles of State Policy] provides that the State shall endeavour to provide equal and adequate educational opportunities in all fields. Therefore, the practice of excluding students who get pregnant in colleges of education is contrary to this Constitutional provision and is therefore null and void. And considering that the Ministry of Education has already provided policy direction in this regard, it is imperative that missionary-run or formerly missionary-run colleges of education immediately cease the illegal practice of sending pregnant students away from learning on maternity leave.

4.1.3 Government-run Colleges of Education

In this regard, I collected information on the institutions' response to student pregnancies at Nkhrumah College of Education in Kabwe (now Nkhrumah University College); Chalimbana National In-Service Teachers College; and the University of Zambia.

In an interview with a former student of Chalimbana College who was once excluded from the college for getting pregnant, but is now a qualified teacher at a named school in Lusaka District, the following is what she said about the practice of excluding pregnant students from college:

“After the April holiday, I noticed that I was pregnant. I was so frightened about the consequences that were to follow, exclusion. Although I was married, I was quite disturbed.... I left the college and only returned the following academic year. Having been a victim of this policy, and having experienced the emotional torment I went through, my recommendation is that let government allow pregnant women in all institutions of higher learning continue with their education while pregnant.”

In another interview with a senior officer at Nkrumah University College, the respondent stated that when the institution was operating as a college, they did not allow students who got pregnant

to continue with the training. However, the policy has since changed since they now deal with in-service students, in addition to Grade Twelve school leavers. He said students could undergo registration at the college while pregnant and those who got pregnant during their studies were also allowed to continue learning since it was now a university. And the foregoing findings were replicated in a later interview held with the Registrar of Chalimbana National Institute for In-Service Teachers College. The Registrar stated that they had done away with the practice of sending away pregnant students since they are now admitting in-service teachers in addition to school leavers.

Further, I had an interview with a senior member of staff in the Council of the University of Zambia regarding the institutional response to pregnancies by students. He stated that the University of Zambia was guided in their operations by the University of Zambia Act. He stated that the Act does not have discriminatory provisions against either sex, as all students are treated the same. He said that they consider issues of pregnancy as purely personal matters and that it was up to the concerned student to either continue with their studies or withdraw and come back later.

My findings at Nkrumah, Chalimbana and the University of Zambia are in conformity with the new policy direction that I subsequently learnt the Ministry of Education had adopted, that is, of allowing pregnant student to carry on with their training. As shown in the cited case below, college policies which border on affording different or discriminatory treatment to female students are always struck down as being unconstitutional or against public policy.

In the case of *Students Representatives Council of Molepolole College of Education v. The Attorney General Botswana, Court of Appeal [1995](3)LRC447* the appellant, who were the Student Representative Council challenged the constitutionality of regulation 6 of the Teachers' Training College which required female students who got pregnant to immediately inform the college authorities and were obliged to leave the college or miss the next semester. The SRC argued that regulation 6 contravenes section 15(3) of the Constitution which prohibits discrimination on the basis of sex.

The Court of Appeal held that regulation 6 is unfairly discriminatory because it unreasonably and without justification denies pregnant students the opportunity to continue their education. The regulation that expels students who become pregnant while enrolled at a college was thus held to be unconstitutional.

The law in this area is fairly settled. However, what remains is the challenge of implementing the policy of allowing pregnant students to continue with their education.

4.2 Ministry of Education Policy in Colleges of Education

My research in the field established that there were variations in treatment of pregnant students in colleges of education, depending on whether the college was private, missionary or government run. In line with the grounded theory methodology, which was one of the methodologies used in this study, the next point of call in my data collection was the Ministry of Education. The purpose was to investigate what the policy of the Ministry is in this regard. I also wanted to find out whether or not there were different policies for different colleges of education. I interviewed two senior officers at the Ministry of Education, namely, the Director of Planning and Research and the Gender Focal Point Person who are both female.

In respect of the practice of excluding pregnant students from colleges of education, the officers stated that the Ministry of Education has a new policy which entails that pregnant candidates who qualify into colleges of education should be allowed to register as students and that those who got pregnant along the way should not be sent away on maternity leave but allowed to continue learning. I put it to them that some missionary-run/formerly missionary-run colleges were still excluding pregnant students from college. They explained that some colleges were taking a long time to adjust to the new policy, especially missionary and formerly missionary colleges of education. They said these were very conservative and particular about morals. They did not avail me a copy of either the old policy or the new one. The respondents were desperate to show that the situation was not as bad on the ground as I found it. They hastened to add that, even where college authorities sent away students who got pregnant, there was another policy in

place which guaranteed the student's school place after she has returned from maternity leave. The policy was named as the *Re-entry Policy*. I was promptly given a copy of this policy.

I took the discussion further by indicating to my respondents that my concern was not whether or not excluded pregnant students were assured of their college place upon return or not, but that I was interested in the sending of pregnant students on forced leave. They stated that it was in recognition of that very same challenge that the Ministry repealed the old policy to allow pregnant students to continue with their education in colleges of education. I further asked my respondents if then the problem was the gap between the law or policy and its implementation. They acknowledged that the problem was one of implementation since the correct policy was now in place.

On the statistics of enrolment ratio between male and female students in colleges of education, the officers stated that the Ministry's policy in that regard was 50-50 ratio and that the Ministry was satisfied that colleges were complying with that requirement. I was later able to confirm that position from the copy of the *2010 Education Statistical Bulletin* which I was given. The officers explained further that in order to achieve the balance in enrolment ratios during selection, the colleges are advised to lower the cut-off point for female applicants.

My analysis of the findings at the Ministry of Education regarding the policy on female students who get pregnant is that the policy is in place. However, implementation was lacking. I could see from the apparent laxity of these respondents, unfortunately, that they were not very concerned about how the policy was being implemented in the colleges.

4.3 The Interface between College Practice, Ministerial Policies and National Laws

The colleges' of education approach towards the treatment of pregnant students varies from one college to another, depending on whether they are private, missionary or government run. The policy of the Ministry of Education towards the regulation of student pregnancies in colleges of education was stated as being that pregnant students should be allowed to continue with their

learning. This policy applies to government, missionary and private colleges. However in terms of implementation, there is a gap between this policy and what is happening in the colleges of education. There is a lack of proper enforcement of this policy, hence the chaotic and inconsistent approach taken by various colleges of education in the handling of student pregnancies. The Ministry of Education which is supposed to play a pivotal role in the co-ordinating and implementing of the policy is not taking a proactive stance in the matter.

The national laws in this regard are very clear. Article 23(3) of the Constitution of Zambia proscribes all forms of discrimination, including discrimination based on sex. Excluding pregnant students from college is a form of discrimination based on the sex role of women of getting pregnant. Further, Article 112(e) of the Constitution stipulates that the State shall endeavour to provide equal educational opportunities in all fields and at all levels for all. Further, the National Gender Policy under Clause 4.3 on Education and Training, outlines strategies meant to redress the gender imbalance and inadequacies in promoting women's right to education and training. It is therefore apparent that the practice of excluding pregnant students from colleges of education is discriminatory and illegal as it is at variance with national laws and policies.

Zambia is a State Party to a number of international and regional human rights instruments. For instance, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Articles 1 to 5 enjoins States Parties to prohibit all forms of discrimination against women. Research findings show that in the colleges of education where the practice of excluding pregnant students is practiced, it is not supported by law or national policy. The basis of this practice is moralistic values and customs and not law. Since the ministerial policy and national laws agree in this respect, the challenge for the Ministry, as far as colleges of education are concerned, is one of enforcement of the law and policy. In other words, there is a gap between the law and the practice in some colleges of education where students who get pregnant are still being illegally excluded from registering and sent away during the academic year. When analyzed from the point of view of Liberal Feminist theorists, it is not the law that needs to be reformed but rather the societal attitude which perceives that women are inferior to men. As for the Sameness/Difference Theory (which is one of the theories informing this study), the new

policy of allowing pregnant students to continue with training takes into consideration the differences between men and women and the need to treat women in a special way when it comes to issues of pregnancy.

CHAPTER FIVE

5.0 FINDINGS AND ANALYSIS: NURSING SCHOOLS

5.1 Nursing Schools' Policy on Student Pregnancies and its effect on Pregnant Students

This study has established that all nursing schools in Zambia are regulated by the General Nursing Council of Zambia pursuant to powers conferred on the council by provisions of section 18 the Act No. 31 of 1997. The General Nursing Council of Zambia has put in place Regulations and a Code of Ethics which nursing schools have to comply with in their training programmes. These include regulations on the character of students to be recruited and the requirement to be examined by a qualified medical doctor to ascertain the fitness of students to undertake a course in nursing. The regulations prohibit nursing schools from recruiting pregnant candidates as students, and make it mandatory for all students in nursing schools who get pregnant to be sent away on leave and only return after they have delivered. The interviews I had with students who have been affected by the exclusion policy revealed untold suffering and mental anguish on their part.

In order to understand the lived experiences of the affected female students on how the policy of excluding pregnant students has affected them, I had an interview with one (who preferred to remain anonymous) first year student at Chainama College of Health Sciences who is studying Clinical General Medicine. The respondent (a married woman and mother of two daughters) should have been doing her third and final year in 2012 but because she was excluded in 2010 for getting pregnant, she is still in her first year. After her pregnancy test at a private clinic came out positive, they agreed with her husband that she remains in college to explore the possibility of continuing with her studies during her pregnancy. It was very apparent from the interview that she did not wish to be sent away on two-years of mandatory leave as per the college regulations. She narrated how she felt when one of her classmates asked her if she was pregnant:

“In March 2010, one of my classmates enquired from me if at all I were alright. She said I looked like someone who was pregnant. I was very frightened and disturbed by her statement. However, I struggled to maintain my composure and told her that I was not. I then knew that I could not hide the secret of my pregnancy any longer.”

After that inquiry, she discussed the matter with her husband and agreed that she had to come out in the open to the college authorities instead of waiting for them to discover her status. The following is what she said about her experience with the Head of Department when she advised him of her pregnancy:

“Some day in March 2010, I gathered courage and went to see the head of department to tell him about my pregnancy. When I got to his office, immediately I wanted to explain my problem to him, I broke down crying because I could see my whole career going down the drain. I had paid ZMK3,100,000.00 (US\$600.00) and I was doing fine in class and in less than two years’ time, I was going to be through with my course.”

She further explained that the head of department tried to counsel her and told her what she did not want to hear, that, the code of ethics as dictated by the General Nursing Council of Zambia required her to take leave from her studies for two years. According to her she felt very devastated. She explained:

“That day as I left the office of the head of department, I knew that was the end of my career. I felt two years was a very long time for one to postpone their plans to. I felt I was alone in the world. I was angry with my husband for bringing about the state of affairs and meanwhile I was suffering alone. I wondered if that was the price I had to pay for being a woman.”

It suffices to state that the respondent was back in college after a two-year forced leave. The second interview I had at Chainama College of Health Sciences was with a female student who had experienced the exclusion policy after she fell pregnant and was now (by January 2012) a third year student studying Clinical Medicine General. She is single and mother of one daughter. She preferred to remain anonymous. She explained that when she realised that she was pregnant in 2009 while doing her second year, she did not consider abortion as an option as she knew it was illegal and would complicate her life. However her challenge was a lack of financial support

since the father of the child was dependent on his uncle. Here she describes her predicament. Her immediate problem was deciding where she would live for the two years' maternity leave period:

“After staying in the college for two more days after my exclusion, contemplating where I was going to go next, I telephoned my cousin in the suburb of Matero within Lusaka and explained my predicament to her. My cousin rented a one bed-roomed flat in Matero. She works in one of the government departments as a secretary. Though we did not enjoy a very warm relationship, she accepted to keep me for a few months only. She knew about how harsh my brother was and also the character of my brother's wife.”

According to this respondent, staying in Matero was just fine for her when she compared it with the shame and depression she was going through. She started attending the ante-natal clinic at Matero Clinic. She developed a good relationship with nurses there. After seven months into her pregnancy, her cousin did not want to stay with her any longer and she asked her to leave. She was given transport money. She decided to go and stay with her grandmother in Mumbwa (a town which is 150km west of Lusaka). She gave birth to a baby girl while there in 2009. She was only able to return to college in January 2011.

The next respondent I interviewed at Chainama College of Health Sciences who has been affected by the policy of sending away pregnant students was a second year (in 2012) student studying Environmental Health Technology. She is not married and when she was sent away on leave in January 2011, she was expecting her second child from the same man who is married to another woman. When she told her mother that she would not be going back to college in January 2011, her mother was very displeased and apparently disturbed by the news. The respondent knew that she would only be eligible to return to Chainama College in January 2013, but she felt she could not wait for two years at home doing nothing. According to her she started pressurizing the college management to allow her to return to class in following year 2012. Through the assistance of a senior government officer who is a family relation, she finally got admitted back into college after only one year of maternity leave. She had the following comments to make about the policy of sending pregnant students on two-year maternity leave:

“Regarding the policy of forcing students to go on maternity leave, it is unfair to female students. I am aware that female students at the University of Zambia Ridgeway Campus who are studying for the Bachelor of Medicine get pregnant and are allowed to continue learning. And yet those are the people whose institution is located right up in the University Teaching Hospital. My appeal to the Government is that they should treat us here at Chainama College fairly by allowing those who get pregnant to continue learning. I also want to appeal to my fellow students to stop stigmatizing students who get pregnant. It is not that every student who gets pregnant is promiscuous.”

My last interview with women who have been directly affected by the exclusion policy of pregnant students in nursing schools was with a teacher at a named school within Lusaka who requested to remain anonymous. She first went to Livingstone School of Nursing in Livingstone in the Southern Province of Zambia. After she got pregnant while in the second year of her studies she got excluded. Out of frustration, she went to train as a teacher after delivering. This is what she said about the experience:

“When I got to my auntie’s home after being sent away from college, I was afraid of how she was going to react upon telling her that I had been excluded for two years because I was pregnant. When I finally had the courage to tell her, she looked very frightened and said that I had put her in problems with my father. She said that my father was going to blame her for my pregnancy. ...After telephoning my mother about it, we had to keep our phones off for some days fearing the back-lash from my father.”

After failing to secure her place back in the nursing school, the respondent then applied to David Livingstone College of Education where she trained as a teacher.

In an interview with the Training Director (Principal) for Chainama College of Health Sciences, he stated that as a matter of policy, at the time of enrolment, candidates who report for first year while pregnant are not allowed to register. Instead, they are advised to go and deliver and report the following academic for registration. He said their place would be guaranteed and hence they would not need to apply afresh and be subjected to competition. He further explained that as for the students who fall pregnant during the course of the academic year, equally those are not chased from college. They are sent on maternity leave for two years and return afterwards. They

would find college places without having to re-apply. He said that in this regard, the college complied to the letter with the government *Re-entry Policy*.

In another interview with the Registrar of Rufunsa Nursing School which is a private nursing school situated 180 kilometres East of Lusaka, he stated that in accordance with the General Nursing Council of Zambia guidelines, they do not enrol pregnant students and that students are not allowed to get pregnant while in the college. However he said that he did not know what the reaction of the college authorities would be in the event that a student got pregnant during training. He stated that since they started offering the programme, no student had fallen pregnant.

I also had another interview with a senior member of staff at Lusaka Health Institute of Nursing, which is a private nursing school in Lusaka, situated along Alick Nkhata Road near Mass Media. Regarding their policy on students who get pregnant, the member of staff told me that the nursing school was regulated by the General Nursing Council of Zambia. He stated that the Nursing and Midwives Act conferred authority on the nursing council to supervise operations of public and private schools of nursing, and that the nursing council was very clear on the issue of admission of pregnant students. Nursing schools are not allowed to admit pregnant students and that once pregnant, the student has to be sent away from the nursing school and only return after giving delivery.

Analysing these situations through the lens of the Liberal Feminist Theory, it is clear that the discrimination against women or, in this case, female subordination, is rooted in the laws and/or rules that guide the operations of these nursing schools. Hence in order to end this discriminatory practice, there is a need to reform the laws and/or rules that do not allow pregnant students from carrying on with their education as a result of the enforcement of this harsh policy against female students.

However, reforming the laws that inform the practice of excluding female students may not solve the problem in its entirety as this would be theoretical aspect of the problem only. There is also a need to change the incorrect societal perception that women are inferior to men. This is because despite changing the law, there may be other social barriers that would result in pregnant

students failing to continue with their education. These may include challenges like the stigmatization of pregnant students. Further, the practice of excluding pregnant students is based on a policy and subordinate or domestic laws of the General Nursing Council of Zambia. They are discriminatory against women and violate national laws and international human rights instruments.

Further, this policy does not take into consideration the difference between men and women and the fact that in order to have gender equality, women require special treatment due to the fact that they get pregnant while men do not. Further, the policy of excluding pregnant students from nursing schools is discriminatory and women and illegal as it violates Constitutional provisions, particularly Article 23(3), which proscribes discrimination on the basis of sex, among other grounds. The perpetuation of this policy calls for policy and law reform in order to do away with the discriminatory practice of excluding pregnant students in nursing schools.

However, due care must be taken in considering the fact that, when women are pregnant, they are more vulnerable to contracting diseases. Hence their exclusion from nursing schools when pregnant may be a valid ground for the policy. It suffices to mention that there are counter-arguments to the effect that pregnant nurses continue to work in hospitals despite their status. This calls for a delicate balance of the two arguments.

5.2 The Interface between the Ministry of Health/General Nursing Council of Zambia exclusion Policy and National Laws

Whereas the Nursing and Midwives Act confers powers on the General Nursing Council of Zambia to make regulations for the proper running of nursing schools, it does not state that pregnant students should not be allowed in nursing schools. This policy has been put in place by the council as part of the ethics in the nursing profession. In my discussion with the Training Director for Chainama College, he stated that this policy is meant to up-hold the high moral standing of the nursing profession during training and to protect pregnant students from easily contracting diseases when they are pregnant.

Invoking the Liberal Feminist Theory in understanding this scenario, it is clear that the discrimination of women or in this case female students is rooted in the policies that guide the operations of these nursing schools. There is also a need to critically examine the validity of the argument that women are more vulnerable to diseases when they are pregnant. Otherwise there is a need to change the policies so that pregnant students can be allowed to carry on with their education. Reference is also made to the adequacy of the Re-entry Policy which is the basis on which pregnant students are permitted to return to college after they have delivered. This policy, however, does not address the concerns of this study, which is the quest for gender equality in nursing schools and colleges of education. The policy still leaves the female students at a disadvantage as compared to their male counterparts. The fact that the practice of excluding pregnant students is not enshrined in the Act of Parliament vindicates the first and second assumptions in this study which say that the practice is not grounded in law and that it is discriminatory as it violates national laws and international human rights instruments.

The practice of excluding pregnant students in nursing schools is at variance with other laws. For instance, Article 23(3) of the Constitution of Zambia prohibits all forms of discrimination, including discrimination on the basis of one's sex. Further, the practice is inconsistent with the spirit of Article 112(e) of the Constitution in which the State endeavours to provide equal and adequate educational opportunities in all fields and at all levels for all. Therefore excluding students from learning on account of pregnancy takes away educational opportunities for female students thereby resulting in their discrimination.

On the aspect of whether or not all students who get excluded manage to return or not, the Training Director for Chainama College indicated that the majority do return. Since it is not all excluded students who manage to return to school, the Re-entry Policy is certainly inadequate.

The justification for the need to change this policy is not far-fetched. As outlined in the assumptions of this study, the practice of excluding pregnant students in nursing schools is not grounded in national laws but in policies and college rules. Meanwhile, the national laws and international human rights instruments including national policies like the National Gender Policy proscribe discrimination against women and are couched towards promoting the welfare

of women in all sectors, including nursing. Consequently, the policy of excluding pregnant students from nursing schools is illegal. There is therefore a variance between the national laws and the policy of excluding pregnant students in nursing schools. In view of this inconsistency, the policy, not being a law, is therefore invalid.

The General Nursing Council of Zambia has to put in place a regulatory framework for nursing schools which is in conformity with the Constitution and other laws. The policies must take into account the difference between men and women and should therefore have special provisions allowing female students to carry on with their studies while pregnant. This is in line with the Sameness/Difference theory. Furthermore, there is a need for society to change its perception of women. Women can still remain role models and up-hold the ethics of the nursing profession even during pregnancy.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATIONS

The study endeavoured to investigate the policy of excluding pregnant students from colleges of education and nursing schools. It was conducted against the backdrop of the government's policy to enhance gender equality in all areas of human endeavour. Since the study focused on training institutions in two separate sectors, namely the education and health sector, different conclusions were reached about each sector. Consequently, the recommendations in each of the sectors are different and thus dealt with separately.

6.1 Conclusion and Recommendations for Colleges of Education

6.1.1 Conclusion

This study has established that colleges of education handle the issue of student pregnancies differently, depending on whether they are private, missionary or government run. Private colleges enrol pregnant students who meet the entry qualifications and do not exclude students who get pregnant while in college. On the other hand, missionary colleges and some government colleges formerly run by missionaries do not admit pregnant candidates and they exclude those who get pregnant in the course of the academic year. Government colleges admit pregnant students who have met the entry qualifications and do not exclude those who get pregnant later.

The Ministry of Education policy provides that all colleges of education should allow pregnant students to register and continue learning even when they get pregnant. Therefore, the assumption that colleges of education exclude pregnant students is partially upheld. However, since the exclusion still practised in missionary colleges contravenes national law and policy, the practice is illegal. Further, it has been seen in the study that not all students who are sent away on

maternity leave manage to return to training. Therefore the solution lies in allowing students to continue learning even after they get pregnant.

Further, there is a gap between the Ministry's policy and how it is implemented by different colleges of education. Missionary colleges are resisting the change of policy. They want to continue enforcing the old policy of dealing with cases of pregnancies among students. Since it has been shown that the old policy causes considerable hardship to female students, and is, therefore, discriminatory, it is imperative that the new policy be implemented in all colleges in order to liberate female students from the discriminatory practice of exclusion. The new policy which is in place is sufficient to deal with the situation. All that is required is a strong enforcement mechanism.

6.1.2 Recommendations

1. Since the policy to curb the discriminatory practice of excluding pregnant students is in place, the Ministry of Education has to come up with an effective implementation framework in order to enforce it. This will ensure that all colleges comply with the requirement to allow pregnant students to continue with their training. The compliance requirement must operate within a specific timeframe, failing which defaulting colleges should suffer the imposition of appropriate punitive measures.
2. There is a need for the Ministry of Education to come up with awareness creation campaigns to educate missionary colleges of education and society at large about the rights of all women (at whatever stage of their lives) to education as enshrined in the Constitution as supported by other local, regional and international laws.
3. There is a need to educate female students as rights holders about their right to education so that they may effectively challenge discriminatory policies and rules that breach or threaten to breach their right to education, including decisions to exclude them from college when they get pregnant.

4. There is a need to improve the capacity of NGOs and other rights groups to undertake test case/class action litigation on behalf of students who are illegally excluded for getting pregnant, including other violations that may discriminate against them.
5. There is a need to incorporate human rights and gender education into the curriculum of colleges of education in order to enrich the knowledge of students and college staff on issues of human rights and women's rights in particular.

6.1.3 An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Colleges of Education

Table 4: An Action Plan for Implementing Recommendations to curb the Exclusion of Pregnant Students from Colleges of Education

OBJECTIVE	TARGET	STRATEGY	PERSON RESPONSIBLE	PROGRESS/ DATE	PERFORMANCE INDICATORS
To prepare a policy implementation framework for allowing pregnant students to start and complete their studies	All colleges of education	To be disseminated through workshops, posters, leaflets.	The Ministry of Education	Number of colleges visited & workshops held, leaflets distributed in a month.	The practice of excluding pregnant students eradicated in all colleges of education by the end of the year
To publicise women's right to education & gender equality	Students in colleges of education; the community in general	To disseminate messages through radio & tv discussions; theatre & drama	Ministry of Education; NGOs; school drama clubs, etc	Number of communities canvassed; number of speeches, drama shows etc held each month.	Community fully conversant with issues of women's rights to education & gender equality.
To empower students with human rights knowledge so that they can challenge discriminatory practices	Students in colleges of education and other training institutions	By holding lectures, talks & seminar presentations; distribution of leaflets, etc.	Ministries of Education & Gender and Child Development ; NGOs	Number of colleges covered; number of seminars & lectures held in a month.	Students in colleges empowered with knowledge about their human rights
To empower NGOs & other rights groups on the techniques of undertaking test-case/class action litigation on behalf of discriminated students.	NGOs & other Rights Groups.	Training sessions & lectures	The Law Association of Zambia; Legal Resources Foundation, cooperating partners for funding, etc	Number of NGOs or persons trained; number of training sessions in a month.	NGOs & other rights groups fully trained to undertake litigation on behalf of discriminated citizens by December 2013.

To incorporate gender & human rights into the college curriculum	College students & lecturers	Incorporate human rights in the course work through Curriculum Development Centre.	Ministry of Education; Curriculum Development Centre; Law Development Commission	Number of colleges with curriculum on human rights incorporated, by 2013.	All colleges' training curricula have a course on human rights.

6.2 Conclusion and Recommendations for Nursing Schools

6.2.1 Conclusion

From this study, it has been noted that all nursing schools exclude pregnant students from their training institutions. The source of this policy is the General Nursing Council of Zambia. This policy, although formulated pursuant to powers conferred on the Nursing Council in terms of section 18 of the Nurses and Midwives Act, the Act does not direct that pregnant students must be excluded from nursing schools. Since, the practice is not grounded in national laws, and it is at variance with the Constitution and other statutes, there is need for the same to be reviewed as it is causing untold hardships and discriminating against female students. [Since, therefore, the practice is not grounded in any national law, and it is at variance with the Constitution and other statutes, it is illegal and there is, therefore, a need for it to be abolished as it is causing untold hardships and discrimination against female students.] It has been shown in the findings of this study that some of the students do not manage to return to continue with their course of study after being excluded for getting pregnant. The reasons for this failure are numerous, and they include cultural values that a mother should just be at home to look after the children, husbands stopping their wives from returning to college, the lack of sufficient resources to support the student as well as her child, among others.

The right to education is a Constitutional one as enshrined in Article 112(e) of the Constitution. By excluding pregnant students from nursing schools, their right to education is violated. Hence, the policy and practice of excluding pregnant students is illegal. This calls for the removal of the discriminatory policy in nursing schools. Worth noting also is the inconveniencing, degrading and humiliating experience which excluded female students undergo. They are stigmatised and incur financial loss. It has been demonstrated in other institutions like the University of Zambia that it is possible to be pregnant and carry on with one's education.

However, there is the argument that pregnant women are more vulnerable to diseases than those who are not. There is also the argument that there are nurses who work in hospitals while pregnant and there no regulations stopping them from working when they are in that state. This debate has to be subjected to a scientific test in striking the balance between allowing pregnant students to continue with their training as they subsequently go and do their attachment in hospitals, and sending them on maternity leave.

6.2.2 Recommendations

1. Since the policy of excluding pregnant students from nursing schools contravenes the Constitution and other laws that prohibit discrimination, it must be abolished immediately in order to stop the discrimination both in letter and application.
2. That it be substituted with a more moderate policy which should take into consideration the possible health risks that are associated with vulnerability of pregnant students contracting diseases/infections during their practical studies when they come into contact with patients at, e.g., attachment medical health facilities.
3. After the abolition of the policy on the blanket exclusion of pregnant students from nursing schools, the Nursing Council should put in place a strong implementation framework to compel compliance in order to eliminate discrimination against female students.

4. There is a need to incorporate human rights and gender studies into the curriculum of nursing schools in order to empower students & lecturers with knowledge about human rights.

5. There is a need for awareness campaigns in the community about women's right to education and gender equality in order to change societal perception of women being inferior to men.

6.2.3 An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Nursing Schools

Table 5: An Action Plan for Implementing Recommendations to Curb the Exclusion of Pregnant Students from Nursing Schools

OBJECTIVE	TARGET	STRATEGY	PERSON RESPONSIBLE	PROGRESS/ DATE	PREFORMANCE INDICATORS
Revoke the policy on exclusion of pregnant students	All nursing schools	Issuance of a statutory instrument/ regulations by nursing council	The General Nursing Council & Minister of Health	Number of consultative meetings among stakeholders for revocation of policy.	Policy on exclusion of pregnant students revoked by the end of the year 2012.
Put in place a non-discriminatory policy to regulate nursing schools	All nursing schools	Issuance of a statutory instrument/ regulations by nursing council	The General Nursing Council & Minister of Health	Number of consultative meetings to have a new policy.	A new non-discriminatory policy put in place
Have a strong implementation & awareness campaigns	All nursing schools & the community in general	Circulation of new policy, workshops, drama shows, tv & radio discussions	The General Nursing Council, NGOs, hospitals	Number of workshops held, number of schools that have stopped excluding, etc in a month.	No more students excluded for getting pregnant in colleges of education. Community sensitized on women's right to education.
To incorporate human rights & gender education in nursing school curriculum	Student nurses & lecturers.	Through course curriculum & lectures.	The General Nursing Council; Ministry of Health; Ministry of Gender & Child Development.	Number of nursing schools with curriculum on human rights incorporated by 2013.	All nursing schools have human rights & gender education in their curriculum

Bibliography

- Banda F., (2005). *Women, Law & Human Rights. An African Perspective*. Oxford: Hart Publishing.
- Becker Mary et al. (2007). *Excerpts from Feminist Jurisprudence: Taking Women Seriously Cases And Materials*. London: Thomson West.
- Bentzon, A.W. et al. (1998). *Pursuing Grounded Theories: South-North Experiences in Developing Women's Law*. Harare, Mond Books.
- Bryson, V. (1992). *Feminist Political Theory An Introduction*. Hampshire, Macmillan Press,
- Charmaz, K. (2006). *Constructing grounded theory: a practical guide through qualitative analysis*. London, SAGE Publications Inc.
- Dahl, T.S. (1987). *Women's Law: An Introduction to Feminist Jurisprudence*. Oslo: Norwegian University Press.
- Ghosh, B.N. (2011). *Scientific Method and Social Research*. New Delhi: Sterling Publishers Private Limited.
- Holden, S. (2003). *AIDS on the Agenda. Adapting Development and Humanitarian Programmes to Meet the Challenge of HIV/AIDS*. London: Oxfam GB.
- Mushota, L. (2005). *Family Law in Zambia. Cases and Materials*. Lusaka, Unza Press.
- Saulnier, C.F. (1996). *Feminist Theories and Social Work, Approaches and Applications*. USA, Haworth Press.
- Schlyter. A. (1999). *Recycled Inequalities. Youth and Gender in George Compound, Zambia*. Research Report no.114. Sweden, Motala
- Selden, R. (1986). *Contemporary Literary Theory*. Sussex, The Harvester Press.
- Stewart, J and Armstrong, M (1990). *The Legal Situation of Women in Southern Africa*. University of Zimbabwe publications. Harare, Zimbabwe.
- Strauss, and Corbin, (1998). *Basics of Qualitative Research. Techniques and Procedures for Developing Grounded Theory*. London: Sage Publications.
- Tong, R.M. (1994). *Feminist Thought. A Comparative Introduction*. London, Routledge
- Tove, S. (1987). *Women's Law, An Introduction to Feminist Jurisprudence*. Norwegian University Press: Norway

Tsanga, A.S. (1998). Taking Law to the People. Gender, Law Reform and Community Legal Education in Zimbabwe. Harare: Weaver Press

UNESCO; International Technical Guidance on Sexuality Education: An evidence information approach for schools, teachers and health educators, Volume 1 The Rationale for Sexuality Education. December 2009

UNICEF Zambia statistics (2010) http://www.unicef.org/infobycountry/zambia_statistics.html accessed on 9/03/2012

Zambia. *National Gender Policy*. Lusaka. Government Printers. 2000