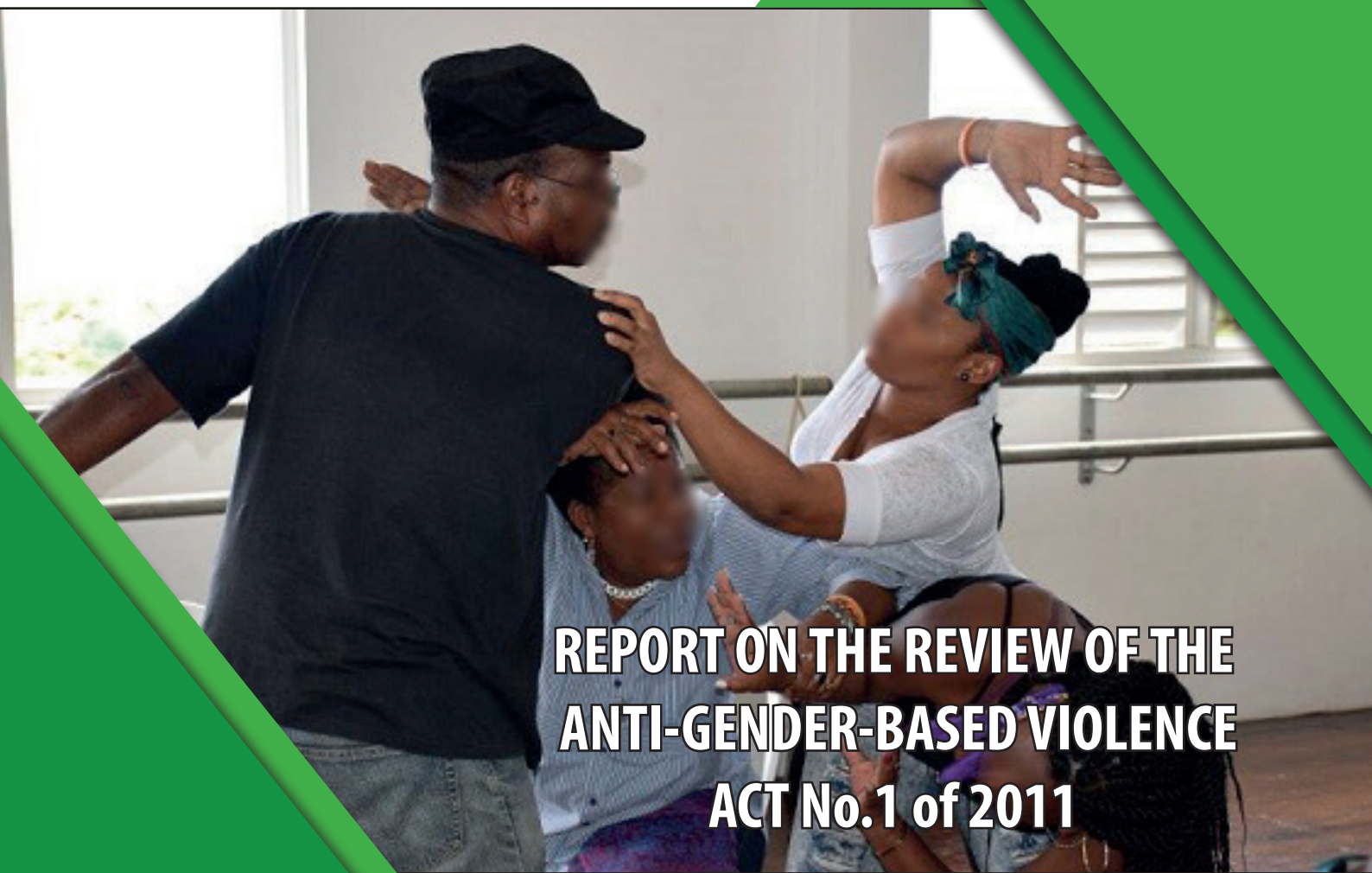




Zambia Law Development Commission



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

SUMMARISED PROJECT REPORT

2023

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ZAMBIA LAW DEVELOPMENT COMMISSION

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

**ZAMBIA LAW DEVELOPMENT COMMISSION
PLOT 26F CHEETAH ROAD
KABULONGA
AUGUST, 2023**

SUMMARISED

PROJECT REPORT

**This report is a summarized version of the full report and can be accessed at
www.zambialawdevelopment.zm**

ABOUT THE ZAMBIA LAW DEVELOPMENT COMMISSION

The Zambia Law Development Commission ('ZLDC') is a statutory body established by an Act of Parliament, the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia. The primary mandate of the ZLDC is law reform.

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 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 Zambian society;
- (vii) encourage international co-operation in the performance of its functions under this Act; and
- (viii) do all such things incidental or conducive to the attainment of the functions of the Commission.

Contents

- 1. INTRODUCTION AND BACKGROUND.....6
- 1.1 Rationale and Significance of Study 6
- 1.2 Objectives 7
- 1.2.1 Specific Objectives 8
- 1.3 Methodological Considerations..... 8
 - 1.3.1 Desk Review 8
 - 1.3.2 The Consultative Process..... 9
- 2. DESK REVIEW PROCESS..... 10
- 2.1 International and Regional Instruments 10
- 2.2 Domestic Legislation 10
- 2.3 Applicable Legislation from Other Jurisdictions..... 10
- 3 ZLDC FINDINGS AND RECOMMENDATIONS..... 11
- 3.1 ZLDC Findings 12
- 3.2 ZLDC Recommendations 13
- 4. RECOMMENDATIONS FOR AMENDMENT OF THE AGBV ACT AND THE PENAL CODE ACT 14

FOREWARD

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

1. 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 is defined as 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.

1.1 Rationale and Significance of study

The review of the AGBV Act was as a result of difficulties faced in the application and implementation of the 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 off reported gender-based violence cases. The Audit findings revealed that despite cases of GBV being reported to the police, a low number of cases 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

¹ Realising Women's Equality Rights in Africa

² Anti-Gender Based Violence Act, No 1 of 2011 Section3

³ Act No 1 of 2011

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, 18,540 cases were recorded,⁴ representing a 2.4% 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

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.

1.2 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.

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

1.2.1 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:
 - a) Make comprehensive provisions for the rights of victims of Gender-Based Violence
 - b) 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; and
 - c) Provide effective means for victims of GBV to access the courts and other forms of support.

1.3 Methodological Considerations

To fulfil 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. It also 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.

1.3.1 Desk Review

The project commenced with a desk review and 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.⁷ An issue paper was developed during the desk review. The findings of the desk review highlighted:

- i. shortfalls in the provisions of the AGBV Act;
- ii. pertinent policies, laws, and regional and international instruments; and
- iii. the administrative framework of the AGBV Act.

⁷ 24th -28th July, 2017

The desk research entailed a review of allied legislation, and consideration of various relevant documents, including government and civil society reports, policy documents, regional and international instruments, and judicial precedents.

1.3.2 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.

2. DESK REVIEW PROCESS

During the desk review the review team identified and documented gaps in the application of the legal framework applicable to GBV issues in Zambia. The legal framework in the project report is discussed under two components: international and regional instruments; and domestic legislation.

In terms of international and regional instruments, Zambia is a party to a number of instruments that embody principles and standards addressing gender-based violence. These instruments serve as benchmarks and provide a framework upon which the State can base evidence-based practice.

In terms of domestic legislation, the state has enacted legislation including the AGBV Act to curb gender- based violence abuses.

2.1 International and Regional Instruments

The international and regional instruments that were considered in this regard were the: Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Beijing Platform for Action of 1995 (BPA); African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Charter); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); SADC Protocol on Gender and Development; and the SADC Model law on GBV.

2.2 Domestic Legislation

The review of the Anti-Gender Based Violence Act took into consideration provisions of legislation which have a bearing on the implementation of the AGBV Act and these include the Constitution of Zambia; Penal Code Act; Criminal Procedure Code Act; Children's Code Act; Education Act; Gender Equity and Equality Act and Matrimonial Causes Act.

2.3 Applicable Legislation from Other Jurisdictions

During the study, a comparative study was carried out to review the relevant legislation of selected countries which could serve as benchmarks upon which the State can base evidence-based best practices. The countries that were considered in this regard were Zimbabwe, (Domestic Violence Act Chapter 24 of 2006); Kenya (Protection Against Domestic Violence Act No.2 of 2015); and

Namibia (Combating of Rape Act No.8 of 2000). These jurisdictions were selected because they have legislation speaking to issues pertaining to acts of gender-based violence public which address the various issues raised by stakeholders during stakeholder engagement meetings.

Accordingly, 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; and Offences.

i. Name and objects of the Act

The comparative study revealed that Zimbabwe and Kenya have similar names and objects to the law in Zambia while the law in Namibia is entitled “Combating of Rape Act” and the key object of the Act is to address issues of rape.

ii. Definitions of various acts of gender-based violence

It was observed that law in Namibia does not provide for circumstances that are aggravating in nature while the laws in Kenya and Zimbabwe provide for circumstances that are aggravating in nature and this has an impact in sentencing. Further, the Domestic Violence Act of Zimbabwe, specifically criminalises certain acts of GBV, and provides recourse for acts of GBV that are civil.

iii. Offences

The comparative study revealed that Kenya, Namibia and Zimbabwe provide for general offences on domestic violence. Zimbabwe creates criminal offences for acts of GBV except for acts of domestic violence that constitute emotional, verbal, psychological, and economic abuse.

3. ZLDC FINDINGS AND RECOMMENDATIONS

3.1 ZLDC 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,⁸ harmful cultural or customary practices are only penalized when they result in injury. The Children’s Code Act, in addressing harmful cultural practices in section 18⁹ 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 Act.
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 remedies.
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 criminalized and that appropriate civil actions should follow.

⁸ 157. (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.

⁹ 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 work place are not provided for in the Penal Code Act.

3.2 ZLDC Recommendations

Based on its findings, the Commission came up with the following recommendations:

1. Amend section 157 of the Penal Code to extend 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, psychological abuse should be pursued by way of a complaint in civil procedure.
7. Provisions should be inserted into the Penal Code Act that provide for sexual harassment abuses as a form of gender based violence.

4. RECOMMENDATIONS FOR AMENDMENT OF THE AGBV ACT AND THE PENAL CODE ACT

PART A- AGBV ACT		
PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
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 makes 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>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Combining Section 2 with a proposed Section 4</p>	<p>Introduce a new section (possibly new section 4) with the marginal note “Prohibition of gender-based violence”. Move 2(1) to 4(2) to provide for the action to follow non-compliance with the subsection that prohibits acts of AGBV.</p> <p>The provision should read as follows: “4. (1) <i>A person shall not subject another person to acts of gender - based violence.</i> (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>	<p>There is a need for a section specifically prohibiting gender-based violence and prescribing what action shall follow non-compliance with the section.</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	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Section 3 Interpretation <i>“aggravated” in relation to gender-based violence, means any act of gender-based violence which—</i> <i>(a) causes the victim to suffer wounding or grievous bodily harm; or</i> <i>(b) the court otherwise considers to be so serious as to be aggravated, taking into account—</i> <i>(i) whether a weapon was used;</i> <i>(ii) evidence of pre-meditation;</i> <i>(iii) whether the victim is particularly vulnerable;</i> <i>(iv) any failure, by the police, the court or any official body, to respond to previous warnings; and</i> <i>(v) any other consideration the court considers appropriate</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	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Section 3- “child” means - <i>a person below sixteen years</i></p>	<p>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”</p>	<p>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.</p>
<p>Section 3 gender Means-<i>female or male and the role individuals play in society as a result of their sex and status</i></p>	<p>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></p>	<p>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.</p>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Section 3 “<i>Physical abuse</i>” means <i>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 to torture or other cruel, inhumane or degrading treatment or punishment;</i></p>	<p>Introduce an interpretation of the words “inhuman and degrading treatment” as follows-<i>Inhumane treatment causing intense degrading treatment-that is extremely humiliating</i></p>	<p>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.</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. In addition to the above, “social abuse” should include harmful cultural practices as well.</p>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
s.3- “Physical, mental, social or economic abuse” (Abuse arising from cultural practices)	<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 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>Specific provision is required for abuses arising from harmful cultural practices both in the AGBV Act and 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. <i>(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>

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 where the police officer has reasonable grounds to believe that the 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 ¹⁰ 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, ¹¹ 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. 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. However, the judiciary already has power through the Chief Justice to establish courts where deemed necessary as contained in the Constitution under Article 120.</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> <p>shall be referred to as an Anti-Gender Based Violence, Fast Track Court.</p>

¹⁰ Chapter 87 of the Laws of Zambia

¹¹ Chapter 88 of the Laws of Zambia

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Section 12 Interim Protection Order</p>	<p>The Court must be compelled to issue an interim protection order pending the consideration of the order applied for</p>	<p>Section 12 (6) to now read: <i>Where an application is made on notice to the court for a protection order and the court is of the opinion that—</i> <i>(a) the respondent is committing, has committed or is likely to commit an act of gender-based violence; and</i> <i>(b) the applicant will suffer significant harm if a protection order is not issued;</i> <i>the court shall issue an interim protection order pending the consideration of the order applied for</i></p>
<p>Section 13 Issuance of Protection order</p>	<p>The Court must be compelled to issue a protection order</p>	<p>Section 13 to read: <i>The court shall issue a protection order to prohibit a 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>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
Section 26 Inspectors of shelters	28(1) Adopted; however, the word “norms” should be replaced with the word “regulation”.	Section 26 (1) to read: The Minister may appoint suitably qualified persons as inspectors to ensure compliance with the norms and standards prescribed pursuant to section <i>twenty-four</i>
Section 33 Administration and Management of Fund	33(2) empowers the Committee to develop guidelines for the disbursements from the Fund	Under the guidelines, there is a need to provide a disbursement for GBV survivors for economic empowerment even through CDF. This will require linkages between the Public Welfare Assistant Scheme and CDF.
SCHEDULE (Section 31 (2)) Anti-Gender-Based Violence Committee Paragraph 1 Composition of Committee	The composition of the Committee should include all key stakeholders	To include: a representative of the: i) National Prosecution Authority; ii) Zambia Agency for Persons with Disabilities; iii) Zambia Department of Immigration; and iv) Zambia Correctional Service

PART B-PENAL CODE ACT

<p>Section 137 Indecent Assault on Females (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: 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 (1) Any person who practices sexual harassment in a workplace, institution of learning or elsewhere on a child commits a felony and is liable, upon conviction to imprisonment for a term of not less than three years and not exceeding fifteen years</p>	<p>Harassment: 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> <p>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>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<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>
<p>Section 169 Neglecting to provide food, etc. for children (Deprivation)</p> <p>Any person who, being the parent or guardian or other person having the 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 necessaries for such child, so as thereby to injure the health of such child, is guilty of a misdemeanour.</p>	<p>The application of this provision is restricted to a child of tender years.</p>	<p>There is a need to amend section 169 of the Penal Code Act to extend the application to the family and dependents.</p>

PART	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Subjection to torture or other cruel inhumane treatment...</p> <p>Section 248 Assaults occasioning actual bodily harm</p> <p>Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years</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	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
<p>Abuse delivered from customary rites or practices e.g., forced virginity testing and female genital mutilation</p>	<p>Specific provisions must be made in the Penal Code Act addressing these issues. 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>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>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	SUBMISSION	JUSTIFICATION/RECOMMENDATIONS
	<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 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>	<p>The provision on deprivation of use of property should have an equal standing of section 14 if the 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>

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