

# Human Rights Violations in Zambia

## Part II: Women's rights

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### Shadow Report UN Human Rights Committee

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**Researched and written by:**

- Judith Mulenga (ZCEA - Zambian Civic and Education Association)
- Palan Mulonda (HURID - Institute of Human Rights, Intellectual Property and Development Trust)
- Muziula Kamanga (Wildaf Zambia)
- Mariana Duarte, Cécile Trochu-Grasso and Patrick Mutzenberg (OMCT)

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## Foreword

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Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC). This activity is complementary to providing direct assistance to victims.

These alternative reports are a valuable source for Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

With the support of the European Union, OMCT presented this report on Human Rights Violations in Zambia at the 90<sup>th</sup> session (9-27 July 2007) of the Human Rights Committee, during which the third Zambian State Report was reviewed.

This report is based on a research and interviews carried out by OMCT during a preparatory mission held in Lusaka from 23<sup>rd</sup> April to 27<sup>th</sup> April 2007. It is jointly prepared with three national human rights non-governmental organisations (NGOs):

- HURID – Institute of Human Rights, Intellectual Property and Development Trust
- Wildaf – Zambia
- ZCEA (Zambian Civic and Education Association)

Representatives from these NGOs will attend the HRC session, brief the members of the Committee on the human rights situation in Zambia and present the shadow report.

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The World Organisation Against Torture (OMCT) is the world's largest coalition of non-governmental organisations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. Its global network comprises nearly 300 local, national and regional organisations, which share the common goal of eradicating such practices and enabling the respect of human rights for all.

Should you need additional information, please do not hesitate to contact our UN Treaty Bodies team:

- UN Treaty Bodies: [Patrick Mutzenberg \(pm@omct.org\)](mailto:pm@omct.org)
- Women's issues: [Mariana Duarte \(md@omct.org\)](mailto:md@omct.org)
- Children's issues: [Cécile Trochu \(ct@omct.org\)](mailto:ct@omct.org)
- Individual complaints: [Boris Wijkström \(bw@omct.org\)](mailto:bw@omct.org)

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## 1. INTRODUCTION AND GENERAL BACKGROUND ON THE STATUS OF WOMEN

### A. *Discriminatory provisions in domestic law*

The Zambian Constitution guarantees formal equality of women and men. Importantly, however, the Constitution contains a limitation in Article 23[4] [c] that reserves the right to legislate laws with respect to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law” with no requirement to ensure equal rights to women and men.

Furthermore, the United Nations Committee on Economic, Social and Cultural Rights noted in 2005 that “discrimination against women is rooted in [Zambia]’s customary law, and it is so serious that it amounts to a breach of both their human and natural rights.”<sup>1</sup>

### B. *Gender inequality in practice*

Participation of women in political and public life is limited, and women are underrepresented at all levels of decision-making in government, parliament, political parties, private sector, special public service committees and other institutions in the community.<sup>2</sup> The State has explicitly stressed its commitment to achieving thirty percent participation by women in political and decision-making positions by 2005, reporting indeed some concrete results (for example, seats in Parliament held by women have raised from 9.7% in 1996 to 13.9% in 2006, with 22 women elected to Parliament on 28<sup>th</sup> September 2006 elections<sup>3</sup>), and 4 of the 25 cabinet members in the cabinet appointed soon after the 28<sup>th</sup> September 2006 elections being women representing a 16% stake. At the Deputy Minister level, current statistics stand at only 10% for women, while at the Provincial level, they stand at 0%. In the civil service, female representation is not any different from the political arena. At the Permanent Secretary level, female representation stands at 19% while at the Director level, women only account for 23%. Thus, the under-representation of women in political and decision-making positions serves as a constant remainder that much needs to be done in attaining the 30% goal which has now being changed to a 50% goal by SADC member states, to which Zambia is party.

Moreover, women appear to be the ones most affected by the erosion of the formal sector and by unemployment. Among the male workforce, the participation rate in the formal sector is 67%, while the female workforce remains at just 45%.<sup>4</sup> Increasing levels of unemployment and simultaneous diminution of employment opportunities in the formal sector have constrained many women to seek precarious work in the informal sector and others, to turn to sex work in order to provide for their families. The alarming scale of the HIV/AIDS pandemic in Zambia and the government’s increasingly strict regulation of prostitution have forced many Zambian women to migrate to neighbouring countries to find work in the sex industry. Moreover, the disastrous economic situation in Zambia and the corresponding marginalization of women in the workforce means that women are frequently financially dependent upon their husbands and partners, thereby making it extremely difficult for them to leave situations of domestic violence.

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1 Summary record of the 3<sup>rd</sup> meeting of the Committee on Economic, Social and Cultural Rights, Geneva, 26 April 2005, consideration of the Initial Report of Zambia.

2 Para. 240bis, A/57/38(SUPP), CEDAW 2001.

3 For more details, consult the web-site <http://www.socialwatch.org/en/fichasPais/231.html>. For clarifications about the methodology, see: <http://www.socialwatch.org/en/documentos/metodologia.pdf>.

4 Lucy Muyoyeta, “2006 Budget: Some Gains, but not enough for the Poor to Benefit”, Country Report 2006, Social Watch.

## 2. INSTITUTIONAL AND LEGAL BACKGROUND SPECIFIC TO WOMEN

In 2000, The Government of Zambia created a Division for Gender in Development (GIDD) within the cabinet and committed itself to mainstreaming gender in all the sectors of society.

Moreover, a number of administrative measures aimed at the promotion of equal rights of men and women have been taken, such as:<sup>5</sup>

- A **National Gender Policy**, adopted in 2000 with the aim of achieving full participation of men and women in the decision-making process of the country at all levels and grant equal opportunities in the social, economic and political spheres between females and males in order to ensure equality and equity. A **Strategic Plan of Action** (2004-2008) was also developed for the National Gender Policy in order to ensure the systematic implementation of gender and development programmes in the country. Nevertheless, the Committee on Economic, Social and Cultural Rights highlighted in 2005 the fact that only insufficient progresses had been made in the implementation of the national gender policy.
- In 2003, the Government established the **Gender Consultative Forum** aimed at advising government on emerging issues and ensuring that policies being formulated and programmes being implemented are gender responsive. The membership of the Gender Consultative Forum is drawn from major stakeholders largely from the Government, civil society and the academia. Currently the members are the Government through GIDD, three members of the Non-Governmental Organisation Coordinating Committee [NGOCC which is an umbrella body of women's organisations in Zambia], and the academia represented by the Gender studies department of the University of Zambia.
- The mandate of the Gender Consultative Forum is defined in three broad terms of reference. The first is to advise GIDD on emerging gender issues. Secondly, the forum must ensure that policies being implemented are gender sensitive and thirdly to advise on any other issues connected or incidental to gender and development.
- The Gender Consultative Forum's mission is to develop institutional collaboration that brings about a collective attainment of gender equity and equality. Thus, the forum brings together a pool of resources among all stakeholders which brings about a unified sense of purpose in championing gender issues. The forum has an appreciable level of interaction with existing institutions as all stakeholders are well represented on it. For instance, the Government, through the GIDD, has a presence and thus, all Government Ministries and agencies easily corporate with it while the civil society, and the women's movement in particular, through NGOCC has a presence enough not to undermine the work of women movement.
- **Poverty Reduction Strategy Paper (PRSP)** and **Transitional National Development Plan (TNDP)** focusing on gender equity and equality as a means of achieving sustainable development. Specifically, they identified the following objectives to redress gender imbalances in socio-economic development, thus increasing the opportunities for the enjoyment of civil and political rights for men and women:
  - develop specific strategies regarding men's and women's access to and control over land;
  - promote and facilitate men's and women's access to information and economic resources;
  - eliminate gender imbalances in access to and opportunities for financial resources;
  - enhance men's and women's participation in decision-making processes.

<sup>5</sup> As reported in CCPR/C/ZMB/3, paragraph 41.

The importance of the above-mentioned measures can never be over-emphasised. They are all critical initiatives that can greatly improve the lot of the Zambian woman. However notwithstanding the importance of the same measures, the Zambian Government, apart from formulating the same and holding ‘*talk shop*’ works, has not done anything tangible to actualize these initiatives. In particular, the Government has performed disastrously in regard to the first two measures, while for the measure relating to eliminating gender imbalances in access to and opportunities for financial resources, there has been some limited commitment by the Government to its attainment. For instance, through the constituency development fund, most clubs run by women easily access the funds. There has also been some appeal to financial institutions to grant collateral-free loans to women. In regard to the last measure, there has been some slight increase in women’s participation in decision-making processes but the few improvements fall far short of the country’s commitments

The ***National Plan of Action for Human Rights*** (1999-2009) also includes a number of gender-focused measures that aim at achieving gender balanced participation in decision-making activities and ensuring the elimination of negative aspects of customary and statutory laws and practices. As the National Plan of Action for Human Rights draws to a close [2 years are remaining] it is fair to comment on the Human Rights Commission’s performance thereof. The Commission’s performance has been satisfactory, especially considering the limited resources [both human and financial] that it has had to work with in implementing its expected outputs. For instance, the Commission through collaboration with other stakeholders, has managed to have the National Gender Policy adopted [in 2000] by Government as well as adding its voice to the amendment of gender-insensitive laws. The Commission has also managed to organise training seminars for local court justices and carry out advocacy on gender-related issues especially in rural areas. The Human Rights Commission’s expected outputs are very much sustainable but the biggest problem is that the Commission has limited human and financial resources at its disposal as well as the heavy Government overtones in its work. In particular, it is worth noting that the Chairman, all the Commissioners and director of the Commission, are appointed by the Government; thus this highly compromises their work and this is even worse for gender-related issues in a country that is predominately traditional.

### **3. WOMEN’S RIGHT TO AN EFFECTIVE REMEDY (ARTICLE 2§3)**

#### **A. *Legal and Institutional Framework***

##### **Criminal legislation**

###### Domestic violence

The criminal law remedies available to women who are victims of domestic violence are limited to the commencement of proceedings for assault occasioning actual bodily harm, under Section 248 of Chapter 24 titled “Assaults” of the Zambian Penal Code. Women who have suffered physical injury as a result of domestic violence may also sue their husbands or partners for damages in the civil courts and physical violence is recognized as providing a motive for divorce under both customary and statutory law. Nevertheless, the Government of Zambia has not yet introduced specific legislation on domestic violence.

###### Sexual offences

Sexual offences in general are covered in the Penal Code [Chapter 87 of the laws of Zambia] under a section called “Offences against Morality.” Nevertheless, a clear response from the

Government and the judicial authorities to prevent and punish these acts has not yet been provided and sexual offences continue to be a widespread phenomenon throughout the country. The most common offences are incest, rape, defilement and indecent assault.

On this point, of particular interest is the proposed “Sexual Offences and Gender Violence Bill” [2006], drafted by the WILDAF (Women in Law and Development in Africa, Zambia), together with other local organizations, which aims at reviewing the current Penal Code and legislation that have proven to be inadequate in addressing gender-based violence.

The proposed Bill is a major departure from the Penal Code. In terms of remedial measures, it contains a number of such and these are covered under part 5 titled “Protection Orders.” The Bill proposes that in terms of access to remedies, any person including the victim of sexual or gender-based violence, can make an application to the court to safe-guard such persons’ interest. The Bill further proposes that an aggrieved person [victim of sexual /gender-based violence] or any other person on his/her behalf, is at liberty to apply to the Court for an interim protection order defining the respondent’s [the perpetrator] relation to the victim. The proposed Bill further avails a child an opportunity to apply to the Court without the assistance of any next of kin for a protection order. The other point that the proposed Bill brings out, insofar as access to remedies, is that persons seeking to obtain protection orders can make such applications outside Court hours, thus even when the registrar is closed, such persons can approach a Judge or Magistrate directly, go to his/her residence or chambers. The proposed Bill also allows the Court to make ex parte protection orders where any delay would endanger the life of the victim thus these interim orders greatly assist the victim in accessing remedies. The proposed Bill provides that remedies under the Act, such as protection orders, can be granted by any Judge and all classes of Magistrates and thus in places where there are only lower class Magistrates, such would still be granted without necessarily requiring the applicant to seek the help of a higher class Magistrate.

Under customary law, however, access to remedy to victims of sexual violence may be virtually denied. For example, under Bemba custom, a parent or guardian of a girl has the right to sue the person who first has sexual intercourse with her. Importantly, the action cannot be brought by the girl who is victim of the illegal sexual relationship, as the right to sue is derived from the family's status and can only be claimed by the family.<sup>6</sup>

### Specialised law enforcement institutions

In order to address problems related to gender violence, and in particular violence against women and children (in the form of physical or sexual abuse), the State party has instituted the following measures:<sup>7</sup>

- Creation of the **Victim Support Unit (VSU)** in 1994 within the Zambia Police Service. It deals with cases related to property grabbing, spouse battering, and sexual abuse brought before it by women and children. The Unit is established in all police stations and posts countrywide and is accessible to the general public. All cases that are reported to the VSU are prosecuted by officers from the Unit, who have been specifically trained in matters of property grabbing, spouse battering and sexual abuse issues. Moreover, VSU (supported by UNICEF) has carried out campaigns to sensitize women on their rights and how they can complain about domestic violence.
- Creation of the **Sex Crimes Unit**, established by the Zambia Police Service in order to deal with cases of sexual assault, defilement and rape in the country. The Sex Crime

<sup>6</sup> Chuulu M. *How the Law of Marriage Discriminates Against Women*, (1991) P 17, Lusaka, Zambia.

<sup>7</sup> As they are described in the CCPR/C/ZMB/3 at paragraphs from 67 to 70

Unit of the Zambia Police Service is a desk within the Victim Support Unit whose mandate is essentially to handle sexual related cases reported to the police such as rape, defilement, incest and indecent assault. Thus, the handling here involves receiving sexual violation cases, investigating them and, where possible, prosecuting them. The creation of this desk has been necessitated by the ever increasing number of sexual violation cases in the country which needed a special response from the police. The Sex Crime Unit is a fairly new desk [2006] that is yet to be established in all Police stations across the country and thus, its effectiveness cannot be fairly determined at this stage. However, due to the ever increasing cases of sexual violations in the country and the limited human resource of the police, it is logical to state that the desk's effectiveness would always be compromised.

### **B. Practice**

Although most police stations in Zambia have a Victim Support Unit, law enforcement personnel are, in general, ill-equipped to handle complaints from women and girls alleging that they have been victims of rape and other forms of sexual violence. The discriminatory attitudes of many members of the police and the judiciary have led to a lack of trust and thus to the subsequent under-reporting of rape and other forms of violence against women. It has been reported that there have been cases where police officers, not belonging to the Victim Support Unit, handle sexual violation and spousal violence cases and this has had a telling effect on the relevance of the evidence during trial as such officers tend wrongly advise victims.

Importantly, police and other state officials who deal with women who have been victims of domestic violence in Zambia are not systematically trained in dealing with complaints of violence against women in the family. Women are often pressured by law enforcement officials into withdrawing complaints of violence and to reconciling with their abusive husbands, partners, or parents-in-law.

It is worth noting that according to Zambian law no violations provided for in the Penal Code should be taken on by local courts – let alone local chiefs. See section 5 of the Penal Code as read with section 2 thereof where the jurisdiction to handle any crime act such as personal violations as provided for in the Penal Code, is vested only in the Subordinate, High and Supreme Courts and not the Local Court. Moreover, section 2 of the Local Court Act –Cap 29, empowers the Local Court to only administer customary law which excludes violence to a person as it is an offence under the Penal Code. However, many such cases, including indecent assault, defilement and rape, are brought before these local authorities without referral to the competent statutory jurisdictions. Hence, in spite of the heavy penalties provided for under the Penal Code, the perpetrators of rape are often punished with little more than a small fine, thus sending the message that rape is not considered by the Judiciary to constitute a serious criminal offence, which should be met with appropriate, severe punishment. In addition, the application of customary law, particularly in cases of “defilement,” has led to these crimes commonly being settled through the payment of money to the victim’s family rather than being pursued through the criminal justice system, thereby reinforcing the idea that rape of women and girls is an offence against family status rather than constituting a serious criminal offence against the victim herself.

Moreover, the lack of female representation in local courts has a significant impact on the interpretation of customary law. The gendered application of customary law, in fact, is compounded by the fact that local court magistrates do not have formal legal qualifications in addition to their knowledge of customary law and they are, therefore, frequently unaware of developments in human rights law that need to be considered in the application of customary law. In addition, the participants in proceedings before local courts are not entitled to legal

representation and this often has a prejudicial impact on the ability of the parties, in particular women, to present their claims.

Magistrates and Judges do not receive any gender-sensitive training in their formal training. However from time to time, Non-Governmental Organisations (NGOs) such as WILDAF, WLSA do offer short seminars on gender-related issues to magistrates. For instance, in 2006, 200 local court justices were trained in women's rights by NGO representatives with funding from the German cooperation agency (GTZ), out of a total of 899 such justices.

#### 4. NON-DISCRIMINATION AND EQUALITY OF MEN AND WOMEN (ARTICLES 2§1, 3, 23 AND 26)<sup>8</sup>

##### *A. Non-discrimination in marriage and the family (art. 23)*

##### **Customary versus Statutory Law**

The application of customary law and English law gives rise to difficulties, because most customary laws place women at a disadvantage. The application of the rule that requires that when customary law conflicts with statutory law, the latter prevails is impaired by the Constitution itself. Indeed, given the fact that most marriages are contracted under customary law, the Constitutional exception provided for in Article 23[4] [c] excluding the gender equality principle in matters such as “adoption, marriage, divorce, burial, devolution of property on death” is of particular importance. Another important principle is provided in the Local Court Act, Chapter 29. It calls upon Local Courts not to administer matters in a way that is repugnant to natural justice: any litigant who is dissatisfied with the decision of the Local Court is free to appeal to the Magistrates Court or to the High Court. Thus, the aggrieved litigant may argue the repugnancy of the decision of the courts – provided that he or she is aware of this provision.

The main challenges to ensure that women's rights are guaranteed in the family, particularly in marriage, are the annulment or amendment of Article 23[4] of the Constitution and the sensitisation of local court justices to gender equality matters. Moreover, there remain provisions in statutory law that are permissive with a number of discriminatory practices and need to be revised as well.

##### *Marriage under customary law*

Under Chapter 29 of the Laws of Zambia, local courts are charged with the application of customary laws in relation to non-statutory marriages, divorce, reconciliation, child custody, payment of *malobolo* or *lobola*, pregnancy suits, compensation for adultery and the distribution of the property of persons who die intestate. Customary law is therefore particularly relevant in matters relating to family law and inheritance rights, areas in which women are often subjected to gender-based discrimination. Additionally, the rights under customary law derive from family – as opposed to individual – status and, as a result, women often have very limited decision-making power in areas related to family or property law.

**Adultery** is permissible under customary law, but only with regard to men, and this is hardly a ground for divorce. Conversely, when it is the woman who commits adultery, the Local Courts or any tribal council hearing the case, would almost surely grant a divorce against the woman. Adultery entails a claim of damages against the male offender in customary law, confirming the view that women's rights per-se are disregarded in favour of the violated proprietary rights of the

<sup>8</sup> Application of Article 3 of ICCPR, pursuant to General Comment 28 of the Human Rights Committee, will be analysed in the respective chapters on Articles 2§3, 4, 6-10. The present chapter relates mainly to Article 23.

husband as sanctioned by the society. Thus, marriage becomes the setting within which society and the laws sanction sexual intercourse. The latter, in turn, is viewed as a crucial element of marriage, so that customary law provides that if sex does not take place, then the marriage has not been consummated and may be annulled. Indeed, customary law continues to deny the existence of forced sex within and out of marriage.

Sadly, even statutory law falls short of expressly prohibiting forced sex within a marriage. According to the Penal Code section 132, forced sex or rape is defined as any unlawful carnal knowledge of a woman. Conversely, there is lawful carnal knowledge, as marriage is a lawful entity, meaning that there can never be unlawful carnal knowledge of one's wife. This is possibly the reason why there is no such crime as marital rape in Zambia. The payment of "*lobola*" creates an obligation on a woman to be sexually available whenever a spouse desires.

#### Marriage under statutory law

The Marriage Act of Zambia (Chapter 50 of the Laws of Zambia) provides for the regulation of the practice of marriage under statutory law. It excludes the possibility of contracting marriage under statutory law if one of the parties or both are already married under either customary or statutory law to someone else [Please see sections 38[a] and [b] as well as section 34 of the Marriage Act].

Statutory law explicitly prohibits **forced marriages** in articles 135 and 136 of the Penal Code. Art. 135 states that: "*Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony and is liable to imprisonment for seven years*". Article 136 provides that 'Any person who unlawfully takes a child out of the custody of protection of the child's father, mother or guardian is guilty of a felony and is liable to imprisonment for a term of not less than 7 years according to the Amendment to the Penal Code No 15 of 2005.

### **Legally sanctioned discriminatory practices relating to marriage and family**

#### Early marriages

The predominance of customary law marriages results in marriages under customary law that can be contracted without respecting the minimum age requirement of 21 years that is instead, set by Section 10(ii), Part II of the Marriage Act.

Moreover, according to Sect.17 of Part III of the Marriage Act on "Consent to marriage in certain cases necessary" either party is between the age of 16 and 21 can get married with "*the written consent of the father, or if he be dead or unsound mind or absent from Zambia, of the mother, or if both be dead or unsound mind or absent from Zambia, of the guardian of such party*". [The law provides for both male and female though out of practice, most of the people marrying aged between 16 and 21 have been females]

Clearly, this provision discriminates against the mother, by affirming that her consent is secondary to that of the father. Along with other discriminatory provisions, this state of affairs sets the ground for the subjection of a woman's rights in a marriage.

#### Malobolo, lobola or bride price

It is a pervasive and enduring feature, which has been universalized by society and local courts. Customary law marriages are not valid unless a *malobolo* or *lobola* payment is made to the wife's family. Women are never involved in negotiations pertaining to the payment of *malobolo*. If it is not made within a certain time following the marriage, actions for elopement and for the payment of the outstanding *malobolo* can be commenced at the local court. The "*purchasing*" of brides through the payment of *malobolo* frequently leads to women being treated as commodities, and

exposes them to an increased risk of psychological and physical violence at the hands of their husbands and extended families.

In some groups this system transfers a woman's fertility or protective capacity to her husband and his kin. Moreover, *malobolo* has to be returned in the event of a divorce. This causes difficulties to the woman as she is often forced to stay in marriage just because her kin are unable to return the *malobolo*, or for fear or being castigated by her family. In other instances, the payment of *malobolo* ties the woman to her husband's family even after his death.

Although many deny that payment of "lobola" constitutes the purchase of a woman, the fact that the man or his family has parted with resources in order to acquire a wife, affects the man's perceptions of the nature of the marriage relationship. In this regard, the criminalization of forced sexual intercourse with the wife cannot be envisaged.

### Polygamy

Polygamy is permissible under customary and some religious laws, while under the statutory law it is defined as "bigamy" and hence, declared illegal in Article 166 of the Penal Code, stating that "*Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty and is liable of imprisonment for five years*". Indeed, polygamy is increasingly widespread, especially in rural areas.

### Discriminatory rules for transmission of nationality

Under statutory law, the Citizenship Act provides that Zambian nationality can be obtained under naturalization by means of marriage. However, there is a further criterion that applies to cases of foreign women that are married to Zambian men: these are qualified for citizenship only if the woman has lived in Zambia for at least three years. Conversely, for a foreign man that marries a Zambian woman, the latter has to have lived in Zambia for a period of at least 10 years, for her spouse to obtain the citizenship. These provisions are clearly discriminatory against women.

### Violation of women's right to freedom of movement

Pursuant to Article 22 of the Constitution, all persons in Zambia have the equal right to move about freely. However, the provision in Article 23[4] [c] allowing the application of customary law in which men are regarded superior than women impairs their equal enjoyment of the right to freedom of movement. Thus, men under the shade of customary law tend to control their wives and daughters movements – regardless of their age – in such manner as to know and authorise where she may go, for what purposes and the duration of such visits.

The measure taken against such laws has been the drive to repeal Article 23[4] [c] of the Constitution as well as harmonise good customary law practices with statutory law and discard the harmful ones. However, there has not been any specific measure, apart from the aforementioned, to address this situation. Remedies are as provided for in Article 22 as read with Article 28 of the Constitution granting one the right to seek legal action before a Judge of the High Court for restoration of his/her right.

## **Other persisting harmful practices**

Another discriminatory practice against women in the context of the family is the persistence of the custom of ritual purification following the death of a spouse, also called "**sexual cleansing**" whereby the surviving partner has sexual intercourse with a relation of the deceased in order to appease the spirit of the deceased husband. The legality or social desirability of the practice of sexual purifications never considered by the courts and the cases documented demonstrate that this ritual is more often practiced by widowers' families than by those of widows. The concern by

political and tribal leaders that the practice of sexual cleansing contributes to the spread of HIV in Zambia is leading to some changes, although “widows have long tolerated it, and traditional leaders have endorsed it as an unchallenged tradition of rural life.”<sup>9</sup> More recently, some local courts have recommended not pursuing this practice. A Lusaka Local Court Justice in passing judgment over a woman who had brought an action against the family of her late partner seeking recognition of the marriage and cleansing thereof, advise families to desist from sexual cleansing as it was in his words, “a good receipt for HIV/AIDS” [21/09/2006 *Zambia Daily Mail*].

According to a study conducted by Women and Law in Southern Africa,<sup>10</sup> other harmful mourning rites are still persistent, such as the one calling for the surviving spouse to be covered with a blanket throughout the whole funeral period until after burial. Other practices include no eating or bathing until after the day of burial.

Another major concern is the persistence in the traditional way of succession. This phenomenon is known as “**property grabbing**”. This barbaric system of the stripping of property from widows and orphans became so rampant that in 1989, the Government felt compelled to enact two laws of succession. One of these, the Law of Intestate Succession, has provided for how the estate of a Zambian dying without leaving a will is to be distributed. The law seeks to make adequate financial and other provisions for surviving spouse, children, dependants and parents of such a person. Although this law appears to be a considerable breakthrough, particularly for women’s rights, it has a number of limitations. Among these, the Act fails to deal with mourning rites, which are usually directed at women and have the characteristic of being terribly oppressive. The “sexual cleansing” ritual falls within this category, which can be associated with all the risks and negative consequences that have been previously singled out.

## **B. Efforts towards legal reform**

### **Local Courts**

There have been some decisions against the harmful practices described above, in particular sexual cleansing and forced marriages. Even though these are not Courts of Record, since these courts deal with cases under customary law, their decisions have had great effect at the local level.

On 9 December 2005, in a divorce case, a local court justice ruled that “notwithstanding that the parties in this matter were married under customary law, justice demands that when a marriage has broken down, the parties should be put in equal positions to avoid any one of them falling into destitution.”<sup>11</sup>

### **The High Court**

In the case *Edith Nawakwi vs. Attorney General* (1990/HP/1724) the High Court has held that a mother in Zambian society was less likely to be treated on an equal footing than a father and that the Government practice that required a mother to obtain a father's letter of consent in acquiring a passport or travel document for a child was discriminatory. The final decision of the Court<sup>12</sup> was

<sup>9</sup> Sharon LaFraniere, “AIDS Now Compels Africa to Challenge Widows' Cleansing”, *The New York Times*, 11 May 2005.

<sup>10</sup> Women and Law in Southern Africa, « *Inheritance in Zambia: Conflict of Death* », published on 10<sup>th</sup> May 2001, available at <http://www.wlsa.org.zm/zambia/pages/10may01p1.htm>.

<sup>11</sup> IRIN, *Zambia: Landmark judgement for women in customary marriages*, Lusaka, 21 December 2005. See appendix.

<sup>12</sup> The High Court also declared that: “it is not at all justified from whatever angle the issue is looked at, for a father to treat himself or to be treated by the institutions of society to be more entitled to the affairs of his children than the mother of that child or those children” (CCPR/C/ZMB/3, paragraph 46).

that a mother does not need to get the consent of the father in order to have her children included in her passport. The Court also stated that “discrimination based on gender only has to be eliminated from our society. Men and women are partners and not only partners but equal partners in most human endeavours. They must thus be treated equally”. The Court also found that a single-parent family headed by a woman should be recognized as a family unit in the Zambian society.

### **Current legislative review mechanisms**

The *Mung'omba Constitutional Review Commission* was mandated, inter alia: a) to identify constitutional provisions which should be eliminated because discriminatory; b) to recommend to what extent gender equality should be protected under the Constitution. On point a), it has recommended the repeal of Article 23(4) of the Constitution, although the Government is yet to state its position on the matter.

Additionally, the Government has constituted a process, under the *Zambia Law Development Commission*, to review and codify customary law, especially with regard to its application in matters of personal status, marriage, divorce, and inheritance rights. This process will ensure the standardized application of customary law, considering the need to guarantee equal rights to men and women.<sup>13</sup>

## **5. SITUATION SPECIFIC TO WOMEN IN CASE OF DEROGATION (ARTICLE 4)**

Zambia was last under a state of emergency in 1997 during which time every citizen's rights, be it female or male was endangered. During the state of emergency, the Bill of Rights as provided for in the Constitution part 3 is suspended and all citizens, both male and female enjoy their human rights at the pleasure of the President.

The impact on women can be phenomenal in that in their already weak or disadvantaged position, women do not fully enjoy their human rights owing to the historical reasons and thus when the “*little*” guarantees are tempered with, it simply means that women cease to have any human dignity and in Zambia, we have had experiences of women who in such cases of state of emergency are arrested by the police to help with investigations of a coup d'état simply because it is their husbands or partners who committed such crimes. For instance, following the abortive coup d'état of 1997, the wives of the two master minds – the late Capt Jack Chiti and Capt Stephen Lungu – complained of State harassment at the hands of the police and other State agents [See Post Newspaper of 08/11/1997].

## **6. WOMEN'S RIGHT TO LIFE (ARTICLE 6)**

### **Data on deaths of women related to pregnancy, abortion and childbirth**

Available data indicates that the already high levels of maternal deaths are climbing. The 2001-2002 Zambia Demographic and Health Survey (ZDHS) estimated that from 649 deaths per 100,000 live births in 1996, maternal mortality increased to 729 deaths per 100,000 births

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<sup>13</sup> Thrid Periodic Report of Zambia to the Committee on Human Rights, CCPR/C/ZMB/3, submitted on 27<sup>th</sup> November 2006, Paragraph 66.

between 2001 and 2002.<sup>14</sup> The proportion of women whose deliveries were conducted by a medical person declined, from 51% of births in 1992 to 47% in 1996 and 44% in 2001-2002. In 2001-2002, 77.2% of the women who had a non-institutional delivery did not receive postnatal check-up. The women who deliver at the health facilities may also be discharged before receiving the postnatal check-up.

Excessive bleeding is the main direct cause of death from obstetric complications. Other medical causes include infections, hypertensive disorders, obstructed labour, and complications from unsafe abortions. Other women die as a result of medical conditions that are aggravated by pregnancy or delivery, such as malaria, anaemia, HIV, and cardiovascular disease. Moreover, AIDS contributed 12% of the indirect causes of maternal deaths<sup>15</sup>. Specific findings on deaths from direct causes include the following<sup>16</sup>:

- ✓ Excessive bleeding accounts for some 34% of maternal deaths, according to a study funded by the United Nations Population Fund (UNFPA) in 1998<sup>17</sup>. The study also showed a higher incidence of haemorrhaging among deliveries in the villages (27 out of 48), compared with 5 out of 14 for those at health facilities;
- ✓ Infections, which often are a consequence of poor hygiene during delivery, amount for some 13% of maternal deaths in Zambia;
- ✓ Obstructed labour, which occurs when the infant is unable to pass through the mother's pelvis either because of his or her position or the size of his or her head, accounts for 8% of maternal deaths in Zambia.

Studies show that many women have limited access to skilled professionals for maternal care. For example, the 2001/2002 ZDHS shows that only 4% of mothers deliver with the assistance of skilled professionals, compared with 48% in 1996. The Central Board of Health of Zambia noted a tendency among women to deliver at home increased as they got older,<sup>18</sup> suggesting that long distances to health centres might be a major reason for this. In urban areas, 99% of households are within 5 kilometres of a health facility, compared with only 50% of households in rural areas, according to ZDHS.

Surveys also show that the vast majority of women who die from obstetric causes in Zambia are in the middle-poor income groups. Only 3% of maternal deaths occur among women in high-income categories, according to the same study. Health care services vary because of the two-tier fee system in the government-run hospitals. A woman in the low-cost section pays about 4US\$ and may get the attention of a clinical officer, a nurse or midwife (rarely a doctor), and medication if it is available. At the higher end, a payment of about 100US\$ entitles a woman to a single or double room, a doctor on call, and full medical attention, as the 1999 UNICEF report notes.<sup>19</sup>

Complications from unsafe abortions also account for a high number of maternal deaths, although abortion is legal in Zambia. The 1972 Termination of Pregnancy Act allows access to safe abortion on medical or social grounds. Even though Zambia has one of the most liberal abortion laws in southern Africa, most women and health care providers are still unaware of the legality

14 Source: Zambia Demographic and Health Survey, 2001-2002, Calverton Maryland, USA: Central Statistical Office, Central Board of Health, and ORC Macro, p.138, or UNDP, "Zambia: Millennium Development Goals, Status Report 2005", available at <http://www.undp.org.zm/undptest/docs/MDGR2005.pdf>.

15 Zambian Ministry of Health and Central Board of Health (CboH), « *HIV/AIDS in Zambia: Background, Projections, Impacts, Interventions* », Lusaka, Zambia: Ministry of Health and CboH, December 1997).

16 From : « *Diverse Factors Linked to Maternal Deaths in Zambia* », Zarina Geloo, available at: <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=8792>.

17 B.G. Nsemukila, *A Study of Factors Contributing to Maternal Mortality in Zambia*, Lusaka, Zambia, UNFPA, 1998.

18 CboH, « *Zambia National Health Research Agenda: National Health Research Priorities and Recommendations for Action 1999-2001* », Lusaka, Zambia: CboH, February 1999.

19 United Nations Children's Fund (UNICEF), « *Reducing Maternal Mortality and Morbidity* », Lusaka, Zambia: UNICEF, 1999.

and availability of abortion services. A 1998 country profile by Zambia's Central Statistics Office (CSO) found that some 80% of women admitted to health care facilities with complications from induced abortions were younger than 19.<sup>20</sup> However, many deaths occur outside of these institutions and go unreported. Three physicians should approve the procedure, which must be performed at a clinic or hospital. In rural areas, each clinic has one health practitioner who uses his or her discretion to perform abortions. Indeed, the client takes a chance because, should complications arise, the clinic may be unable to respond adequately.

Other social and cultural factors determine whether or not women visit health care facilities. Many say the services are disrespectful to women. According to the 1998 UNFPA-supported *Study of Factors Contributing to Maternal Mortality Rates in Zambia*, women complain of bad attitudes by health care workers. Some say the nurses shout at mothers for not buying things like razor blades, baby clothes, and gloves (hospitals no longer provide these items). The presence of male nurses is also off-putting. Adherence to some tribal customs also increases the risk of maternal deaths. Among these customs, women drink herbs that they think will help them deliver quickly, the UNFPA study notes. The concoctions are often homemade, sometimes toxic, and prepared in unhygienic conditions. All this increases the risk that the mother could have sudden vomiting or diarrhoea while in labour. Among other customs, some women are taught to insert their fists or other objects into the vagina to help it expand in readiness for birth. It is also taboo in some communities to inform husbands about complications, especially when they relate to excessive bleeding. He is informed only when the condition is far advanced – a delay that a further impedes any decision to seek care.

### Measures taken to reduce maternal mortality rates

The Maternal and Neonatal Health (MNH) project, supported by the United States Agency for International Development (USAID), set up a national office in Zambia in 2000 to strengthen essential maternal and neonatal services, using the following strategies:

- ✓ Improved delivery of services: aims to strengthen education and clinical training by revising the registered midwives curriculum and developing a package that includes guides for tutors and learners and a manual of procedures.
- ✓ Behavioural change interventions: activities of the Zambia White Ribbon Alliance for Safe Motherhood, launched in 2001, include the Better Health Campaign (a multimedia communication programme) and a distance education programme to help neighbourhood health committees sensitize and mobilize communities around such issues as preparing for birth, recognizing obstetric complications, and understanding postpartum needs.
- ✓ Policy and advocacy: working with the General Nursing Council of Zambia, the MNH project is lobbying for the revised registered midwives curriculum to be used as the basis for updating national technical guidelines for health centre staff. Complementing these were the WHO guidelines: "Managing Complications in Pregnancy and Childbirth: A Guide for Midwives and Doctors."<sup>21</sup>

Among the latest interventions, is the pilot project for women-friendly services, set up in Lusaka in 2000. The aim of the project is to provide maternal services which are of better quality, are accessible, affordable and culturally acceptable.<sup>22</sup>

<sup>20</sup> CSO, Country Profile, 1998, Lusaka, Zambia: CSO, 1999.

<sup>21</sup> Available at: [http://www.reproline.jhu.edu/english/2mnh/2mcpc/manual\\_toc.htm](http://www.reproline.jhu.edu/english/2mnh/2mcpc/manual_toc.htm).

<sup>22</sup> All information in this last section is available at: <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=8792>, « *Diverse Factors Linked to Maternal Deaths in Zambia* », Zarina Geloo.

Finally, the Government policy of readmitting girls into school after having delivered has greatly helped to reduce the high maternal mortality rates, as girls are discouraged to opt for unsafe abortions. Additionally, health workers, notably nurses and other Government administrative staff, have actively carried out advocacy campaigns against early abortions to young women thereby providing them with necessary information.

Maternal mortality rates still remain high in Zambia and have been on the rise from 649 deaths per 100,000 live births in 1996 to 729 deaths in 2002. The latest statistics indicate that maternal mortality rates are at 793 [2006].

The Government has yet to procure and distribute to all health centres an adequate number of ambulances and radio communication equipment to facilitate referral of patients needing specialised attention especially in rural areas. Though Government has refurbished, rehabilitated and extended health training institutions to scale up the training of mid-wives, low public service remuneration has seen many trained mid-wives seeking employment outside the public service thereby leaving Government managed health centres which handle the bulk of patients with little man-power. The Government has not increased the capacity of health institutions regarding the provision of maternity services [only 28 maternity annexes in Eastern, Lusaka and Northern provinces were built recently, without any serious similar projects in the remaining six provinces].

### **HIV-related deaths of women and girls**

The Zambian government has not backed up its rhetoric on responses to the AIDS epidemic, and particularly to the latter's effects on women and girls. On paper, the Zambian government has been forthright in its assessment of the situation and professed a commitment to safeguarding basic rights. On HIV/AIDS, the National AIDS Council described the populations vulnerable to HIV infection as children, youth, women and certain mobile populations. It further acknowledged that young girls are particularly vulnerable to HIV due to practices including incest and coerced sex and the fact that they have little legal recourse.<sup>23</sup>

## **7. PROTECTION OF WOMEN AGAINST TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 7)**

### **A. General Background**

The government recognizes the problem of gender violence, and the particular problems of incest and defilement of girls. Although it is noted that legal provisions in the Penal Code are designed to protect women from abuse, the government concedes that "enforcement has not been vigorous enough to protect women and girl-children from violence, sexual-harassment and abuse, as well as property grabbing which are still common."<sup>24</sup>

#### Torture or ill-treatment by State agents

The torture or ill-treatment that women in Zambia are exposed to at the hands of State agents tend to be characterized by sexual violence as well as by degrading treatment such as being forced to parade naked in front of groups of male law enforcement officials. The perpetrators of this violence have largely gone unpunished and the victims have not been granted compensation for the injuries that they have suffered.

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23 National AIDS Council, p.9.

24 Republic of Zambia, *National Gender Policy*, Lusaka, March 2000, p.42.

In addition, women who have been the victims of torture involving rape or other forms of sexual violence are very unlikely to report the full extent of the torture they have suffered due to shame and fear and it is, of course, for this very reason that male law enforcement officials tend to use these forms of torture against women.

Due to the fact that police are the ones who prepare reports on the same and accused as the perpetrators of the vice, they are always unwilling to release any data which might injure their public standing. Thus, statistics will always be a problem on this subject and the actual prosecution of such cases is even worse to envisage. Moreover, even though the Police Complaints Authority, which is in charge of receiving such complaints, is very reactive, its recommendations do not bind the police or the judicial authorities. Victims' lack of awareness of their rights is another obstacle to having such cases reported and the accused prosecuted.

However, in March 2007, a young lady who was in police custody at Chelston police cells in Lusaka reported this issue to the women's movement and the media who followed it up. The case is now before a Magistrate and Longwe Clarke and Associates, a civic rights activities firm, are handling the matter on behalf of the victim. From what we have been advised, the matter has passed through the Pea and Mention stages and has begun the trial stage.

#### **Raped Pregnant Woman Charged with Aggravated Robbery**

By Perpetual Sichikwenkwe, Legal Resources Foundation of Zambia (LRF)

**November 17, 2006:** A 23-year-old pregnant woman detained at Kamfinsa Prison in Kitwe has narrated how police officers allegedly arrested her and charged her with aggravated robbery after she went to get a medical form at a police station so that she could seek medication after she was raped by thugs.

Dorris Mwaba alleged that as she was walking one evening in Mulenga compound, she met three men who dragged her to a nearby bush where one of them successfully raped her. When the other two were trying to rape her, a passer-by saved her when he heard her scream from the bush. Mwaba said she was taken back to her husband's house by the person who rescued her.

The following day, Mwaba went to Mulenga clinic to seek medication since she was experiencing pains because she was also beaten by the thugs. When she explained what happened to her to the nurse, the nurse advised to first get a medical form from the police. Mwaba alleged that while at the enquiries at Wusakile Police station waiting to be attended to, an officer she did not know approached her and told her that she was facing an assault charge as she had assaulted her assailant.

Mwaba was detained for two weeks. When Mwaba appeared in Kitwe, a subordinate was surprised to hear that her charge had allegedly been changed to that of aggravated robbery.

*According to LRF Lusaka office the case is yet to commence trial due to delays by the prosecution and LRF is seeking for dismissal of the case for that reason.*

#### Domestic violence

Many women in Zambia are subjected to violence by members of their husband's family and this violence is often exacerbated by the practice of *malobolo* as the family feels that they have purchased the bride and may, as a result, subject her to violence and other forms of ill treatment. Wife battering is also widespread.

The persistence of early marriages, combined with *malobolo*, place young girls in an extremely vulnerable position as current legislation and the lack of a clear criminal provision that prohibits marriage under a certain age, even with parental consent, leave room for abuse. In this regard,

the Government through the VSU has been carrying out advocacy tours, especially in rural areas, sensitising people against all forms of violence related to dowry-bride price especially in cases involving young girls. However much remains to be done in this area, and enacting new legislation would be the first step.

### Sexual offences

In 2006 the Victim Support Unit at the Lusaka Police Division registered 124 cases of rape, 6 cases of attempted rape and 34 cases of indecent assault on females. Additional complaints were filed in 2006 on cases that occurred in 2005: 58 rape cases, 8 attempted rape cases and 15 indecent assaults. Out of these reports, 72 resulted in arrests, 54 have been brought to court and 87 are being investigated.

The Young Women's Christian Association (YWCA) reported in November 2006 that its shelter in Lusaka received 8 rape cases of girls and 10 rape cases of adult women every week.<sup>25</sup>

### Harmful practices

Civil society has been campaigning against harmful sexual practices such as dry sex<sup>26</sup> which in most cases are coercive, but only a few NGOs work in this area. Other practices include coercing girls into anal sex to preserve their virginity, widespread incest, forced abortion and forced prostitution. Yet another gender-based form of ill-treatment that prevails is the beating of women perceived to be improperly dressed.

As with other practices and customs that occur in the private sphere – such as sexual cleansing – and disproportionately affect women and girls, education and women's empowerment are paramount preventive measures.

## **B. State response**

The response from law enforcement agents and Magistrates has been positive in most cases, but in some instances very negative. For instance, no legal proceedings on incest can be had unless the Director of Public Prosecution [DPP] gives sanction and this tends to take a long time. However, law enforcement agencies such as the police and the Magistrates only act on cases that are reported to them and unfortunately, a good number of such cases are not reported as they are kept within family circles.

In the case of *The People vs. Gustavo Kapambwe Chomba* [SP/69/2006], the accused is alleged to have repeatedly had sexual intercourse with his now 17-year-old daughter for four years and the matter is now in Court. The accused has been charged with incest and the case is at trial stage and the defense will soon be opening their case. This matter is being handled by WiLDAF. It must be specially noted that this is the case despite the overwhelming evidence against the accused, the DPP took eleven months to sanction, which is very odd to say the least.

In the case of *The People vs. Mulenga* [Unreported], the High Court at Kabwe sentenced a 57 year old man to five years imprisonment for impregnating his daughter. In sentencing him, the Judge stated that the courts were worried with the high increase in incest cases and thus had to give the highest sentence provided for in the law.

## **C. Legal and Institutional Issues with regard to Violence against Women**

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<sup>25</sup> See IRIN, *Zambia: More than 10 girls raped every week*, Johannesburg, 27 November 2006. See appendix.

<sup>26</sup> So-called "dry-sex" is a frequent practice whereby girls and women attempt to dry out their vaginas in an effort to provide more pleasurable sex to men.

## **Criminal legislation on gender-specific forms of torture**

### Rape and other forms of sexual violence

Sections 133 and 134 of Chapter 87 (entitled “offences against morality”) of the Zambian Penal Code provide for a sentence of life imprisonment for persons found guilty of rape or attempted rape. Rape is defined in Section 132 of the Code as “...*unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband*”. Crimes of rape are considered to be one of the causes of the increasing spread of contagious diseases, such as the HIV/AIDS virus. Nevertheless, the Penal Code does not provide for cases in which the rapist is a carrier of a sexually transmitted disease.

Abduction and indecent assaults are also criminalized under Sections 135-137 of the Penal Code and these crimes are punishable by prison sentences ranging from seven to fourteen years. The Penal Code also contains the crime of “defilement” which is committed by “any person who unlawfully and carnally knows any girl under the age of sixteen years” and is punishable by life imprisonment.

### Domestic violence

The Government of Zambia has not yet introduced specific legislation on domestic violence. No provisions for prohibiting or punishing such practices are contained within the Marriage Act. Perpetrators of domestic violence can only be sued in instances of violence resulting in bodily harm. Only in these instances, may a complainant invoke the Zambian Penal Code (Section 248 of Chapter 24, “Assaults”). This excludes instances when women are victims of psychological violence or marital rape. Clear prohibition of incest and early marriage are also lacking.

*For further details on how cases are dealt with by Zambian authorities see section 3 (Right to an Effective Remedy, Article 2§3).*

### **The 2006 Proposed Sexual Offences and Gender Violence Bill**

When WiLDAF-Zambia, and other like-minded NGOs, finished drafting the Bill in 2006, the same was then handed over to the Government through the Gender in Development Division [GIDD] which in turn handed the same over to the Ministry of Justice. The Minister of Justice is by law then supposed to raise a Memorandum with Cabinet for the Government through Cabinet to adopt a stance and then the same can be presented to Parliament for possible enactment.

The draft bill contains substantive amendments to criminal law with regard to violence against women and children. It defines gender-based violence, including explicit psychological and economic violence, marital rape, dowry violence, widow inheritance or property grabbing, female genital mutilation, female infanticide, child marriage, among other offences occurring in the family, as well as exploitation and trafficking.

It also provides for aggravated sentences when rape results in HIV transmission and for the presumption of lack of consent when the victim is a child or unable to resist.

Very importantly, it provides for the creation of a Sexual Offences and Gender Violence Court and the granting of protection orders to victims.

While appreciating the fact that for such offences sentences cannot be any stiffer than life imprisonment, it is important to bear in mind that the law in its current status prescribes the life imprisonment term as the mandatory maximum sentence that one can get. However, it does not prescribe the mandatory minimum sentence that a Judge or Magistrate needs to meet out to a convicted rapist and thus, there have been situations where a Magistrate passes out a sentence

of one month to a rapist and this discretion that the Court had is essentially the one being challenged by interest groups in the country. The draft Bill provides instead for minimum mandatory sentences such as 15 years' imprisonment for rape and a minimum of 3 years in cases of indecent assault.

## **8. SLAVERY, FORCED OR COMPULSORY LABOUR OF WOMEN (ARTICLE 8)**

### ***A. Legal and Institutional Framework to Combat Trafficking and Commercial Sexual Exploitation of Women***

#### Criminal legislation

Sections 140 and 144 of Chapter 87 of the Zambian Penal Code criminalize “procuring defilement of women by threats or fraud or administering drugs” and “detention with intent or in a brothel.” Sections 146 and 147 of the Code provide that male and female persons living on the earnings of prostitution or aiding and soliciting for prostitution shall be guilty of misdemeanour.

The Zambian Penal Code does not criminalize trafficking in persons per se although the provisions of the Penal Code which criminalize “detention with intent or in a brothel” and several of the offences in Chapter 25 of the Code on “Offences against liberty” (kidnapping, abduction, kidnapping or abducting in order to subject a person to grievous harm, slavery, etc.; Buying or disposing of any person as a slave or Unlawful compulsory labour) are relevant to the crime of trafficking with aims at exploitation.

Article 24 of the Constitution prohibits trafficking in “young persons” who are defined as being persons under the age of fifteen. However there is no general constitutional prohibition on trafficking in persons. Moreover, no definition of trafficking is provided.

#### Specific measures

The Government does not have programmes that specifically target trafficking, although law enforcement officers have attended training courses on this issue. A Government Inter-ministerial Committee on Human Trafficking, chaired by the Ministry of Home Affairs, has been created mandated to promote coordination and information sharing among agencies. Government agencies responsible for combating trafficking include the Police, immigration authorities, and the Ministries of Justice, Labour, and Education.

Since its inception in 2004, the Inter-ministerial Committee on Human Trafficking has endeavoured to address the issue of human trafficking. The Committee has so far developed a national plan of action which is being used to tackle the issue of human trafficking. The Committee has seriously engaged with other stakeholders to address the issue of human trafficking and this has seen the high profiling of the issue which not too long ago was not considered to be possible in Zambia.

Moreover, the Government does not have well-tailored rehabilitation programmes for women victims of trafficking/forced prostitution, save the social welfare and Victim Support Unit framework. However, there are a number of NGOs that are working in this area most notably TASINTHA, HOPE and these organisations have established hot-lines to assist victims of forced prostitution and human trafficking.

### ***B. Practice***

According to the 2005 USAID Report,<sup>27</sup> trafficking in persons occurs to, from, and within the country. Although the Government does not collect or maintain data on the extent or nature of trafficking in the country, trafficking, particularly in the form of child prostitution is believed to be significant. The report indicates that female citizens are trafficked within the country and to other parts of Africa and to Europe, and the country is used as a transit point for regional trafficking of women for prostitution. Traffickers fraudulently obtain Zambian travel documents for their victims before proceeding to other destinations. Women were trafficked to the country for commercial sex work. In 2005, persons convicted of trafficking were subject to a term of imprisonment from 20 years to life terms.

A 2004 survey of service providers, community members, and children located in four cities indicated that traffickers came from a variety of backgrounds and included family members, truck drivers, prostitutes, and business persons. Foreign traffickers were said to have come from Asia, Europe, North America, and countries in the region. Traffickers often use promises of employment to entice young girls and women to leave their homes and families and then force them into prostitution.

When government officials understand that individuals are victims of trafficking, they do not treat victims as criminals. In identified cases, victims have not been detained, jailed, deported, or prosecuted for violations of other laws. When trafficking investigations have substantiated allegations, the government has encouraged victims to assist with investigation and prosecution. The government does not have its own means of protecting victims and witnesses; however, it arranges for protective custody and security protection through facilities operated by NGOs.

*At the time of drafting this report, no data had been made available by the Ministry of Home Affairs. It should be included in the verbal report.*

## **9. TREATMENT OF WOMEN DEPRIVED OF THEIR LIBERTY (ARTICLES 7 AND 10)**

### ***A. Legislation***

There is no domestic law, regulation or internal rule that ensures specific guarantees for women under arrest or in police custody. Moreover, no minimum standards are provided for in national laws or regulations regarding the separation of men and women, the requirement to have at least one female guard when male agents are present, or the provision of specific health care women request.

### ***B. Practice***

#### Description of conditions in police custody and prisons for women

In general, women's specific needs while in police custody or in detention are not adequately addressed by the authorities.

Women suspects are generally interrogated in the presence of female officers. The Zambian Police have adopted this practice but, because of human resources limitations and the small number of female officers in service, this policy risks being relaxed, especially in rural areas. Thus, where there are no female police officers at a police station, chances are that only male officers would carry out the interrogations and where female officers are present, then such are

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<sup>27</sup> Available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78764.htm>

given priority to handling such interrogations. The same happens for body searching, which may be conducive to abuse.

Moreover, guardianship is defined by the human resource base of a particular prison and since there are more male prison officers, the trend tends to be that the warders are male. Instances where the lack of female prison warders has led to the relaxation of this rule include Mongu prison in western province, Lusaka Central prison and Munsakamba Open Air prison in central province

Punishment and disciplinary measures used against women in detention include that of cooking for fellow prisoners, being denied visits by friends and relatives and doing the cleaning such as sweeping of the general surroundings.

Pregnant women are usually separated from other inmates when the due date is near, and are allowed to attend antenatal sessions on appointed dates by health personnel. The frequency of visits of such women is usually dependent on the merits of a particular case and good will of the prison officer in charge.

There is a loose policy arrangement where female inmates are allowed to have their young children with them in prison but the conditions are poor. Thus, the facilities existing in Zambian prisons are not conducive for both mother and child. Infants and young children of incarcerated women are held along with their mothers up to schooling age which is seven years.

Women relatives to prisoners (mother, wives, daughters) seeking to visit incarcerated family members used to report harassment or being submitted to intimate body searches, often by male guards. However, according to available information, the trend has gone down with the insistence that female prison warders search female visitors and male ones the male visitors. This has been confirmed by the Prison Fellowship which is a faith inclined Community based organisation working with prisoners.

With regard to medical care, whenever a prisoner is ill, that is inclusive of both male and female inmates, their seeking medical attention is dependent upon the prison officer in charge being satisfied that such prisoner is indeed sick enough as to require attention at the hospital or see the doctor. Considering that prison officers in charge are not medically qualified, the trend has been to wait for the prisoner to seriously get sick thereby violating their right to health and worsening their health. And due to the biological make-up of women, this trend has put them at a higher risk of various opportunistic diseases, all in the name of trying to make certain that the prisoner is indeed sick. This trend has greatly impaired the ability of prison authorities to avail timely medical attention to female inmates.

#### **Data from the Human Rights Commission**

In a recent investigation report,<sup>28</sup> the Zambian Human Rights Commission states that virtually no police posts located in the Copperbelt Province have separate cells for males, females and juveniles. The Commission further reports that all the police stations and police posts that it visited in the region between 25 March and 8 April 2007 “acknowledged having dealt with one or two defilement cases in the recent past.” According to officers operating in these units, “cases of defilement take a long time to be heard and disposed of due to inadequate number of medical doctors to assess and certify such cases and due to lack of funds on the part of the victim’s family

<sup>28</sup> Human Rights Commission, *Brief Report on the Commission’s Visit to Places of Detention on the Copperbelt Province Between 25th March and 8th April, 2007*, p. 9.

to pay for transport to hospitals and medical fees.” To give an example, Ndola District has only one doctor assigned to do this type of work.<sup>29</sup>

There is a great suspicion that a high number of such cases are not reported. Currently, there is a case in Court of a woman in Lusaka who was raped by a Police officer. In Lusaka, there is a township called chelston where this case occurred. In early March 2007, exact dates unknown, a young lady in police detention was raped by a police officer in the night and the young lady reported this to her relatives who took it up with relevant authorities. The matter has since being taken to Court and the police officer was charged with rape. Currently the case is going through the preliminaries and trial will commence soon.

In a 2005 report,<sup>30</sup> the Human Rights Commission documented the case of a woman on death row at the Female Section of Mukobeko Maximum Security Prison, who claimed that female inmates were not considered for pardon under the prerogative of mercy, which is clearly discriminatory.

According to this same report, the Prospect Police Station at Kabwe District had only one tiny cell meant for male suspects and it was congested at the time (2005). Female suspects were locked up in a corridor between the male cell and the inquiries office.<sup>31</sup> In Kabwe Central Police Station female suspects were kept at the inquiries office because there were no cells for them. During the night, they were kept in the corridor.<sup>32</sup>

These conditions are conducive to abuses given the difficulties to have access to medical doctor in some areas who may certify any such cases.

In case of torture in police custody, after the victim has reported the case to the police and a police report is made, they can then request, through standard forms, for an examination to be carried out by a health practitioner. The standard procedure is that there are no fees for medical examinations by public health personnel provided a police report is obtained by the victim before seeking medical attention. However, there are reports that indicate that due to complainants' lack of knowledge of their own rights, they tend to be charged for such examinations anyway and in some cases may not be able to pay for them which hinder their access to remedy and rehabilitation.

In the case of a rape allegation while in detention, the standard procedure is that such a woman would complain to the prison warder who in would inform the prisoner officer in charge. The prisoner officer in charge would then institute investigations and if satisfied with the same, would invite the police to take over the case. There are no guarantees to protect female inmates from alleged aggressors.

Allegations of rape and other sexual abuse in police custody or in detention when reported to the police are handled over to the Victim Support Unit to investigate in any such manner as is prudent to a particular case and this might involve the removal of the victim from a given police cell to another or the sending on leave of the alleged perpetrators. According to available information there has not been any conviction of law enforcement agents or prison guards for rape so far.

Cases and statistical data to illustrate this situation will be provided upon oral presentation of the shadow report.

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<sup>29</sup> Ibid, p. 10.

<sup>30</sup> National Human Rights Commission, *Report on Prison and Police Cell Visit, Central Province*, 2005, p. 11.

<sup>31</sup> Ibid, p. 27.

<sup>32</sup> Ibid, p. 28.

## 10. CONCLUSIONS AND RECOMMENDATIONS

In view of the foregoing issues contained in this report, we would like to recommend the following:

### 1. Domestication of International Instruments

The State Party must domesticate all international instruments it has ratified that promote the equal rights of women and men, as well as those promoting affirmative action measures aimed at improving the lot of the Zambian woman. Of a particular note here is the domestication of the Convention on the Elimination Against All Forms of Discrimination against Women [CEDAW], International Convention on Civil and Political Rights [ICCPR] and the International Convention on Economic, Social and Cultural Rights [ICESCR]. In this regard, repealing article 23[4] [c] of the Constitution is of utmost importance.

### 2. Promote Gender Parity in Decision Making Positions

Due to the low number of women in political and decision making positions, Zambia must adopt concrete and viable measures aimed at increasing the number of women in such positions and thus, must forthwith do away with window dressing measures where the political and corporate leadership tend to appoint women only to public gallery positions, like public relations personal, to hoodwink the public into thinking that women are making the grade. We further recommend that 50% of the 8 nominated Parliamentary seats that are given to the Republican President be reserved for women while the remaining 50% be competed for between men and women.

In the same regard, we recommend that due to the low number of women in the employment sector [Constituting only 45% of the formal sector as compared to the 67% by men] a Women's Development Fund be established to enable more women access to gainful employment.

### 3. Gender Mainstreaming

In order to actualize gender parity, gender mainstreaming is crucial and thus the creation of a women's ministry is watering down this goal. The Women Affairs Ministry is an attempt at trying to neglect women's concerns through the creation of a relevant desk to trick the public into thinking that their concerns are receiving due attention. We recommend that the Ministry of Women Affairs be abolished and that Gender in Development Division [GIDD] be retained in its original form located at Cabinet Office to spearhead the mainstreaming of gender in all public institutions.

### 4. Enactment of Gender-Based Violence Legislation

Due to the increase in gender-based violence and continuance of retrogressive practices like early marriages, forced marriages, psychological torture of women, sexual harassment, dry sex against a woman's consent, we recommend for the speedy enactment of the Sexual Offences and Gender Violence Bill which addresses these issues in a broader way than the current legislation [under the Penal Code] which lamentably does not address those issues which the scope in which the occur.

### 5. Harmonization of Customary Law with Statutory Law

We recommend the speedy harmonization of customary law with statutory law so that issues such as the differences in marriage age [puberty for customary law and 21 years for statutory law] are reconciled.

In the same respect, we recommend the codification of customary law based on the findings of the Zambia Law Development Commission research which aims at retaining only those good customary law practices.

**6. Training of Local Court Justices**

Since Local Court Justices do not receive any formal training whatsoever and this has been very telling in regard to their concept of human rights, we recommend that a National Training Institute be established to carry out short-term training in law, particularly in human rights and gender, so that Local Court Justices would have a human rights approach in resolving matters before them.

**7. Access to Medical Doctors by Inmates**

We recommend that all female prisoners be subject to routine medical checks once a month by a qualified medical practitioner

**8. Conduct of Searches by the Police**

While we appreciate the enormous human resource deficit of the Zambia Police Service, especially with regard to female police officers, the continued use of male police officers to search suspect women offenders is a violation of human rights that is unjustifiable in whatever manner and must be stopped immediately.

Accordingly, we recommend that all suspect female offenders should only be searched by a female police officer and where a particular police station does not have female police officers, then arrangements must be made to bring the nearest female police officer to such station to conduct the search.

## APPENDIX: News Articles

### ZAMBIA: More Than 10 Girls Raped Every Week



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JOHANNESBURG, 27 Nov 2006 (IRIN/[PLUSNEWS](#)) - A Zambian nongovernmental organisation (NGO) revealed this week that it records eight cases of rape of young girls every week at its centre in the capital, Lusaka.

The statistics were released by the Young Women's Christian Association (YWCA) of Zambia to mark the start of the global campaign, '16 Days of Activism Against Gender Violence', which runs from 25 November - International Day for the Elimination of Violence Against Women - until International Human Rights Day on 10 December.

Katembu Kaumba, YWCA's executive director, said alongside the abuse of girls, the organisation's shelter in Lusaka also recorded 10 cases of rape of adult women every week. "Since we have only two safe houses - one each for the girls and women - they are full all the time."

### More than half of Zambian women have experienced physical violence

"Nationally, the figure is much higher - about 12 every week," said Superintendent Presphord Kasale, who heads the Victims Support Unit of the Lusaka Division of the Zambia Police Service.

A joint report by the support unit, the YWCA, Women in Law in Southern Africa, a rights NGO, and the government's Child Justice Forum released more shocking statistics: almost half of married women aged over 15 reported being battered or physically abused by their husbands, and 53 percent of women overall experienced physical violence.

Kaumba said the number of cases of gender violence was high because girls and women were now more prepared to report the abuse.

She added that alcohol and substance abuse was often a contributory factor in abuse cases. "We found that in a majority of cases of rape that we recorded at our unit, the perpetrators blamed alcohol for their behaviour."

The unit and its NGO partners have begun an awareness campaign in schools to give the students tips to on how to protect themselves. "We find that most of the rapes are committed between 6 [pm] and 7 pm, when most children are sent out on errands. We advise them never to go out without an adult companion during these hours."

The Zambian government, in collaboration with civil society, has also begun a consultation process on a gender-based violence bill, and the YWCA said an amendment to the penal code providing stiffer sentences for rapists was before parliament.

"We are supporting a minimum sentence of 35 years up to life imprisonment in the case of rape of minors [contained in the draft amendment]," said Kaumba. The NGOs are also advocating for a separate penalty for infecting the person who had been raped with HIV.

The penal code amendment is expected to be enacted during 2007.

## ZAMBIA: Landmark judgment for women in customary marriages



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LUSAKA, 21 Dec 2005 (IRIN) - A precedent setting ruling earlier this month by a local court in Zambia has given women married under customary law the right to a share of marital property in the event of a divorce or death of the husband.

Previously, a woman married under customary law would not be entitled to a share of property, irrespective of whether she had contributed to its acquisition.

Zambia has a dual legal system, and although statutory law takes precedence over customary law, the fact that many people live in rural and traditional settings has given customary law primacy in large parts of the country.

### **The subordination of women is a feature of customary law**

The subordination of women and the indulgence of men has been a feature of marriage under customary law, which stipulates that marriage is a union of a man who may or may not already be married and a woman who must be unmarried at the time of entering into matrimony.

In the event of a divorce, most tribes do not recognise a woman's right to a share of marital property - she gets whatever her ex-husband or his family decides she can have.

Local courts have to be guided by the traditions and customs of Zambia's seven main tribes, but because the practices and procedures remain unwritten and subjective, magistrates often use their own judgment when deciding such cases.

The situation was exacerbated in towns, where magistrates have had to deal with several customs or tribes simultaneously.

"The magistrates find it difficult to make decisions because of the societal influences, which are mixed with some tribal customs. It is only in the villages and rural areas where one tribe dominates that local courts are able to adjudicate properly using local customs," observed Matrine Chuulu, coordinator of the NGO, Women and Law in Southern Africa (WILSA).

In the divorce case between Martha Kembo Mwanamwalye and Collins Mwanamwalye on 9 December, Magistrate Mwamba Chanda ruled that "notwithstanding that the parties in this matter were married under customary law, justice demands that when a marriage has broken down, the parties should be put in equal position to avoid any one of them falling into destitution".

The magistrate's ruling was welcomed by Chuulu. "This is an interesting and progressive judgment: interesting because this ruling came from a local court, the custodian of tradition and lore, and it bases its judgment on tribal customs; progressive because for a long time women have suffered destitution when there is a divorce," she commented.

"It is difficult for women to get their share of matrimonial property even when they are married under the statutes, but for customary unions it is worse because custom does not give a woman any right to demand anything - in some customs even the children are taken away," she added.

In customary or traditional marriages families agree on a bride price (lobola), and a verbal agreement witnessed by relatives from both families is made. The couple do not sign any legal document to prove that they are married.

It is precisely for this reason that men prefer customary unions, said lawyer Manfred Chibanda. "All my friends and even my family and mother are married by tradition, because [the mindset is] 'I do not want my wife to get anything of mine, if she leaves my house then she goes the way she came' - it's a way of protecting ourselves," he explained.

On the other hand, lawyer Margret Chinyama said, the recent judgment "fixes" men with views like Chibanda.

"There is now no excuse for men not to marry under the statutes because, whether they like or not, their wives can get a share of marital property. It is poetic justice, actually, that this should be caused by a judgment from the local court, which is the custodian of such discriminatory laws," she added.

Marian Chembe, who married under traditional rites, said she was using the Mwanamwalye case to make her claim for a share of marital property. She divorced her husband after 30 years of marriage but was awarded nothing in the settlement.

"I will use this ruling to stake my claim. I think I have a good chance of getting at least one house from my husband - we had three which we had rented out," she said.

The Law Development Commission in Zambia is in the process of compiling a handbook on customs for local courts to take note of when determining cases of a traditional nature.

Referring to the Mwanamwalye matter, Chuulu concluded, "But in the meantime, we welcome decisions like this, as it shows that society is changing for the better."



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**Case postale 21 - 8, rue du Vieux-Billard  
CH 1211 Genève 8, Suisse  
Tel. +41-22-809.49.39 Fax +41-22-809.49.29**