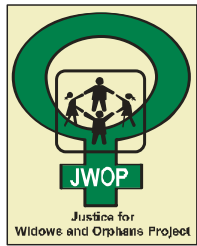




NATIONAL LEGAL AID CLINIC FOR WOMEN



Universal Periodic Review

Human Rights Council

Submission on the Human Rights of women in Zambia by African Women Millennium Initiative in Zambia¹, WILDAF², National Legal Aid Clinic for Women³, Young Women Christian Association Zambia⁴, Justice for Widows and Orphans Project⁵ and Women for Change⁶

¹ **African Women Millennium Initiative** in Zambia (AWOMIZ) was established in 2007 as a non-government organization dedicated to promote the observance of human rights especially women's rights. The organization works promote and support the mass mobilization of women and young people in reclaiming their rights and entitlements within the social and economic spaces of development in Zambia. AWOMIZ works to engage in policy and law reform advocacy related as well and capacity building for human rights defenders for the betterment of the citizens. www.awomiz.org

² **Women in Law and Development in Africa** (WILDAF) is a Pan African Non-Governmental and non-profit making network of individuals and organizations that use the platform of the law to promote a culture for the exercise of, and respect for human rights, particularly of women's and children's rights in Africa. WILDAF has about 24 African member countries and the Zambian one is part of the consortium. The Zambia chapter, like the others is a network grouping with 46 network members comprising women CBOs and NGOs. The Zambian chapter was established in 1993 to promote the development of a policy and legal environment which protects women's rights in Zambia, through research, advocacy, strategic partnerships and information sharing.

³ **National Legal Aid Clinic for Women** (NLACW) was created in 1990 by the Law Association of Zambia. NLACW provides 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. The

⁴ **Young Women Christian Association (YWCA)** is Nongovernmental organization Established in 1957. The organization is dedicated to the empowerment of women and children. It supports groups as well as individuals in their effort to make positive changes in their lives Support is concentrated on the development of the whole person – body, mind, and spirit. YWCA is the only organization that is providing shelters for battered women. In addition the organization runs child in crisis centers; drop in centers and conducts advocacy and outreach activities in issues related to women and children.

⁵ **Justice for Widows and Orphans Project (JWOP):** The Justice for Widows and Orphans Project (JWOP) is a non-profit, non-governmental organization (NGO) established to sensitize widows and orphans on their basic human rights, advocate for legal reform and protect, promote and safeguard the rights of the widows and orphans in Zambia.

⁶ **Women for Change Women for Change (WFC)** is a Zambian gender focused NGO working with communities, especially women and children, in rural areas to contribute towards sustainable human development using popular education methodologies. The organization's principle objective is to contribute to the creation of sustainable economic and social systems which are controlled by rural communities and which respond to their needs. The organization is thus committed to the creation of a critical mass aware of their human rights and obligations as citizens.

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SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF ZAMBIA

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Executive Summary

This submission has been prepared by a group of civil society organizations working in the area of women's rights. The organizations include: the African Women Millennium Initiative in Zambia; Women in Law and Development in Africa; National Legal Aid Clinic for Women; Young Women's Christian Association of Zambia; Justice for Widows and Orphans Project; Legal Resources and Women for Change are submitting this information to be considered during the Universal Periodic Review of Zambia at the Human Rights Council.

This report will first of all quote the various international conventions which Zambia has signed and ratified in relation to women's rights. The report will further make reference to some of the Concluding remarks from the Treaty Monitoring Bodies, Special Rapporteurs recommendations and the 2008 UPR recommendations. The report will focus on some of the discriminatory laws, the problem of gender based violence (Defilement, Rape and Battery), and gender imbalance and Succession matters.

1. Human Rights Treaties ratified by Zambia in relation to women's rights

Being a signatory to the following International Conventions, the Government of Zambia has assumed the obligation to promote, respect and fulfill the human rights related to women and it has further reaffirmed its faith in the fundamental human rights in the dignity and worth of the human persons, in the equal rights of men and women. In addition, the basic rights of political participation among other rights and the women are supposed to be protected from all forms of discrimination. The Conventions include:

- **Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)**
- **International Covenant on Civil and Political Rights (CCPR)**
- **International Covenant on Economic, Social and Cultural Rights (CESCR)**

- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Committee Against Torture (CAT)**
- **Convention on the Rights of the Child - Committee on the Rights of the Child (CRC).**

Discriminatory Laws

2. We wish to highlight how discriminatory laws impact on women negatively. Further this report will show how some of the gaps in the law continue to have negative effect in dealing with issues of gender based violence especially defilement cases, spouse battery, welfare of widows and orphans when it come of Succession matters.
3. Treaty Monitory Bodies and Special Rapporteur in relation to discriminatory Laws: The discrimination of women is unacceptable especially that the CEDAW makes it very clear in Articles 2 and 5 on State's obligations. For example article 2⁷ (f) (g) states that," State parties shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discriminations against women. Article 5 (a) further states that, States must modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".
4. The Human Rights Committee's 90th Session (9-27 July, 2007) took note that the State has dragged on to consider repealing the controversial article 23 of the Constitution of Zambia which is not in compliance with Articles 2, 3, and 26 of CCPR⁸ as the Concluding observations of 2007⁹ indicates in paragraph 12 and 13. The Committee reiterated its concern that the exceptions taken to the right not to be discriminated against, as provided for in article 23 of the Constitution, are not in compliance with Articles 2, 3 and 26 of the Covenant. The Committee is concerned, in particular, at exceptions relating to (a) non-citizens; (b) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and (c) the application of customary law. The committee further urged the State party to review article 23 of the Constitution in order to bring it in line with Articles 2, 3 and 26 of the Covenant.
5. Article 23 of the Constitution of Zambia comes up as a matter of great concern during the review of the State by Committee on CEDAW¹⁰ (July, 2011). The Committee expressed concern that, despite the recommendations in previous Concluding observations, the contradiction in the Constitution has not been amended in that while Article 11 guarantees the equal status of women, Article 23, paragraph 4, permits discriminatory laws and practices in the area of

⁷ www2.ohchr.org/english/law/cedaw.htm

⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/434/46/PDF/G0743446.pdf?OpenElement>

⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/434/46/PDF/G0743446.pdf?OpenElement>

¹⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/449/65/PDF/N1144965.pdf?OpenElement>

personal and customary laws namely; early marriage, payment of dowry (*lobola*), the practice of property division after the death of a husband (property-grabbing), sexual cleansing, and polygamy. The Committee is further concerned that the State Party has not yet enacted a general prohibition against discrimination.

Violence against Women and Girls

6. The Special Rapporteur on Violence against Women noted her concern during her visit to Zambia in 2010 at the time when the State was conducting the Constitution Review. The Special Rapporteur reiterated her concerns at the fact that Article 23 (4) in the then Constitution Review draft permits discriminatory laws and practices in the area of personal and customary laws were retained in the draft text (article 48¹¹) despite the guarantee of equal status of women found in Article 11 of the current Constitution. Despite the numerous calls by national and international entities including the United Nations Committee on the Elimination of Discrimination against Women and the United Nations Human Rights Committee, both the current and draft Constitutions stipulate that in case of conflict between customary and statutory laws, the former prevails and excludes the application of the gender equality principle in matters such as “adoption, marriage, divorce, burial, devolution of property on death” (Article 23.4(c)).
7. She further recommended that, the Government and all State institutions should work together to repeal Article 23.4c of the current Constitution as a matter of priority in order to render the Constitutional framework of the country compliant with the international human rights obligations the State has assumed.
8. In addition, we wish to urge the State to deliver on its promise to implement the UPR recommendations 5 and 6 for 2008 which recommended that “***the prohibition of discrimination be strengthened in the context of then Constitution Review and furthermore that specific legislation be adopted to ensure for full implementation of CEDAW***”. The State also accepted to adhere to the ***Optional Protocol to CEDAW***¹².
9. We would like to urge the State to show political will by domesticating the provision of CEDAW in full as also indicated in the President’s speech to parliament (2011) and also during the celebration of International Women’s Day (2012) that, Government remains committed in ensuring for the domestication of international treaties of which CEDAW is one of them.
10. In recent years Zambia has witnessed an increase in reported cases of violence against women which continues to affect many women and girls. In the recent years, Zambia has witnessed an increase in reported cases of gender based violence. The cases that have seen an increase in reporting include defilement, child marriage, rape and spouse abuse which in some cases has

¹¹ <http://www.parliament.gov.zm/index.php>

¹² ib.ohchr.org/HRBodies/UPR/Documents/Session2/ZM/A_HRC_8_43_Zambia_E.pdf

resulted in murder involving female spouses. For example an organization (YWCA Zambia) dealing with gender based violence in the year 2011 received the following numbers of cases. For the period under review; Child Defilement cases- 128; Spouse Battery 502; Incest - 9; emotional abuse – 1182, sexual offenses; Early marriage-70; Child physical abuse- 66; Succession-413, Rape-22 cases¹³.

Defilement

11. The problem of defilement of girls by elderly men has continued to increase hence making the communities unsafe for young girls to live in. This is a serious source of concern as it threatens the future of these young girls. The majority of the defilers are people who are supposed to offer protection to the children such as biological fathers, step fathers, uncles, grandparents e.t.c. while the age of the children who are defiled seems to be getting younger, the age of the defilers is also getting older. For example on 8th March, 2012, Police in Kasama, Northern Province of Zambia reported to have arrested a 65 year old man for defiling a 5- year old girl. In another incident, a 45-year-old casual worker of Malama Basic School was allegedly reported to have forced himself on a 13 year old girl of the same school¹⁴. The problem of defilement has been reported to be happening even within families, leaving NO safe place for girls.
12. Last year (2011), Zambia-enacted a new law called the **Anti-Gender Based Violence Act No 1 of 2011** which provides good measures in dealing with the problem of gender based violence. The Act provides for the protection of victims of gender based violence;; Protection orders; Shelter for Victims; establishment of an Anti-GBV Committee; establishment of an Anti- Gender Based Violence fund among other things. Despite this good move and political will shown by government, the implementation of this Act remains a big challenge as the Rules of enforcement have not yet been drawn by the Chief Justice and the Statutory Instrument to operationalize the Act has not yet been issued. The implication is that as much as ills relating to women and girls can potentially be addressed under the provisions of the Act, it is impossible to enforce them through litigation because only subsisting laws such as the Penal Code have defined Rules of enforcement. Women have continued dying at the hands of their husbands. A week never passes without a case of a woman battered by her own husband and in some cases resulting in death. This problem has continued to worry the civil society to what has gone wrong with the men in communities.
13. In the first quarter of 2012 alone, Northern Province has recorded 99 cases of defilement and 138 cases of wife battery¹⁵. This is one province out of 10 provinces and it can be deduced that, the problem of VAW/G involving defilement and wife battery is widespread and there is need for the State to take this issue seriously as it threatens the development of the nation. Some of

¹³ Young Women Christian Association Zambia (YWCA 2011 report)

¹⁴ <http://www.znbc.co.zm/media/news/viewnews.cgi?category=9&id=1331281915>

¹⁵ <http://www.znbc.co.zm/media/news/viewnews.cgi?category=9&id=1331281915>

the Causes of defilement and domestic Violence include: ¹⁶negative cultural beliefs, Traditional practices, Unequal gender relations, Socio-economic status, and Poor enforcement of the law, inadequate awareness of women's rights, negative beliefs, myths and misconceptions that sex with a young woman or girl attracts wealth or sex with a virgin will cure sexual infections.

Property and inheritance rights

14. Zambia enacted the Intestate Succession Act in 1989. The Act was to regulate inheritance for individuals who die without a will and to eradicate the practice of property grabbing, which has for many years negatively affected surviving women and children. Although the adoption of this law represented an important step forward, grabbing of property has remained an extensive practice partly due to the fact that penalties provided for depriving beneficiaries of property and assets do not sufficiently act as a deterrent.
15. Furthermore, **the Intestate Succession Act though providing legal guidance to intestates leaves a big gap in the interpretation of per cent values to beneficiaries for example 10 per cent for a dependent can turn out to be a big chunk were 10 children have to share 50 per cent.** On the other hand, the Intestate Act does not clearly define the roles of the administrator in as far as keeping and changing of title to property into their names is concerned. Administrators can under the current provisions devolve property into their names without any serious penalties hence depriving the actual beneficiaries. As much as a combination of customary and statutory law provides a choice for women, it is restrictive in the sense that only well informed women in urban areas can make that choice while those in rural areas have no say at all. The State accepted to implement the UPR recommendation 7 of 2008, to ***“take measures to improve the situation of widows and girl orphans, including by ensuring protection of inheritance through enforcement of legislation provisions”¹⁷***. The State has not performed to implement this recommendation which required it to The State must act with urgency to ensure that it reviews the existing legislation and ensure for justice for widows and orphans.

Child Marriage

16. Zambia is facing yet another clash of laws between customary and statutory law especially in line with family law. Statutory law for example defines a child as one below the age of 16 according to Penal Code. In this regard any person, who engages sexually with a child as per definition here before, commits defilement. On the other hand customary law does not provide for age limits for marriage, any person that attains puberty can marry under custom without any subsequent consequences, further in situations where such situations are deemed illegal, any attempts at using statutory law in remedying such is met with resistance by community members themselves who tend to support customary law.

¹⁶

http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/ZM/A_HRC_8_43_Add1_Zambia_E.pdf

Women's Participation

17. A strong patriarchal framework and the family structure favor men over women at all levels and in all spheres of life, posing serious impediments to the advancement of women. Although social attitudes are gradually changing, especially in urban settings, women continue to occupy a subordinate position and remain economically dependent on a number of fronts. Since a few years now Zambia has been trying to move from a position of male dominated leadership style of governance to one that adheres to the equal representation for both women and men. However, it should be noted that, the current government has scored yet another achievement this year. It should be noted that, under this new government which come into power in 2011, during this year's International Women's Day celebration government announced the establishment of a Women's Ministry and the appointment of a Gender Cabinet Minister. In addition to this, there are several other appointments that have seen women rise to top leadership and these include: (i) for the first time in the history of independent Zambia, a female Inspector General of police has just been sworn into office. (ii) The head of the Anti Corruption Commission is a female (iii) the Electoral Commission of Zambia, a body mandated to preside over all state elections is headed by a female and (IV) the Auditor General's office is headed by a female.

18. RECOMMENDATIONS

1. **In view of the current Constitution, we recommend the amendments to the provisions of Article 23 of the Constitution of Zambia so as to clearly address the customary ambiguity that is unjustifiably constructed to override the Supreme law hence defeating the intent of Article 11 on non-discriminatory provisions.**
2. **Harmonize religious and customary law in keeping with the provisions of the CEDAW provisions in particular Article 16**
3. **Prioritize and ensure adequate resources for the full implementation of the Anti-Gender-Based Violence Act and adopt comprehensive measures to address such violence, including domestic violence in accordance with the CEDAW Committee's general recommendation No. 19 stated in 2011 Concluding remarks**
4. **There must be a deliberate policy aimed at harmonization of customary and statutory law**
5. **Harmonize the Penal Code definition of a child to that of the Convention on the Right of a Child. The Penal Code defines a child as one under the age of 16 years while Convention on the Right of a Child defines a child as one 18 years and below.**
6. **Train judges, lawyers and prosecutors and especially officials in customary Courts in provisions of CEDAW**

- 7. Strengthen training for the judiciary and law enforcement personnel and health-service providers in order to ensure that they are aware of the provisions of the Anti-Gender-Based Violence Act, so that, they provide adequate gender-sensitive support to victims and that they strengthen efforts to prosecute and punish perpetrators of rape, defilement and wife battery;**
- 8. Raise awareness among members of Parliament, Government officials with decision-making power, employers and the general public about the necessity of temporary special measures**
- 9. Expedite the revision of the Intestate Act so as to address discrepancies that disadvantage actual beneficiaries of estates in the event that a male spouse dies leaving no will.**
- 10. Government must set time-bound targets and allocate sufficient resources for the implementation of strategies, such as outreach and support programmes, the creation of incentives and quotas aimed at achieving the substantive equality of women and men in all spheres of life ;**
- 11. Consider putting in place measures such as Statutory quotas, a gender parity system for nominations to government bodies, and conditioning the financing of political parties on equal representation of women in their internal bodies and on candidate lists, to increase the representation of women in decision-making positions and on elected and appointed political bodies in rural and urban areas;**
- 12. Provide training on gender equality to civil servants and politicians, especially men, with a view to enhancing the understanding that the full and equal participation of women and men in political and public life is a requirement for the full implementation of CEDAW, thereby creating a more favorable environment for women’s participation in political and public life.**