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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement**

## **Rapport de la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, Rashida Manjoo**

**Additif**

### **Mission en Zambie\***

#### *Résumé*

Le présent rapport contient les conclusions de la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences qu'elle a formulées à la suite de sa visite en Zambie, du 6 au 11 décembre 2010. On y trouvera un examen de la violence contre les femmes dans le pays, de ses causes et de ses conséquences, ainsi que des mesures prises par l'État pour prévenir cette violence, protéger les femmes et fournir des moyens de recours aux victimes, ainsi que poursuivre et punir les responsables.

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

## Annexe

### Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Zambia, 6-11 December 2010

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## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, conducted an official visit to Zambia from 6 to 11 December 2010. The objective of this visit was to examine the situation of violence against women in the country taking into account its causes and consequences, and the State responses to prevent such violence, protect and provide remedies to women who have been subjected to such violence, and to prosecute and punish the perpetrators.

2. During the visit, consultations were held in Lusaka with the Vice-President and high-ranking officials at the Ministries of Justice, Community Development and Social Services, and Education. In addition meetings were held with high-ranking officials of the Gender in Development Division of the President's Office, the Directorate of Public Prosecutions, the National AIDS Council, and the Victim Support Unit of the Police Force. Meetings were also held with the Deputy Director of the Lusaka Local Court, the Chairperson of the Parliamentary Committee on Governance, Gender and Human Rights, and members of the Human Rights Commission.

3. She also met with representatives of civil society organizations, including women's groups, United Nations agencies and representatives of a number of donor countries. The Special Rapporteur had the opportunity to visit a women's shelter run by civil society organizations in Lusaka, the One Stop Centre at the University Teaching Hospital, the Crisis Response Centre at the Mazabuka Hospital, the detention cells of Matero police station in Lusaka and the women's wing of Lusaka Central Prison, where she heard testimonies from a number of women. She was also received by Chief Naluama, Naluama Chiefdom, at Munali Hills, Mazabuka District.

4. While regretting that a number of meetings originally scheduled could not take place due to sudden requests for cancellation, the Special Rapporteur wishes to express her deep appreciation to the Government for its full cooperation. She is also very grateful to the United Nations Country Team for the support extended prior to and throughout the visit. The Special Rapporteur looks forward to a fruitful and continued dialogue with the Government and other stakeholders on the implementation of her recommendations.

## II. Context

5. Zambia is a landlocked country, rich in natural resources, with a population close to 10 million people, of whom 50.8 per cent are females according to the 2000 Population Census. The country is divided into nine provinces and 74 districts. By 2008 life expectancy at birth was 40 years. Despite significant economic growth in the last decade, this growth has not yet reached the most vulnerable, and extreme poverty persists in the country. The 2008 MDG Progress Report indicated that in 2001 the incidence of extreme poverty stood at 51 per cent, with rates higher in the rural areas and was more prevalent among female-headed households.

6. Zambia is a country where customary law and its institutions are still vibrant and where traditional leaders continue to influence and shape societal norms. This impacts women in different ways as structures and attitudes within the family and the community marginalize women and male preference practices continue to be perpetuated. These deeply-embedded patriarchal values have led to women remaining discriminated against and disadvantaged in a number of sectors and being at a higher risk of violence.

7. The report of the independent expert on the question of human rights and extreme poverty highlighted the fact that gender discrimination remains pervasive and that this discrimination has limited women's access to land, education, credit and other productive assets and has created a power imbalance preventing women and girls from having full control over their lives. This has led to women being overrepresented among the extremely poor, the unemployed, the illiterate and those living with HIV/AIDS - while at the same time being underrepresented in political and decision-making bodies. Widespread violence against women is also one of many realities which exacerbate women's subjugation in Zambian society.<sup>1</sup>

8. The Government has not shied away from these problems and has repeatedly acknowledged that meaningful development cannot take place without addressing fundamental gender issues and particularly those of women's empowerment. In the Fifth National Development Plan (FNDP) gender was addressed both as a cross-cutting and also as a specific issue. In the Sixth National Development Plan, 2011-2015, the Government has committed to continue advancing gender mainstreaming into policies and legislation and supporting the socio-economic empowerment of all, especially women. It has also undertaken to integrate comprehensively into policies and programmes international and regional instruments on gender to which the State is party.

### **III. The status of women in the country**

9. Zambia has ratified most of the core international and regional human rights instruments, including the Convention on the Elimination of all Forms of Discrimination against Women and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. De jure equality between women and men is partially incorporated in the domestic formal legal system starting with provisions in the Constitution. De facto, women continue to be discriminated against in many ways and in different sectors. Societal attitudes and gender norms, which arise out of patrilineal and patrilocal practices, put women at a disadvantage and increase the risk of women being subjected to violence in the family, community, and at the hands of or with the acquiescence of State agents.

10. Approximately 50 per cent of women are married by the age of 18. Education has an important consequence on the age of marriage and women with secondary school education or higher get married more than seven years later than those with no education.<sup>2</sup> More than one-quarter of young women aged 15-19 have already begun childbearing: 22 per cent are mothers and an additional 6 per cent are pregnant with their first child. Young motherhood is more common in rural areas than in urban areas.<sup>3</sup> The 2007 maternal mortality rate for Zambia was 591 per 100,000 live births.<sup>4</sup>

11. About 60 per cent of women aged 15-49 interviewed in the ZDHS were employed compared with almost 100 per cent of men. According to the ZDHS, "among those who were employed, men were more likely to earn cash, while women were more likely to be unpaid". Women who earned cash generally earned less than their husbands or partners.

12. HIV/AIDS has a disproportionate impact on the lives of women and girls as they carry the brunt of the burden generally in caring for people living with AIDS. In addition

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<sup>1</sup> A/HRC/14/31/Add.1

<sup>2</sup> Zambian Demographic and Health Survey 2007.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

violence infringes the rights of women and girls and diminishes their ability to protect themselves against HIV/AIDS.

13. The 2008 MDG Progress Report indicates that, while access to education has improved, challenges remain in terms of improving the quality of educational achievement. The status of girls' education is relatively good and the trend has shown a growth in their enrolment, which is at 98 per cent, compared to that of males, which is 96 per cent. Yet completion levels among female students remain lower than those of males. Females have higher dropout rates at all levels of the school system. Between 2003 and 2006 the ratio of girls to boys in primary school was fairly stable at a level close to 1.0. The ratio in secondary school seems to have undergone a notable decline from 0.0 to 0.73 during the same period. With regard to tertiary education, the years 2003-2007 saw a higher rate of enrolment of male students in the University than that of females despite affirmative action allowing 30 per cent extra places for females. Women continue to be underrepresented in technical and vocational education programmes, where they make up less than 20 per cent of enrolments, and are mainly involved in the traditional female occupations, such as hairdressing, secretarial work, health care, hotel work, garment manufacture and home economics.

14. Women in Zambia have limited access to productive resources such as land, and support services such as credit facilities. Women are disadvantaged by the lack of knowledge and/or understanding of the legal complexities that affect land matters such as how to register land, take ownership and contest land rights. Although the Government has started implementing affirmative action in allocating titled land to women, onerous requirements, including developing the land within short timelines coupled with persistent discriminatory practices related to land and inheritance issues continue to pose challenges to women's access to land and their economic empowerment. Women's access to credit remains limited as commercial banks require collaterals against loans which women are usually unable to provide as they do not own land or property.<sup>5</sup>

15. In terms of women participating in decision-making processes, women remain largely underrepresented at most levels of Government. The proportion of seats held by women in Parliament was 14 per cent in 2004 and 12 per cent in 2006, which is below the 30 per cent and 50 per cent recommended by the Southern Africa Development Community and the African Union respectively. In October 2009 the Government reported that Parliament had 22 elected female members out of a total of 150. In 2009, at Cabinet level 3 out of 26 portfolios were held by women. At the local government level, out of 1,422 councillors, 94 are women; there are four female town clerks or council secretaries and a handful of heads of department in the 72 councils across the country.<sup>6</sup> Female representation in the justice system reflects similar trends: in the Supreme and High Courts out of a total of 43 judges, 13 are women (30.2 per cent); in the Magistrate Courts, out of a total of 119 magistrates, 27 are female (22.6 per cent) and in the local courts, out of approximately 808 justices, 90 are female (11.1 per cent).<sup>7</sup>

<sup>5</sup> Gender in Development Division, National Gender Communication Strategy, 2010-2015, November 2010.

<sup>6</sup> Times of Zambia, Zambia: LGAZ takes issue with gender representation, 20 January 2010. Available from <http://allafrica.com/stories/printable/201001200114.html>; IPS, Zambia: Calls for political parties to field 50% female candidates, 22 July 2010. Available from: <http://ipsnews.net/print.asp?idnews=52239>

<sup>7</sup> Initial Report on the Implementation of the Solemn Declaration on Gender Equality in Africa, adopted on 8 July 2004 at Addis Ababa, October 2009.

#### IV. Manifestations of violence against women and girls

16. Women in Zambia experience a variety of forms of violence including battery, sexual abuse and exploitation, rape, defilement and incest, inter alia. Violence against women is one of the most pervasive means by which gender inequalities are manifested and this has a strong nexus with the social, economic and cultural situation of women.

17. 47 per cent of Zambian women have suffered from physical violence at some point since the age of 15. One in ten women has experienced sexual violence.<sup>8</sup> The 2005 Zambia Sexual Behaviour Study indicates that 15.1 per cent of female respondents reported having experienced forced sex and that 17.7 per cent of urban females and 13.7 per cent of rural females reported being subjected to sexual violence. According to reports, the age group of women most affected is the 20-24 age group. 54 per cent of Zambian women had suffered from spousal or partner abuse at some point in time, whether physical, emotional or sexual. Forty-three per cent of married women reported having experienced some form of physical or sexual violence by their husbands or partners in the year preceding the survey. 70 per cent of married women who had experienced physical violence report that the perpetrator of the violence was a current husband or partner. Women whose husbands or partners abused alcohol were more likely to suffer from physical or sexual violence than women whose husbands or partners did not. Furthermore, one in ten women reported having suffered from acts of physical violence during pregnancy. Sixty per cent of women and 50 per cent of men agree that a husband is justified in beating his wife for certain reasons.<sup>9</sup>

18. Gender inequality is prevalent in many sectors and is reflected in the low status and limited opportunities for women and girls. In addition to poverty, cultural and traditional practices continue to infringe the rights of women and girls. Some of the customary practices which contribute to discrimination against women and fuel violence include sexual cleansing,<sup>10</sup> initiation ceremonies which indoctrinate young women to be submissive to male domination, early marriages, *malobola* or *lobola*, or bride price, and polygamy.

19. A strong patriarchal framework and the family structure favour 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 men.

20. Many interlocutors the Special Rapporteur talked to expressed concern at the fact that the general population seems to condone violence as a way to solve conflicts particularly within the domestic sphere. The visit coincided with the 16 Days of Activism against Gender Based Violence, and the media was active in covering the issue of gender-based violence. Nevertheless, views were articulated to the effect that the media reportedly contributes to fuelling the generic acceptance of violence, including against women and girls.<sup>11</sup>

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<sup>8</sup> See footnote 2.

<sup>9</sup> Ibid.

<sup>10</sup> In many communities, there is a practice whereby the surviving female spouse is cleansed after the death of her husband. The cleansing may be symbolic or may take the form of sexual intercourse with a member of the deceased spouse's family. Someone who refuses to be cleansed is marginalized; hence many women subject themselves to this rite unwillingly.

<sup>11</sup> Discussion with interlocutors who did not provide specific examples.

## A. Domestic violence

21. Domestic violence remains a serious problem in the country and beatings of women by intimate partners remains widespread. Throughout her visit, the Special Rapporteur heard numerous accounts of tragic stories of violence, such as that of a young woman, M. N., whose boyfriend cut her face and ear, or that of another woman, B. L., whose husband stabbed her with a broken bottle, slicing off part of her nose and then continued punching and kicking her as she lay on the ground.

22. Many women are subjected to violence not only by their husbands but also by their husbands' families. The practice of *malobola* or *lobola*, bride price, is still widespread in the country, and this leads the husband and in-law family to believe that they have purchased the bride and therefore are allowed to subject their "property" to violence and other forms of ill-treatment.

23. Early marriages still persist, particularly in rural areas, as parents perceive a girl child as a source of wealth. It is also reported that the practice of early marriages may contribute to high maternal mortality rates in the country as women who die in childbirth are mostly young and undergo prolonged labour or other complications. The persistence of early marriages combined with bride price places young girls in an extremely vulnerable position.

24. Yet the available official statistics do not appear to reveal the true extent of the problem of domestic violence. In 2009, the Victim Support Unit of the Police Force reported, inter alia, 244 cases of rape, 188 cases of indecent assault, 45 cases of threats of violence, and 53 cases of use of insulting language. Looking closely at the data on rape, for example, the majority of reported cases, i.e. 131 out of the 244 mentioned above, had not reached the court. A number of barriers impede higher rates of reporting of incidents of domestic violence. Women prefer to conciliate with the perpetrator mostly because of family and social pressures and because of economic dependence on the perpetrator. Access to the formal justice system is difficult for a variety of reasons, including the fact that women do not trust the system, as it has failed to hold perpetrators accountable.<sup>12</sup>

## B. Defilement

25. Violence against children and particularly girl children is also pervasive in the country. A number of illustrative cases were brought to the Special Rapporteur's attention. These include the case of G.M., a 13-year-old girl, who was raped by the uncle she was living with following her mother's death. G., a 14-year-old girl, was sexually abused at the age of six by her three older stepbrothers, while B.M., an orphan from Chinsali, was continuously raped by the uncle who was providing her with shelter and education.

26. The Special Rapporteur heard on various occasions that cases of defilement<sup>13</sup> had been on the rise. Statistics from the Victim Support Unit confirmed that cases of defilement had been increasing, from 696 cases reported in 2007 to 1,676 cases reported in 2009.

<sup>12</sup> See V1, F.1 below.

<sup>13</sup> The Penal Code defines defilement as "any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than 15 years and may be liable to imprisonment for life" (section 138).

### **C. Violence against women in the transnational arena**

27. Zambia is a source, transit and destination country for men, women and children trafficked for forced labour and commercial sexual exploitation. Trafficking occurs within the country's borders where women and children from rural areas are exploited in cities in involuntary domestic servitude or other types of forced labour. To a lesser extent, Zambia is a destination country for migrants from Malawi and Mozambique who are exploited in forced labour or commercial sexual exploitation.

28. Women who are irregular migrants in the country are also exposed to higher risks of violence. The Special Rapporteur was informed that female migrants, particularly those engaging in sex work, are often subjected to sexual abuse. They are also unable to negotiate safe sex, thus becoming at risk of contracting HIV/AIDS. Women migrants are even more reluctant than Zambian women to seek assistance from law enforcement officers and health service providers because of their irregular status.<sup>14</sup>

29. Violence against women, including defilement, rape, early marriages and survival sex, continues to be a major problem affecting women asylum seekers and refugees, both those in camps and settlements and those residing in urban areas outside the designated settlements.

### **D. Violence against women in detention**

30. The Special Rapporteur observed that female detainees, whether in police custody or in prisons, have to endure harsh living conditions. During her visit, she observed that, for example, the living conditions in the women's wing of Lusaka Central Prison could amount to degrading practices. Fifty-seven women inmates shared one cell and 59 shared another with two toilets and one shower in each cell for night use. For daytime use there were five additional toilets and showers. The prison administration provided inmates with two meals a day and additional food was brought in by families or donations. Those female detainees whose families were unable to visit them could only rely on the food provided by the prison administration and a share of what the prison received from donations. Cooking utensils and stoves were also generally brought by family members.

31. The Special Rapporteur was also informed that female detainees, whether in police custody or in prisons, received little medical attention for pre-natal and post-natal care and treatment, and for HIV/AIDS and tuberculosis testing, with little or no adequate nutrition support. Incarcerated pregnant women reported non-existent or inadequate pre- and post-natal care and treatment. Pregnant women also faced stigma when accessing maternity care in public hospitals accompanied by prison officers.<sup>15</sup>

32. The Human Rights Commission is mandated by Section 9 of the Human Rights Commission Act, Chapter 48 of the Laws of Zambia, to assess and monitor the conditions in police and prison detention facilities, and it regularly undertakes inspections of such facilities throughout the country. The Commission reports point to general patterns of poor and degrading living conditions, including congestion of female wings in prisons, lack of adequate water and sanitation facilities, and dilapidated infrastructure not fit for human habitation. In addition, in many prison facilities including that visited by the Special Rapporteur, juvenile women offenders were held with adults; children and babies were

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<sup>14</sup> Confidential source.

<sup>15</sup> Human Rights Watch, *Unjust and Unhealthy. HIV, TB, and Abuse in Zambian Prisons* (April 2010), p. 81.



living with their inmate mothers in distressing conditions; and female inmates on remand were held with female convicted inmates.<sup>16</sup>

33. Women in detention facilities are also allegedly subjected to abuse, violence and humiliating and degrading punishment in order to extract confessions. Women are also offered release in exchange for sex. In a number of prisons women inmates reported beatings, slapping and stroking with a stick as a form of punishment.<sup>17</sup> The case of J.S., which was brought to the Special Rapporteur's attention, is emblematic. J.S. from Chainda died in police custody allegedly after being beaten and raped by police officers at the station where her husband had taken her to report a marital conflict, and to seek counselling from the Victim Support Unit. The police denied the allegations and claimed that J.S. hanged herself while in detention although the post-mortem did not reveal any sign of suicide by hanging.

## **E. Violence against girls in and around schools**

34. Violence against girls in education establishments remains a problem. Surveys undertaken by civil society organizations revealed that sexual and physical forms of violence exist in schools and are mainly perpetrated against female pupils by male school staff and schoolboys.<sup>18</sup> Girls are not only at risk of being subjected to violence in schools but also on the journey to and from school. Great distances to schools also render girls more vulnerable to harassment on the way. Girls are reported to have sexual relationships with minibus and taxi drivers as a way of coping with transport costs. In addition, weekly boarding pupils living in rented lodging and makeshift dormitories are more likely to suffer from violence and have a higher risk of dropping out of school due to pregnancy.<sup>19</sup>

## **V. Achievements in the State response to violence against women**

### **A. Developments in the legislative framework**

35. The Special Rapporteur visited the country during a very exciting time concerning developments in the constitutional and legislative frameworks. The review process of the Constitution, which started in 2007 with the establishment of the National Constitutional Conference,<sup>20</sup> was close to completion at the time of her visit. From 2007 to 2010 the National Conference led a participatory process of analysis and review of the current Constitution which included eight plenary sessions, 295 committee meetings, and the production of an initial report, the draft constitution and a final report.<sup>21</sup>

<sup>16</sup> Human Rights Commission, Report on Prison and Police Cells Visits, Central Province, 2005 and Prison and Police Cells Inspection Report, North-Western Province, 2008.

<sup>17</sup> Ibid.

<sup>18</sup> Forum for African Women Educationalists of Zambia (FAWEZA), Media Campaign for Girls' Education in Central Province, October 2010.

<sup>19</sup> According to the Ministry of Education, in 2007 the majority of the 13,133 reported schoolgirl pregnancies were for girls living in weekly boarding facilities.

<sup>20</sup> The National Constitutional Conference was established by Act No. 19 of 2007 and amended by the National Constitutional Conference (Amendment) Act No. 5 of 2010.

<sup>21</sup> Final Report of the National Constitutional Conference, August 2010.

36. The Draft Constitution of August 2010 contains a number of important advancements within the Bill of Rights and now includes provisions for the protection of economic, social and cultural rights and the rights of specific groups such as persons with disabilities, youth and older persons. Concerning women's rights, the draft Bill has not retained proposals put forward during the National Constitutional Conference process to strengthen the protection of relevant rights including, for example, the right to reproductive health; to acquire, change or retain nationality; to choose residence and domicile; to guarantee guardianship and adoption rights; or to choose a family name, inter alia. The Draft Constitution provides for the establishment of a Gender Equality Commission mandated to "promote respect for gender equality and the protection, development and attainment of gender equality" (Article 246). The Special Rapporteur learned, subsequent to her visit, that Parliament rejected the draft Constitution on 29 March 2011, except for the Bill of Rights which, like the Constitution, must be approved by referendum.

37. During her visit, the Special Rapporteur noted the general excitement concerning the Anti-Gender Based Violence Bill 2010, which was before Parliament. She subsequently took note with appreciation that the Bill was passed by Parliament, in February 2011, and, at the time of writing, was awaiting Presidential approval. The production of specific legislation aimed at providing protection for women who have been subjected to violence is long overdue. The first step leading to the current Bill dates back to 2000 when the Technical Committee on Strengthening of Laws, Enforcement Mechanisms and Support Systems relating to Gender-Based Violence, particularly against Women and Children was constituted to make recommendations to deal with this problem. The Committee recommended, inter alia, that gender violence be defined and criminalized, and that specific legislation be enacted to address violence against women and children.<sup>22</sup> The recommendations of the Committee led to the enactment of the Penal Code Amendment Act No. 15 of 2005 which made the provisions of the Penal Code related to violence against women and children (Chapter XV) more punitive. These amendments also created the new offences of sexual harassment and harmful cultural practices.

38. This Bill, which, according to stakeholders, went through a highly consultative process, is believed by many to introduce important innovations. It stipulates that one single act may amount to gender-based violence (Section 4); it focuses on protecting the victims, including removing them from violent environments and making provision for the creation of Government-run shelters; it creates the Anti Gender-Based Violence Committee with a monitoring and advisory role (Section 31); and it establishes the Anti-Gender Based Violence Fund (Section 32) to provide basic material support to victims, including counselling and rehabilitation.

39. The Intestate Succession Act was enacted in 1989 with the purpose of regulating inheritance for individuals who die without a will and eradicating the practice of property grabbing, which has disproportionately affected surviving female spouses 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 and

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<sup>22</sup> The Report of the Technical Committee on the Strengthening of Laws; Enforcement Mechanisms and Support Systems relating to Gender Based Violence, particularly against Women and Children, July 2000.

social norms continue unchanged.<sup>23</sup> This law also fails to address negative mourning rites, such as “sexual cleansing”.<sup>24</sup>

40. Concerning the Government’s response to addressing trafficking in persons, the Anti-Human Trafficking Act of 2008 criminalized all forms of trafficking and prescribed penalties that range from 25 years to life imprisonment.

41. While statutory laws such as those above may provide for formal equality for women, the day-to-day life of the majority of the Zambian population is governed by customs and traditions which inform customary laws and practices. These are administered by local courts insofar as they are not repugnant to natural justice, morality or incompatible with written law.

## **B. Developments in the institutional and policy framework**

42. The Office of the Minister for Gender and Women in Development evolved over time. It began as a Women’s Desk prior to 1984. In 1996 it was integrated into the Cabinet Office with the mandate to provide leadership in coordinating and monitoring gender mainstreaming. In 2006 the position of Minister responsible for Gender and Women in Development was established and in 2008 the position of Deputy Minister was added. The department was given the status of National Women’s Machinery as it is the Government department responsible for coordinating, monitoring and evaluating the implementation of the National Gender Policy. The Office also manages the implementation of the Joint Gender Support Programme, 2008-2011, which provides the national medium-term framework for development cooperation in the promotion of gender equality and the empowerment of women. For the first time in 2010, the Office obtained a stand-alone budget from Cabinet.<sup>25</sup>

43. The National Gender Policy adopted in 2000 provides guidelines on integrating gender issues into all national development processes. It also contains the main commitments of the Government in the elimination of violence against women including the following: promotion of awareness-raising campaigns to change harmful traditional practices; encouragement of victims to report all cases of violence and sexual abuse; establishment of mechanisms to coordinate efforts between the police, social workers and legal personnel; establishment of institutions in charge of the rehabilitation of women and girl victims of violence.

44. In April 2010 the Gender and Women in Development Office also produced the National Plan of Action on Gender-Based Violence (NPA-GBV), 2010-2014 in order to facilitate the implementation of previous recommendations scattered across several national policies, plans of action and reports. The Plan focuses on four main strategic areas: legislative and policy review; advocacy and awareness creation; capacity-building of relevant stakeholders involved in the delivery of interventions against gender-based violence such as psychological support, health services and security and protection; strengthening the coordinating mechanisms. The Gender and Women in Development Office has produced comprehensive National Guidelines on the management of cases of gender-based violence which are aimed at providing a uniform and clear framework to manage cases of violence against women and girls.

<sup>23</sup> Zambia Law Development Commission, Report on the Project for the Development of Comprehensive Legislation to Combat Gender-Based Violence, November 2010.

<sup>24</sup> Note 10.

<sup>25</sup> The budget was approximately US\$ 2 million. The Office employed just under 40 staff at the time of the visit.

45. In November 2010 the Government adopted the National Gender Communication Strategy which seeks to change the negative perceptions and attitudes towards gender that have perpetuated gender inequalities in the country.

46. The Government also has in place a system of Gender Focal Points in all Ministries and provincial administrations. On paper, these focal points are to be nominated at a senior level. In practice, these functions are often delegated to junior officers. The efficacy of the focal point system remains to be assessed, as terms of reference for these focal points had only recently been drawn up and allocation of additional resources for the officers acting as gender focal points had not yet been determined.

47. The Ministry of Community Development and Social Services, through its two departments of social welfare and community development, is mandated to deal with victims of human trafficking and to provide for the protection of children who have been subjected to abuse, neglect and exploitation. It also has a variety of support programmes for women including the organization and management of groups, and the provision of skills for income-generating activities in order to reduce women's economic dependency. The Ministry has also collaborated in a number of awareness-raising activities on gender-based violence conducted through school debates, door-to-door campaigns in communities, mobile video shows and road shows, community drama activities, and television and radio programmes.

48. The Government's response to HIV/AIDS has shown sustained commitment to invest resources and strategies to address the challenges of HIV/AIDS. The National AIDS Strategic Framework 2011-2015 aims at providing an overall strategy for the planning, coordination and implementation of the multi-sectoral response based on available evidence and emerging social and epidemiological issues. The framework is guided by a number of fundamental principles including the adoption of a human rights-based and gender-sensitive approach recognizing that the epidemic in Zambia has a gender bias.<sup>26</sup> The National Plan of Action to reduce HIV infection among women and girls 2010-2014 aims at reducing women and girls' vulnerability to HIV infection and mitigating the impact of HIV/AIDS at individual, household, community and institutional levels through sustained action to strengthen the implementation of women's and girls' human rights.

49. In Parliament, the Committee on Legal Affairs, Governance, Human Rights and Gender Matters was created in 1999 with the task of ensuring that gender issues are given priority and prominence in the governmental activities overseen by the Parliament, and also in legislative and policy processes.

50. The Human Rights Commission was established in 1996 by virtue of article 125 of the Constitution and its mandate is articulated in the Human Rights Commission Act, Chapter 48 of the Laws of Zambia. The Commission has established five thematic committees including one on Gender Equality Rights whose priorities are legal empowerment of women and initiatives to eradicate violence against women. At the time of the visit the Commission had conducted a number of legal literacy programmes in rural communities whereby 1,760 people had been trained, half men (headmen) and half women in almost every province. Despite the important work the Commission has conducted over the years, it remains understaffed and under-resourced and has to rely on other State entities for the implementation of its recommendations.

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<sup>26</sup> National Plan of Action to Reduce HIV Infection among Women and Girls 2010-2014, December 2009.

## VI. Challenges

### A. Constitutional and legal reform

51. Although the draft Constitution is a very considerable overall achievement, the Special Rapporteur reiterates her concerns at the fact that article 23.4 in the current Constitution which permits discriminatory laws and practices in the area of personal and customary laws has been retained in the draft text (article 48) 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)).

52. A number of stakeholders the Special Rapporteur met expressed concern at the inclusion of the expression “life begins at conception” in article 40 of the draft Constitution as they fear it may limit women’s access to reproductive health services including access to safe abortion services even when their lives were at risk.

53. The Special Rapporteur acknowledged that the Anti-Gender-Based Violence Bill 2010 is an important step forward in providing frameworks that should be ultimately conducive to stepping up the fight against all forms of violence against women. However, because the Bill is so comprehensive, it appears ambitious and is not accompanied, to the Special Rapporteur’s knowledge, by financial and capacity-building plans, which are key to its effective implementation.

54. While choosing to focus this Bill on the protection of women and girls rather than on definitions and criminalization of acts of violence and abuse, it was generally agreed that a complete reform of the response to gender-based violence would not be effective without a parallel review of certain criminal aspects. In this regard, the Special Rapporteur noted the Penal Code (Amendment) Bill, 2010, passed by Parliament in February 2011, which revises certain penal provisions related to sexual offences and most importantly introduces a minimum punishment of 15 years for the offence of rape. However, the definition of what constitutes rape could be broadened to reflect developments in international law. Furthermore, the offence of marital rape is still considered neither an offence nor an aggravated circumstance.

### B. Legislation pertaining to violence against the girl child

55. Concerning defilement and abuse of children the word “unlawful” in article 138 of the Penal Code is problematic as it may suggest that there are instances in which one may have lawful carnal knowledge of a child.<sup>27</sup> The age of the child (16) in section 138 is not in conformity with international human rights standards. In addition the offence of defilement appears to be perceived as possible only against girls whereas the Penal Code uses the term “child”.

<sup>27</sup> As reiterated by the Supreme Court in *Rex. v. Chinjamba*, under customary law there is no minimum age for marriage and thus there can be lawful carnal knowledge of a child, which remains, however, contrary to international human rights obligations. While the Government is to be commended for discouraging the practice of underage marriages, it should also seek to address this anomaly.

56. The Marriage Act stipulates a minimum age of 21 for a marriage to be contracted without the consent of parents or guardians. A number of provisions of this Act relating to age exemptions are however problematic. Section 33, for example, considers null and void a marriage between persons either of whom is under the age of 16 years. However, the same section is not applicable when a High Court judge has given consent to the marriage after receiving an application and being satisfied that the case is not contrary to public interest. In addition, section 17 permits a marriage when either party is less than 21 years of age, with the consent of the parents or guardians. This section, however, does not specify the minimum age of its application, thus increasing the likelihood that marriages may be contracted by 16-year-olds and possibly younger persons, where there is parental consent. Finally, section 34 stipulates that “nothing in this Act shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner, apply to marriages so contracted”.

### **C. Statistics and data collection**

57. The Special Rapporteur noted limitations in current efforts in collecting data related to violence against women. A number of governmental entities and civil society organizations collect data on violence against women, each of them for their own purposes and frequently at micro level and through individualized data collection tools, which makes data analysis cumbersome.<sup>28</sup> The available statistics are not consistently and coherently brought to the macro level and analysed in a comprehensive way. In addition, general statistics on crime, such as those related to murder, are not disaggregated by the sex of the offender or the victim. The lack of systematic disaggregated data, and a system to manage in a centralized manner the data and information available, has affected the ability to provide a comprehensive situation analysis in relation to violence against women. This has consequently impacted planning and decision-making responses.

58. The Zambia Law Development Commission while undertaking research for the development of comprehensive legislation to combat gender-based violence found it “very difficult to obtain useful data to show the extent of the problem”.<sup>29</sup> It was, therefore, unable to fully ascertain whether the rise in reported cases was due to a rise in crime, or to increased awareness of rights and remedies and thus increased reporting of violence, and also whether interventions put in place have been effective. During her visit, the Special Rapporteur’s observations confirmed this uncertainty.

### **D. Social and cultural context of women**

59. According to the National Gender Policy,<sup>30</sup> certain cultural beliefs and customs have perpetuated gender imbalances which have disadvantaged women. These include traditional ways of socializing girls and boys, which are transmitted through formal and informal institutions such as the family, schools, places of work and courts of law. Certain roles assigned to girls tend to make them submissive and foster an inferiority complex. Boys on the other hand are assigned roles which are highly valued and are prepared for becoming decision-makers.

60. The assigned roles within the family and community affect women’s and girls’ performance in education, employment and other aspects of life, whereas these roles lead

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<sup>28</sup> National Action Plan on Gender-Based Violence (NAP-GBV) 2008-2013.

<sup>29</sup> See footnote 22.

<sup>30</sup> Gender in Development Division, National Gender Policy, March 2000.

men and boys to dominate in decision-making at household and community level as well as to control family and community assets.<sup>31</sup>

61. The persistence of beliefs and roles which privilege men as holders of authority within the family and society, continue to contribute to high levels of violence against women. For example, spouse beating by a man is still regarded as a domestic issue and therefore a private affair. A number of practices in various communities also tend to limit women's access to and ownership of property, including traditional land, particularly in rural areas, despite such communities being dominated by females.

## E. HIV/AIDS

62. Zambia has one of the highest HIV prevalence rates in the world with an adult HIV prevalence rate of 14.3 per cent in 2007, with a gender breakdown of 16.1 per cent women and 12.3 per cent men living with HIV/AIDS. Nearly 80 per cent of all Zambians infected with HIV are under the age of 25. Younger women and older men are mostly infected with HIV with prevalence reaching a peak for women in the 30-34 age group. In 2009 an estimated 82,681 adults were newly infected with HIV, 59 per cent of whom were women and 41 per cent men. It is further estimated that for every two people on treatment, five more are newly infected, of whom three are women.<sup>32</sup>

63. HIV prevalence in Zambian prisons appears to be significantly higher (27 per cent) than the prevalence in the general adult population, although systemic data on this is not yet available. Access to treatment, care and support is available in larger prisons but almost non-existent in smaller settings that lack general prison-based health services. Prison confinement may increase vulnerability to HIV due to unprotected sex in the form of rape, non-availability and non-use of condoms as well as the high prevalence of STIs.<sup>33</sup>

64. It is established that gender inequalities fuel the epidemic and hamper efforts to prevent new infections among women. Women's subordinate status within intimate relationships, their economic dependence on male partners and their fear of being abandoned or assaulted make it difficult for them to negotiate safe sex and to use condoms consistently.<sup>34</sup> Culturally women are taught never to refuse to have sex with their husbands regardless of the number of extra-marital partners they may have or their unwillingness to use condoms, even when they are suspected to have HIV or sexually transmitted infections. Socialization processes include traditional and cultural initiation ceremonies whereby women are taught to accept that men can have multiple partners, and can initiate violence within a marital relationship. The low use of condoms in marital and other stable relationships is also due to pressure on women to demonstrate their fertility.<sup>35</sup>

65. Violence against women may constitute an obstacle to women accessing HIV testing, counselling and treatment services. Perpetrators of violence against women are mainly current or former husbands or live-in partners, boyfriends and male relatives. Thus for the majority of victims, fear of abandonment, divorce and the consequent loss of property may compel women to hide their HIV status and their antiretroviral treatment.<sup>36</sup>

<sup>31</sup> Ibid.

<sup>32</sup> National AIDS Strategic Framework, 2011-2015: Towards Improving the Quality of Life of the Zambian People, 25 November 2010.

<sup>33</sup> Note 20.

<sup>34</sup> Human Rights Watch, *Hidden in the Mealie Meal. Gender-Based Abuses and Women's HIV Treatment in Zambia*, December 2007.

<sup>35</sup> Note 36.

<sup>36</sup> Note 38.

Conversely, women's inability to protect their access to property and resources because of the structural deficiencies of both the justice and societal systems may impede their adherence to antiretroviral treatment. Widows and divorcees in particular, who may be deprived of all assets by partners and in-laws, are often unable to afford transportation costs to regularly visit clinics, and obtain adequate food and nutrition, which are essential for the success of antiretroviral treatment.<sup>37</sup>

## **F. Lack of effective remedies**

### **1. Access to justice**

66. Among the stakeholders that the Special Rapporteur met with, there is general agreement that there is widespread impunity in relation to cases of violence against women and that underreporting of cases of violence against women remains extensive. In addition the formal justice system is mostly inaccessible to women due to geographical distance, cumbersome and lengthy procedures, and lack of protection of and support for victims.

67. The penalties for offences related to violence against women are quite severe, with maximum jail terms of life imprisonment for rape, seven years for abduction and life imprisonment for defilement and incest with girls aged under twelve years old. Unlike offences of murder and aggravated robbery, which are tried by the High Court, all offences against morality, including those related to violence against women, are not categorized as serious crimes and as such do not reach the High Court. Such categorization, compounded by judicial discretion in the subordinate courts, result in hardly any cases of violence against women, regardless of their gravity, being tried by the High Court.

68. A number of additional criminal procedural and evidentiary elements remain problematic. Section 8 of the Criminal Procedure Code stipulates that subordinate courts may promote reconciliation for assault and other offences not amounting to a felony. This provides an avenue whereby many cases are not prosecuted, as victims tend to favour reconciliation, due to imbalance in power relations and economic dependence. In addition, if victims are unable or unwilling to cooperate during the investigation or trial stages, it is difficult for the investigation and prosecution to continue *proprio motu*.<sup>38</sup>

69. Although section 17 of the Criminal Procedure Code provides for the medical examination of the accused person at any time during the trial by order of the court, there is no way of compelling an accused person to provide specimens during investigations. This may lead to loss of evidence, especially in sexual assault cases.

70. Additionally, offences related to violence against women are bailable according to section 123 of the Criminal Procedure Code, which permits bail upon provision of sufficient sureties except in cases of murder, treason, aggravated robbery and theft of motor vehicles if a person is a subsequent offender. If the offender is admitted to bail, he may intimidate the witnesses and the victims, especially when they are related or know each other.<sup>39</sup>

71. Forensic expertise and equipment remain insufficient particularly to conduct DNA analysis. DNA samples are currently sent to South Africa for analysis.

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<sup>37</sup> Ibid.

<sup>38</sup> Section 157 (vii) of the Criminal Procedure Code states that unless a court otherwise allows, all evidence must be taken from the witness box.

<sup>39</sup> The Anti-Gender Based Violence Bill provides for protection orders to address concerns related to witness and victim protection.



72. The Special Rapporteur was also informed by the women she interviewed in the Lusaka Central Prison that access to legal representation is a daunting challenge. Many women detainees meet their defence counsels for the first time in courtrooms and legal aid counsels often do not provide professional services to them.

73. The Victim Support Unit was created in 1994 by virtue of the Police Service Amendments Act No. 14 of 1999 with the mandate to deal with cases of child abuse, human trafficking, spousal abuse, victimization of elders and rape and sexual harassment. The Unit may mediate in a reported case, investigate a complaint, offer counselling and apprehend and prosecute the offenders. While the Unit represents a significant step forward in the police response to violence against women, it is not in a position to fill the structural gaps highlighted in this report. In particular the Unit is compelled to operate within a formal justice system which generally disadvantages women and a societal system where customary laws and practices are predominantly used. In addition there is no system in place to follow up on the situation of women who report cases and return to their families and communities. Efforts by the Unit are also curtailed by a number of problems concerning logistics, transport, and human resources, especially in the provinces. In addition there are generally no private rooms where victims can be interviewed, and insufficient numbers of same-sex police officers to conduct interviews. Despite ongoing efforts to train officers in psychosocial counselling, human rights, gender and women's rights, many of the challenges remain.

## 2. Application of customary law

74. Zambian ethnic groups practise their customs and traditions and apply them in their day-to-day lives. However the application of customary law and practices may give rise to a number of difficulties, particularly in relation to women's rights.

75. At the local level victims' families more often opt for compensation through customary institutions rather than pursuing criminal proceedings through the formal system. This mainly results from family and societal pressure, economic dependence on the perpetrator, and the challenges identified above as regards the formal justice system.

76. Local courts, which replaced native courts, administer justice according to customary law by virtue of the Local Courts Act, chapter 29 of the Laws of Zambia. They are at the lowest level in the hierarchy of the courts, and the most popular as they are cheap (litigants do not need lawyers), simple in nature and procedure, and easily accessible (generally present in every district and community). Besides simple torts, contracts and petty crimes, the main workload of local courts is the law relating to non-statutory marriages, namely divorce, reconciliation, custody of children, payment of *malobola* or *lobola*, pregnancy suits, compensation for adultery, elopement and devolution of the property of persons who die without a will.

77. There are a number of structural shortcomings in the functioning of local courts which, considering that the main workload relates to issues related to women's rights, may affect women's access to effective remedies including concerning cases of interpersonal violence. For example, legal representation in local courts is excluded in all civil matters and may be allowed under exceptional circumstances in criminal cases. Also, prosecution services are limited in these courts. The Special Rapporteur learned that in local courts messengers are de facto used as prosecutors, a practice which is not legal but tolerated because of the failure of the Directorate of the Public Prosecutions to provide prosecution personnel.

78. Local court justices complain of distressing working conditions and low salaries which are frequently not paid on time. The conditions of service of local court justices, including accommodation, transport and subsistence allowances, as well as their training

needs, are neglected. Efforts to improve the conditions of the judiciary have mostly focused on the High Court and the Supreme Court.

79. There is a disproportionate gender imbalance in the staffing position of local courts. It has been argued that, in rural areas, when a vacancy for a court justice occurs, the local court officer requests the area chiefs to submit names for consideration by the Judicial Service Commission, and that the local chiefs seem to be inclined towards male candidates.<sup>40</sup>

80. These deficiencies notwithstanding, the potential of local courts and customary law may not have been fully explored. Customary laws and local courts, which have a fluid and evolving nature, have the ability to depart from the strict application of customary laws, particularly where this would lead to discriminatory, unfair and oppressive results - depending on the leadership of such forums. Some positive developments that were shared with the Special Rapporteur included, for example, instances of local courts ordering, in divorce cases, the payment of a lump sum or periodic maintenance instead of only ordering a distribution of domestic property, as was previously the case. Others have introduced the notion of the best interest and welfare of the child in cases of child custody.<sup>41</sup> Such judicial decisions reflect the possibilities for jurisprudence which reflects the human rights norms of equality, justice and non-discrimination.

### 3. Coordinated response

81. The Special Rapporteur noted that there are no policy guidelines across the health, psychosocial, or legal sectors mandating coordinated, prompt and supportive services to victims. Counselling services are generally not available except in some of the shelters run by civil society organizations and some of the one stop centres existing in certain hospitals. With respect to the provision of psychosocial support, many social workers have no specific training in addressing cases of violence against women, have little institutional support, large caseloads, and extremely limited resources, thus resulting in difficulties in providing adequate services to victims.

82. With regard to the health sector response, the Special Rapporteur noted that there does not seem to be a policy or guideline on dealing with gender-based violence, nor do health professionals have adequate capacity to routinely identify and manage such cases. Most hospitals and clinics lack adequate drugs, equipment and supplies to diagnose or treat problems associated with violence against women.

83. According to the Medical Practitioners Act, only medical practitioners could complete the medical reports required for prosecution of cases of violence against women which resulted in the exclusion of peri-urban and rural areas, mostly staffed by clinical officers and nurses. The Health Professions Act No. 24 of 2009, which repealed and replaced the previous Act, has filled the legal gap as it no longer restricts who may make a complete medical report in these cases. De facto, however, there seems to be continuing adherence to the old law. Further, the Special Rapporteur learned that, although medical forms should be provided free of charge, there are practices whereby police stations charge victims for photocopying the forms, as these stations do not have regular funds for replacing stationery. While commending the work of the One Stop Centre at the University Teaching Hospital in Lusaka and the Coordinated Response Centre of Mazabuka Hospital, which she visited, the Special Rapporteur noted with concern that victims have to pay for medical forensic examinations where such services are available.

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<sup>40</sup> Afronet, *The Dilemma of Local Courts in Zambia or Deliberate Customary Law Marginalisation?* 1998.

<sup>41</sup> *Ibid.*

84. The One Stop Centre in the University Teaching Hospital provides a comprehensive response to sexually abused children (between 0 and 15 years) which include medical tests and treatment, including post-exposure prophylaxis, coordination with the Victim Support Unit for delivery of medical and other forms and preparation of prosecution files, and provision of expert evidence in court. It is regrettable that there are so few centres of this type (there are only six) and the comprehensive service they provide is mostly not available in ordinary health centres. In addition the One Stop Centre is unable to follow closely the cases of those who do not return to the Centre and cannot trace the level of prosecution unless this information is reported by those victims who return to the centre for follow-up. There is no protocol among the centre, police and prosecution services for a systematic tracking and follow-up system. Regrettably this type of centre is primarily financially supported by donors. The Special Rapporteur welcomed the information she received whereby the 6th National Development Plan includes one budget line for supporting the Lusaka One Stop Centre.

85. Another major gap is the fact that the Government has not so far funded any shelter to house victims of abuse and violence who run away from their abusers. Currently there appear to be approximately eight safe houses including shelters and drop-in centres run by the Young Women's Christian Association and the A Safer Zambia (ASAZA) coalition. While commending the work of civil society organizations in filling this gap, the Special Rapporteur noted with concern that the due diligence obligation to protect women from violence rests upon the State.

86. Women who experience violence have difficulty in obtaining information on their rights and on the services available to them, and often lack legal representation in court cases. Despite the provision of free legal aid for those who cannot afford legal costs, this has not to date had a significant impact due to the limited capacity and resources of the Legal Aid Board.

## VII. Conclusions and recommendations

87. **The Government has secured a number of important legal and institutional achievements in the areas of gender, equality and protection from violence against women in the context of complex and difficult social and economic challenges. Yet these achievements have not translated into concrete improvements in the lives of the majority of women in the country, who remain marginalized, discriminated against and at high risk of being subjected to violence. Women's access to justice and protection is impeded by generalized impunity, limited numbers of shelters, lack of or insufficient legal representation and limited awareness of their rights, as well as by economic dependency and societal reluctance to recognize numerous forms of violence as crimes and human rights violations requiring serious attention. The persistence of negative customary and religious practices, despite efforts by State institutions to regulate some of them, continues to exacerbate discrimination against women and women's position of dependence and subordination.**

88. **In the light of the above, the Special Rapporteur would like to offer to the Government the following recommendations:**

### A. Law and policy reforms

89. **The Government and all State institutions should work together to repeal Article 23.4c of the current Constitution (article 48 of the draft 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.

90. The Government should organize the referendum required to validate the draft Bill of Rights, as quickly as possible, so as to address current protection gaps.

91. The enactment of the Anti-Gender-Based Violence Bill should be promptly completed; and should be accompanied by dedicated budget allocations for its effective implementation, and also accompanied by action plans to build the capacity of all relevant actors. In addition, the Fund to be established in accordance with this bill should aim at strengthening and ensuring continuity in the work that civil society organizations have been commendably doing, including the running of shelters for and the provision of coordinated responses to women and girls victims of violence.

92. Legislation should be enacted to establish an effective and independent Gender Equality Commission, with an equivalent status to that of the Human Rights Commission. The Commission should strive to complement the work on gender equality and women's rights that existing bodies have carried out thus far. It should also be provided with adequate resources to effectively exercise its mandate.

93. Additional amendments to the Penal Code that should be considered include: review of the definition of rape; introduction of aggravating circumstances for the crime of rape, such as when it is committed within intimate relations; review of the definition of defilement, age of the child in defilement offences; exceptions for marriages under 16 years of age; review of the category of relatives who may be considered as committing incest to include extended family members who take care of children.

94. As regards corporal punishment, the Local Courts Act allowing for corporal punishment should be amended to reflect the jurisprudence emanating from the 1999 High Court case which found corporal punishment to be unconstitutional.<sup>42</sup>

95. The Government should monitor the implementation of the Health Professions Act particularly as it relates to the provision of medical reports in violence against women cases. Educative work on this law should also be an integral part of its implementation.

96. The Government has taken a number of positive steps to encourage girls' education, including bursaries for vulnerable girls, the building of high schools for girls in every province, and the introduction of the re-entry policy promoting girls' return to school after giving birth. Further measures are necessary to make schools violence-free environments. In this respect the Ministry of Education, should, as a matter of urgency, develop and adopt regulations to prevent and protect schoolgirls from violence as well as put in place frameworks and systems for effective implementation of such regulations as directed by the High Court in 2008.<sup>43</sup>

97. Affirmative action measures should be adopted to increase the participation of women in the political, economical, social, cultural and judicial sectors, particularly to reverse the gender imbalance in these sectors.

98. The Government should ensure sustainability of the budget of the Gender in Development Division to enable it to carry out effectively its main task of integrating and coordinating gender in all public policies and strategies.

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<sup>42</sup> Banda v. The People, 29 November 1999.

<sup>43</sup> R. M. v. Hakasenske, 30 June 2008.

99. Measures should be taken to strengthen the provision of legal aid to women who have been subjected to violence, including those charged with murder of the abuser.

100. The Government should take the necessary measures to ensure that interviews of victims and witnesses of violence be held in separate rooms in police stations.

101. The Government should sanction those entities which charge women victims of violence for medical reports and other forms and should provide all offices with adequate stationery supplies.

102. Legislation should be amended to establish that responsibility for prosecuting violence against women lies with the prosecution authorities and not with the survivors of violence, and to explicitly prohibit conciliation in all cases of violence against women, both before and during legal proceedings.

103. Legislation should be amended to mandate proper collection of, and the timely testing of collected medical and forensic evidence, and the submission to court of medical and forensic evidence where possible.

104. In cases where it is warranted, the Government should take those measures, whether legislative, administrative or other, necessary to provide victims with alternative means of giving evidence without having to confront the defendants. This could be ensured, for example, through the use of in-camera proceedings, as it is currently permitted in the trials of juveniles.

105. The Government should take measures to establish a coordinated and integrated referral system to include all sectors such as the health, police, legal, social welfare and education sectors with a view to addressing the protection needs of women and girls who have been subjected to violence. To this end, regulations, protocols and instructions should be developed to provide clear guidance to practitioners.

## **B. Statistics and data collection**

106. The Government should establish a system for standardized data collection and analysis, disaggregated by sex, race, age, ethnicity and other relevant characteristics, in order to understand the magnitude, trends and patterns of the problem. Monitoring and evaluation tools must also be developed to evaluate progress made in eradicating violence against women in a clear systematic way. Such tools should also be devised and integrated in the demographic and health surveys.

## **C. Social and cultural context of women**

107. Legislative efforts must be continuously pursued alongside widespread endeavours to educate and change the mindsets of men, women and children, through all available means including schools, the media, and traditional and religious leaders.

108. The Government jointly with the customary law entities should clarify the relationship and boundaries between customary laws and institutions and the civil and criminal justice system. Creative ways must be found to codify victims' right to be treated in accordance with human rights and gender equality standards.

109. The media should be trained and sensitized to issues related to women's rights generally and violence against women in particular, in order to contribute to changing the predominant social and cultural beliefs and attitudes that are harmful to women.

110. Capacity-building for all those involved in providing responses to women who have been subjected to violence should as a minimum continue, be strengthened, systematized and tailored to the specificities of every sector concerned.

111. The Special Rapporteur acknowledges the support provided to date by international organizations and donor agencies in the promotion of gender equality and the fight against violence against women and encourages them to continue working with the Government particularly to implement the above recommendations. In particular she would like to recommend that United Nations and international specialized agencies support the National Human Rights Commission in carrying out its mandated tasks, including those related to the promotion and protection of women's human rights, in both the public and private spheres.

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