

GENDER BASED VIOLENCE IN ZAMBIA: THE INEFFECTIVE ENFORCEMENT OF THE ANTI-GENDER BASED VIOLENCE ACT OF 2011

*Written by **Kafwilu Kamenji Chinambu***

Dean, School of Law, Cavendish University Zambia, Lusaka Zambia

ABSTRACT

Every person has the right to human rights because they were created in the image of God. They can be cited as moral assurances. Due to the horrors committed during the Second World War, a number of human rights have been evolved since then. Since then, a number of parties, including nations, have started to recognize the importance of human rights and have started to promote and protect them. The promotion and preservation of women's rights, which are recognized as a vulnerable category, has been a major focus of UN efforts to advance human rights around the world. A number of laws were passed to safeguard women because they were thought to be the weaker sex in comparison to their male counterparts, hence the enactment of various pieces of legislation to protect them. In pursuance of this, the Zambian Parliament on April 15th 2011 enacted the Anti-Gender Based Violence Act.ⁱ An Act to provide for the protection of victims of gender based violence; constitute the Anti- Gender-Based Violence Committee and establish the Anti-Gender-Based Violence Fund. Furthermore, Parliament enacted the Gender Equity and Equality Act No. 22 of 2015.ⁱⁱ Despite the enactment of the Anti-Based Violence Act of 2011 and other laws to curb gender based violence, Zambia continues to experience alarming levels of gender based violence. These include spouse battery, murder, sexual exploitation, rape, defilement, incest, forced prostitution, sexual harassment, sexual cleansing, early marriages and other forms of violence. In the first quarter of 2022 6,915 cases of Gender Based Violence were reported countrywide compared to 4,254 recorded in the first quarter of 2021 showing an increase of 2,661 cases translating to a 62.5%.

BACKGROUND

The issue of gender-based violence has long been acknowledged on a global scale. Gender-based violence affects both men and women, but due to a number of circumstances, it is more likely to afflict women and children. It's time to accept the unpleasant reality that women can also commit murder and act violently; in recent months, they have been making news for abusing and assaulting people of the other sex. Society is gradually becoming more violent and dangerous for everyone.ⁱⁱⁱ In the celebrated case of **Esther Mwiimbe v The People**^{iv}, a woman murdered her husband by pouring hot cooking oil on him and she pleaded the defence of provocation, she was sentenced to death. At the time this case took place, there were very few cases of gender based violence against men reported, this has in the past few years brought into grim focus cases of women murdering men on the rise.^v Such stories shatter the trend that only women get battered, that men are never victims, and that women never attack.^{vi} But the system is stacked against men because statistics show that more women are abused and murdered by men.^{vii} In the fourth quarter of 2021, there was a total of 7,920 cases of GBV reported. Out of this number 4,790 representing 60.6% were women; while 1,316 were men representing 16.6; 1,814% were children representing 26%. Because victims are frequently too ashamed to talk about their experiences, the subject has become taboo. For instance, Joseph Phiri, a resident of Lusaka, believes it is improper to denounce his wife to the police despite the fact that she has repeatedly subjected him to verbal and physical abuse. Given the foregoing, the 2011 Anti-Gender Based Violence Act was passed to address Gender Based Violence. Yet, this law favors women more than men. Although it is still thankfully uncommon for women to murder men, men are also gradually becoming more at risk of becoming victims rather than perpetrators. There is need to come up with a strategy that can protect both males and females. The Act,^{viii} of course is aimed at curbing GBV however, various stakeholders have expressed concern over difficulties faced in the application and implementation of the Anti-GBV Act of 2011 and the court rules. The solution is likely to be found in a harmonized and collective approach that deeply addresses the concerns and issues of both men and women. Gender based violence is a phenomenon which is experienced all over the world. If not dealt with can result in negative impact on society including social, economic, health and political etc. Notwithstanding the fact that women and girls are more vulnerable to violence, sidelining male victims

could have negative consequence on the efforts towards preventing and eradicating the scourge of GBV. This is particularly important to all stakeholders.

A coordinated and group effort that comprehensively addresses the worries and problems of both men and women is likely to yield the solution. Elsewhere in the world, there is a phenomena known as gender-based violence. Negative effects on social, economic, health, and political spheres of society, among others, may occur if they are not addressed. Despite the fact that women and girls are more susceptible to violence, ignoring the needs of male victims could have a severe impact on efforts to prevent and end the pandemic of GBV. All parties involved should take note of this.

Cases of gender-based violence have increased during the previous few years. Since 2013, there have been an increasing number of cases of gender-based violence, reaching 25,121 in 2019, 26,370 in 2020, and 20,540 in 2021. This decrease in overall cases does not, however, include GBVAM cases, which, according to statistics, steadily increased in the fourth quarter of 2021, with the majority of cases being reported in the first quarter (627 cases), second quarter (533 cases), third quarter (578 cases), and fourth quarter 1,316 cases (1,053 cases total), for a total of 3,053 cases for the entire year. Comparatively to the 4,254 cases reported in the first quarter of 2021, 6,915 cases of gender-based violence were reported nationwide in the first quarter of 2022. 6,915 instances of gender-based violence were reported nationwide, up from 4,254 in the first quarter of 2021, a rise of 2,661 instances or 62.5%. In total, 1088 males suffered maltreatment. As of the first quarter of 2021, there were 533 instances of GBVAM, a rise from the first quarter of 2021. This necessitates strong attempts to combat this plague through the use of the legal system.

Zambia continues to endure worrisome levels of gender-based violence despite the Anti-Based Violence Act of 2011 and other legislation to prevent it from happening. Among them include early marriage, forced prostitution, murder, sexual exploitation, rape, defilement, incest, sexual assault, and other acts of violence. In the first quarter of 2022, there were 6,915 incidences of gender-based violence reported countrywide, up 2,661 cases, or 62.5%, from 4,254 in the first quarter of 2021. The study's objectives were to look into the causes of gender-based violence against men (GBVAM), examine the provisions of the Anti-Gender-based Violence Act of

2011 intended to stop GBVAM, and analyse the reasons why the Act's enforcement hasn't been successful in stopping GBVAM. This study is useful to members of society, the government, non-governmental organisations, CSOs, the church, the international community, in short all stakeholders; as it unveils the reality of GBVAM which if taken seriously can contribute to the eradication of the GBV with the inclusion of all sexes, female and males respectively.

Gender based violence against men is a subject that for long has not been discussed due to its controversial nature. Society has not yet accepted the fact that women too, can inflict violence on their male partners. Hence the issue of GBVAM has been disregarded by many including the government and other stakeholders, as something unheard of as much emphasis is placed on protection of women and girls as the main victims of GBV, as evidenced from the statistics above. The main law on GBV in Zambia is the Anti-Gender Based Violence Act of 2011; which however, was enacted on the premise of protecting mainly the rights of women and children, being the main victims of gender based violence. It must also be appreciated that the Act does not operate in isolation, but with other laws. In most cases, it has been very difficult to deal with GVBAM as in some instances, the law does not provide for male victims, e.g. in sexual offences, descriptions of certain offences such as defilement and rape are more tilted towards women and children as the only victims of sexual offences. Feminism and GBV frequently go along. As a result, there is very little literature on the subject of GBVAM because much more studies have been conducted on GBVAW than on GBVAM. Because it reveals the untold truth about men being victims of gender-based violence, this study is timely. The study clarifies further that if GBVAM is not given the same weight as GBVAW, the fight against GBV remains ineffective.

In the case **Mukata v Mukata**,^{ix} Lusaka High Court judge Dorcus Malama dissolved the marriage between former Chilanga UPND Member of Parliament Keith Mukata and wife Maricoh Roisin Hoare. Last year on November 5, Maricoh filed for divorce, alleging that her marriage with Mukata had broken down irretrievably. In response, Mukata filed an answer and cross-petition in which he admitted that their marriage had broken down irretrievably. Delivering judgment in the matter, judge Malama said it was clear from Mukata's evidence on record that there was no mutual love between the couple and that there was no recognition of

the existence of their marriage. She found that Maricoh's behaviour towards her husband was not only unreasonable but also atypical of the union of marriage.

This case, when seen from a different angle, seems to suggest that the evidence produced by Mukata was regarded as having greater probative value than that provided by the Petitioner. Second, it's important to remember that the Respondent was imprisoned as a result of shorting his security guard while with his sweetheart. The Respondent also engaged in adultery in this instance. It appears in the opinion of the researcher that it is true that the adultery of a woman is more pronounced than that of a man. No one talked about the man's adultery but the wife's adultery was so serious.

In February 2017, Judge Susan Wanjelani sentenced Mukata to death by hanging for the murder of his security guard, but acquitted his co-accused and lover Charmaine Musonda on all counts. In her judgment, Justice Wanjelani said she was convinced beyond reasonable doubt that Mukata's guard died from gun shots, which were discharged by him.^x

Perhaps, the court should have also considered the aspect of the Respondent also committing adultery, but it appears that the main contention and the grounds on which the marriage was dissolved were the grounds contained in the answer and cross petition.

CAUSES OF GBVAM

Feminist, masculinity, and social vs. biological theories are just a few of the ones that make up the theoretical foundation for GBV. Male Dominance in Heterosexual Relationships; Withdrawal and Failure to Prosecute Some Cases Leads to Ineffective Enforcement of the Anti-Gender Based Violence Act and Related Laws; Patriarchy Results in Ineffective Enforcement of the Anti-Gender Based Violence Act and Related Laws and Other Legal Challenges are the Major Causes of the Ineffective Enforcement of the Anti-Gender Based Violence Act of 2011.

The human rights organizations of the UN do have various quasi-legal enforcement methods. They include the treaty organizations associated with the seven treaties that are now in effect as well as the complaint processes for the Universal Periodic Review and United Nations

Special Rapporteur under the United Nations Human Rights Council. The nation state has primary duty for upholding human rights. Making citizens' human rights a reality falls primarily under the purview of the State. The following are some methods for keeping an eye on and enforcing human rights.

States to ratify human rights institutions-States that ratify human rights treaties commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation. When domestic law fails to provide a remedy for human rights abuses, parties may be able to resort to regional or international mechanisms for enforcing human rights.

Institutions to promote and protect human rights-International law provides that each country must come up with institutions that safeguard human rights to report on legal aid and access to judicial and other recourse mechanisms, to be required to exhaust domestic remedies.

Regional bodies to monitor human rights-Another way through which human rights can be monitored and implemented is through the international, regional and national bodies taking up a regulatory role to ensure that their member states promote and protect human rights. One such example is the United Nations role.

Punishment of human rights violators- At international law there a system through which violations of human rights are dealt with. This is one way of monitoring as those violators are penalised and other people are deterred from violating human rights for fear of punishment.

Observance of democracy-democracy is a system of government which promotes human rights. This can be used as tool to monitor human rights as human rights violations are reported.

Educating the public-this is another way through which human rights are monitored, once the public is educated they supplement government effort to safeguard human rights.

Reporting mechanisms-each country has a reporting mechanisms on any possible violation of human right both at national and international levels. This is in pursuance of monitoring so that all state parties observe human right and also penalties to be snapped on human rights violators.

CONCLUSION

The government should update the law against gender-based violence; it should empower traditional leaders through the Ministry of Chiefs; and it should. The government needs to do more to increase awareness of gender roles; to address GBVAM, the government must take alternative measures; more support for GBVAM victims is required from all parties, and the government of Zambia has to make changes to the country's human rights system.

ENDNOTES

ⁱ No. 1 of 2011

ⁱⁱ Zambia's Progress Report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcomes of the twenty-third special session of the General Assembly (2000). In the context of the Twentieth Anniversary of the Fourth World Conference on Women and the adoption of the Beijing Declaration and Platform for Action 2015.

ⁱⁱⁱ Jonsson, U., Patel, M., Kamchedzera, G., Rozka, D., Balaji, L., Betts, M. et al., 2001, Monitoring the realization of rights to adequate food, health and care for good nutrition: A way forward to identify appropriate indicators? Report by a pre-ACC/SCN Task Force, Nairobi, Kenya

^{iv} (1986) ZR 15

^vLa Fontaine, 1960

^{vi} Cipparone, 1987

^{vii}Munalula, 2005:148

^{viii} Ibid

^{ix} Unreported:2022

^x Keith Akekelwa Mukata v The People (10 of 2018) [2019] ZMCA 63 (27 May 2019)