

**REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE,
HUMAN RIGHTS AND GENDER MATTERS ON THE ANTI GENDER-BASED
VIOLENCE BILL, N.A.B No. 46 OF 2010 FOR THE FIFTH SESSION OF THE
TENTH NATIONAL ASSEMBLY APPOINTED ON 23 SEPTEMBER, 2010**

Consisting of:

Mr J J Mwiimbu, MP (Chairperson); Mr B E Chimbaka, MP; Mr B Sikazwe, MP; Mr K Kakusa, MP; Mr L H Chota, MP; Mrs S T Masebo, MP; Rev V M Sampa-Bredt, MP; and Mr L P M'sichili, MP.

Following Cabinet reshuffles in December, 2010 which saw the appointment of Mr B Sikazwe, MP and Mr B E Chimbaka, MP, to ministerial positions, the membership of the Committee was reduced to six. However, Mr G Lubinda, MP and Mr G G Nkombo, MP, were co-opted into the Committee, raising the number of members to eight.

The Honourable Mr Speaker,
National Assembly,
Parliament Buildings,
LUSAKA.

Sir,

Your Committee has the honour to present its Report on the Anti Gender-Based Violence Bill, N.A.B No. 46 of 2010 referred to it by the House on 25 November, 2010.

Functions of the Committee

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any order of the House, your Committee may consider any Bills referred to it by the House.

Meetings of the Committee

3. Your Committee held eight (8) meetings to consider the Anti Gender-Based Violence Bill, NAB No. 46 of 2010.

Procedure Adopted by the Committee

4. Your Committee, in considering the Bill, requested written submissions from various stakeholders who also appeared before it and made oral submissions.

Objects of the Bill

5. The objects of the Anti Gender-Based Violence Bill, N.A.B No. 46 of 2010, are to:

- (a) provide for the protection of victims of gender-based violence;
- (b) constitute the Anti Gender-Based Violence Committee;
- (c) establish the Anti Gender-Based Violence Fund; and
- (d) provide for matters connected with, or incidental to, the foregoing.

Consideration of the Anti Gender-Based Violence Bill, N.A.B No. 46 of 2010

Background

Gender-based violence has long been recognised as a problem all over the world. Although it affects both males and females, women and children are particularly vulnerable to gender-based violence due to various factors. In many cases, gender-based violence culminates into injury and loss of human life. In particular, sexual gender-based violence has become a major health concern, causing not only physical but also emotional and psychological harm to its victims. In the era of HIV and AIDS and considering all the serious consequences associated with the pandemic, there is great need to urgently address the situation.

Zambia is no exception to the worldwide phenomenon of gender-based violence, and many Zambian men, women and children are faced with the risks associated with this vice on a day to day basis. In fact, it is disheartening to note that available statistics indicate that the number of reported cases of gender-based violence in Zambia has been increasing. Recognising the seriousness of the problem, Zambia has ratified various major regional and international instruments seeking to promote the eradication of gender-based violence. These include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of a Child (CRC), the

African Charter on Human and People's Rights (ACHPR) and the Southern African Development Community (SADC) Declaration on Gender and Development. By committing herself as a State Party to these regional and international instruments, Zambia has accepted the obligations therein to work towards protecting the rights of children, women and vulnerable men and in particular towards elimination of gender-based violence. It is, therefore, necessary that Zambia domesticates the relevant parts of the aforementioned Conventions and Declarations through enacting or amending relevant legislation. In view of the foregoing, the Zambian Government has introduced the Anti Gender-Based Violence Bill, N.A.B No. 46 of 2010 in response to a long-standing recommendation to enact legislation that specifically addresses gender-based violence.

Specific Parts of the Bill

Part I: Preliminary

This Part provides for the application of relevant acts and interpretation.

Part II: Filing of, and dealing with, complaints of gender-based violence

This part provides for the number of acts amounting to gender-based violence, the duty to assist or inform victim of rights, filing of complaint, the requirement for the Police to respond promptly and police assistance after receipt of complaint.

Part III: Protection Orders

This part makes provision for applications for protection orders, conduct of proceedings, interim protection orders, issuance of protection orders, effect of protection orders, conditions of protection orders, modification of protection orders, duration of final protection orders, extension of protection orders to other persons, grant of protection orders not to exclude criminal liability, occupational orders, appeals, power to discharge protection order and contravention of protection orders.

Part IV: Shelter for Victims

This Part provides for minimum norms and standards of shelters, Inspectors of shelters, shelters for child victims, shelters for adult victims and accounts and audit.

Part VII: General Provisions

This part provides for service of process, settlement of matter out of court, proceedings in camera, prohibition of publication of proceedings, public education, rules of court and regulations.

Schedule

The Schedule provides for the composition of the Anti Gender-Based Violence Committee, the tenure of office of the members and vacancies, proceedings of the Committee, sub-committees of Committee, allowances of members, disclosure of interest, immunity of members, prohibition of disclosure of information to unauthorised persons and the secretariat of the Committee.

Issues and concerns raised by stakeholders

Your Committee notes that most of the stakeholders who appeared before it, expressed support for the Bill and most of its provisions. Having received various submissions on the Bill from various stakeholders, your Committee wishes to record the major concerns and issues raised by the stakeholders as set out below.

- (a) It was noted that the Bill did not provide definitions for some key terms such as “sexual” and “care institution”. It was submitted that in a statute of this nature, such key terms must be clearly defined to avoid ambiguity.
- (b) It was submitted that “brandishing a weapon” should not have been omitted under the definition of “aggravated” as such acts result in serious emotional trauma for the victims. Further, some stakeholders submitted that in Clause 3(1)(b)(iii) under the definition of “aggravated” it was necessary to specifically identify children as victims who were particularly vulnerable.
- (c) Some stakeholders expressed concern that the issue of harmful cultural practices had not been comprehensively dealt with in the Bill. For example, the list of harmful cultural practices provided at Clause 3(1)(m) of the Bill (in the definition of “physical, mental, social or economic abuse”) was not comprehensive although the wording of the Bill implied that it was exhaustive. It was thus contended that the definition of harmful cultural practices should be broadened to include any practice which was repugnant to natural justice and good morals. Further, some stakeholders submitted that any practice classified as a harmful cultural practice should be banned out rightly.

- (d) With regard to Clause 20, concern was expressed that the implementation of the Occupation Orders may prove difficult because some perpetrators may fail to comply with such orders by failing to continue meeting payments such as rentals due to economic factors. As a result, there may be injury inadvertently occasioned on the landlord, who is an innocent third party. Notably, there is no provision in the Bill for the landlord to seek redress in such cases. Further, such Occupational Orders may be impractical in a rural setting where the victim may be living in the perpetrator's village, where the perpetrator's larger family also resides. In fact, the issuance of an Occupational Order in such circumstances may result in further abuse or harm to the victim.
- (e) With regard to the provisions of Clause 10 (4) of Part III regarding issuance of Protection Orders, some stakeholders expressed concern that there was no provision to allow a court to issue a Protection Order on its own motion or upon an application by the child itself.
- (f) Clause 28 of the Bill makes provision for various ministries to offer assistance to the victims of gender-based violence. However, it was noted that the list in this provision omitted the Ministry of Health and the Ministry of Justice. It was stated that these Ministries were key in the process of rehabilitation of victims of gender-based violence.
- (g) There was a concern over the lack of an explicit provision that the shelters offered to victims would be temporary. Some stakeholders felt that it was necessary for this to be made very clear in the Statute.
- (h) There was concern with regard to the provision Clause 36 in relation to the restriction of the discretion of the court to consider and allow out of court settlements of matters of aggravated gender-based violence. Read together with Clause 3 (1)(a) which provides that one of the definitions of the word "aggravated" in relation to gender-based violence is that the act of gender-based violence caused the victim to suffer wounding, it was felt that if the Clause was enacted in its current state, injustice may be occasioned in some cases where the wounding was superficial and there was no repeated abuse.
- (i) Clause 39 places on the Minister responsible for gender the responsibility of providing for public education on gender-based violence. Some stakeholders expressed concern that this was unrealistic in view of the fact that the Minister was limited in terms

of the structures and personnel to conduct nationwide awareness raising activities and public education campaigns.

- (j) While the Bill in Part IV provides for the establishment of shelters for victims of violence with funding appropriated by Parliament for this purpose, there was no provision for funding to be extended to existing shelters, managed by non-governmental organisations, in order to support their operations. It was also noted that there was no clear provision for the reintegration of children from the shelters back into the normal structures of society or into their families.
- (k) Some stakeholders noted that while the Bill in Clause 31 of Part V provides for the composition of the Gender-Based Violence Committee, it only provides for non-governmental organisations to be represented by one member out of a total of thirteen members. Taking into account the fact that a number of non-governmental organisations have significant experience in dealing with issues of gender-based violence, there was a concern that the Bill made little effort to tap into these organisations' expertise and vast experience in these matters.
- (l) Some concern was expressed over the provisions at Clause 2 (2) in Schedule I with regard to the removal of members of the Committee in that there was no transparent procedure to guide the Minister in effecting such removal.
- (m) Concern was expressed with regard to the provisions in Clause 32 of Part VI of the Bill relating to the Anti Gender-Based Violence Fund. It was submitted that the sources of financing for the Fund were not confirmed as even in the case of state funding, the wording used was "may", which was permissive. Stakeholders submitted that it was necessary for the Government to show seriousness and take up the responsibility of leading the process by providing mandatory financing for the Fund.

Committee's Observations and Recommendations

- (a) Your Committee notes the concerns by stakeholders and recommends that the Bill be amended to provide for the definitions of "care institution" and "sexual."
- (b) Your Committee notes the various concerns raised with regard to the definition of the word "aggravated" at Clause 3 (1) (a) which includes any act which causes the victim to suffer wounding. Taking into account the definition of "wound" at Section 4 of the Penal Code, Chapter 87 of the Laws of Zambia, as "*any incision or*

puncture which divides or pierces any exterior membrane of the body...”, your Committee is seriously concerned that this provision may result in unintended and unnecessary prosecution of parties even for minor injury, especially in cases where the offence is not committed repeatedly. They, further, note that the application of the definition as it stands, coupled with the provision at Clause 36 (4) of the Bill which ousts the court’s discretion to consider the nature of the injury and allow the settlement of such matters out of court as the circumstances would be deemed to be aggravated, would make such injustice even more likely. Your Committee, therefore, recommends that the definition of “*aggravated*” at Clause 3(1)(a) be revised to omit the words “*wounding or*” so that it reads: “*(a) causes the victim to suffer grievous bodily harm*”.

- (c) Your Committee notes the concerns raised with regard to harmful cultural practices. It recommends that the list at Clause 3 (1) (m) should not be exhaustive, but that the provision be broadened to include any practice which is repugnant to natural justice and good morals, including those listed.
- (d) Your Committee notes the concerns relating to implementation of this statute and strongly recommends that in order to fully operationalise this statute once enacted, it will be necessary for the Government to commit adequate resources to the setting up of shelters for victims of gender-based violence countrywide. In areas where such shelters will not be available, it is imperative for the Anti Gender-Based Violence Fund to be properly financed so that the Government can meet rental payments for victims.
- (e) Your Committee notes the submissions regarding the omission of the Ministry of Health and the Ministry of Justice from the Ministries to be involved in the process of rehabilitation of the victims of gender-based violence. It notes that these Ministries would play a key role in the process of rehabilitation of victims of gender-based violence and in assisting such victims to seek redress through the justice system. It, therefore, recommends that the two Ministries be included in the list provided in Clause 28.
- (f) Your Committee recommends that there be an additional provision to Clause 10 (4) of Part III which should empower the court to issue a protection order on its own motion.
- (g) Your Committee agrees that while the Minister responsible for gender is a key stakeholder in this matter, the Minister does not have the requisite structures and personnel to carry out the mammoth task of countrywide public education and sensitisation on

- issues of gender-based violence. Therefore, your Committee recommends that the Bill be amended to mandate the Ministry of Community Development and Social Services, which has established structures and personnel in all the districts countrywide, to collaborate with the Minister responsible for gender in carrying out the sensitisation and education campaigns on gender-based violence.
- (h) Your Committee notes the submissions and recommends that a clear provision be made in the Bill making it mandatory for the Government to allocate adequate funding to the Anti Gender-Based Violence Fund in order to provide support to existing victims' shelters run, by non-governmental organisations, establish new Government-run shelters all over the country and provide other relevant support to victims of gender-based violence as envisaged by the Bill. Your Committee emphasises that it is only once adequate funds are made available that this law will be effective. There should also be clear provisions in the Act relating to reintegration of children back into society and/or their families.
 - (i) Your Committee recommends that in light of the expertise and vast experience that exists within civil society in Zambia with regard to gender-based violence, the number of civil society representatives on the Anti Gender-Based Violence Committee should be increased to three while the number of Government representatives should be reduced accordingly.
 - (j) Your Committee recommends that the Bill be amended to include provisions for a transparent procedure for the termination of membership of the Anti Gender-Based Violence Committee to curb arbitrary removal of members by the Minister.

Conclusion

Your Committee wishes to put on record its gratitude to you, Mr Speaker, for affording it an opportunity to scrutinise the Anti Gender-Based Violence Bill, N.A.B. No. 46 of 2010. Your Committee also wishes to thank the Office of the Clerk of the National Assembly for the support and advice rendered to it throughout its deliberations. Your Committee is indebted to all the witnesses, who appeared before it, for their cooperation in providing the necessary submissions.

We have the honour to be, Sir, your Committee on Legal Affairs, Governance, Human Rights and Gender Matters mandated to scrutinise the Anti Gender-Based Violence Bill, N.A.B. No. 46 of 2010.

Mr J J Mwiimbu, MP
(Chairperson)

Mr G Lubinda, MP
(Member)

Mr L H Chota, MP
(Member)

Mr K Kakusa, MP
(Member)

Mrs S T Masebo, MP
(Member)

Mr G G Nkombo, MP
(Member)

Rev V M Sampa-Bredt, MP
(Member)

Mr L P M'sichili, MP
(Member)

January, 2011
LUSAKA

J J Mwiimbu, MP
CHAIRPERSON

LIST OF OFFICIALS

Mr S M Kateule, Principal Clerk of Committees.
Mr G Lungu, Deputy Principal Clerk of Committees.
Mr S C Kawimbe, Committee Clerk (SC).
Mr E B C Mumba, Senior Research Officer.
Ms C Musonda, Assistant Committee Clerk.
Mrs C K Mumba, Assistant Committee Clerk.
Mrs F M Mwanza, Senior Personal Secretary.
Ms C Mtonga, Typist.
Ms S Kayawa, Typist.
Mr C Bulaya, Committee Assistant.
Mr S M Likunyendo, Parliamentary Messenger.

PERMANENT WITNESSES

Ministry of Justice

Mr C F R Mchenga, SC, Director of Public Prosecutions.
Mrs M M Katongo, Acting Principal Parliamentary Counsel.
Mrs Y Chirwa, Senior Parliamentary Counsel.
Ms C Musonda, Parliamentary Counsel.
Ms B L Musopelo, Parliamentary Counsel.
Ms P K Goma, Parliamentary Counsel.

WITNESSES

Ministry of Sport, Youth and Child Development

Mr T D Mulonga, Permanent Secretary.
Mr J C Zulu, Director of Child Affairs.
Mr B Nakachinda, Director of Sports.
Mr C A Mulonda, Director of Youth.
Mr H Kapacha, Chief Planner.
Mr P Mukimba, Acting Principal Accountant.
Mr C Mwiinga, Acting Senior Planner.
Mr B Mungulube, Senior Advisor.
Mrs B M W Bbuku, Acting Director of Human Resources and Administration.

Zambia Police Force

Mr F Kabonde, Inspector-General.
Mrs C Katanga, Director – Legal.
Mr T Kasale, Coordinator - Victim Support Unit.

Council of Churches in Zambia

Ms M Akakulubelwa, Programme Officer.
Ms A Konayuma, Assistant Programme Officer.
Rev P Banda, Coordinator.
Rev L Soko, Minister in Charge - BIC Church.

Non-Governmental Organisations Coordinating Council (NGOCC)

Ms M Mulenga, Board Vice Chairperson.
Ms G Manyonga, Board Secretary.
Ms E B Mwale, Executive Director.
Ms N Ziba, Communication Coordinator.

UNICEF

Ms N Kaloto Lesa, Child Protection Specialist.
Ms A Sampa Kamwendo, Child Protection Officer.

Magistrates and Judges Association (MAJAZ)

Mr W K Muma, National Secretary.
Ms F M Hamaundu, Chairperson – Lusaka Province.
Mr K Mulife, Committee Member.

Young Women's Christian Association (YWCA)

Ms P Ndhlovu, Executive Director.
Mr N Mwape, Coordinator.
Ms B Mwiinga, Youth Coordinator.
Ms R Mbewe, Acting Regional Coordinator – Lusaka.
Mr R Havwala, Men's Network Coordinator.

Forum for Women Educationalists in Zambia (FAWEZA)

Ms D Chimuka, National Coordinator.
Ms M Chuulu, Regional Coordinator – Women and Law in Southern Africa.
Mr M Kamanga, Coordinator – WILDAF.
Ms E Ng'oma, Programmes Manager.
Mr C Sibeene, Programmes Officer, Women in Law and Development in Africa.
Ms K Hana, Programmes Officer, Women in Law and Development in Africa.
Ms M Chibwe, Programmes Officer, Women in Law and Development in Africa.
Ms M Bwalya, Programmes Officer, Women in Law and Development in Africa.

Law Association of Zambia (LAZ)

Mr L Banda, Member.

Tisunge Ana Athu Akazi Coalition (TAAAC)

Ms S Makashinyi, Project Coordinator.
Ms P Chileshe, Executive Director, ZARD.
Ms H K Kumalo, Acting National Coordinator, WLSA.
Mr N Banda, Project Coordinator – ZNWL.
Mr E Mutuma, Director of Programmes, PPAZ.
Ms M M Tembo, Member.
Ms A Davidian, Member.