




Zambia Law Development Commission



REPORT ON THE REVIEW OF THE ANTI-GENDER-BASED VIOLENCE ACT No.1 of 2011

PROJECT REPORT - 2023

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About the Zambia Law Development Commission

The Zambia Law Development Commission ('ZLDC' or the 'Commission') has been in existence for 26 years. It was established as a department in the Ministry of Justice. In 1996, it was converted from a department to a semi-autonomous statutory body established under the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia which repealed and replaced the Law Development Commission and Institute of Legislative Drafting Act. 5 of 1974.

The functions of the Commission are to:

- i. recommend the revision and reform of the law in Zambia;
- ii. recommend the codification of unwritten laws in Zambia;
- iii. review and consider proposals for law reform referred to the Commission by the Minister or the members of the public;
- iv. hold seminars and conferences on legal issues;
- v. translate any piece of legislation into local languages; and
- vi. to research and make recommendations on:
 - a) the socio-political values of the Zambian people that should be incorporated into legislation;
 - b) the anomalies that should be eliminated from the statute book;
 - c) new and more effective methods of administration of the law and the dispensation of justice that should be adopted and legislated;
 - d) the removal of archaic pieces of legislation from the statute book;
 - e) new areas of the law that should be developed which are responsive to the changing needs of the Zambian society.
- vii. encourage international co-operation in the performance of its Act; and functions under this.
- viii. do all such things incidental or conducive to the attainment of the functions of the Commission.

The Zambia Law Development Commission is headed by a 13-member Commission comprising part-time members appointed by the Minister of ...?

The following are the members of the Commission:

- | | | | |
|-------|--------------------------------|---|---|
| i. | Madam Justice Ruth Chibbabbuka | - | Chairperson |
| ii. | Mr Munukayumbwa Munyima | - | Vice Chairperson |
| iii. | Dr. O'Brien Kaaba | - | Chairperson
Research and
Projects Committee |
| iv. | Mr Emmanuel Sibonge | - | Chairperson Finance
Committee |
| v. | Ms. Bubala Chibbonta | - | Member |
| vi. | Mrs. Kawama Simumba | - | Member |
| vii. | Mrs Chipso Nkhata | - | Member |
| viii. | Ms. Mwaka Chizinga | - | Member |
| ix. | Dr. Herrick Mpuku | - | Member |
| x. | Dr. Dominic Kangongo | - | Member |
| xi. | Dr. Bibian Kalinde | - | Member |
| xii. | Mrs. Eva Jhala | - | Member |
| xiii. | Rd. Henry Mbushi, S.C | - | Member |

The Commission Secretariat which is responsible for the day to day running of the Commission is headed by a Director who is the Director and Commission Secretary, Mrs. Hope M. Ndhlovu- Chanda.

FOREWORD

The Anti-Gender Based Violence Act No.1 of 2011 is the primary Act that provides for the protection of victims of gender-based violence. The Act in this regard provides for the issuance of protection orders, the creation of shelters for child victims of violence, and shelters for adult victims and their children. The Anti-Gender Based Violence Act further constitutes the Anti-Gender-Based Violence Committee which is mandated to monitor the activities of all the relevant institutions on matters connected with gender-based violence. The Act also establish the Anti-Gender-Based Violence Fund which is managed by the Anti-Gender-Based Violence Committee. The Fund is applied for the basic material support of victims, and any other matter connected with the counselling and rehabilitation of victims in their best interest.

In 2017 the Ministry of Gender (now the Gender Division) engaged the Zambia Law Development Commission to undertake a review of the Anti-Gender Based Violence Act No.1 of 2011. This review was prompted by increasing gender-based violence cases and a lack of cohesion in the multi-disciplinary functions of the pertinent government institutions collectively involved in managing and disposing of reported gender-based violence cases.

This Report outlines the law review process which comprised of a desk study; focus group discussions in the form of stakeholder consultative meetings and stakeholder validation meetings. The Report further outlines recommendations of stakeholders and the Zambia Law Development Commissions which form the framework for instructions to the Ministry of Justice for the amendment of the Anti-Gender Based Violence Act.

In the quest by Zambia to narrow the gender gap which would also require addressing violence and discrimination based on gender, we sincerely hope this process shall help to enhance the provisions of the Anti-Gender Based Violence Act and other relevant pieces of legislation dealing with acts of gender-based violence and offences.

Madam Justice Ruth Chibbabbuka
Judge of the High Court of Zambia
Chairperson: Zambia Law Development Commission.

ACKNOWLEDGEMENTS

Effective implementation of Zambia's UN-GRZ joint programme on Gender-Based Violence which is designed among other things to strengthen and scale up best practices including developing and enacting appropriate laws requires joint effort from all stakeholders. Indeed, developing an adequate legal framework for the protection of victims of gender violence is a task that requires the concerted efforts of all key stakeholders.

The Zambia Law Development Commission is happy to have been part of this journey and would like to express its gratitude to the Gender Division for engaging and entrusting the Commission with the great responsibility of leading and carrying out this law review process. It is sincere hope that the findings and recommendations made in this report will help achieve both the socio-political values of the Zambian people and best practices as benchmarked by international instruments and models.

Allow me to also extend the Commission's indebtedness to the government ministries, departments, Plan International, civil society organizations and other stakeholders who participated in the various processes of the review, sharing the practical experiences with the implementation of the AGBV Act and tackling the vice of gender-based violence. Your generous sharing greatly enriched the contents of this report and informed the development of the proposed amendments to the AGBV Act.

Our thanks extend to the UNDP and the other UN Agencies for facilitating the implementation of the joint programme and to the Governments of Sweden and Ireland for their continued financial support. We remain indebted.

Hope M. Ndhlovu-Chanda (Mrs.)
Director & Commission Secretary

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ACRONYMS

AGBV ACT – Anti-Gender Based Violence 2010 (No.1 of 2011) of the Laws of Zambia

BPA – Beijing for Action of 1995

CCTV – Closed Circuit Television

CEDAW – Convention on the Elimination All Forms of Against Women

CPC – Criminal Procedure Code Act Chapter 88 of the Laws of Zambia

GBV – Gender Based Violence

NPA – National Prosecution Authority

PC – Penal Code Act Chapter 87 of the Laws of Zambia

SADC – Southern African Development Community or African Union

WILSA – Women in Law in Southern Africa

DEFINTION OF TERMS

ACCESS TO JUSTICE - A person facing a legal issue has timely and affordable access to the level of legal help they need to get a fair outcome on the merits of their legal issue, and can walk away believing they got a fair treatment in the process.

FAST TRUCK COURT – This deal with the unfortunate scourge of gender-based violence in Zambia.

FEMICIDE - the killing of a woman or girl, in particular by a man and on account of her gender.

ONE STOP CENTRE - provides holistic services (health, Psychosocial support, legal and Police Services) to GBV Survivors under one roof and free of charge.

PARALEGAL - a person trained in subsidiary legal matters but not fully qualified as a lawyer.

SURVIVORS - a person who survives gender based violence and others, especially a person remaining alive after an event in which others have died.

VICTIM - a person harmed, injured, or killed as a result of the act of gender based violence

VICTIM SURPORT UNIT - is mandated to investigate, arrest and prosecute all cases involving and committed against spouses, women, children and the aged. The unit also provides counseling to both victims and perpetrators of Gender Based Violence (GBV) and other crimes.

DOMESTIC LEGISLATION

1. The Constitution of Zambia No.2 of 2016
2. Anti-Gender Based Violence Act No. 1 of 2011
3. The Constitution of Zambia No.2 of 2016
4. Children's Code Act No.12 of 2022
5. Criminal Procedure Code Chapter 88
6. Education Act No.23 of 2011
7. Gender Equality and Equality Act No.22 of 2015
8. Matrimonial Causes Act No.20 of 2007
9. Penal Code Act Chapter 87 of the Laws of Zambia

POLICIES

1. The National Gender Policy 2014
2. The National Policy on Education, 1996
3. The National Health Policy 2012
4. National Disability Policy 2012
5. National Social Protection Policy 2014

TREATIES

1. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
2. The Beijing Platform for Action of 1995 (BPA)
3. African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Charter)
4. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)
5. The SADC Protocol on Gender and Development
6. SADC Model law on GBV

INTERNATIONAL LEGISLATION

1. Combating of Rape Act No.8 of 2000, Namibia
2. Combating of Domestic Violence Act No.4 of 2003, Ghana
3. Domestic Violence Act Chapter 24 of 2006, Zimbabwe
4. Public Order Act of 1965, Sierra Leone
5. Protection Against Domestic Violence Act No.2 of 2015, Kenya

1. DOMESTIC JUDGMENTS

2. Mwape v The People Supreme Court 2012
3. Nshinka Kaputo v The People Appeal No. 196/2020
4. The People v. William Siwale HP/166/2017

REGIONAL JUDGMENTS

1. P Jezile v The State High Court of South Africa Western Cape Division
2. Nduta v The Republic-Kenya
3. S v Bock (3) () [2020] NAHCMD 390 (03 September 2020) Namibia

INTERNATIONAL JUDGMENTS

1. Bevacqua and S.v. Bulgaria, no. 71127/01
2. Jessica Gonzales v. United States
3. OPUZ V. TURKEY App. No. 33401/02, 9 June 2009 (European Court of Human Rights)

1.0 INTRODUCTION AND BACKGROUND

Gender refers to the socially and culturally ascribed roles and responsibilities to various categories of people. Gender is not only about the roles assigned, but also about the value placed on those roles. Inequality often arises as a result of the assignment of these roles and responsibilities.¹ Such inequality has resulted in systemic violence and discrimination based on gender. Gender-based violence (GBV) has been defined to mean any physical, mental, social, or economic abuse against a person because of that person's gender.²

The Anti-Gender Based Violence Act of Zambia,³ was enacted in 2011 to provide, among others, for the protection of victims of gender-based violence; constitute the Anti-Gender-Based Violence Committee, and establish the Anti-Gender-Based Violence Fund. This was a welcome move to respond to the vice of GBV in Zambia. The enactment of this legislation influenced the establishment of the GBV Fast-track Court, which is mandated to adjudicate GBV-related causes.

¹ Realising Women's Equality Rights in Africa

² Anti-Gender Based Violence Act, No 1 of 2011 Section 3

³ Act No 1 of 2011

2.0 RATIONALE AND SIGNIFICANCE OF STUDY

The review of the AGBV Act was as a result of the difficulties faced in the application and implementation of the AGBV Act. Further a performance audit was conducted by the Auditor General on the management and disposal of gender-based violence cases in Zambia from 2017 to 2022. The general objective of the Audit was to assess the efficiency and effectiveness with which the multi-disciplinary functions of the Zambia Police Service, Ministry of Health, National Prosecution Authority, and the Judiciary were collectively managing and disposing of reported gender-based violence cases. The Audit findings revealed that despite cases of GBV being reported to the police, a low number are prosecuted.

The findings of the audit further revealed that prosecution of cases involving child victims faced challenges due to a lack of child-friendly courts, which resulted in the increased withdrawal of cases and non-appearance in court cases. The Audit also revealed that there are inadequate mechanisms such as the provision of child-friendly counselling facilities to ensure that the needs of child victims are prioritised during the prosecution of gender-based violence cases.

It was further found that One-Stop-Centres do not have the required personnel to complement the full set of multi-disciplinary personnel, such as medical practitioners, psychosocial counsellors, paralegals and Victim Support Unit police officers. Further, the One-Stop-Centres do not have the required equipment and supplies to promptly and comprehensively attend to victims of gender-based violence.

Further to the findings above, periodic reports of the Zambia Police Victim Support Unit on gender-based violence show that despite the enactment of the AGBV Act and the launching of the Fast-track Court, GBV is on the rise in Zambia. In 2015 alone, 18,088 cases were recorded. In 2016 the following year, 18,540 cases were recorded,⁴ representing a 2.4% percent increase.⁵ The upward trend continues years later. In 2019, a total of 25,121 cases of gender-based violence were reported compared to 22,073 cases reported in 2018. The reported cases showed an increase of 14%. In 2020, a total of 26,370 cases were reported, representing an increase of 5%. A total of 20,540 cases of gender-based violence were reported countrywide in 2021.⁶

⁴ 2016 Victim Support Unit (VSU) Report

⁵ Performance Audit Report of the Auditor General on the Management and Disposal of Gender Based Violence Cases in Zambia from 2017 to 2022

⁶ [PREVALENCE OF GENDER BASED VIOLENCE IN ZAMBIA – March Associates](#) accessed 27/10/2022

The table below shows the statistics on Gender Based Violence cases on different forms from the year 2017 to 2022 from the Zambia Police Service and Zambia Statistics Agency.

	Form of GBV	2017	2018	2019	2020	2021	2022
	Physical Abuse	1,685	2,118	8,400	8,929	10,049	3,366
	Economic Abuse	-	-	3,904	4,519	3,481	1,535
	Sexual Offences	192	-	3,274	3,449	3,083	1,000
	Emotional Abuse	-	-	8,653	799	918	398
	Child Defilement	416	-	890	-	3,009	-
Total		16,090	22,073	25,121	26,370	20,540	8,790

Source: Zambia Statistics Agency: Gender Status Report 2017 to 2019; and Zambia Police-Victim Support Unit Annual Gender Based Violence Statistics for 2020 to 2022

It is against this backdrop of fluctuating numbers of gender-based violence cases and the failure of the multi-disciplinary functions of the Zambia Police Service, Ministry of Health, National Prosecution Authority and the Judiciary collectively, to effectively manage and dispose of reported gender-based violence cases, that the Ministry of Gender (now the Gender Division) engaged the Commission in 2017 to undertake a review of the Anti-Gender Based Violence Act. The review process was undertaken to combat the above-mentioned challenges by strengthening the AGBV Act.

3.0 OBJECTIVES

The overall objective of the review process was to develop mechanisms for the enforcement of the Act and to establish an institutional framework anchored on the need to fully operationalise it.

Specific Objectives

The specific objectives were to:

1. Review and document regional and international standards and best practices against gender-based violence.
2. Make recommendations for a legal framework that:
 - i. Make comprehensive provisions for the rights of victims of gender based violence;
 - ii. Enhance gender based violence-related offences sitting in the Penal Code to ensure that the same speaks to acts of gender based violence prohibited in the AGBV Act;
 - iii. Provides effective means for victims of gender based violence to access the courts and other forms of support.

4.0 METHODOLOGICAL CONSIDERATIONS

The Commission mindful that gender-based violence is an emotive subject sought to engage a methodology that would ensure wide, diverse, and inclusive participation.

To achieve the project objectives, qualitative methods of data collection and analysis were adopted. This included a desk review, stakeholder consultations, drafting meetings, validation meetings, and other processes. The desk review entailed the review of both primary and secondary data sources. Primary data sources included the Constitution, pertinent domestic legislation, judicial precedents, and policies. Secondary data included the consideration of international and regional human rights instruments such as Declarations, Conventions, Treaties and Protocols establishing minimum standards in relation to the subject matter.

Desk Review

The project commenced with a desk review. The Ministry of Gender invited the Commission as well as other key stakeholders including representatives from Women and Law in Southern Africa (WLSA), the National Prosecution Authority (NPA), and the Judiciary to a desk-review workshop held at Mika Convention Centre in Chongwe in July 2017. An issues paper was developed during the desk review. The findings of the desk review highlighted:

- Shortfalls in the provisions of the AGBV Act;
- Pertinent policies, laws, and regional and international instruments; and
- The administrative framework of the AGBV Act.

4.1 The Consultative Process

The issue paper arising from the desk review meeting informed the development of a working paper shared with various stakeholders who were invited by the Commission to participate in consultative workshops for the review of the AGBV Act. The working paper guided discussions during the stakeholder consultations.

A total of three consultative workshops were held in:⁷

- Lusaka ;⁸
- Chongwe;⁹ and
- Kabwe;¹⁰

A drafting matrix was populated in Kabwe to consolidate submissions made by stakeholders to develop recommendations for the amendment of the Act.

The general objective of these workshops was to get input from a wide range of participants representing different interest groups on the subject of gender-based violence.

A Validation meeting was finally held in Kafue, to share the final review findings and recommendations with the stakeholders who had participated in the process.¹¹

⁷ The submissions from each meeting are annexed to this report

⁸ 24th -28th July, 2017

⁹ 14-16 August, 2017

¹⁰ 20-23 October, 2020

¹¹ 17-18 October, 2022

5.0 INTERNATIONAL INSTRUMENTS AND STANDARDS

International instruments embody international human rights standards which are binding on states which are party to them. Zambia is party to a number of instruments speaking to the topic of gender-based violence.

The international and regional instruments considered in the study are discussed below:

i. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

The CEDAW is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promote women and girl's equal rights. Further, it is described as the International Bill of Rights for women and is one of the key international instruments that guides in achieving gender equality and empowerment for all women and girls by the United Nations¹². States Parties that have ratified or acceded to the CEDAW have the obligation to ensure equal rights between men and women to enjoy economic, social, cultural, civil and political rights.

Article 12 of the CEDAW obligates States Parties to put appropriate measures to eliminate discrimination against women concerning health care, to ensure equality of men and women, access to health care services, including those related to family planning. Further, State Parties should ensure that appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation¹³.

Article 13, obligates member states to eliminate discrimination against women concerning economic and social life in order to ensure same rights with men as follows: right to family benefits, right to bank loans, mortgages and other forms of financial credit, and right to participate in recreational activities, sports and all aspects of cultural life.

Zambia having ratified the CEDAW on 21st June, 1985, is, as a state party to the Convention, obligated to respect, protect and fulfil the human rights of all its citizens. Therefore, the provisions of the Convention including the ones discussed above on gender related issues need to be implemented considering that the Gender Equity and Equality Act provides for the domestication of the CEDAW. The CEDAW convention, treats gender-based violence as a form of

¹² <https://www.unwomen.org> retrieved 25/10/22

¹³ Convention on the Elimination of All Forms of Discrimination against Women

discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

ii. The Beijing Platform for Action of 1995 (BPA)

The BPA is a landmark document for advancing the rights of women and gender equality worldwide which was agreed on during the fourth World Conference on women in 1995. This was a consensus to comprehensively support the development of women and their equality with men¹⁴.

The BPA firmly established an agenda for empowering women by integrating their concerns into national plans and policies. Governments and the UN agreed to promote gender mainstreaming as a strategy to ensure that a gender perspective is reflected in all policies and programs at the national, regional, and international levels.

A key area of concern under the agreed commitments is '*violence against women*' The BPA obligates United Nations members who have made commitment to implement it, to take concrete steps to give greater attention to the rights of women in order to eliminate all forms of discrimination and of gender-based violence against women.

"Violence against women" according to the BPA entails any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. The BPA goes further to set out a non-exhaustive list of forms of violence.¹⁵

In addressing violence against women, the BPA requires, Governments and other actors to promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken an analysis may be made of their effects on women and men, respectively.¹⁶

Although not a binding treaty, the BPA identifies specific actions for governments as highlighted above to take to prevent and respond to violence against women and girls which could be of great importance in the fight against Gender Based Violence in Zambia.

¹⁴ <https://pcw.gov.gov.ph> retrieved on 25/10/22

¹⁵ Available at [Beijing Platform for Action. Chapter IV. D. Violence against women – Paragraph 113\(b\) - The Good Men Project](#) accessed 05/01/2023

¹⁶ Beijing Platform for Action, Paragraph 123 on Violence Against Women [Beijing Platform for Action, Paragraph 123 on Violence Against Women | In-Sight Publishing](#)

iii. The African Charter on Human and Peoples' Rights

The African Charter is the pivotal human rights instrument of the African Union. Zambia ratified the African Charter on January 10, 1984 and is, therefore, a state party.

The Charter provides that all human beings are inviolable and every single human, male or female, shall be entitled to respect for their life and the integrity of his person and may not be arbitrarily deprived of this right.¹⁷

Whilst the African Charter places a duty on the State to promote and protect pmorals and traditional values recognised by the community,¹⁸ it is cognisant of the possibility of repugnant cultural practices and therefore as a safeguard to protect women from harmful cultural practices, this is followed by the provision of the State duty to ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.¹⁹ Through these provisions the Charter is able to facilitate the decline of gender based violence acts in member states.

Every individual under the Charter,²⁰ shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Further, every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.²¹

Respect of the dignity inherent in a human being in accordance with the aforementioned provisions, entails protection from any physical, mental, social or economic abuse against a person because of that person's gender. In accordance with Article 5, the Charter does not only proscribe a wide range

¹⁷ Article 4

¹⁸ Which is a first for any international Treaty Article 18(2)

¹⁹ Article 18(3)

²⁰ Article 5

²¹ Article 2

of abuses. It further guarantees the enjoyment of this protection without any form of discrimination including on the basis of sex and status.

The Charter stipulates that states parties shall ensure that every individual has the right to have his cause heard. This includes, ²² the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulation and customs in force. By this provision states parties are required to recognize that, there is no right in the African Charter that cannot be made effective.²³ The provisions in the African Charter on Human and Peoples Rights discussed also relate to gender-based violence.

iv. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)

The Maputo Protocol was adopted pursuant to Article 66 of the African Charter on Human and Peoples' Rights which provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, specifically the rights of women. Zambia ratified the Protocol in May 2005. It is considered one of the most comprehensive and progressive women's human rights instruments.

States Parties by this Protocol reaffirm the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant declarations, resolutions and decisions, with a view to taking concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

The Protocol defines harmful practices,²⁴ as all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity. Harmful cultural practices have been a prominent source of acts of gender-based violence. The definition in the Protocol is vital as it guides states parties on what acts may amount to gender-based violence.

The Protocol has a provision which specifically places an obligation on States parties to combat all forms of discrimination against women through

²² Article 7(1) a

²³ SERAC v Nigeria (2001) AHRLR 60 paragraph 68

²⁴ Article 1(g)

appropriate legislative, institutional and other measures. In this regard Zambia and all other parties shall:²⁵

(a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;

(b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;

(c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

Some of the other notable provisions, which are important for the attainment of gender parity include obligations on State Parties to:²⁶

- Guarantee women's right to consent to marriage;
- Set the minimum age of marriage at 18 years;
- Ensure equal rights for women in marriage;
- Protect against all forms of violence against women, including unwanted or forced sex; and
- Reform laws and practices that discriminate against women.

v. The Southern Africa Development Community (SADC) Protocol on Gender and Development

The Southern Africa Development Community Protocol on Gender and Development was adopted in 2008 to bring about, among other things the integration and mainstreaming of gender issues into the Southern African Development Community (SADC) to ensure the elimination of all gender inequalities in the region and the promotion of the full and equal enjoyment of rights. The Protocol recognises that certain social, cultural and religious practices, attitudes and mind sets continue to affect the attainment of gender equality. Another important trait of the SADC Protocol is that it draws up a plan of action setting specific targets and timeframes for achieving gender equality and equity in all areas, as well as effective monitoring and evaluation mechanisms for measuring progress. The protocol gives comprehensive

²⁵ Article 2(1)

²⁶ Articles 6(a),6(b),6(h), 4(2) and 2(d)

definitions of gender, equality, gender-based violence, gender equality, gender mainstreaming, gender stereo types, and gender sensitive, which are all important for ensuring the fulfilment of the purpose of the Anti-Gender Based Violence Act.

vi. SADC Model law on GBV

The SADC Model Law is a detailed set of provisions embodying the international, regional and sub-regional standards on gender based violence, developed for the purpose of facilitating the adoption of national legislation in the SADC region.

Being a model law, it need not be adopted by SADC member states in its exact form, but could be adjusted to suit the legal and other realities of the respective member states. Thus, unlike treaties, which are binding once ratified and impose obligations on states parties, the Model Law is a non-binding document crafted specifically as a tool to guide law makers in translating obligations emanating from the pertinent international treaties into a detailed national law.

The SADC Model Law proposes a four pronged approach for national law reform processes by member states to effectively address GBV which entails:²⁷

- i. Providing a human rights-based approach to GBV that addresses the root causes of the problem and allows for inclusion of all marginalised groups including asylum seekers, stateless persons, persons without documentation and migrants;
- ii. Introducing innovative methods to deal with GBV more effectively;
- iii. Ensuring adequate information and financial recourses are provided for the intervention, prevention, protection, enforcement and regulation of policies and practices related to GBV and also that implemented measures are working, maintained and sustainable;
- iv. Interfacing all concepts, rules, and principles of access to justice to promote seamless connectivity for efficient handling, investigating, prevention, prosecuting, protection and enforcement of all GBV cases.

²⁷ SADC Model Law-Chapter 1 Explanatory Notes on SADC Model Law On Gender Based Violence page 12

Part 1: Preliminary Provisions

The preliminary provisions consist of matters generally underlying the understanding of the GBV Model Law. In this Part member states are required to take into account and consider the Constitution, Acts of general application, customary law, international legal obligations, especially human rights and freedoms.

Member states are expected to enact and enforce national laws that prohibit all forms of GBV and address and punish all forms of such violence, in line with international human rights standards and instruments related to addressing GBV.

Member states that already have in place national laws that prohibit GBV are required to review, assess and strengthen such laws in conformity with this GBV Model Law.

For the purposes of the definition of “GBV”, the following shall be included:

- (a) domestic violence;
- (b) intimate partner violence;
- (c) sexual violence, including sexual assault and sexual harassment;
- (d) harmful practices, including early marriage, forced marriage, female genital mutilation;
- (e) female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing;
- (f) honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, maltreatment of widows, forced pregnancy, and trying women for sorcery or witchcraft;
- (g) femicide;
- (h) trafficking; and
- (i) sexual slavery

Part 2: Human rights Based Approach and Policy Direction

The rights outlined in this Part are a restatement of certain rights specified in various international and regional human rights instruments on gender-based violence and Member States’ constitutions.

Member states here are required in generalised terms to draft in the AGBV law the rights with specific reference or relativity to the issue of gender-based violence, whilst emphasising the rights of women and girls. It follows that the focus of the Act, therefore, should sit in the text. The effect is to bring life to the AGBV Act

Member states should use the content to develop specific provisions on the subject related issues as conforms with the style and language of National law. With regards to offences and penalties, the Members must provide for appropriate prohibitions, offences and penalties which are put in strategic sections as indicators that punishment is required in relation to that subject area. With the review of the Penal Code, where a criminal matter is to be instituted, a specific section speaking to GBV in the AGBV Act will be required to be read together with the PC and CPC, guided by a section prohibiting acts of GBV and subsequently referring offences to the PC and CPC. All criminal offences are to sit in the PC and CPC even those relating to GBV.

There is also need for terms such as “inhumane treatment” to be defined in the AGBV Act, while abuses scattered in the definition section should be clustered into the 4 themes each with their own definition. Moreover, Social abuse should specifically provide for harmful cultural practices as well as expand the definition under section 3 to include a person and not be limited to a child only.

The Model Law in this Part outlines comprehensive provisions for the rights of victims of GBV. These are articulated as follows:

- Protection from discrimination;
- Access to justice;
- Right to fair trial and settlement of complaints;
- Right to fair administration;
- Right to life;
- Protection from GBV;
- Protection from inhumane treatment and right to safety of person;
- Equality, privacy, dignity and respect;
- Access to information;
- Non-refoulement of refugees and asylum seekers;

- Protection from harmful practices;
- Right to education and access to educational facilities;
- Right to health;
- Right to employment and social security;
- Right to nationality;
- Right to asylum;
- Protection from exploitation;
- Right to sustainable livelihood and economic empowerment;
- Rights of vulnerable women and children;
- Special policies and programmes for victims and women living in rural and peri-urban areas.

Part 3: Access to Justice

This part of the Model Law contains important provisions for ways in which victims of GBV can access the courts and other forms of support. Emphasis is placed on the way in which GBV proceedings can better be handled at court so as to avoid secondary victimisation. Procedural matters in courts carry much significance when it comes to ensuring confidence of the victims to report and assuring any aggrieved parties that they will be fairly treated when they bring their cases of violence forward to the criminal justice system. Certain aspects of the justice system involving presentation of evidence are also highlighted, and provisions are made for consideration of having evidentiary procedures that are sensitive to GBV survivors.

This is a welcome development, especially considering the general lack of confidence in the judiciary among GBV victims who in most cases feel unbelievably or unprotected by the system. Important provisions relating to Government support for victims and their families especially dependents are also contained herein.

Some of the rights highlighted are;

- i. The right to reasonable, accurate, and timely notice of any judicial institution proceeding or parole proceeding involving the crime of GBV or any release or escape of an accused;

- ii. The victims' right to be informed of their rights, remedies, and victim support services and on how to obtain them, in addition to information about their role and opportunities to participate in judicial and quasi-judicial proceedings (survivor-centred approach);
- iii. The right to seek restitution from the offender or compensation from the State;
- iv. The right to safety and privacy and to be free from hardship during the detection, investigation and prosecution process, which requires legal provisions to ensure the safety, privacy and dignity; of victims and their families at all stages of the criminal justice process , such as witness and victim protection programmes, measures to exclude the public from the courtroom, use of testimonial aids like screens or CCTV and support persons, the prohibition to publish the victim's name or other intimate details;
- v. Access to free legal aid and judicial and administrative support, including interpretation services for all including asylum seekers, refugees, stateless persons and persons without documentation;
- vi. The right to speak to a female officer, where possible, whether it be the police or any other criminal justice official.

Part 4: Early and Effective Response Mechanisms and Referral Systems

Part 4 of the model law deals with the measures that should be put in place by member states to protect and promote the rights of GBV victims. These measures include reliance on the judicial system instead of other extra-judicial mediations, considerations of the history of offenders and the emphasis of non-reliance on customary practices that advance gender inequality and promote further exploitation of women and girls (especially through child marriages).

Additionally, this Part of the Model Law requires member states to make provision for the recognition of other offences that are related to GBV and the punitive measures that should be meted out to individuals who are convicted of GBV offences. Provision is also made for the protection of witnesses and child victims of GBV.

These are all important and necessary provisions which, if followed through, can ensure the credibility and reliability of the justice delivery systems in the country. Proposed provisions include:

- Simplified procedures and processes for effective response and referral
- Response to gender-based violence complaints by law-enforcement officers
- Response to gender- based violence complaints by prosecutors

- Response to gender- based violence complaints by health providers
- Developing innovative and proactive models to respond to gender-based violence
- Mandatory requirements for grievances, complaints and appeals policy

Parts 5, 6 and 7: GBV Response, Prevention, Protection, Intervention and Sentencing Measures

In these parts of the Model Law, details as to GBV response for member states are outlined. The Law advocates for early and effective response mechanisms and referral systems which are to be made possible by simplified and integrated procedures and processes and well trained, competent, professional, and capacitated authorities.

The above measures are to be supported by the availability of health, legal, material, and other support services that meet the best interests of survivors. The response to GBV by all responsible officers should be quick, within the law and in the best interests of the victim and the victim or reporter should be protected, and GBV cases should be prioritised. Responsible officers such as the police should render immediate assistance to victims by sending victims to health facilities. At all stages of case processing, the victim should be given all necessary information and services available should be given after informed consent, with respect, dignity, integrity, and fairness.

Member states should establish prevention, protection, support, and intervention measures for victims that entail provision of free 24/7 hotlines, shelter, services, and specialised services (dealing with special cases such as migrants and trafficking) and support overseen by competent and professional staff.

The support services should be available at community, provincial and national levels. Basic benefits and services are to be provided to victim and dependents and the victim should be informed of their availability and should be offered these without any condition such as having reported the case.

Protection orders with specific conditions and requirements from the perpetrator must be given and should be in the best interests of the victim. Additionally, the scope of who can apply for the order should be widened to further assist victims of GBV where a victim is incapable of personally applying for a protection order.

Pro-active measures should be implemented to avoid GBV. These include access to education and empowerment programs, community, and national campaigns on GBV, sensitisation of the AGBV Act, involvement of local or

community leadership, appropriate training of authorities and officers and their adequate capacitation with resources, authority and reporting lines, and compulsory learning of issues relating to GBV in private and public institutions.

Access to data and information, capacity building, public awareness, monitoring and evaluation is also seen as vital in the Model Law. National laws should make provision for cases to be traced, tracked and systematic, and interventions are to be based on evidence and context.

Adequate information should be available and accessible to the public and adequate funds should be allocated to information dissemination, programming, training, and regular monitoring, and evaluation.

Finally, submission of state reports on GBV to SADC-PF and other regulatory bodies is seen as way of enforcing compliance and developing regulations related to GBV.

6.0 DOMESTIC LEGISLATION

The review of the Anti-Gender Based Violence Act took into consideration provisions of allied legislation which have a bearing on the implementation of the Act. Therefore, the Commission reviewed legislation which may have an impact in the implementation of the proposed law.

i. The Constitution of Zambia (Amendment), 2016 Act No.2

The Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that are inconsistent with its provisions are void to the extent of the inconsistency. The Constitution binds all persons in Zambia, State organs and State institutions.

In addition, the Constitution provides for national values and principles which among others include morality and ethics; patriotism and national unity; democracy and constitutionalism; human dignity, equity, social justice, equality and non-discrimination; and good governance and integrity.²⁸ The Constitution dictates that the said national values and principles should be applied to the interpretation of the Constitution, enactment, and interpretation of the law, and to the development and implementation of the State policy.

It is therefore a requirement, that every piece of legislation must conform with the provisions of the Constitution, accordingly the review process took this to be a very important consideration. The Constitution defines a child as a person who has attained, or is below, the age of eighteen years.²⁹ The definition of a child in the Anti-GBV Act diverts from this definition therefore the 2 definitions will require to be reconciled.

ii. Penal Code Act Chapter 87 of the Laws of Zambia

The Penal Code provides for offences and punishment in Criminal Law. The Gender Based Violence Act provides for acts that amount to GBV but do not create any offences. However, the AGBV Act stipulates that any act of gender-based violence shall be inquired into and tried in accordance with the Criminal Procedure Code, the Penal Code and any other written law.³⁰ Section 137 provides for indecent assault of females, this offence also amounts to an act of Gender Based Violence. Section 137A provides for harassment of a child. This provision limits harassment in such cases, to a child only. The

²⁸ Article 8 of , Constitution of Zambia (Amendment) Act no.2 of 2016

²⁹ Article 266, Constitution of Zambia (Amendment) Act no.2 of 2016

³⁰ Section 2(1) Anti-Gender Based Violence Act No.1 of 2011

offence of harassment is deemed to be an act of gender based violence in the AGBV Act.

Section 75 proscribes any person from conducting or causing any one to conduct harmful cultural practices on a child. Such acts are deemed to be acts of gender based violence in the AGBV Act. Section 169 creates an offence for a parent, guardian or any person in charge of a child to neglect to provide for such a child. This offence is also deemed to be an act of GBV.

iii. Criminal Procedure Code Act Chapter 88 of the Laws of Zambia

The Criminal Procedure Code Act makes provision for the procedure to be followed in criminal cases. The AGVB Act states that any act of GBV will be inquired to and tried in accordance with the Criminal Procedure Code.

iv. Children's Code Act No.12 of 2022

The Children's Code Act among others: reforms and consolidates the law relating to children; provides for parental responsibility; provides for the grant of legal aid; and establishes procedures for the treatment of, children in conflict with the law.

Part 1 of the Act assignees the definition of a child to the Constitution which defines a child as one who has attained the age of 18 years and any one below the age of 18 years.

Part 2 of the Act provides for rights and duties of a child. Section 18 prohibits any person from subjecting any child to genital female mutilation or child marriage or to any cultural rites, and religious or traditional practices, that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development.

A similar provision sits in the AGBV Act which deems the above acts as acts of gender based violence.

Part 3 provides for the administration of matters relating to children. It establishes the Child Development Department which is responsible for the administration of child related matters.

Part 5 provides for the arrest, bail and deprivation of liberty of a child. Section 55 (1) provides that a child can only be questioned or interviewed by a law enforcement officer in relation to an alleged offence if a parent, guardian, child welfare inspector, legal representative, close relative of the child or the person having parental responsibility for the child is present at the questioning or interview. The Children's Code Act further provides circumstances under which a law enforcement officer may dispense with the above requirement

where the law enforcement officer is of the view that it is not in the best interests of a child for the child's parent, guardian, legal representative, close relative of the child or the person having parental responsibility for the child to be present, the law enforcement officer shall arrange for a child welfare inspector to be present at the interview.

The above provision is similar to section 8 of the AGBV Act to the extent that it mandates a law enforcement officer to interview a child in the presence of the parent or guardian of the child; or a next friend. However, section 55, goes further and provides circumstances under which a parent or guardian presence may be dispensed with.

Part 7 of the Act provides for court proceedings. Section 65 provides that a subordinate court sitting for the purposes of hearing a charge against a child or for any other purpose relating to a child shall constitute itself as a juvenile court.

Section 78 provides that where in any criminal or civil proceedings against a person, a child is called as a witness, the Juvenile Court or Children's Court shall receive the evidence, on oath, of the child if, in the opinion of the Juvenile Court or Children's Court, the child possesses sufficient intelligence to justify the reception of the child's evidence, on oath, and understands the duty of speaking the truth. If the Court is of the view that a child does not possess sufficient intelligence and does not understand the duty of speaking the truth such a child may give unsworn evidence before the court or evidence through a child welfare inspector responsible for the child's case.

Notwithstanding the above, section 78(9) provides that a Juvenile Court or Children's Court may, having regard to the nature and circumstances of the offence in question, require evidence presented before the Juvenile court or Children's Court to be corroborated by some other material evidence.

v. Education Act Chapter 134 of the Laws of Zambia

The Education Act regulates the provision of accessible, equitable and quality education. It also provides for the establishment, regulation, organisation, governance, management and funding of educational institutions. The Education Act also domesticates the Convention on the Rights of the Child in relation to education.

The Education Act protects children from being withdrawn from school because of early marriage. Section 18 provides that a learner who is a child shall not contract any form of marriage and also makes it an offence for any person who marries or marries off a learner who is a child; or prevents a learner who is a child from attending school for the purpose of marrying or

marrying off the learner who is a child. The AGBV Act equally prohibits child marriages and deems such to be abuse and an act of gender-based violence.

vi. Gender Equity and Equality Act No.22 of 2015

The Gender Equity and Equality Act among others: establishes the Gender Equity and Equality Commission and provide for its functions and powers; provides for the taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity, equality and integration of both sexes in society; promotes gender equity and equality as a cross cutting issue in all spheres of life and stimulates productive resources and development opportunities for both sexes; prohibits harassment, victimisation and harmful social, cultural and religious practices.

This Act defines gender as the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls' and boys'.³¹ This definition diverges from that in the GBV Act. These definitions should be harmonized.

vii. Matrimonial Causes Act No.20 of 2007

The Act is instructive as far as the care and upkeep of a spouse are concerned. Section 36(2) stipulates that *“Where upon, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife, and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use”*

³¹ S.2, Gender Equity and Equality Act no. 22 of 2015

7.0 POLICIES

i. The National Gender Policy 2014

In 2000, the Zambian government developed a National Gender Policy (NGP). This Policy was revised in 2014 with the aim to ensure the attainment of gender equality in the development process by redressing the existing gender imbalances. Further, the Policy provides for equal opportunities for women and men to actively participate and contribute to their fullest ability and equitably benefit from national development.³²

In implementing the Policy, the focus was to facilitate the repeal and amendment of legislation that discriminate against women; increase access to and control over productive resources such as land and credit facilities; enhance access and utilisation of information and technology; and mainstream gender in all socio-economic and political policies, programmes, plans, projects and the national budgets to ensure that they are gender responsive.³³

The revised Policy gives a clear mandate to the Ministry responsible for Gender and other line Ministries to mainstream gender in their operation. It sets priority areas of action at the National, Provincial, District and Community levels in terms of planning, resource allocation and implementation of development programs to promote gender equity and equality.³⁴ In addition, the Policy takes into account the priorities and aspirations of the Government as set out in the Development Plans Vision 2030, Millennium Development Goals (MDGs) and the Southern African Development Community (SADC) Protocol on Gender and Development.

The National Gender Policy also outlines some of the cross-cutting gender issues that have undermined the effective implementation of the policy and these are as follows:

a) Poverty

The majority of the Zambian population continues to live in poverty and the existence of gender inequalities between women and men have worsened the situation. Poverty remains higher in rural areas than in urban areas.

Over the past decade, Zambia registered positive economic growth due to the implementation of sound economic policies and growth in the productive sector. However, the downside of the positive economic growth is the high

³² National Gender Policy 2014: Zambia.

³³ *ibid*

³⁴ *Ibid*

poverty levels that have continued to characterise rural populations, especially female-headed households. Further, poverty among women continues to be a hindrance to their participation in decision making because they are less educated and skilled. Women are disproportionately affected by HIV and AIDS and continue to be the victims of GBV, whilst remaining poor.³⁵ If poverty is not addressed it will be difficult for Zambia to achieve the action plan relating to gender equity and equality.

b) Decision Making

The women's participation in both governance and decision making has been identified as a critical element to sustainable development. However, women are largely under-represented in decision making at all levels in institutions such as the Executive, Legislature, Judiciary, political parties, the private sector, religious bodies and traditional establishments.³⁶

Achieving gender equality requires active female participation and involvement in decision making at all levels, starting in the home and extending to the highest levels of government. The fact that gender inequalities continue to exist in all sectors at all levels, has negative implications on national development.

c) Culture, Family and Socialisation

In the Zambian setup, gender roles across all ethnic groups are determined and differentiated by one's sex through socialisation and cultural practices. Cultural norms and values lead to gender imbalances through the process of socialisation. For instance, girls are socialised to be wives and mothers who are generally submissive while boys are socialised to be husbands, fathers and leaders. Girls and women are overburdened than boys and men in the sharing of roles particularly at the household and community levels.

Additionally, some cultural practices such as initiation ceremonies, child, early and forced marriages, sexual cleansing, spouse inheritance and property inheritance or grabbing have a negative impact on the well-being of women and children. This in turn affects their performance and participation in education, reproductive health, labour and employment, agriculture, and decision making at home, community and national levels.

³⁵ Living Conditions Monitoring Survey, 2010

³⁶ Gender Audit of the Private and Public Sectors; Zambia National Women's Lobby; 2014

d) Gender-Based Violence

Gender-Based Violence (GBV) continues to be a huge problem in Zambia that impedes national social-economic development. The 2021 Zambia Police Service Annual Gender Based Violence Data Analysis,³⁷ indicates that a total number of 20,540 cases of Gender Based Violence were reported countrywide which has slightly reduced compared with 2020 where 26,370 cases were reported.

Even if the government has enacted the Anti-Gender Based Violence Act No. 1 of 2011, there have been low levels of reporting amongst women and men and high rates of withdrawal of reported cases have negatively contributed to the fight against gender-based violence. There is a wide preference for settling such matters outside the Courts of Law in order to preserve family respect. Since most cases of GBV are perpetrated by men who may be the breadwinners, the victims prefer to withdraw the cases rather than risk the economic security that they associate with marriage or long-term partnerships.

e) Forced, Early and Child Marriages

Forced early or child marriage is defined as marriage of children below the age of 18 years and applies to both boys and girls although the practice usually affects girls. In Zambia, a child is defined as a person below the age of 18 years. This is in accordance with the United Nations Convention on the Rights of the Child (CRC) and the National Child Policy.³⁸

According to the National Gender Policy, Zambia has one of the highest child marriage prevalence in the world. On average 2 out of 5 girls are married before they turn 18 years. It is worth noting that of these married girls, 65 percent have no education while 58 percent have only primary education as compared to 17 percent of girls with secondary education.

High levels of poverty among households result in parents and guardians forcing girls into early marriages. Presently 70 percent of Zambia's households are poor and girls from the poorest 20 percent of the households are 5 times more likely to be married before the age of 18 than girls from the richest 20 percent of the households. Once married, only 28 percent of them use contraceptives in spite of the need to space childbirth.

The government has subsequently taken a leading role in ending forced, early or child marriages by signing the Eastern and Southern African Ministerial

³⁷ The Zambia Police Service Annual Gender Based Violence Data Analysis 2021.

³⁸ The United Nations Convention on the Rights of the Child (CRC) and the National Child Policy.

Commitment on Comprehensive Sexuality Education Services in 2013, whose main milestones include ending child marriage. Further, in 2014 the government established the Ministerial Committee of Ending Child Marriages in Zambia whose objectives include providing oversight and policy guidance to the fight against child marriage. At regional level, Zambia is part of the African Union Continental Campaign on Ending Child Marriage.

ii. The National Policy on Education, 1996

The Government in 1996 formulated the National Policy on Education,³⁹ for formal institutional education. The Policy addresses issues such as decentralisation and productivity on one hand and curriculum relevance and diversification, efficient and cost-effective management, capacity building, cost sharing, and revitalised partnerships on the other. One of the major policy objectives for the Government is to promote equity in access, participation and successful completion of education at all levels, irrespective of gender, social class, or disability. Further, the Government aims at ensuring that there are equal participants and beneficiaries of education at each level and that they are equally integrated in the education sector, whether as pupils, students, teachers, managers or supervisors, and within the various fields of education and training.

In this regard, the Government has put in place strategies that include inter alia, a requirement for Education Boards to develop Action Plans for the promotion of equal opportunities of access and participation in the various levels of school education; formulation of strategies to encourage increased participation by girls in science and technology; and strategies ensuring that all measures aimed at sharing the cost of education take into account the families capacity to pay. Legislatively, the Government has made it a punishable offence for parents or guardians to withdraw children from school before the completion of their basic education.⁴⁰ This is to ensure that all children have equal opportunity to education.

According to the National Gender Policy 2014,⁴¹ education and skills play a critical role in the social-economic development of any nation as it provides opportunities for employment; poverty reduction; productivity and personal growth. The promotion of gender equity and equality in education means equitable access to quality education and skills development which will in turn translate into enhanced human capital for sustainable national development.

³⁹ Educating our Future-National Policy on Education,1996.

⁴⁰ Education Act, 2011

⁴¹ The National Gender Policy,2014

Therefore, this Policy is relevant to gender-related issues as it recognises that the education sector is crucial to socio-economic growth and promotes gender equity and equality so as to achieve equitable access to quality education and skills development for human capital in order to achieve sustainable national development. For a country to achieve sustainable national development, its human capital must be well-educated and have the skills to make it more productive and competitive in the regional and global markets. The Policy further recognises that education enhances the quality of life and enables people to recognise their full potential and make use of the resources available to them.

iii. The National Health Policy 2012

Despite improvements observed over the years, Zambia's health sector profile is characterised by a high prevalence and high impact of preventable and treatable communicable diseases and the growing burden of non-communicable disease such as malaria, tuberculosis, cancers, mental disorders, diabetes, heart diseases as well as sexually transmitted infections (STIs) including HIV and AIDS.

The increased disease burden has threatened the lives, well-being and livelihood of many Zambians, especially women and girl children.⁴² Gender inequalities disproportionately affect women and girls. In most societies, women and girls have lower status and less control over decision-making about their bodies in their intimate relationships, families and communities exposing them to violence, coercion and harmful practices. Women and girls face a high risk of unintended pregnancies, sexually transmitted infections including HIV and AIDS, cervical cancer, malnutrition and depression among others.⁴³

The National Health Policy provides an all-encompassing National Health Policy Framework that consolidates subsisting policies in the health sector. It is premised on the principle of 'equity of access to cost-effective quality health services, as close to the family as possible'.⁴⁴ The Policy informs and is implemented through, successive National Development Plans and National Health Strategic Plans.

The overarching objective of the Policy is to reduce the burden of disease, and maternal and infant mortality and increase life expectancy through the provision of a continuum of quality effective healthcare services as close to

⁴² The National Gender Policy, 2014

⁴³ <https://www.who>

⁴⁴ Ministry of Health mission statement

the family as possible in a competent, clean and caring manner.⁴⁵ As a result, the Government has set out strategies to address the key determinants of health such as environmental health and food safety; nutrition; health promotion and education; occupational health and safety; and maternal, newborn and child health.

If there is gender equality, then men and women have the same opportunities to access and benefit from social and economic resources such as health assets and services. This Policy is therefore relevant to gender in that access to equitable health services is important for sustainable national development. Equal access to quality health care has a significant positive effect on an individual, public health, economic growth and development.

iv. National Disability Policy 2012

The National Policy on Disability (NPD) was necessitated by the need to have a specific framework to address disability concerns in Zambia. Though the NPD draws on international experience from both SADC and other regions, it was formulated to provide a framework relevant to Zambia in the efforts to create an enabling environment for persons with disabilities. From as far back as pre independence, the Country had not adequately responded to the challenges faced by persons with disabilities. Therefore, the Policy was formulated to respond to the particular experiences of persons with disabilities in Zambia and to create an environment that responded to their challenges as members of society, in order to safeguard their human rights.

It suffices to state that, persons with disabilities have the potential to contribute to the economic prosperity and growth, if given equal opportunities and supported with resources. Therefore, the Policy also provides interventions which if fully implemented can ensure eradication of poverty among persons with disabilities.⁴⁶

The National Disability Policy identifies the rights of persons living with disabilities; hence provide for the promotion of gender equity in the provision of services to persons with disabilities and enforce laws that protect persons with disabilities against discrimination and abuse.⁴⁷ The above mentioned takes into account issues of gender based violence among the disabled in the enjoyment of human rights.

⁴⁵ National Health Policy 2012

⁴⁶ National Disability Policy - p 1

⁴⁷ Supra – p 21

v. National Social Protection Policy 2014

The Government is committed to eradicating poverty and vulnerability among its population in general and for the poor and vulnerable segments of society in particular.

Traditionally, Government has included Social Protection programs as part of the broader social policy. However, Social Protection implementation continues to be fragmented, uncoordinated, poorly resourced and ineffectively evaluated. The formulation of this National Social Protection Policy is one of the Government's dedicated efforts to ensure that the role of social protection in pro-poor growth remains central and increases systemic efficiency.⁴⁸

Experiences of vulnerability resulting from the violation of human rights are common, particularly amongst the poor due to various factors such as HIV/AIDS; widowhood; orphan hood; human trafficking and gender-based violence. The above factors are often associated with various manifestations of appropriation, exploitation or abuse that affect the most vulnerable.

Interventions to strengthen social protection at all levels require the development of appropriate laws, raising awareness of legal rights, enforcing the law against offenders, and providing appropriate support for victims. The target group or beneficiaries of social protection measures are all citizens. However, since women, children, elderly and persons with disabilities are most vulnerable to the abuse of rights, and least able to act when such abuses occur, they are the principle beneficiaries of these actions. Specific programmes implemented include the rehabilitation of street children, provision of places of safety and children's homes, anti-sexual and gender based violence, anti-human trafficking and child labour, Correctional Services and legal aid services.⁴⁹

⁴⁸ National Social Protection Policy – p 1

⁴⁹ National Social Protection Policy - p 7

8.0 Judicial Decisions

Judicial decisions where courts have pronounced themselves over gender based violence were also reviewed. These serve as evidence-based best practice. Domestic, regional and international judgments were considered.

Domestic Judgments

The cases under the domestic judgments were deemed to amount to acts of gender based violence. However, the analysis of the cases review that despite the cases being amounting to gender based violence, they were not prosecuted in accordance with the Anti-Gender Based Violence Act. Further, cases of gender based violence are not reported as such, which creates challenges in identifying such cases.

Mwape v The People Supreme Court 2012

The appellant was charged with defilement contrary to Section 138 of the Penal Code, Chapter 87 of the Laws of Zambia, and was sentenced to the minimum mandatory sentence of 15 years imprisonment. The accused appealed against the said judgment stating that the Court had erred in law by deciding not to conduct a voir dire and proceeding to receive the sworn evidence of a child. On ground two, it was contended that the court below erred by “*finding corroboration*” and concluding the appellant was guilty.

On the first ground, the Court held that, while there had been no voir dire and while the Magistrate had failed to inquire as to whether the child understood the nature of the oath, this did not necessitate a re-trial, given that such orders are typically discretionary and this was not the only evidence tendered at trial.

On the second ground, the Court observed that the question of identity was not in dispute and that there was substantial corroborative evidence that the crime had been committed.

Accordingly, the Court concluded that the grounds lacked merit, as the Court was competent to convict the appellant even without the victim’s evidence. Therefore, the court set aside the 15-year minimum sentence in favour of a 20-year hard labour sentence.

Analysis

This case dealt with defilement, an offence created by the Penal Code. Defilement is also categorised as sexual abuse and therefore a form, of gender-based violence. The offence of defilement is prosecuted in accordance with the

Penal Code and Criminal Procedure Code. In dealing with this case, the court applied section 122 of the Juveniles Act which has since been repealed. The said section provided that a 15year old child can give evidence on oath without the need for assessment through a voir dire, it is only a child below the age of 14 who needs to be assessed through a voir dire. In this case, the victim was 13 years old and a voir was not conducted, the court was of the view that notwithstanding the fact that the court never conducted a voir dire, there was other corroborating evidence.

The enactment of the Children's Code Act of 2022, which defines a child as one who is 18 years and below. Section 78 of the Children's Code Act provides that a child may give evidence before the juvenile court or Children's Court on oath if, in the opinion of the juvenile court or Children's Court, the child possesses sufficient intelligence to justify the reception of the child's evidence, on oath, and understands the duty of speaking the truth. It goes further to state that if the child is unable to satisfy the court, then such a child may give unsworn evidence or may give evidence through a child welfare inspector responsible for the child's case.

The implication of this provision is that a child cannot give evidence on oath without the court conducting a voir dire. This case is further reported like any other case without raising issues of gender-based violence, neither was the matter fast-tracked as provided for in the Anti-Gender-Based Violence Act.

Nshinka Kaputo v The People Appeal No. 196/2020

Precious Mangesana (the deceased), who was the girlfriend of Nshika Kaputo (the appellant), was on the evening of 5th October 2017 found dead outside the appellant's house. A post-mortem report revealed the cause of death to be a fatal gunshot to the neck.

The appellant was arrested and subsequently tried in the High Court. He was convicted and sentenced to death. The appellant appealed against the conviction and sentence to the Court of Appeal.

The appellant appeared in the court below, charged on information containing two counts namely:

- i. Murder; and
- ii. Acts intended to cause grievous harm.

It was alleged in the particulars of the offence in count one that the appellant, on 5th October, 2017, did murder Precious Mangesana and in count two, that

the appellant on 5th October, 2017 shot his daughter, Naila Kaputo, an act intended to cause grievous harm.

Analysis

The court dealt with the offence of murder which is termed as an aggravated form of gender-based violence which offence is specifically charged under section 200 of the Penal Code. In dealing with this matter, the court appears to have addressed its mind to the fact that the offence was committed in a domestic relationship setup. However, this case like many others was prosecuted like any other criminal case and was not fast-tracked.

The People V. William Siwale HP/166/2017

The Accused was charged with the offence of murder, contrary to section 200 of the Penal Code. The Accused was drinking at a bar and whilst there he saw his wife (the deceased herein) in the company of a group of other women. Shortly thereafter the Accused's wife asked him to go home. The Accused got annoyed and asked the deceased if she was drunk which she denied. The Accused then started kicking the deceased. She managed to run away and went home. As she reached home, the Accused ran after her and continued beating her and luckily she was rescued by neighbours. Later in the evening, the deceased went back to her house and the Accused continued beating her.

The following morning, the Accused asked for assistance from the neighbours as he failed to wake her and upon checking her, the neighbours discovered that she had died.

The matter was then reported to Kabangwe Police Station where investigations were instituted into the matter and the Accused was apprehended. Further, a post-mortem was conducted on the deceased's body which revealed that the cause of death was severe head injury due to blunt force and trauma.

The Accused was charged and arrested for the offence of murder contrary to Section 200 of the Penal Code. However, the offence was reduced to manslaughter Contrary to Section 199 of the Penal Code which the Accused pleaded guilty.

The Court noted that the facts of the case were a classic example of gender-based violence of the worst form. The trial Judge noted that the Accused embarked on the sustained beating of his wife not once but at three different times. The Court affirmed that gender-based violence shall never be tolerated and sentenced the accused to ten (10) years imprisonment with hard labour.

Analysis

The case dealt with murder, an offence under Section 200 of the Penal Code. The Court expressly noted the death of the deceased was due to gender-based violence, however, the Gender-Based Violence Act was not considered in the adjudication of the case despite the elements of gender-based violence.

Regional Judgments

Under the regional judgments, countries such as South Africa, Kenya and Namibia were looked at. The purpose for reviewing the cases from the above named countries was to assess how cases of gender based violence are prosecuted and reported. The analysis of the cases reviewed that in some countries such as Namibia, cases of gender-based violence are prosecuted in accordance with the law dealing with gender-based violence. Further, the analysis reviewed that cases of gender-based violence are reported separately and are easy to access.

Jezile v The State High Court of South Africa Western Cape Division

The appellant was convicted in a regional magistrates' court of one count of human trafficking, three counts of rape, one count of assault with intent to cause grievous bodily harm, and one count of common assault against a 14-year-old schoolgirl, whom he had married in accordance with customary marriage laws. After she ran away from the appellant, the appellant took the complainant to Cape Town by taxi, where they resided with the appellant's brother and his wife. There, the incidents of rape and assault occurred.

The appellant raised as one of his defences and as a ground of appeal that the alleged rapes took place in the context of a customary arranged marriage, or ukuthwala. According to expert evidence, ukuthwala was an irregular form of initiating a customary marriage. Experts have stated that, in its traditional form, ukuthwala was consensual and innocuous, but there existed an 'aberrant' form in which young girls were abducted and often raped and beaten to force them into marriage. The magistrate held that the matter was not about ukuthwala and its place in our constitutional democracy, but about whether the state had shown that the accused had committed the offences he was charged with and, if so, whether he acted with the knowledge of wrongfulness and the required intent.

The court held that child trafficking and any form of abuse or exploitation of minors for sexual purposes are not tolerated in South Africa's constitutional dispensation. Furthermore, it ruled that the appellant could not rely on traditional ukuthwala as justification for his conduct because practices

associated with an aberrant form of ukuthwala could not secure protection under the law.

Thus, the Court could not find that he did not traffic the complainant for sexual purposes or that he had committed the rapes without the required intention—even on the rather precarious grounds of the appellant's assertion that his belief in the aberrant form of ukuthwala constituted a 'traditional' custom of his community.

Analysis

In this case, the court dealt with mainly the issue of child marriages constituted in accordance with customary law. The court heard of how the accused married a 14-year-old and was subsequently charged with the offence of rape, the charge he denied as the sex was consensual and happened in the context of customary marriage.

In convicting the accused, the court disagreed with the accused's assertion, it stated that child trafficking and any form of abuse or exploitation of minors for sexual purposes is not tolerated in South Africa's constitutional dispensation. Furthermore, it ruled that the appellant could not rely on traditional ukuthwala as justification for his conduct because practices associated with an aberrant form of ukuthwala could not secure protection under the law.

Nduta v The Republic-Kenya

The appellant appealed his conviction and sentence for injuring his wife, whom he inherited according to customary practice after her husband died in 2002. On November 8, 2013, his wife attempted to pack clothes to visit her children in Nairobi. The appellant refused to let his wife travel and threatened to murder her. The appellant cut both of his wife's arms using a panga (machete), but she managed to escape to her nephew's home. The nephew saw the appellant armed with the panga and a knife before taking his aunt to the police station and later the hospital.

The appellant was convicted of grievous harm contrary to section 234 of the Penal Code and sentenced to seven years imprisonment. He appealed, arguing that the trial court failed to consider that this was a mere domestic issue that could have been resolved by village elders. The appellant asked for a non-custodial sentence citing the fact he was an elderly man (78 years old). The High Court upheld the conviction and the sentence, noting, "The appellant's actions amounted to violence against women. It is my view gender-based violence which the court cannot condone or tolerate and let perpetrators of violence against women and girls go unpunished." This case

demonstrates the relationship between the criminal courts in Kenya and customary law.

Analysis

The case brings out traditional practices that amount to gender-based violence. The court further made an emphasis in its ruling that the matter at hand amounts to gender-based violence which the court cannot condone or tolerate and lets perpetrators of violence against women and girls go unpunished.

S v Bock (3) [2020] NAHCMD 390 (03 September 2020) Namibia

The accused was charged and convicted of murder and assault with the intent to cause grievous bodily harm as read together with the provisions of the Combating of Domestic Violence Act.

In this case, it is worth noting that, the accused and the deceased were in a romantic relationship. The accused's plea explanation indicated how events occurred in a fit of drunken rage after the deceased told the accused that she deliberately infected him with HIV/AIDS. On the material day, the deceased was stabbed three times with a knife by the accused.

The Court convicted the accused of the offence of murder, with direct intent, as prescribed in the Combating of Domestic Violence Act, Act 4 of 2003. Further, the Court also convicted the accused on a second count of assault with the intent to cause grievous bodily harm, as provided under the Combating of Domestic Violence Act, Act 4 of 2003.

Analysis:

The case dealt with murder and intent to cause grievous bodily harm which are both offences prescribed under the Combating of Domestic Violence Act No. 4 of 2003. The Court acknowledged domestic violence in the matter, citing the Combating of Domestic Violence Act, No. 4 of 2003. The aforesaid Act is used to prosecute (gender based violence issues) domestic violence in Namibia, the Act is sufficient because it prescribes offences and penalties.

International Judgments

Under International judgments, the purpose of reviewing the cases was to assess how cases of gender-based violence are prosecuted and reported. The analysis of the cases reviewed that cases of gender-based violence are prosecuted in accordance with the law dealing with gender-based violence and other relevant laws. Further, in the prosecution of such cases, issues of

gender-based are brought out and they are at the center of the prosecution. Cases of gender-based violence are also specifically reported and easy to access.

OPUZ V. TURKEY App. No. 33401/02, 9 June 2009 (European Court of Human Rights)

The facts of the case were that, the applicant and her mother had both been threatened, gravely assaulted and beaten by the Applicant's husband (the Accused) on numerous occasions during the course of the marriage of the Applicant and the Accused. Several times the two women complained to the police about the Accused's actions. Although he was prosecuted several times, the prison term of three months was often later commuted to a fine. The violence continued and resulted in the death of the Applicants mother.

The Applicant claimed that the injuries and anguish she had suffered as a result of the violence inflicted upon her by her husband amounted to torture within the meaning of Article 3 of the European Convention on Human Rights. The Applicant alleged that the violence she had suffered appeared to have been inflicted under state supervision as despite the ongoing violence and her repeated requests for help, the authorities had failed to protect her from her husband.

Analysis:

In the Court's opinion, the local authorities gave exclusive weight to the need to refrain from interfering in family matters. Moreover, there was no indication that the authorities considered the motives behind the withdrawal of the complaints.

This is despite the applicant's mother's indication to the Diyarbakır Public Prosecutor that she and her daughter had withdrawn their complaints because of the death threats issued and pressure exerted on them by the applicant's husband. It is also striking that the victims withdrew their complaints when the husband was released from custody.

As regards the Government's argument that any further interference by the national authorities would have amounted to a breach of the victims' rights under Article 8 of the Convention, the Court recalled its ruling in a similar case of **Bevacqua and S.v. Bulgaria, no. 71127/01**, where it was held that the authorities' view that no assistance was required as the dispute concerned a "private matter" was incompatible with their positive obligations to secure the enjoyment of the applicants' rights. Moreover, the Court reiterated that, in some instances, the national authorities' interference with the private or family life of the individuals might be necessary in order to protect the health

and rights of others or to prevent the commission of criminal acts. The seriousness of the risk to the applicant's mother rendered such intervention by the authorities necessary in the case.

However, the Court regretted that the criminal investigations in the instant case were strictly dependent on the pursuance of complaints by the applicant and her mother on account of the domestic law provisions in force at the relevant time; for example Articles 456 & 4, 457 and 460 of the defunct Criminal Code, which prevented prosecuting authorities to pursue the criminal investigations because the criminal acts in question had not resulted in sickness or unfitness for work for ten days or more.

It was observed that the application of the aforementioned provisions and the cumulative failure of the domestic authorities to pursue criminal proceedings deprived the applicant's mother of the protection of her life and safety. In other words, the legislative framework then in force, particularly the minimum ten days' sickness unfitness requirement, fell short of the requirements inherent in the State's positive obligations to establish and apply effectively a system to punishing all forms of domestic violence and providing sufficient safeguards for the victims. The Court thus considered that, bearing in mind the seriousness of the crimes committed, by the Applicant's husband in the past, the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victims' withdrawal of complaints.

Jessica Gonzales v. United States of America IACHR, 2011

Jessica Gonzales was subjected to recurring controlling abusive behaviour and physical and sexual assaults by her husband. She obtained protection orders, however, the police repeatedly neglected to respond to her calls or enforce her restraining orders against her husband, which, tragically led to her children's deaths.

The Supreme Court of the United States found that Ms. Gonzales had no right to expect the police to enforce the protective order. Consequently, she brought her case before the Inter-American Commission on Human Rights (IACHR). The IACHR held that the Government of the United States was responsible for human rights violations against Ms. Gonzales and her three children, as it had a positive duty to protect Ms. Gonzales whom it knows is a person at risk due to the restraining orders against her husband and recommended legislative reform to better protect women and children against domestic violence.

Analysis

This case describes a typical example of gender-based violence and specifically deals with protective orders which are a remedy accrued to the victim. The Commission stated that the state has an obligation to protect women and children against domestic violence. The failure by the state to enforce the restraining orders issued against the accused amounted to a violation of human rights against the victim and her children.

9.0 COMPARATIVE STUDY

A comparative study was carried out to review the relevant legislation of selected countries, to serve as benchmarks upon which the state can base evidence based best practice. The countries that were considered in this regard were Zimbabwe, Kenya, Sierra Leone, Ghana.

These jurisdictions were selected because they have progressive legislation addressing issues pertaining to acts of gender-based violence. Further, being African countries, they share similarities with Zambia in terms of cultural social, and economic values.

The key areas of focus for the comparative study were based on problematic areas identified by the review team and stakeholders during the consultative meetings. These included the: Name and Objects of the Act; Definitions of various acts of gender-based violence; Offences.

Zimbabwe

(i) *Name and Objects of the Act*

In Zimbabwe, the law that governs gender-based violence is the Domestic Violence Act Chapter 24 of 2006. The said Act makes provision for the protection and relief of victims of domestic violence.

(ii) *Definitions of Forms of Gender-Based Violence*

- Aggravated

Section 17(2) provides that where an offence other than one provided for in the Act is committed by a respondent upon a complainant during or in furtherance of the commission of any act of domestic violence, the court convicting the respondent therefor shall regard such circumstances as aggravating when assessing the sentence to be imposed. Similarly, the AGBV Act of Zambia makes provision for circumstances that are aggravating in nature, however, it does not expressly state that these circumstances have an impact on the gravity of the sentence to handed down by the courts as done in the Zimbabwean law.

“Care Institution” - The Zimbabwean law does not provide for care Institutions.

“Child” - The Zimbabwean law does not provide for the definition of a child

“Economic Abuse” - The Zimbabwean law provides that economic abuse includes—

(i) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under the law or which the complainant requires out of necessity, including household necessities, medical expenses, school fees, mortgage bond and rent payments, or other like expenses;

(ii) denying the complainant, the right to seek employment or engage in any income-generating activity;

The above provision is similar to the provision in the AGBV Act of Zambia to the extent that both laws provide that economic abuse includes unreasonable deprivation of economic or financial resources to a victim and denying the victim the right to seek employment.

"Physical abuse" includes any act or threatened act of physical violence towards a complainant;

"sexual abuse" includes any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant;

"emotional, verbal and psychological abuse" means a pattern of degrading or humiliating conduct towards a complainant, including but not limited to the following—

(i) repeated insults, ridicule or name-calling; or

(ii) repeated threats to cause emotional pain; or

(iii) the repeated exhibition of obsessive possessiveness which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security; or

(iv) any act, omission or behaviour constituting domestic violence as defined in subsection (1) which, when committed in the presence of minor members of the family, is likely to cause them mental injury.

The above provision is similar to the definition contained in the AGBV Act of Zambia.

The law in Zimbabwe defines "harassment" as engaging in a pattern of conduct that induces in a complainant the fear of imminent harm or feelings of annoyance and aggravation, including—

(i) watching or loitering outside or near the building or place where the complainant resides, works, carries on business, studies or happens to be;

(ii) repeatedly making or sending or causing another person to repeatedly make or send abusive phone calls or electronically-transmitted messages to the complainant, whether or not conversation ensues;

(iii) sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mails or offensive objects to the complainant;

The definition of sexual harassment in the Domestic Violence Act of Zimbabwe does not include sexual contact or unwarranted sexual advances as a form of harassment contrary to the provisions of the AGBV Act of Zambia.

The law in Zimbabwe defines physical abuse to include any act or threatened act of physical violence towards a complainant. It also defines "sexual abuse" to include any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant.

The Domestic Violence Act of Zimbabwe creates criminal offences for acts of GBV except for acts of domestic violence that constitute emotional, verbal, psychological, and economic abuse.

Kenya

i. Name and objectives of the Act

Protection against Domestic Violence Act No.2 of 2015

Objective of the Act

The objects of this law among others: to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or other dependent persons; and to provide for matters connected therewith or incidental thereto.

The Kenyan Act has similar objects to the Zambian Anti-Gender Based Violence Act which provides for the protection of victims of gender-based violence; constitutes the Anti-Gender-Based Violence Committee; establishes the Anti-Gender-Based Violence Fund; and provides for matters connected with, or incidental to, the foregoing.

ii. Definitions

a. Abuse

The definition of abuse is not provided for in the Kenyan Act.

b. Aggravated

The Kenyan Act does not provide for a definition of aggravated.

c. Economic Abuse

According to the Kenyan law economic abuse includes:

(a) the unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including household necessities, medical expenses, school fees, rent, mortgage expenses or other similar expenses; and

(b) the denial to the applicant of the right to seek employment or engage in any income-generating activity.

The definition of economic abuse in the Anti-Gender Based Violence Act is similar to the one in the Kenyan law however, it does not provide for the offences of desertion and neglect to maintain. It can also be observed that the Anti-Gender Based Violence Act does not provide for an offence of 'unreasonably depriving a victim, a family member or dependant of the victim, of property in which the victim, family member or dependant of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property. The Kenyan law under section 33 (1) provides for general offences such as aggravating circumstances.

d. Emotional, Verbal and Psychological Abuse

In the Kenyan law, the definition of emotional, verbal and psychological abuse means a pattern of degrading or humiliating conduct towards the applicant, including but not limited to the following:

- (a) repeated insults, ridicule or name-calling;
- (b) and (b) repeated threats to cause emotional pain.

The definition in the Anti-Gender Based Violence Act is broader compared to the one in the Kenyan law as it includes obsessive possessiveness. However, possessiveness is not included as an act that amounts to sexual harassment which is a form of emotional abuse.

e. Harassment

The Kenyan Act defines harassment to mean engaging in a pattern of conduct that induces in an applicant the fear of imminent harm, including

- (a) watching or loitering outside or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) repeated contact or attempts to contact the applicant by telephone, electronic means, post or otherwise, whether or not a conversation ensues; and
- (c) sending, delivering or causing the delivery of offensive or abusive documents or offensive objects to the applicant.

The definition of harassment in the Kenyan law is similar to the one in the Anti-Gender Based Violence Gender Act. However, this definition needs to be reconciled with the definitions in the Equity and Equality Act, Cyber Security and Cyber Crime Act and the Penal Code Act.

f. Physical Abuse

According to the Kenyan Act, “Physical Abuse” includes any act or threatened act of physical violence towards the applicant. In the Anti-Gender Based Violence Act, physical abuse means physical assault or use of physical force against another person, including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person or torture or other cruel, inhuman or degrading treatment or punishment.

Observation

The definitions in the two Acts are similar however; in the Kenyan law, the definition is general. When it comes to offences under forcible confinement, the Act should reconcile with the Penal Code Act.

g. Violence

The Kenyan law defines violence as:

- a) abuse that includes:
 - (i) child marriage;
 - (ii) female genital mutilation;
 - (iii) forced marriage;
 - (iv) forced wife inheritance;
 - (v) interference from in-laws;

- (vi) sexual violence within marriage;
- (vii) virginity testing; and
- (viii) widow cleansing;
- b) damage to property;
- c) defilement;
- d) depriving the applicant of or hindering the applicant from access to or a reasonable share of the facilities associated with the applicant's place of residence;
- e) economic abuse;
- f) emotional or psychological abuse;
- g) forcible entry into the applicant's residence where the parties do not share the same residence;
- h) harassment;
- i) incest;
- j) intimidation;
- k) physical abuse;
- l) sexual abuse;
- m) stalking;
- n) verbal abuse; or
- o) any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person.

The Anti-Gender Based Violence Act does not define violence.

h. Domestic Violence

Domestic violence, in relation to any person, means violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.

The Anti-Gender Based Violence does not provide a definition for domestic violence

iii. General Provisions as to Offences

Section 33 (1) of the Kenyan Act provides that; where any offence, other than one referred to in this Act, is committed by a respondent upon an applicant during or in furtherance of the commission of any act of domestic violence, the court convicting the respondent thereof shall have regard to such circumstances as aggravating the offence committed, when assessing the sentence to be imposed. (2) For the avoidance of doubt, a prosecution under

this Act or any other law shall not prevent the applicant from seeking protection or redress under this Act.

The Zambian law does not make provisions for general offences.

Namibia

Regarding GBV the pertinent laws in Namibia are, Combating of Rape Act No. 8 of 2000 and the Combating of Domestic Violence Act No. 4 of 2003.

i. Names and objects of the Acts

The Combating of Rape Act No. 8 of 2000

The Act provides for the combating of rape, prescribes minimum sentences for rape, provides for the abolition of the rule that a boy under the age of fourteen years is presumed incapable of sexual intercourse, provides for the modification of certain rules of evidence applicable to offences of sexual or indecent nature, imposes special duties on prosecutors in criminal proceedings relating to sexual offences, imposes special duties on the police in respect of certain bail applications.

The Act provides for the rights of a complainant of rape in bail proceedings and it regulates the granting of bail to persons charged with rape. Further, the Act regulates that certain criminal proceedings should not take place in open court, the Act also extends the prohibition of the publication of certain information relating to certain offences.

The Act also regulates the admissibility of evidence relating to similar offences and the admissibility of evidence relating to the character of a complainant of rape or an offence of an indecent nature.

Combating of Domestic Violence Act 4 of 2003

The Act provides for the issuing of protection orders in domestic violence matters and prescribes matters relating to domestic violence offences.

Accordingly, the Act prescribes police duties with respect to domestic violence incidents.

ii. Definitions

a. Aggravated

This is not defined under the Combating of Domestic Violence Act of Namibia; however, the Anti Gender-Based Violence Act defines the term.

b. Care Institution

This is not defined under the Combating of Domestic Violence Act of Namibia, however, the Anti Gender Based Violence Act defines it to “include an educational institution”.

c. Child

A child is defined to mean a person who is under the age of 18 years, both Namibia and Zambia have the same definition for a child.

d. Domestic Violence

Domestic Violence is not defined under the Zambian Anti-Gender Based Violence Act; however, under the Combat of Domestic Violence Act the Namibian law, it is defined to mean “*within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct*”

(a) physical abuse, which includes -

(i) physical assault or any use of physical force against the complainant;

(ii) forcibly confining or detaining the complainant; or

(iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;

(b) sexual abuse, which includes -

(i) forcing the complainant to engage in any sexual contact;

(ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;

(iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant’s sexual integrity; or

(iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties;

(c) economic abuse, which includes -

(i) the unreasonable deprivation of any economic or financial resources to which the complainant or dependant of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including

household necessities, and mortgage bond repayments or rent payments in respect of a shared household;

(ii) unreasonably disposing of moveable or immovable property in which the complainant or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;

(iii) destroying or damaging, property in which the complainant, or a family member or a dependant of the complainant, has an interest or a reasonable expectation of use; or (iv) hiding or hindering the use of property in which the complainant, or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;

(d) intimidation, which means intentionally inducing fear in the complainant, or a family member or dependant of the complainant by -

(i) committing physical abuse against a family member or dependant of the complainant;

(ii) threatening to physically abuse the complainant, or a family member or dependant of the complainant;

(iii) exhibiting a weapon; or

(iv) any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour.”

e. Economic Abuse

The Namibia law has a similar definition for economic abuse but the Zambian Definition adds “denying a person the right to seek employment or to engage in an income-generating activity”. This makes the Zambian definition adequate.

f. Emotional verbal and psychological abuse emotional

In Namibia this is defined to mean a pattern of degrading or humiliating conduct towards a complainant, or a family member or dependant of the complainant, including repeated insults, ridicule or name calling, causing emotional pain; or the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s, or the complainant’s dependant or family member’s privacy, liberty, integrity or security; or where applicable, threats or attempts to do any of the acts referred to in the definition.

g. Harassment

Harassment in the Zambian definition covers what is in the Namibian definition, hence making it more adequate.

h. Mental Abuse

This is defined under the Zambian AGBV Act and not defined under the Namibian law.

i. Physical Abuse

The definitions are similar for both Namibia and Zambia.

j. Sexual Abuse

Sexual Abuse both definitions are similar, but the Namibian definition does not include, “sexual contact by a person aware of being infected with HIV or any other sexually transmitted infection with another person without that other person being given prior information of the infection.

k. Sexual Harassment

This is defined under the Zambian AGBV Act and not defined under Namibian law.

l. Social and economic abuse

Social and economic abuse is defined under the Zambian AGBV Act and not defined under the Namibian law.

m. Stalking

This is defined under the Zambian AGBV Act and not defined under Namibian law.

n. Fast Track Court

This is provided for under the Zambian AGBV Act and not provided for under Namibian law.

iii. Marital Rape

Section 2 (3) of the Combating of Rape Act prescribes that no marriage or other relationship shall constitute a defence to a charge of rape under this Act, further, Section 3 criminalises marital rape and if convicted the imprisonment is for a period of not less than five years.

The Act grants total protection to young girls and boys against rape and provides for stiffer minimum sentences for rapists and prescribes marital rape as an offence categorically by law.

The Act explicitly combats gender-based violence issues in the form of rape and treats it as a crime meted with criminal sanction.

Section 132 of the Penal Code⁵⁰ defines rape as “*Any person who has 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, is guilty of the felony termed "rape".*” However, section 133 sanctions the person who commits the offence of rape for life imprisonment. The Zambian law is general, hence not providing and sanctioning marital rape.

iv. Offences

Section 21 of the Act creates the offence of domestic violence and it states that “*The offences listed in the First Schedule are domestic violence offences when they are committed or alleged to have been committed against a person, or in relation to a person, with whom the person charged with those offences has a domestic relationship. The person found guilty of a domestic violence offence is liable on conviction to the penalties ordinarily applicable to the offence in question*”. In line with the above section, the police are at liberty to use any law to charge the offender, because the Combating of Domestic Violence Act does not prescribe any sanction for the offences committed under it.

⁵⁰ Chapter 87 of the Laws of Zambia

10.0 INSTITUTIONAL/ADMINISTRATIVE FRAMEWORK

i. The Gender Division

The Gender Division formally known as Ministry of Gender is a Division under the Office of the President. It is charged with the responsibility of administering of the Anti-Gender Based Violence Act No. 1 of 2011.⁵¹ The Division is a National Machinery responsible for coordinating and monitoring the effective implementation of all national gender related legislation, policies and programmes with other government line Ministries and cooperating partners.

The Division is committed to protecting and promoting women's rights, curbing gender based violence, and reducing gender inequalities by making progressive changes to legislation to strengthen their capacity to influence decision-making at the highest level on matters pertaining to gender equity and equality.

ii. The Ministry of Justice

The Ministry of Justice provides legal services, facilitates dispensation of Justice, and promotes governance mechanisms in order to uphold good governance principles and practices in Zambia.

The Ministry carries out some of these functions through the: Legal Aid Board, Zambia Law Development Commission; and National Prosecution Authority.

a) The Legal Aid Board

The Legal Aid Board is a statutory body established by the Legal Aid Act Chapter 34 of the Laws of Zambia. It is mandated to provide legal aid services in civil and criminal matters and causes to persons whose means are inadequate to enable them to engage practitioners to represent them.⁵² The Legal Aid Board Act consists of the assistance of a practitioner in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, and legal representation. Indigent persons negatively affected by the implementation of the Act may seek legal advice and representation from the Legal Aid Board.

b) The Zambia Law Development Commission

The Zambia Law Development Commission (ZLDC) is a statutory body established by the Zambia Law Development Act No. 11 of 1996 Chapter 32

⁵¹ <https://www.gender.gov.zm>

⁵² <http://www.legalaidboard.org.zm>

of the Laws of Zambia. Its functions include conducting research on socio-political values and making recommendations that should be incorporated into legislation.⁵³

The Ministry of Gender as it was then called, engaged the Zambia Law Development Commission (ZLDC) to undertake a review of the Anti-Gender Based Violence Act No. 1 of 2011 in order to upgrade the Act and establish the mechanisms for its enforcement; and to develop an institutional framework to ensure that all of the Act's provisions are fully operationalised.

c) The National Prosecution Authority

The National Prosecution Authority (NPA) is a statutory body established by the National Prosecution Authority Act No. 34 of 2010. The Authority is in charge of prosecuting people charged with criminal offences in Zambia⁵⁴.

The National Prosecution Authority has the sole mandate of conducting criminal prosecutions in Zambia. This includes the prosecution of all gender-based violence cases before the courts of law. The NPA prosecutes cases at the trial stage in the Subordinate Court and the High Court. At the appellate level, the NPA deals with GBV appeals in the Court of Appeal and the Supreme Court⁵⁵.

iii. The Ministry of Community Development and Social Services

The mandate of the Ministry is based on the Government Gazette No. 1123 of 2021. It is responsible for the implementation of basic social protection services that seek to provide social assistance and promotional services such as livelihood and empowerment to the poor and vulnerable in Zambian society. The services provided are aimed at enhancing human development and accelerating national development.⁵⁶

In terms of gender issues, the Ministry is responsible for the establishment of shelters for survivors of Gender Based Violence (GBV) and to ensure that such shelters are spread throughout Zambia. Currently, there are inadequate shelters to provide temporal protective shelters for women and children fleeing from abusive environments. As a result, survivors are forced to remain in abusive environments and are in most cases forced to withdraw cases because of interference from the perpetrators.⁵⁷

⁵³ <http://www.zambialawdevelopment.org>

⁵⁴ <http://www.npa.gov.zam/>

⁵⁵ The National Gender Policy

⁵⁶ <https://www.mcdss.gov.zm/>

⁵⁷ The National Gender Policy 2014

v. The Ministry of Finance and National Planning

The Ministry of Finance and National Planning is charged with the responsibility of economic management to foster sustainable national development. The Ministry is headed by a Minister whose mandate is drawn from the Minister of Finance (Incorporation) Act, Chapter 349 of the Laws of Zambia. The Ministry of Finance will be responsible for provision of Finances to all sectoral Ministries that are responsible for the implementation of the activities aimed at achieving the Policy objectives and targets.⁵⁸

The Ministry is also responsible for advancing national development policies, programmes and plans that are consistent with the principles of gender equality. The Ministry also mobilises resources and provide treasury support for the effective implementation of measures. Further, the Ministry ensures that all sector plans and budgets comply with gender responsive planning and budgeting principles that support gender mainstreaming.⁵⁹

vi. The Ministry of Education

The Ministry of Education⁶⁰ is charged with the responsibility of promoting and facilitating early childhood education, adult literacy, skills development and higher education for the citizens of Zambia. Education is one of the key ways in which citizens can enhance their quality of life. Lack of or inadequate education is an underpinning issue that compromises among other things, the ability to make informed decisions relating to health in general and - reproductive health, access to water and sanitation, property ownership, and contribution to national development in general.

The Ministry plays a critical role in eliminating gender inequalities which undermine human productivity and welfare, as well as development and growth overall. The Ministry promotes policies strategies, plans and programmes designed towards gender parity which leads to transformation in society in terms of gender equity and equality at all levels of development.⁶¹

vii. The Ministry of Health

The Ministry of Health is responsible for providing effective quality health care services closer to the people. It also ensures equity of access to human and

⁵⁸ <https://www.mofnp.gov.zm/>

⁵⁹ The National Gender Policy, 2014.

⁶⁰ The Ministry of General Education and Ministry of Higher Education were merged into one Ministry- Ministry of Education by Gazette Notice No. 1123 of 2021.

⁶¹ This function was previously held by the Ministry of Gender prior to its dissolution by Gazette Notice No. 1123 OF 2021

socioeconomic development and target to attain sustainable development goals on health and other national health priorities.⁶²

Further, the Ministry is characterised by good clinical outcomes and professional standards, and that services delivered are appropriate to each patient's needs. In this regard, the Health Professions Act of 2009 makes provision for medical reports for GBV cases required for their prosecution.⁶³

viii. The Ministry of Home Affairs and Internal Security

The Ministry of Home Affairs and Internal Security is a Government institution charged with the responsibility of providing and maintaining internal security in order to promote sustainable social economic development for the people of Zambia. The Ministry ensures quality internal security services in order to create a safe, secure, and peaceful environment.⁶⁴

Under the Ministry of Home Affairs and Internal Security through the Zambia Police, two specialised institutions have been set up to address issues of gender-based violence and these are:

a) The Victim Support Unit (VSU)

This was established through the Zambia Police Amendment Act No. 14 of 1999 to ensure effective prevention, investigation, and excellent service delivery when dealing with cases of gender-based violence and in particular with femicide, property grabbing, spouse battering and sexual abuse of girl children.

b) The Child Protection Unit (CPU)

This is a unit under the Zambia Police mandated to prosecute offenders of child abuse and works in partnership with the Ministry of Community Development and Social Services. It also has the mandate to thoroughly investigate all crimes such as gender based violence committed against Children through conducting objective forensic examinations and adopting methodologies for preparing child witnesses before the court.

⁶² <https://www.moh.gov.zm/>

⁶³ The National Gender Policy, 2014

⁶⁴ <https://www.hais.gov.zm/>

ix. The Zambia Statistical Agency

The Zambia Statistical Agency is the sole entity responsible for the publication of official statistics. The agency is a statutory body which was established through the Statistics Act No.13 of 2018.⁶⁵

In regard to gender-related matters, the agency is responsible for coordinating the collection of gender-disaggregated data as well as providing periodic reports on the annual national gender status report covering all sectors. It also serves as a source of data for specific gender indicators and provides technical support in undertaking special surveys that may be required from time to time.⁶⁶

x. The Office of the Auditor General

The Office of the Auditor General is established by Article 249(1) of the Constitution of Zambia Amendment Act No. 2 of 2016. It is the supreme audit institute in Zambia mandated to audit government institutions, provincial administration, and local authorities, and institutions financed by public funds. Further, the Office of the Auditor General audits accounts that relate to the stocks, shares and stores of the government and conducts financial and value-for-the-money audits, including forensic audits and any other type of audit in respect of a project that involves the use of public funds.⁶⁷

The Office of the Auditor General is responsible for providing audit services in order to enhance accountability in the management of resources allocated for implementing gender mainstreaming programmes in the public sector⁶⁸.

xi. The Human Rights Commission

The Human Rights Commission is a Constitutional body established by Article 230 of the Constitution of Zambia and regulated by the Human Rights Commission Act Chapter 48 of the laws of Zambia. It is mandated to investigate human rights violations, investigate any maladministration of justice, conduct civic education, and promote and protect human rights as outlined in its constitutive Act.⁶⁹

Gender-based violence is a human rights concern. People who have experienced gender violence suffer from different human rights violations

⁶⁵ <https://www.zamstats.gov.zm/>

⁶⁶ The National Gender policy, 2014

⁶⁷ <https://www.ago.gov.zm/>

⁶⁸ The National Gender Policy 2014

⁶⁹ <http://www.hrc.org.zm>

against the right to life, freedom from torture and degrading treatment, freedom from discrimination, and the right to safety and security.

xii. The Judiciary

The Judiciary of Zambia is an independent arm of Government which is provided for under Part VIII Article 118 of the Constitution. It consists of the Constitutional Court, Supreme Court, Court of Appeal, High Court, Subordinate Court and Local Courts. Its core function is to administer justice through resolving disputes between individuals and between state and individuals; interpret the constitution and uphold democratic principles; and protects human rights of individuals and groups.⁷⁰

The Judiciary continues to adjudicate and be proactive in interpreting the law so as to provide precedence that promotes gender equity and equality. The Judiciary also undertakes custodial reforms aimed at reducing the unnecessary exposure of the survivors of discrimination and gender-based violence by way of facilitating fast-track Court and other supporting measures that speed up the dispensation of justice.⁷¹

xiii. The National Assembly

The National Assembly of Zambia is the legislative arm of the Government of the Republic of Zambia whose main functions include: legislation, oversight, and budget approval. It is established under Article 62 of the Constitution.⁷² The National Assembly, therefore, considers any proposed amendments promoting gender equity and equality. The legislature through its administrative measures, provide oversight in the implementation of policies relating to gender equity and equality with the view to ensuring compliance.⁷³

xiv. The Law Association of Zambia

The Law Association of Zambia is a statutory body established in 1973 by the Law Association of Zambia Act, Chapter 31 of the laws of Zambia.⁷⁴ It is a professional body whose objectives include, amongst others, considering legislation relating to legal aid and any other ways of securing representations by persons who are unable to secure it. The Law Association of Zambia actively participates in the fight against gender-based violence in its functions through the agency of the National Legal Aid Clinic for Women.

⁷⁰<https://judiciaryzambia.com>

⁷¹ The National Gender Policy, 2014

⁷² <https://www.parliament.gov.zm/>

⁷³ The National Gender Policy, 2014

⁷⁴ <https://www.laz.org.zm/>

xv. The National Legal Aid Clinic for Women

The National Legal Aid Clinic for Women (NLACW) was created in 1990 by the Law Association of Zambia. It provides for affordable legal services to vulnerable members of the Zambian Society, especially to women and children. The clinic works to empower women by facilitating their access to legal rights by way of legal representation, counselling, legal and human rights education as a distinct but integral part of the women's movement.

xvi. s Civil Society Organisations

Civil Society Organisations (CSOs) play a complementary role to government in improving the socio-economic status of women and men in Zambia. Some of the Non-Governmental Organisations (NGOs) who are partners of the GBV programme include: the Non-Governmental Organisation Coordinating Council (NGOCC) with nearly 75 NGOs and Community Based Organisations (CBOs) under which include organisations such as Women and Law in Southern Africa (WILSA), Campaign for Female Education (CAMFED) and Forum for African Women Educationalists of Zambia (FEWEZA). These organisations primarily work to improve the lives of women and girls in communities throughout Zambia.

xvii. The Media

The media includes both electronic and print media. Its role is to disseminate information and to educate and entertain the public. The media play a major role in protecting and promoting human rights by providing a platform to educate the public about their rights and to disseminate information relating to Gender Based Violence Act.

10.0 SUMMARY OF CHALLENGES IDENTIFIED BY STAKEHOLDERS IN THE FIGHT AGAINST GBV AND IN THE AGBV ACT

Section 3 Interpretations:

The definition of the term ‘abuse’ is not properly defined in the Act as the term implies an intentional, recurring act rather than a once-off incident.

The term ‘care institution’ is not defined in terms of what amounts to a care institution. It was further submitted that the definition of ‘aggravated’ should be amended to include any other circumstance that the court may consider aggravated. Aggravated should also include an act of gender-based violence that is committed in the presence of a child.

The definition of a ‘child’ is contrary to what the Constitution provides.

The definition of “gender” is inadequate.

“Emotional, verbal and psychological abuse” as defined in the AGBV Act should be linked to an offence in the Penal Code.

The term ‘harassment’ as an act of gender-based violence should be an offence under the Penal Code. The Penal Code only recognizes sexual harassment.

The actions that amount to physical, mental, social or economic abuse such as stalking are not provided in the Penal Code. However, other acts such as making the victim feel sad or depressed are civil in nature. Further, the term physical abuse occurs twice in the same definition, and in this regard, the provision should be harmonized.

Section 15 (1) provides that a protection order may, at the request of the applicant or on the court’s own motion, include any or all of the following:

(a) a provision which—

- (i) binds the respondent to be of good behaviour;
- (ii) directs the respondent to seek counselling or other rehabilitative services; or
- (iii) forbids the respondent to be, except under conditions specified in the order, at or near places frequented by the applicant or by any child or other person in the care of the applicant;

Stakeholders submitted that the above provision is unreasonable as it forbids someone from frequenting all places that the victim frequents. It should be re-drafted to make it realistic and practical.

Stakeholders further submitted that the management of shelters be moved from the Ministry of Community Development to the Ministry of Gender, as the Ministry of Community Development is concerned with shelters in general and not victims of GBV. They may not be able to meet the standards needed to help a victim of GBV.

It was further submitted that the use of screens in the courtroom to protect the GBV victim from the effects of being visible to the perpetrator as contained in section 37 of the Anti-GBV Act should also be provided for in the Criminal Procedure Code. Both Acts should clearly state how proceedings should be constituted.

Stakeholders further made the following general submissions:

- i. Reporting:
 - Victims' Economic dependence on perpetrators - victims unwilling to report breadwinners;
 - Culture- Patriarchal norms where men are believed to be superior beings over women and are entitled to sex on demand and women have no control over their bodies. Furthermore, the community has, in certain cases been reluctant to report cases because they are perceived as taboos (eg cases of incest);
 - Inadequate sensitisation that victims can be assisted by the police;
 - Accessibility of Police stations and Medical Facilities /Distance to the nearest facilities;
 - Cumbersome process's discouraging (medical reports, police reports etc.) –one-stop centre or should just be accessible; and
 - System is not child friendly –children are not able to report on their own
- ii. Investigations
 - Inadequate resources-The Police have inadequate equipment including DNA testers and cameras. One machine is available in Lusaka⁷⁵ but has not been fully utilized. Further, a lack of transportation affects their ability to visit crime scenes or follow up on cases. This has a negative impact on the conviction rates.
 - Inadequate knowledge of the Anti-GBV Act- there is a need for the training of the police on the Anti-GBV Act

⁷⁵ This was the position at the inception of the review process

iii. Prosecution

- Lack of specialised training to prosecute GBV-related cases
- Withdrawals: It is common for witnesses to refuse to cooperate and for victims to withdraw their cases.
- GBV Offences: The Act defines acts amounting to GBV but does not have any penalties or sanctions for them. The act of stalking is an example of an act of GBV that is not a crime under the Penal Code. For this reason, it cannot be tried as a criminal offence.

iv. Judiciary

- Inadequate understanding of the dynamics of GBV
- Receiving evidence from a child below the age of 14: It was noted that s.122 of the Juveniles Act⁷⁶ is an encumbrance as the Court cannot receive evidence from a child that fails the test in that section. In such a case, since the evidence needs to be corroborated, without the evidence of the child it becomes difficult to secure a conviction (offences such as defilement are secretive in nature and seldom have other witnesses).

v. Judgment

- Mandatory minimum sentences in cases such as defilement do not allow for plea bargaining, and this negatively affects the conviction rate.
- Victims never return to Court after they have been granted an interim protection Order.

⁷⁶ The Juvenile's Code has since been repealed and replaced by the Children's Code

11.0 ZLDC SPECIFIC FINDINGS

The Commission made the following specific findings based on the submissions received during the stakeholder consultative meetings, and the findings from the desk review

1. In section 157 of the Penal Code Act,⁷⁷ harmful cultural or customary practices are only penalised when they result in injury. The Children's Code Act, in addressing harmful cultural practices in section 18⁷⁸ does not limit penalties to only when injury arises but makes them applicable where physical dignity and psychological development are compromised.
2. The AGBV Act outlines abuse arising from customary rites or practices e.g. forced virginity testing and female genital mutilation which abuses are not adequately addressed under section 157 of the Penal Code.
3. The Immigration Department and Zambia Correctional Service, play an important role in the fight against GBV in regard, to vulnerable migrants and women and children in conflict with the law. However, the two institutions do not sit on the Anti-Gender Based Violence Committee and therefore do not participate in important decision making processes concerning the aforementioned groupings of people under their charge.
4. The Domestic Violence Act of Zimbabwe, criminalises certain acts of GBV, and provides recourse for acts of GBV that are civil.
5. In the SADC model law and the Domestic Violence Act of Zimbabwe, aggravating circumstances are taken into consideration in the sentencing of perpetrators of GBV.
6. The majority of stakeholders submitted that emotional, verbal and psychological abuses must not be criminalised and that appropriate civil actions should follow.

⁷⁷ 157. (1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life. (2) in this section "harmful cultural practice" included sexual cleansing, female genital mutilation or an initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.

⁷⁸ 1) A person shall not subject a girl child to female genital mutilation. (2) A person shall not subject a child to—(a) child marriage; or (b) cultural rites, and religious or traditional practices, that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development

7. Sexual harassment abuses such as those covered in the AGBV Act, more particularly those experienced in the workplace are not provided for in the Penal Code.

12.0 ZLDC SPECIFIC RECOMMENDATIONS

Based on its findings, the Commission makes the following recommendations:

1. Amend section 157 of the Penal Code to extend the application of penalties, to instances when no injury has arisen from the harmful cultural or customary practices as long as all the other elements of the offence are satisfied.
2. Section 157 of the Penal Code be expanded to include abuse arising from customary rites or practices e.g. forced virginity testing and female genital mutilation as provided in the AGBV Act and further that it be reconciled with section 18 of the Children's Code Act.
3. The composition of the AGBV Committee established in the AGBV Act should be revised to include representation from the Immigration Department and Zambia Correctional Service respectively.
4. Offences should be introduced in the Penal Code Act for acts of gender-based violence that are criminal in nature. However, acts of gender-based violence that are not criminal in nature must be dealt with through civil suits procedure as provided for in the AGBV Act.
5. Sentencing guidelines should be developed to ensure that among other considerations, acts of gender-based violence that are aggravating in nature attract a heavier sentence.
6. Acts of gender-based violence that amount to emotional, verbal and psychological abuse should be pursued by way of a complaint in civil procedure.
7. Provisions should be inserted in the Penal Code Act that provide for sexual harassment abuses as a form of gender-based violence.

13.0 STAKEHOLDER ENGAGEMENT FINDINGS AND RECOMMENDATIONS

The following are general recommendations made by stakeholders engaged during the review.⁷⁹

1. Sentencing

The court should be given discretion to consider alternative sentencing unless the GBV is aggravated. Cases should be

⁷⁹ The submissions appear in a form as close as possible to the form submitted by the stakeholders

determined on their facts and not limited to a minimum mandatory sentence.

2. Proceedings to be held in Camera

Section 76 of the Criminal Procedure Code Act should be amended to provide for proceedings of GBV-related cases to be held in camera.

3. Definition of Gender

The AGBV Act should adopt the definition of ‘Gender’ that is provided in the Gender Equity and Equality Act.

4. Age of learner and Re-entry of girl learners

The age of a learner in the Act should be increased from 16 to 18 and that basic and free education should be from early childhood to grade 12. Further, the Education Act should provide special consideration for the re-entry of girls who apply for bursaries at tertiary level without considering the age limit. Define the word “Learner” in the Anti - Gender Based Violence Act and this should be in line the Education Policy.

5. Prohibition of Discrimination

Adequate legislative sanctions should be adopted in order to prohibit discrimination based on gender in line with Article 2 of the CEDAW as the Anti-Gender Based Violence Act does not provide penal sanctions for acts of GBV as outlined therein.

6. Definition of GBV

The Act should provide in its definition of GBV for “threatened abuse” or for “violence likely to result in harm”.

7. Use of the term ‘victim’

The term “survivor” should be used instead of the term “victim” as it perpetuates a victim status, and brings about stigma.

8. Provide Alternative Methods of Filing Complaints Relating to G.B.V.

The Act should grant authority to Chiefs or Government officers in areas that lack easy access to police stations, to be the persons who are to “only receive” complaints and reasonable information

concerning the events related to the Gender Based Violence incidents. The Chiefs or the relevant Government officers must then cause the suspect to be conveyed to the police.

9. Compilation of Statistical Data

That the Act should specifically provide for a system to compile statistical data on GBV by the Department of Gender, which will research on the extent, causes and effect of violence, and continually monitor the effectiveness of the measures to prevent and deal with violence.

10. Reintegration of survivors of GBV

The AGBV Act should clearly outline how survivors should be reintegrated. Institutional frameworks in this regard should be set up by the Ministry of Gender/Ministry of Community Development and Social Services/Ministry of Youth, Sport and Child Development.

11. Establishment of a One Stop Centre

The AGBV Act should make provisions for comprehensive testing, treatment and care of survivors of sexual offences, which should include emergency contraception and ready access to post-exposure prophylaxis. Such services should be provided at a one-stop centre to make the process less tedious. The Gender Division should coordinate the provision of services in collaboration with the Ministry of Health, the Ministry of Home Affairs (police) and the Ministry of Community of Development (psycho-social counsellors).

12. Prohibition of Withdrawal of Complaints.

The Anti Gender-Based Violence Act and Penal Code Act must prohibit the withdrawal of gender-based violence cases by victims.

13. Equal Representation

The composition of the Committees and inspectorate should take into account the equal representation of women, men and youth.

14. Blacklist of Offending Teachers.

The Anti Gender-Based Violence Act should provide for the blacklisting of teachers who commit acts of gender-based violence for a second time against learners.

15. Define “Vulnerable”

The Anti-Gender Based Violence Act should provide for the definition of the word “vulnerable” and align it with the definition in the National Social Protection Policy. Accordingly, the National Social Protection Policy needs to broaden the definition of vulnerability to include survivors of gender-based violence. Further, the National Social Protection Policy must mainstream gender-based violence in its sensitization programs.

14.0 SPECIFIC RECOMMENDATIONS FOR AMENDMENT OF THE AGBV ACT AND THE PENAL CODE ACT BY ZLDC

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
Short title	Amend the short title to the effect that the Act shall provide for the counselling of both the victim and the perpetrator of gender-based violence.	The proposed amendment is consistent with the provisions of the Act as counselling is provided for in section 36.
<p>Section 2</p> <p>Application of relevant Acts</p> <p><i>2(1) An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law</i></p>	This provision should remain as it is as the PC/CPC makes adequate penal provision, and Part III of the Anti GBV Act make provision for protection orders which address civil matters.	<p>GBV-related offences sitting in the Penal Code Act were reviewed with a view of enhancing them to ensure that they speak to acts of GBV prohibited in the AGBV Act.</p> <p>Accordingly, Part B-Penal Code Act, below was compiled to make recommendations for offences to be reviewed in the Penal Code Act.</p>
Combining Section 2 with a proposed Section 4	Introduce a new section (possibly new section 4) with the marginal note "Prohibition of gender-based violence".	There is a need for a section specifically prohibiting gender-based violence and prescribing what action shall follow non-compliance with the section.

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
	<p>Move 2(1) to 4(2) to provide the action to follow non-compliance with the subsection that prohibits acts of AGBV.</p> <p>The provision should read as follows:</p> <p><i>“4. (1) A person shall not subject another person to acts of gender based violence.</i></p> <p><i>(2) An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law.</i></p>	
<p>Section 3 Interpretation</p> <p><i>“abuse” means conduct that harms or is likely to cause harm to the safety, health or well-being of a person</i></p>	<p>The definition of the term “abuse” should also be provided for in the interpretation section of the Penal Code</p>	<p>Further to the proposal that all acts of gender based violence should be provided for as offences in the PC, the same definition of abuse is also required to be provided for in the PC to speak to offences hinging on GBV abuses</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
<p>Section 3 Interpretation</p> <p><i>“aggravated” in relation to gender-based violence, means</i></p> <p><i>any act of gender-based violence which—</i></p> <p><i>(a) causes the victim to suffer wounding or grievous</i></p> <p><i>bodily harm; or</i></p> <p><i>(b) the court otherwise considers to be so serious as</i></p> <p><i>to be aggravated, taking into account—</i></p> <p><i>(i) whether a weapon was used;</i></p> <p><i>(ii) evidence of pre-meditation;</i></p> <p><i>(iii) whether the victim is particularly vulnerable;</i></p> <p><i>(iv) any failure, by the police, the court or</i></p> <p><i>any official body, to respond to previous warnings; and</i></p>	<p>Introduce the following factor under (b) of the definition of aggravated: “failure of the perpetrator to comply with warnings from authorities”</p> <p>Introduce a new (c) and (d) under the definition of the term “aggravated” as follows:</p> <p>(c) is committed in the presence of a minor and there are aggravating circumstances</p> <p>(d) is committed against a person with a disability</p>	<p>The scope of considerations under 3 (1)(b) needs to be widened to include both:</p> <p>i) failure of authorities to act ii) failure of the perpetrator to comply with warnings</p> <p>-Further the definition of aggravated to include an act of GBV which is committed in the presence of minors to the extent that it causes them to suffer trauma; and GBV committed against persons with physical challenges.</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
<i>(v) any other consideration the court considers appropriate</i>		
Section 3- “child” means - <i>a person below sixteen years</i>	Amend the definition of the term “child” so that it is consistent with that in the Constitution, which defines “child” as follows: “means a person who has attained, or is below, the age of eighteen years”	The definition of the term “child” should be consistent with that in the Constitution. Further, this amendment will result in Zambia being compliant with the Convention on the Rights of the Child which defines a child as one who is below the age of 18 years.
Section 3 gender Means- <i>female or male and the role individuals play in society as a result of their sex and status</i>	Amend the definition of the term “gender” by adopting that in the Gender Equity and Equality Act as follows: “gender” means- <i>the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys based on their sex and status;</i>	There is need to replace the definition of “gender” in the Anti-GBV Act with that in the Gender Equity and Equality Act, as the definition in the Gender Equity and Equality Act is more comprehensive than that in the Anti-GBV Act. The proposed amendment will also promote harmonisation between statutes.
Section 3 “Physical abuse” means <i>physical assault or use of physical</i>	Introduce an interpretation of the words “inhuman and degrading treatment” as follows- <i>Inhumane treatment causing intense degrading treatment-that is extremely humiliating</i>	The definition of physical abuse includes inhumane and degrading treatment. There is a need to define what amounts to inhumane and degrading treatment in the AGBV Act.

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
<p><i>force against another person, including the forcible</i></p> <p><i>confinement or detention of another person and the</i></p> <p><i>deprivation of another person of access to adequate food,</i></p> <p><i>water, clothing, shelter, rest, or subjecting another person</i></p> <p><i>to torture or other cruel, inhuman or degrading treatment</i></p> <p><i>or punishment;</i></p>		
<p>s.3- definition of “Physical, Mental, Social, or Economic Abuse”</p>		<p>Cluster the abuses scattered in this definition in accordance with the 4 themes, that is, each theme should have its own definition.</p> <p>In addition to the above,” social abuse” should include harmful cultural practices as well.</p>
<p>s.3- “Physical, mental, social or economic abuse” (Abuse arising from cultural practices)</p>	<p>Create the offence of ‘forced virginity testing’ in the Penal Code Act.</p> <p>-Create the offence of ‘pledging of a person for the purposes of</p>	<p>Specific provision is required for abuses arising from harmful cultural practices both in the AGBV Act and Penal Code</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
	<p>appeasing spirits' in the Penal Code.</p> <p>-Create the offence of 'Forced marriages' in the Penal Code, and bring it in line with the definition in the GEAA</p> <p>-Create the offence of child marriage [the legal age for marriage to be 18 years as per the GEAA) in Penal Code.</p> <p>-Create the offence of 'Forced spouse inheritance' in the Penal Code.</p>	<p>*However, establish which is pertinent of the 4 clusters proposed above to sit this.</p>
Section 3 definition of GBV	<p>GBV forms the core focus of the Act. The prohibition of GBV therefore should also sit in the text of the Act.</p> <p>It is needed in the text to bring life to the AGBV Act, where a criminal matter is to be instituted a specific section speaking to GBV will be required to be read together with PC and CPC, create section 4 – prohibiting acts of GBV</p>	<p>Insert a new section 4 to read:</p> <p>4. (1) <i>A person shall not subject another person to acts of gender-based violence.</i></p> <p>(2) <i>An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law</i></p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Section 9</p> <p>Arrest by Police</p> <p><i>A police officer may, without a warrant, arrest a person</i></p> <p><i>where the police officer has reasonable grounds to believe that the</i></p> <p><i>person—</i></p> <p>.....</p> <p><i>(e) has contravened or is contravening an order issued under this Act.</i></p>	<p>The Penal Code Act ⁸⁰ provides for the arrest with a warrant for numerous GBV-related offences such as desertion and neglect to maintain, In the 1st Schedule of the Criminal Procedure Code Act, ⁸¹ s/168 and s/169 providing for desertion and neglect of children require arrest to be made with a warrant. However, s/9 of AGBVA provides for arrest without a warrant. The two Acts should be reconciled in this respect.</p>	<p>There is a need to align the pertinent provisions relating to arrests without warrants in the AGBV Act and those requiring a warrant in the CPC.</p> <p>It was submitted that the police be allowed to arrest without a warrant – in order to quicken the process. Adopted the position of AGBV to prevent a cumbersome process</p>
<p>Conduct of proceedings</p>	<p>The Act should make provision for the Subordinate Court to constitute itself as an Anti-Gender Based Violence Fast Track Court.</p> <p>However, the judiciary already has power through the Chief Justice to establish courts where deemed necessary as</p>	<p>To read:</p> <p>11(1) A court sitting for purposes of-</p> <p>(a) hearing any gender based violence matter; or</p> <p>(b) exercising any other jurisdiction conferred under this or any other Act:</p>

⁸⁰ Chapter 87 of the Laws of Zambia

⁸¹ Chapter 88 of the Laws of Zambia

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
	contained in the Constitution under Article 120.	shall be referred to as an Anti-Gender Based Violence, Fast Track Court.
Section 12 Interim Protection Order	The Court must be compelled to issue an interim protection order pending the consideration of the order applied for	<p>Section 12 (6) to now read:</p> <p><i>Where an application is made on notice to the court for a</i></p> <p><i>protection order and the court is of the opinion that—</i></p> <p><i>(a) the respondent is committing, has committed or is likely to</i></p> <p><i>commit an act of gender-based violence; and</i></p> <p><i>(b) the applicant will suffer significant harm if a</i></p> <p><i>protection</i></p> <p><i>order is not issued;</i></p> <p><i>the court shall issue an interim protection order pending the</i></p> <p><i>consideration of the order applied for</i></p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
Section 13 Issuance of Protection order	The Court must be compelled to issue a protection order	<p>Section 13 to read:</p> <p><i>The court shall issue a protection order to prohibit a</i></p> <p><i>respondent from committing or threatening to commit an act of gender-based violence personally or otherwise, against an applicant or a relation or associate of the applicant</i></p>
Section 26 Inspectors of shelters	28(1) Adopted; however, the word “norms” should be replaced with the word “regulation”.	<p>Section 26 (1) to read:</p> <p>The Minister may appoint suitably qualified persons</p> <p>as inspectors to ensure compliance with the norms and standards</p> <p>prescribed pursuant to section <i>twenty-four</i></p>
Section 33 Administration and Management of Fund	33(2) empowers the Committee to develop guidelines for the disbursements from the Fund	<p>Under the guidelines, there is a need to provide a disbursement for GBV survivors for economic empowerment even through CDF.</p> <p>This will require linkages between the Public Welfare Assistant Scheme and CDF.</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
<p>SCHEDULE</p> <p>(Section 31 (2))</p> <p>Anti-Gender-Based Violence Committee Paragraph 1 Composition of Committee</p>	<p>The composition of the Committee should include all key stakeholders</p>	<p>To include:</p> <p>a representative of the:</p> <p>i)National Prosecution Authority;</p> <p>ii)Zambia Agency for Persons with Disabilities;</p> <p>iii) Zambia Department of Immigration; and</p> <p>iv) Zambia Correctional Service</p>
PART B-PENAL CODE ACT		
<p>Section 137 Indecent Assault on Females</p> <p>(1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for fourteen years</p>	<p>Indecent Assault:</p> <p>The provision is not gender sensitive because it only speaks to females.</p>	<p>There is a need to amend the provision to provide for all genders.</p>
<p>Section 137 A</p> <p>(1) Any person who practices sexual harassment in a workplace, institution of learning or elsewhere on a child</p>	<p>Harassment:</p> <p>The provision should not only apply to a child, it should be made broader to include adults.</p>	<p>The section should be amended to include both children and adults.</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
commits a felony and is liable, upon conviction to imprisonment for a term of not less than three years and not exceeding fifteen years		There is a need to harmonise the definition of sexual harassment in the Gender Equity and Equality Act, Cyber Security and Cyber Crime Act and with the one in the Penal Code Act under section 137A.
<p>Section 260 Punishment for wrongful confinement</p> <p>Whoever wrongfully confines any person is guilty of a misdemeanour and is liable to imprisonment for one year or to a fine not exceeding six thousand penalty units.</p>	<p>Physical Abuse:</p> <p>In section 3 of the AGBV Act “physical abuse” means physical assault or use of physical force against another person, <i>including the forcible confinement or detention of another person.....;</i></p> <p>Forcible complaint- It is available in the Penal Code.</p>	<p>The Penal Code makes provision for any form of wrongful confinement. However, the provision will require strengthening the sentence in accordance with the sentencing guidelines proposed to be developed.</p>
Section 169 Neglecting to provide food, etc. for children (Deprivation)	The application of this provision is restricted to a child of tender years.	There is a need to amend section 169 of the Penal Code Act to extend the application to the family and dependents.

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
<p>Any person who, being the parent or guardian or other person having the</p> <p>lawful care or charge of any child of tender years and unable to provide for itself refuses or neglects to provide (being able to do so) sufficient food, clothes, bedding and other</p> <p>necessaries for such child, so as thereby to injure the health of such child, is guilty of a misdemeanour.</p>		
<p>Subjection to torture or other cruel inhumane treatment...</p> <p>Section 248</p> <p>Assaults occasioning actual bodily harm</p>	<p>This is catered for in Section 248 of the Penal Code Act. GBV should be considered as an aggravating factor to increase the sentence</p>	<p>Section 248 should be amended to include GBV as an aggravating circumstance</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years		
Abuse delivered from customary rites or practices e.g., forced virginity testing and female genital mutilation	<p>Specific provisions must be made in the Penal Code Act addressing these issues.</p> <p>The Children's Code stipulates in section 18.</p> <p><i>(1) A person shall not subject a girl child to female genital mutilation.</i></p> <p><i>(2) A person shall not subject a child to—</i></p> <p><i>(a) child marriage; or</i></p> <p><i>(b) cultural rites, and religious or traditional practices, that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development.</i></p>	<p>A new provision must be introduced in the Penal Code Act addressing all harmful cultural practices, similar to that in the Children's Code. However, it should be gender sensitive.</p> <p>.</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOM MENDATIONS
	<p>Create the offence of 'forced virginity testing' in the Penal Code Act.</p> <p>-Create the offence of 'pledging of a person for the purposes of appeasing spirits' in the Penal Code.</p> <p>-Create the offence of 'Forced marriages' in the Penal Code, and bring it in line with the definition in the GEAA</p> <p>-Create an offence of child marriage [the legal age for marriage to be 18 years as per the GEAA) in Penal Code.</p> <p>-Create the offence of 'Forced spouse inheritance' in the Penal Code.</p>	
	<p>-Create the offence of 'unreasonably depriving a victim, a family member or dependent of the victim, of property in which the victim, family member or dependent of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property' in the Penal Code Act.</p>	<p>The provision on deprivation of use of property should have an equal standing of section 14 if the ISA fine of 750 penalty units in default 2 years' imprisonment- the fine should be revised to not less than 10,000 put as a minimum</p>

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
	<p>The Intestate Succession Act has a similar provision and this should be reconciled to ensure consistency, especially with sentencing.</p> <p>Section 3(d) definition-economic abuse means: (d) intentionally destroying or damaging property in which the victim of gender-based violence, a family member or a dependent of the victim of gender-based violence has an interest or a reasonable expectation of use;</p> <p>-since the PC provides a similar provision, for consistency replace the term 'intentionally' with 'wilfully and unlawfully' as couched under 335 of the PC.</p>	

15.0 ANNEX I

ZAMBIA LAW DEVELOPMENT COMMISSION

RESOLUTIONS OF STAKEHOLDER CONSULTATIONS - REVIEW OF THE ANTI-GENDER BASED VIOLENCE ACT No. 1 OF 2011

In the process of the review of the AGBV Act, the Commission conducted meetings with various stakeholders who were considered to have an interest in the subject and/or deal with the issue on a regular basis. A total of four (4) meetings were held at: Lusaka at Mika Lodge; Lusaka Waterfalls in Chongwe; Kabwe (1st drafting retreat) and Legacy Hotel Chongwe.

Finally, a validation meeting was held on Thursday 27th October 2022 at Chita Lodge, Kafue for the purpose of presenting the final proposals by stakeholders for amendment to the Bill. The following are the final observations and recommendations of the stakeholders following the said meeting.

a) Proposed Amendments to Anti-GBV Act

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
1.	Section 2- Application of Relevant Acts	The Act in its current state does not provide penal sanctions for acts of GBV	No action was taken on submission.	No action was taken on submission,	2(1) This provision is sufficient in addressing issues of GBV as the PC/CPC makes adequate penal provision, and Part III make provision for protection orders which	The position of the second drafting meeting was adopted. Further, GBV-related offences sitting in the Penal Code were reviewed to ensure that they speak to acts of

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
					<p>address civil matters.</p> <p>-Move 2(1) to 4 and make it subsection (2) to provide the action to follow noncompliance with the said section which prohibits acts of AGBV</p>	<p>GBV prohibited in the AGBV Act.</p> <p>Refer to Annex 1 for offences reviewed in the Penal Code.</p>
	s.3- definition of “abuse”	Include in the Penal Code, an interpretation of the term ‘abuse’ as it is reflected in the AGBV Act	Adopted as presented.	Adopted as presented	No action taken	No action was taken. Therefore, adopted as submitted in the earlier stakeholder engagement .

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	s.3- definition of “aggravated”	<p>3 (1)(b) needs an additional subsection to include both i) failure of authorities to act, ii) failure of perpetrator to comply with warnings</p> <p>Introduce 3(1) (c)</p> <p>- Aggravated to include an act of GBV which is committed in the presence of minors to the extent that it causes them to suffer trauma; and GBV committed against persons with physical</p>	Adopted as presented.	Adopted as presented	<p>3 (1)(b) (v)failure of perpetrator to comply with warnings from authorities</p> <p>3 (1)c) an act will amount to being aggravated if committed in the presence of a minor and there are aggravating circumstances</p>	<p>No action was taken.</p> <p>Therefore, adopted as submitted in the earlier stakeholder engagement</p>

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		challenges .				
	Section3- “care institution”	Definition Is not clear requires further information of care institution Currently reads “includes an educational institution”	No action taken	No action taken	No action taken	Stakeholders adopted the definition currently provided in the Act, as the use of the term “includes” makes the definition wide enough
	Section 3- “child”	The age of a child should be consistent	No action taken	No action taken	Should be a person below the age of 18 as provided in the Convention on the Rights of the Child	The age of the child as provide in the Constitution was adopted- means a person who has attained, or is below, the age of eighteen years;
	s.3- “Economic abuse”	-Although the Penal	Adopted as presented	-It was submitted that the police be allowed to	Avoid the use of the term economic in its own	With the review of the Penal Code, the AGBV Act

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		Code Act ⁸² provides for desertion and neglect to maintain, there is a need to reconcile the provisions relating to arrests with or without warrant. In the 1 st Schedule of the Criminal Procedure Code Act ⁸³ , s/168 and s/169 providing for desertion and neglect of children require arrest to be made with a warrant.		arrest without a warrant – in order to quicken the process. Adopted the position of AGBV to prevent a cumbersome process. -should not criminalise denial of a person from engaging in an income-generating activity. Should remain a civil issue, what will be the ingredients how will it be proved- seek civil remedies instead - the provision on deprivation of use of	definition replace it with “material”	should not have criminal offences all offences should sit in the Penal Code even those relating to GBV

⁸² Chapter 87 of the Laws of Zambia

⁸³ Chapter 88 of the Laws of Zambia

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		<p>However, s/9 of AGBVA provides for arrest without a warrant. The two Acts should be reconciled in this respect.</p> <p>-Create the offence of 'denying a person the right to seek employment or to engage in an income-generating activity in the Penal Code Act</p> <p>-Create the offence of 'unreasonably depriving a victim, a family member or</p>		<p>property should have an equal standing of section 14 if the ISA fine of 750 penalty units in default 2 years' imprisonment- the fine should be revised to not less than 10,000 put as a minimum</p> <p>Section 3 definition- economic abuse(d)- since the PC provides a similar provision replace intentionally with wilfully and unlawfully as couched under 335 of the PC and should carry a similar penalty(mali</p>		

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		dependant of the victim, of property in which the victim, family member or dependant of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property' in the Penal Code Act. The Intestate Succession Act has a similar provision and this should be reconciled to ensure consistency, especially with		cious damage)- misdemeanour liable to 2 years imprisonment if no other sentence		

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		sentencing .				
	s.3- “Emotional, verbal and psychological abuse”	<p>- Possessiveness should be included as an act that amounts to sexual harassment</p> <p>- Silent treatment should be considered a form of emotional abuse</p>	<p>Adopted as presented. However, it was suggested that there is a need to look into the details of what would amount to silent treatment, as well as the elements of the offence. Suggested elements of the offence included the time period within which individuals have not had any communication; an attempt by one party to reconcile and subsequent rejection; resultant</p>	<p>possessiveness- civil relief may be sought under part 3 of the AGBV Act (Protection Orders)</p> <p>- silent treatment- will be difficult to establish the elements of the offence</p>	No action taken	<p>No action was taken.</p> <p>Therefore, the position of the second drafting meeting was adopted.</p>

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
			trauma characterised by conditions such as depression or high blood pressure. It was finally recommended that best practices from countries such as South Africa and Britain be adopted.			
	Section 3 – “gender-based violence”	-forms the core focus of the Act and therefore should also sit in the text. It is needed in the text to bring life to the AGBV Act, where a criminal matter is to be instituted a specific section	No action taken	No action taken	Create a section4-prohibiting acts of GBV and a subsection referring offenders to the PC/CPC or any applicable act with sanctions	The stakeholder s adopted this provision.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		speaking to GBV will be required to be read together with PC and CPC, create section 4 – prohibiting acts of GBV				
	s.3- “Physical abuse”	The definition of physical abuse includes inhumane and degrading treatment. There is a need to define inhumane and degrading treatment in the AGBV Act.	Adopted as presented.	-definition in Act adopted defined inhuman and degrading treatment- Inhumane treatment causing intense degrading treatment- that is extremely humiliating	No action taken	No action was taken. Therefore, the position of the Kabwe engagement meeting was adopted.
	s.3- “Physical, Mental, Social, or	The definition of ‘sexual harassment’ in the GEAA be	Adopted as presented. It was added during deliberation	-since AGBVA has no provision may borrow from GEE Act	-this section is not necessary as we have specific provisions	Adopted position of the 1 st drafting meeting.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	Economic Abuse”	adopted in the AGBV Act as well as the Penal Code Act.	<p>s that sexual harassment in the Penal Code⁸⁴ applies only to children. A broader definition will allow for the section to apply to adults as well.</p> <p>A suggestion was made, in consideration of the review of the Employment Act and the Industrial Relations Act, that the definition of sexual harassment should be applied to these acts</p>	<p>137 (a)- sexual harassment in the PC only alludes to child can borrow this and replace child with person to apply general</p> <p>-stalking- there is a need to redefine it, the word accosting to be replaced with ‘... approaching aggressively or confronting a person in an inappropriate manner</p> <p>-Offence for stalking- misdemeanour</p> <p>Harassment - definition</p>	<p>speaking to these four themes. Therefore, identify these issues and place them under the correct theme.</p> <p>-Further, there is a need to provide a theme for social and cultural issues of virginity testing</p> <p>-Marry this to the PC amendment of 2005 m</p>	<p>Cluster abuses scattered in the definition section into the 4 themes each with their own definition.</p> <p>Social abuse should specifically provide for harmful cultural practices too.</p>

⁸⁴ s/137A

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
			also for uniformity.	under GEE Act should be adopted -definition of sexual harassment 3(a) replace words 'sexual contact' with sexual harassment , as defined in the new definition proposed by AGBV Act, the following paragraph (b) ' following, pursuing, or accosting a person' to be replaced by word stalking		
	s.3- "Physical, mental, social or economic abuse" (Abuse arising from	-Create the offence of 'forced virginity testing' in the Penal Code Act. -Create the offence of	Adopted as presented.	Adopted as proposed, additionally include "forced" ... as stipulated in the PC section 157	No action taken	No action taken. Therefore, provision from stakeholder engagement adopted.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	cultural practices)	<p>‘pledging of a person for the purposes of appeasing spirits’ in the Penal Code.</p> <p>-Create the offence of ‘Forced marriages’ in the Penal Code, and bring it in line with the definition in the GEAA</p> <p>-Create the offence of child marriage [the legal age for marriage to be 18 years as per the GEAA) in Penal Code.</p> <p>-Create the offence of ‘Forced spouse</p>		no 25 of 2016, further the section should be amended to not only make reference to a child but to a person		*However, establish which is the pertinent of the 4 clusters to sit this.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		inheritance' in the Penal Code.				
	s.3- "Sexual Abuse"	<p>-The definition of sexual abuse in the AGBV Act appears to provide for marital rape. An offence should be created in the Penal Code for marital rape. Compare with other jurisdictions how marital rape is defined.</p> <p>-The provision in the Penal Code providing for transmission of an infectious</p>	Adopted as presented.	The definition of sexual abuse removes the statement whether married or not, there are other remedies available for those in marriage. Remove marital rape	No action taken	No Action was taken

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		disease ⁸⁵ needs to be expanded to include sexual contact by a person aware of having HIV or any other sexually transmitted infection with another person without prior information having been given.				
	Section 7- Police to respond promptly	This provision needs to be more compelling on the officer and should facilitate the fast-tracking of the matter	No action taken	No action taken	Administrative provisions must be put in place to ensure a prompt and timely response	Adopted Further, the timeframe should be put in regulations and not in the substantive law as may

⁸⁵ s/183 Penal Code Act CAP 87 of the Laws of Zambia

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
						require to be changed from time to time.
	Section 8- Police assistance after receipt of a complaint	Police assistance to a victim ... sending the victim to a health facility.	No action taken	No action taken	Should read refer instead, sending- is impersonal	No action was taken. Therefore, provision from stakeholder engagement was adopted.
	Section 9- arrest by police 9.10. A police officer may, without a warrant, arrest a person where the police officer has reasonable grounds to believe that the person— (a) is committing, or has committed,	No action taken	No action taken	No action taken	Remove, the term 'offence' and replace it with 'an act', there are no offences created for acts of GBV in the Act, only provides for prohibition in the new section 4	No action was taken. Therefore, provision from stakeholder engagement was adopted.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	or is about to commit an act offence of gender-based violence					
	Section 10(1)-Application for protection order	Widen the scope where a victim is for any reason unable to apply for a protection order personally,	No action taken	No action taken	A person or an institution with information about the gender-based violence	No action was taken. Therefore, provision from stakeholder engagement adopted.
	New Section 13 Constitution and Conduct of Anti-Gender Based Violence, Fast Track Court Revert to establishment	No action taken	No action taken	No action taken	Constitution instead of the establishment of the court. Courts are established by the Constitution	Adopted However, the judiciary already has power through the Chief Justice to establish courts were deemed necessary as contained in the Constitution s. And also, to make court rules

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	Section 16(new)- Contravention of an order	No action taken	No action taken	No action taken	Remove- This is a duplication same Provisions sitting in the Subordinate Court Act and PC on contempt (where a respondent has breached court order)	No action was taken. Therefore, provision from stakeholder engagement was adopted.
	Section 24- Establishme nt of shelters for victims	The minister responsible for social welfare shall receive money from Parliament for the establishm ent and operations for victims, and in consultati on with the Minister establish shelters	No action taken	No action taken	-must be grounded in law -There needs to be more coordinatio n between MOG and Ministry responsible for social welfare as one receives the money whilst the other implements the activities	Not adopted Remove as we no longer have MOG -no need for consultation in the managemen t of shelters to appear in the law...dealt with administrati vely in the National Gender Policy.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
						The Policy gives the MOG the mandate to manage the shelters and receive money.
	Section 26-Inspectors of shelters	Commission of and offence under sub-section (5)	No action taken	No action taken	Speaks to issues sitting in the PC which proposed Section 4 provides adequately for, there may be no need for this provision. Further, with the ongoing review of the PC/CPC, such provisions are required to sit in the PC and CPC	Not adopted. Speaks to issues of compliance with the AGBV Act, therefore should be retained Therefore, provision from stakeholder engagement was adopted.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	Section 31- AGBV Committee	The composition of the Committee should include National Prosecution Authority and the Zambia Agency for Persons with Disability.	Adopted as presented	Adopted as presented Include a representative from a Youth-led and Youth-focused NGO A Non-Governmental Organisation	No action taken	Proposed that Immigration and Zambia Correctional Service also be included being key stakeholders.
	Section 32- Establishment of Fund	This must be subject to the Minister's approval.	No action taken	No action taken	The Fund shall consist of— (a) voluntary contributions to the Fund from any person with the approval of the minister	No action was taken. Therefore, provision from stakeholder engagement was adopted.
	Section 33- Administration and management	No action taken	No action taken	No action taken	Align the role of ministries with statutory	Not adopted Administratively or a provision in

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
	of Fund				functions portfolios and composition of government gazette notice no 836 of 2016	the law increase the scope of use of these funds not just for case managemen t but also for the empowerme nt of survivors -establish linkages with (PWAS) Public Welfare Assistance Scheme and CDF
	Section 36- Settlement of matter out of court	No action taken	No action taken	No action taken	Rather than insert a new section for the reformation of perpetrators , maintain section 36 which provides for counselling- and improve the implementa tion of this section	Adopted However, remove reference to this in the long title as is not a core object of the Act

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
					Also, further provision is made in the Prisons Act, Probation of Offenders Act and PC/CPC which applies to the reformation for all offences, no need to have a special provision only for AGBV issues	
	Section 39- public education	There is a need to broaden the scope of sensitization in the Act. The duty to sensitise the public must not just lie with the Minister but all relevant	Adopted as presented	Adopted further include NGOs, FBOs, the private sector and other pertinent stakeholders	No action taken	No action was taken. Therefore, provision from stakeholder engagement was adopted.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		governmen t Ministries, agencies and all civil societies				
	Paragraph 1 Composition of Committee		No action taken	No action taken	One NGO representati ve is adequate, no need to add others as proposed in Kabwe	Proposed that Immigration and Zambia Correctional Service also be included being key stakeholder s.
	Para 2- Tenure of office and vacancies	No action taken	No action taken	No action taken	A layperson may not distinguish the difference between a 'member' and the 'institution' they represent.	Not adopted
	General Observation	The Act must also address the criminal aspects of gender based violence other than	Adopted as presented	No action taken	No action taken	Criminal aspects of all law now to sit in the Penal Code.

	Provision	Mika Hotel Desk review submission	Waterfalls Hotel Consultative Meeting Resolutions	Kabwe 1st Drafting Meeting Resolutions	Legacy Hotel 2nd Drafting Meeting Resolutions	Chita Lodge Stakeholder validation meeting Action taken
		the civil matters; The rules of Court must also provide for criminal gender based violence matters; and The Criminal Procedure Code Chapter 88 needs to be strengthened on procedure guiding prosecution on gender based violence matters.				

b) Proposed Amendments to Allied Legislation from Stakeholder Engagement

i. Constitution of Zambia

	SUBMISSION	RESOLUTION
Article 23(4)(d)	Article 23(4)(d) of the Constitution allows discrimination of the basis of customary law. The Constitution Amendment Act no.2 of 2016 provides for principles which include non-discrimination. There is need to resolve the conflict in the constitution.	Adopted as presented

ii. Penal Code Act

	SUBMISSION	RESOLUTION
Minimum mandatory sentencing	Unless the GBV is aggravated, the court should be given the discretion to consider alternative sentencing. Cases should be determined on their facts and not limited to a minimum mandatory sentence.	Adopted as presented

iii. Criminal Procedure Code Act

	SUBMISSION	RESOLUTION
s.76	s.76 of the CPC should be amended to provide for proceedings of GBV-related cases to be held in camera.	Adopted as presented.

iv. Juveniles Act

	SUBMISSION	RESOLUTION
s.122 Juveniles (Amendment) Act No.3 of 2011	It is recommended that this section of the Juveniles Act should be amended to allow children that fail the test in that section to submit unsworn evidence.	Adopted as presented.

v. Gender Equity and Equality Act

	SUBMISSION	RESOLUTION
s.3	It is recommended that the AGBV Act adopt the definition of 'Gender' that is in the GEEA.	Adopted as presented

vi. Education Act

	SUBMISSION	RESOLUTION
General Observation.	It is recommended that the age of a learner in the Act should be increased from 16 to 18. It is further recommended that basic and free education should be from early childhood to grade 12.	Adopted as presented.
General Observation	There is need for the Education Act (review) to provide for special consideration for the re-entrant of girls who apply for bursary at tertiary level without considering age limit.	Adopted as presented

vii. Evidence Act

	SUBMISSION	RESOLUTION
Practice of corroboration	It is recommended that a special warning or corroboration in cases involving sexual violence should not be a requirement and that this should be reflected in the law. It is discriminatory.	Adopted as presented.

a) International Instruments and Standards and Institutional/Administrative Framework

	SUBMISSION	RESOLUTION
	The AGBV Act does not provide penal sanctions for acts of GBV as outlined therein.	Adopt adequate legislative sanctions to prohibit discrimination based on gender in line with Article 2 of the CEDAW.
	The AGBV Act is silent on the establishment of the fast track court (administration, processes and procedures)	The AGBV Act should specifically provide for the establishment of the Fast Track Court.
	Perpetrators are not defined in the AGBVA.	The AGBV Act should define who a perpetrator is to include persons, public entities and private entities. States may also be responsible for private acts if it fails to act with due diligence to prevent

	SUBMISSION	RESOLUTION
		violations of rights or to investigate and punish acts of violence and provide compensation.
Section 3	Though defined Child Marriage is not criminalized in the Act.	Child marriage must be specifically included as a form of Gender Based Violence under the AGBV Act, because of its high negative impact on youths and adolescents and if criminalized provide that the minimum age of marriage shall be 18 years.
Section 3	The Act provides in its definition of GBV for “threatened abuse” or for “violence likely to result in harm”	A holistic approach to addressing the problem, involving all the pertinent stakeholders- Operationalize/establish administrative, social and economic measures to ensure the prevention, punishment and eradication of all forms of GBV.
	use of the term of ‘victim’	use term “survivor, use of term “victim” perpetuates a victim status, and brings about stigma
	8. Observation: CEDAW (General Recommendation 19 on Article 16) requires the compilation of statistics on gender based violence issues.	The Act should specifically provide for a system to compile statistical data on GBV by the MOG, which will research on the extent, causes and effect of violence continually

	SUBMISSION	RESOLUTION
		monitor the effectiveness of the measures to prevent and deal with violence
	CEDAW (General Recommendation 19 on Article 16) provides for the rehabilitation of perpetrators. The AGBVA Does not provide for the rehabilitation of perpetrators	The Act must address the rehabilitation of perpetrators.
	The AGBVA Does not adequately provide for the reintegration of survivors.	Should clearly outline how survivors should be reintegrated to ensure this is operationalized
	Act does not provide for the reintegration of children	Institutional frameworks should be set up by Ministry of Gender/Ministry of Community Development and Social Services /Ministry of Youth, Sport and Child Development.
	The Rome Statute provides for Crimes against Humanity, which include GBV and violence against women. Offences to be included as part of GBV from the Rome Statute 7(1)c, g and h(Rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization(including denial of access to sexual reproductive health services), or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious,	As offences are being created the offences in the Rome Statute should also be considered.

	SUBMISSION	RESOLUTION
	gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law)	
	<p>Even though the Constitution prohibits cultural laws and practices which inconsistent with it, certain harmful cultural practices are still practised and deemed acceptable.</p> <p>The AGBVA should provide for an institutional framework for the enforcement of this Constitutional provision</p>	The AGBVA should provide for an institutional framework for the enforcement of this Constitutional provision
	SADC Protocol stipulates that states parties should provide for comprehensive testing, treatment and care of survivors of sexual offences, which include emergency contraception; ready access to post-exposure prophylaxis; preventing the onset of STIs	<p>Act to provide for the provision of such services, at a one-stop centre to make the process less tedious. MOG to coordinate in collaboration with Min of Health (medical personnel), Ministry of Home Affairs (police) and Ministry of Community of Development (psychosocial counsellors)</p>

c) Policy Development

National Gender policy	<ul style="list-style-type: none"> The Anti Gender Based Violence Act and Penal Code must prohibit withdrawal of gender based violence cases. 	Adopted as presented
National Gender Policy	<ul style="list-style-type: none"> It is recommended that the Act should have clear provisions for capacity building; for example, the training must include all prosecutors and other key players mentioned in Section 5 of the Anti-Gender Based Violence Act. 	Adopted as presented
National Gender policy	<ul style="list-style-type: none"> The composition of the Committees and inspectorate should take into account the equal representation of women, men and youth There is a need to harmonise the wording with that in the National Guidelines for the 	Adopted as presented

	Multi-Disciplinary Management of Survivors of Gender-Based Violence in Zambia. Instead of “victim” the Act must use “survivor”	
National Youth policy	<ul style="list-style-type: none"> There is a need to provide a clear and specific role for the youth in the Anti-Gender Based Violence Act in the area of sensitisation. 	Adopted as presented
The National Strategy on Ending Child Marriage in Zambia 2016-2021	<ul style="list-style-type: none"> There is a need to align the definition of a Child in the Anti – Gender-Based Violence Act in line with the Zambian Constitution provision 18 years and below 	Adopted as presented
Education Policy	<ul style="list-style-type: none"> Anti – Gender Based Violence Act to provide for blacklisting of teachers who commit gender based violence for the second time against learners. There is a need to define the word “Learner” in the 	Adopted as presented

	Anti-Gender Based Violence Act and should be in line with the Education Policy.	
Education Policy	<ul style="list-style-type: none"> There is a need for the Education Policy to clearly provide for the Information and Communication Program on Gender-Based Violence. 	Adopted as presented
The National Social Protection Policy	<ul style="list-style-type: none"> The Anti-Gender Based Violence Act should provide for the definition of the word Vulnerable and align it National Social Protection Policy 	Adopted as presented
The National Social Protection Policy	<ul style="list-style-type: none"> The National Social Protection Policy needs to broaden the definition of vulnerability to include survivors of gender-based violence. 	Adopted as presented
The National Social Protection Policy.	<ul style="list-style-type: none"> The National Social Protection Policy must mainstream gender-based violence in its 	Adopted as presented

	sensitization programs	
Disability Policy	<ul style="list-style-type: none"> the Policy should consider gender based violence against physically challenged as special cases due to their vulnerability 	Adopted as presented
General Observation	<ul style="list-style-type: none"> Some Policies must be reviewed so that they are in line with the Ant-Gender Based Violence Act. 	Adopted as presented

d) Enhancement of Administrative/Institutional Framework

Ministry of Justice	The Ministry plays an important role in making sure legislation is adequately drafted in harmony with other laws. They are also key in the monitoring and implementation of policies.	Adopted as presented
Ministry of Community Development and Social Welfare.	The proposal is that management and administration of the Anti-Gender Based Violence Act should fall under the Ministry of	Adopted as presented

	Community Development and Social Welfare.	
Judiciary	The Chief Justice is responsible for the formulation and review of the Rules of Court under the Anti-Gender Based Violence Act.	Adopted as presented
Human Rights Commission	The mandate of the Human Rights Commission is too broad hence Gender Based Violence issues are not coming out.	Adopted as presented
Civil Society Organizations	There should be inclusion of sensitisation and awareness raising on the responsibilities of the parent Ministry managing and administering the Anti Gender Based Violence Act. In addition, Para Legal structures in communities to be recognised and enhanced and linked to government structures to avoid abuse of their mandates.	Adopted as presented

KABWE MEETING**e) Proposed Amendments to Allied Legislation****viii. Constitution of Zambia**

	SUBMISSION	RESOLUTION
Article 23(4)(d)	Article 23(4)(d) of the Constitution allows discrimination of the basis of customary law. The Constitution Amendment Act no.2 of 2016 provides for principles which include non-discrimination. There is need to resolve the conflict in the constitution.	Adopted as presented Declined

ix. Penal Code Act

	SUBMISSION	RESOLUTION	
Minimum mandatory sentencing	Unless the GBV is aggravated, the court should be given discretion to consider alternative sentencing. Cases should be determined on their facts and not limited to a minimum mandatory sentence.	Adopted as presented	Wrong at law

x. Criminal Procedure Code Act

	SUBMISSION	RESOLUTION	
s.76	s.76 of the CPC should be amended to provide for proceedings of GBV-related cases to be held in camera.	Adopted as presented.	Adopted- procedure should have specified in section 37 and should ensure that the perpetrators have no contact with the victims during proceedings in line with the current practice in the fast track courts

xi. Juveniles Act

	SUBMISSION	RESOLUTION	
s.122 Juveniles (Amendment) Act No.3 of 2011	It is recommended that this section of the Juveniles Act should be amended to allow children that fail the test in that section to submit unsworn evidence.	Adopted as presented.	Maintain provision in the Act is in the course of justice

xii. Gender Equity and Equality Act

	SUBMISSION	RESOLUTION	
s.3	It is recommended that the AGBV Act adopt the definition of 'Gender' that is in the GEEA.	Adopted as presented	Adopted Gender means the roles, duties, and responsibilities which culturally or socially ascribed to women, men, girls and boys. Gender Based Violence means violence as defined in section 4.

xiii. Education Act

	SUBMISSION	RESOLUTION	
General Observation.	It is recommended that the age of a learner in the Act should be increased from 16 to 18. It is further recommended that basic and free education should be from early childhood to grade 12.	Adopted as presented.	adopted
General Observation	There is need for the Education Act (review) to provide for special consideration for the re-entry of girls who apply for bursary at tertiary level without considering age limit.	Adopted as presented	n/a

xiv. Evidence Act

	SUBMISSION	RESOLUTION	
Practice of corroboration	It is recommended that a special warning or corroboration in cases involving sexual violence should not be a requirement and that this should be reflected in the law. It is discriminatory.	Adopted as presented.	Not adopted Should be maintained is in the course of justice- the penalties are high so must prove

f) International Instruments and Standards and Institutional/Administrative Framework

	SUBMISSION	RESOLUTION	
	the Anti-Gender Based Violence Act AGBV Act does not provide penal sanctions for acts of GBV as outlined therein.	Adopt adequate legislative sanctions to prohibit discrimination based on gender in line with Article 2 of the CEDAW.	Adopted as presented
	The AGBV Act is silent on the establishment of the fast track court (administration, processes and procedures)	The AGBV Act should specifically provide for the establishment of the Fast Track Court.	Adopted as presented
	Perpetrators are not defined in the AGBVA.	The AGBV Act should define who a perpetrator is to include persons, public entities and	Define perpetrators section 3....

	SUBMISSION	RESOLUTION	
		private entities. States may also be responsible for private acts if it fails to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and provide compensation.	Adopted as presented
Section 3	Though defined Child Marriage is not criminalized in the Act.	Child marriage must be specifically included as a form of Gender Based Violence under the AGBV Act, because of its high negative impact on youths and adolescents and if criminalized provide that the minimum age of marriage shall be 18 years.	Proposed that the Marriage Act be amended, marriage age to be 18 across the board -the Penal Code should an offence to include both statutory and customary marriage
Section 3	The Act provides in its definition of GBV for “threatened abuse” or for “violence likely to result in harm”	A holistic approach to addressing the problem, involving all the pertinent stakeholders- Operationalize/establish administrative, social and economic measures to ensure the prevention, punishment and eradication of all forms of GBV.	Adopted as presented
	use of the term of ‘victim’	use term “survivor, use of term “victim” perpetuates a victim status, and brings about stigma	Maintain victim

	SUBMISSION	RESOLUTION	
	8. Observation: CEDAW (General Recommendation 19 on Article 16) requires the compilation of statistics on gender based violence issues.	The Act should specifically provide for a system to compile statistical data on GBV by the MOG, which will research on the extent, causes and effect of violence continually monitor the effectiveness of the measures to prevent and deal with violence	Administrative
	CEDAW (General Recommendation 19 on Article 16) provides for the rehabilitation of perpetrators. The AGBVA Does not provide for the rehabilitation of perpetrators	The Act must address the rehabilitation of perpetrators.	Addressed
	The AGBVA Does not adequately provide for the reintegration of survivors.	Should clearly outline how survivors should be reintegrated to ensure this is operationalized	Systems are in place addressing the needs and after care of victims within the shelter -further police also provide support and court orders address after care issues 27-30 makes provision
	Act does not provide for the reintegration of children	Institutional frameworks should be set up by Ministry of Gender/Ministry of Community	Section 30 -MOG should take this into consideration as National Gender

	SUBMISSION	RESOLUTION	
		Development and Social Services /Ministry of Youth, Sport and Child Development.	Policy is being reviewed
	The Rome Statute provides for Crimes against Humanity, which include GBV and violence against women. Offences to be included as part of GBV from the Rome Statute 7(1)c, g and h(Rape; sexual slavery ;enforced prostitution; forced pregnancy; enforced sterilization(including denial of access to sexual reproductive health services), or any other form of sexual violence of comparable gravity; Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law)	As offences are being created the offences in the Rome Statute should also be considered	Sexual violence-offences adopted

	SUBMISSION	RESOLUTION	
	<p>Even though the Constitution prohibits cultural laws and practices which inconsistent with it, certain harmful cultural practices are still practiced and deemed acceptable. The AGBVA should provide for institutional framework for the enforcement of this Constitutional provision</p>	<p>The AGBVA should provide for institutional framework for the enforcement of this Constitutional provision</p>	
	<p>SADC Protocol on Gender stipulates that states parties should provide for comprehensive testing, treatment and care of survivors of sexual offences, which include emergency contraception; ready access to post exposure prophylaxis; preventing the onset of STIs</p>	<p>Act to provide for the provision of such services, at a one stop centre to make the process less tedious. MOG to coordinate in collaboration with Min of Health (medical personnel), Ministry of Home Affairs (police) and Ministry of Community and Development (psychosocial counsellors)</p>	<p>Systems/structure Already in place</p>

g) Policy Development

National Gender policy	<ul style="list-style-type: none"> The Anti Gender Based Violence Act and Penal Code must have a provision which prohibits withdrawal gender based violence cases. 	Adopted as presented	
National Gender Policy	<ul style="list-style-type: none"> It is recommended that the Act should have clear provisions for capacity building; for example, the training must include all prosecutors and other key players mentioned in Section 5 of the Anti-Gender Based Violence Act. 	Adopted as presented	
National Gender policy	<ul style="list-style-type: none"> The composition of the Committees and inspectorate should take into account equal representation of women, men and youth There is need to harmonize the wording with that in the National Guidelines for the Multi-Disciplinary Management of Survivors of Gender Based Violence in Zambia. Instead of “victim” the Act must use “survivor” 	Adopted as presented	Maintain term victim

National Youth policy	<ul style="list-style-type: none"> • There is need to provide a clear and specific role for the youth in the Anti - Gender Based Violence Act in the area of sensitization. 	Adopted as presented	
The National Strategy on Ending Child Marriage in Zambia 2016-2021	<ul style="list-style-type: none"> • There is need to align the definition of a Child in the Anti - Gender Based Violence Act in line with the Zambian Constitution provision 18 years and below 	Adopted as presented	
Education Policy	<ul style="list-style-type: none"> • Anti – Gender Based Violence Act to provide for blacklisting of teachers who commit gender based violence for the second time against learners. • There is need to define the word “Learner” in the Anti - Gender Based Violence Act and should be in line the Education Policy. 	Adopted as presented	
Education Policy	<ul style="list-style-type: none"> • There is need for the Education Policy to clearly provide for the Information and Communication Program on Gender Based Violence. 	Adopted as presented	

The National Social Protection Policy	<ul style="list-style-type: none"> The Anti-Gender Based Violence Act should provide for the definition of the word Vulnerable as it has been defined in the National Social Protection Policy 	Adopted as presented	“vulnerability” susceptibility to the impact of risky events, as a result of particular weakness or lack of defences and resulting in a worsened situation for the suffer(s)
The National Social Protection Policy	<ul style="list-style-type: none"> The National Social Protection Policy needs to broaden the definition of vulnerability to include survivors of gender-based violence. 	Adopted as presented	
The National Social Protection Policy.	<ul style="list-style-type: none"> The National Social Protection Policy must mainstream gender-based violence in its sensitization programs 	Adopted as presented	
Disability Policy	<ul style="list-style-type: none"> the policy should consider gender based violence against physically challenged as special cases due to their vulnerability 	Adopted as presented	
General Observation	<ul style="list-style-type: none"> Some Policies must be reviewed so that they are in line with the Ant-Gender Based Violence Act. 	Adopted as presented	

h) Enhancement of Administrative/Institutional Framework

Ministry of Justice	The Ministry plays an important role in making sure legislation is adequately drafted in harmony with other laws. They are also key in the monitoring and implementation of policies.	Adopted as presented
Ministry of Community Development and Social Welfare.	The proposal is that management and administration of the Anti-Gender Based Violence Act should fall under the Ministry of Community Development and Social Welfare.	Adopted as presented
Judiciary	The Chief Justice is responsible for the formulation and review of the Rules of Court under the Anti-Gender Based Violence Act.	Adopted as presented
Human Rights Commission	The mandate of the Human Rights Commission is too broad hence Gender Based Violence issues are not coming out.	Adopted as presented
Civil Society Organizations	There should be inclusion of sensitization and awareness raising on the responsibilities of the parent Ministry managing and administering	Adopted as presented

	<p>the Anti-Gender Based Violence Act. In addition, Para Legal structures in communities to be recognized and enhanced and linked to government structures to avoid abuse of their mandates.</p>	
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Annex 2

LIST OF STAKEHOLDERS WHO PARTICIPATED IN THE STAKEHOLDER ENGAGEMENT PROCESS

ORGANISATION		NAMES OF PARTICIPANTS
1.	Mr. Simon Kapilima	Ministry of Gender
2.	Nchimunya Nkombo	Ministry of Gender
3.	Chali Hambayi	National Prosecution Authority
4.	Sitali Mulozi	National Legal Aid Clinic For Women
5.	Hellen Lungu	Plan International Zambia
6.	Olipa Jere	Ministry of Justice
7.	Muzi Kamanga	WILDAF
8.	Lina Jere	Zambia Law Development Commission
9.	Mwila Chikwanda	Zambia Law Development Commission
10.	Cynthia Simwatachela	National Prosecution Authority
11.	Grace C. Sanduku	Zambia Police
12.	Mandy Manda	National Legal Aid Clinic for Women
13.	Gift Bwembya	Gender Division
14.	Shekespear Siatakwi	Human Rights Commission
15.	Chama Kaisala Zimba	Ministry of Justice
16.	Philip Chilambwe	Gender Division
17.	Jasmine Chinamansa	Gender Division
18.	Precious Simuchoba	Zambia Law Development Commission
19.	Hope M. Chanda	Zambia Law Development Commission
20.	Mordecai Mweene	Zambia Law Development Commission

ORGANISATION		NAMES OF PARTICIPANTS
21.	Rechard Sikananu	UNDP
22.	Mwila Chikwanda	Zambia Law Development Commission
23.	Sitali Mulozi	National Legal Aid Clinic for Women
24.	Mirriam Mwiinga	YWCA
25.	Emelda Shonga Mwitwa	Zambia Daily Mail
26.	Mwiba Mwenda	Zambia Law Development Commission
27.	Gladys K. Tembo	Drug Enforcement Commission
28.	Kennedy Mumbi	Zambia Police
29.	Tom Ngululu	Zambia Police
30.	Tresford Kasale	Zambia Police
31.	Womba Wanki	Generation Alive
32.	Juliet Mwape	Ministry of Community Development and Social Services
33.	Meruis Sooli Chisanga	Ministry of Community Development and Social Services
34.	Clive Lisholo	Immigration Department
35.	George Sikaonga	Zambia Correctional Service
36.	Inutu Akolwa	Zambia Law Development Commission
37.	Peggy Simwanza	Ministry of Gender
38.	Mildred Muchimba	National Prosecution Authority
39.	Ernest B. Lungu	Ministry of Gender
40.	Gertrude Zulu Shinkanga	NGOCC
41.	Gloria Mubita	Zambia Police Service
42.	Billima Precious	WILSA

ORGANISATION		NAMES OF PARTICIPANTS
43.	Judith Mwila	FAN
44.	Mwangala Mutonga	Zambia Police
45.	Joan Mwaanga	Human Rights Commission
46.	Catherine Mangenda	Zambia Police
47.	Andrew Mukuwa	Zambia Law Development Commission
48.	Kelvine Nyankundi	Zambia Law Development Commission
49.	A.B. Ponga	Ministry of Gender
50.	Susan Musonda	Ministry of Gender
51.	Exavicx Saamboko	Ministry of Gender
52	Mulima Nyambe Mubanga	Zambia Law Development

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