

ZAMBIA

In paragraphs 5-9 of its report to the Committee, the Zambian Government recognizes that “Zambian women do not experience and enjoy equality with men and do not fully participate in all aspects of national economic, social and cultural development of Zambian society.” Equality Now is concerned that although progress has been made in the elimination of laws which discriminate against women, there are still laws in force, supported by the Constitution, which explicitly discriminate against women. Equality Now is also concerned that the implementation of laws which are not per se discriminatory is carried out in a manner which discriminates against women, through administrative policies, through non-responsiveness of the police to violence against women, and through gender bias in the judiciary.

Within the context of the dual system of law in force in Zambia, there is no provision to override specific customary laws which are inconsistent with provisions of the Constitution or with statutory law. On the contrary, Article 23 of the Constitution, which provides protection from discrimination on the basis of sex, includes a clause which exempts from this protection all matters relating to “adoption, marriage, divorce, burial, devolution of property in death or other matters of personal law,” which are to be governed by customary law. As the Zambia Association for Research and Development (ZARD) points out in its report (Annex 1), these are the areas where discrimination is most practiced and these are the areas which provide a foundation for larger patterns of social discrimination against women. Customary law may vary from one tribe to another, but among the laws in force are included marriage laws which allow polygamy, which do not require the consent of the bride but only payment of the brideprice, and which provide for inheritance of a widow by her husband’s brother. A study on gender bias in the Zambian court system, undertaken in 1994 by Women in Law and Development in Africa (WILDAF), found that of the cases reviewed, 100% of the petitions for divorce brought by women against their husbands on grounds of adultery were thrown out on the basis of the customary law that a man cannot commit adultery. In contrast, the study found that local courts readily granted men divorce on the mere suspicion that their wives had committed adultery (Annex 2). These discriminatory laws are permissible under Article 23 of the Constitution, and they fundamentally violate Articles 3, 23 and 26 of the Covenant on Civil and Political Rights, which provide for equality.

With regard to discriminatory administrative practices, the ZARD report indicates that despite a 1990 High Court ruling against its Passport Office, the Ministry of Home Affairs continues to require a mother to get the written permission of the father to put the children’s names on her passport. No such permission is required from the mother for a father to put the children’s names on his passport (Annex 3). The Ministry of Education has the discriminatory policy of expelling pregnant girls from school, a policy which is reportedly applied even to adult women in teacher training colleges. In the health sector, despite the Ministry of Health’s 1990 Population Policy, which makes family planning services available to individuals, family planning clinics may ask for permission from a woman’s husband before providing her with contraceptives, or sterilization. In contrast, a man may obtain contraceptives or a sterilization

without permission from his wife. In the private sector, despite a 1992 High Court ruling in the case of Sara Hlupekile Longwe vs. Inter-Continental Hotel, there is evidence that the hotel rule of not serving unaccompanied women continues. Moreover, banking practices require women to provide information about their husband's employment in order to open an account (Annex 4).

The government of Zambia notes in paragraph 21 of its report, on the right of life, that the criminal law protects the life of an unborn child. Abortion is illegal in Zambia, with an exception only if the life of the mother is threatened. Even then, three doctors must certify the need to terminate a pregnancy. Equality Now hopes that the Committee will clarify in its discussions with government representatives that Article 6 of the Covenant was not intended to oblige governments to criminalize abortion. Equality Now notes that criminalization of abortion leads to higher rates of maternal mortality in resulting from unsafe abortion. The ZARD report indicates that the rate of maternal mortality in Zambia rose from 150 per 100,000 births in 1980 to 201 per 100,000 births in 1990. Under the Covenant, women are entitled to equal enjoyment of the rights set forth therein, including the right to life. The criminalization of abortion in fact has a discriminatory impact on women, constituting an infringement of this right.

With regard to violence against women, Equality Now is concerned by reports which indicate that law enforcement agencies including the police and the judiciary systematically discount violence against women and treat it as a "domestic matter" which is not of official concern. In its report on violence against women, the Young Women's Christian Association (YWCA) cited widespread sentiment among women that going to the police in cases of abuse is "a waste of time" (Annex 5). The WILDAF report on gender bias in the court system concluded that "most rape cases are not reported by the victims for fear of embarrassment and harassment during trial, in open court." The report cites several examples of judicial sanction of violence against women. In one case from Luanshya Local Main Court, "a woman who refused to have sex with her husband for two weeks due to ill-treatment by the husband was warned by the court justice that a woman has no customary right to refuse sex to her husband. She was lectured to that the husband is the head of the bed where she slept with him." In another case from Chingola Main Local Court, "a woman who was married for 13 years sued her husband for assault. She testified that she had been assaulted several times and that she was fed up. The local court justice ruled that the institution of marriage is an important institution and should not be tampered with, and that the customs of society allow a husband to beat his wife where she misbehaves, and that if he was not her husband then the court would have attended to her claim." These reports suggest a pattern of judicial misconduct and discrimination in claims of violence against women, in violation of Article 26 of the Covenant on Civil and Political Rights, which guarantees equal protection of the law to all.

Finally, Equality Now would like to draw the attention of the Committee to the enclosed report of the case of Lucy Banda Sichone, who is in hiding with her three month old daughter. She is a Chairperson of a Civic Education Association and a columnist who is being sought for arrest and imprisonment, based on columns critical of the Public Order Act which prohibited the holding of public meetings or rallies without a police permit. She has been accused of contempt

of Parliament, and a substantial award (approximately \$US 200,000) has been offered by the police for information on her whereabouts. The case, as reported (Annex 6), would appear to constitute a clear violation of Lucy Banda Sichone's right to freedom of speech, as guaranteed by Article 19 of the Covenant.

INDEX OF ANNEXES

1. NGO Shadow Report: The Situation of Women in Zambia During the Decade 1985-1994, Zambia Association for Research and Development (ZARD), 1994.
2. Gender Bias in the Zambian Court System: A Report Based on Research Findings, Women in Law and Development in Africa - WILDAF (ZAMBIA), 1994.
3. Republic of Zambia Application to Add Children to the Passport of a Relative.
4. "Hotel must stop discrimination," Times of Zambia, June 27, 1995; "Hotels Rules Right," Times of Zambia, July 8, 1995; "Hotel rule illegal," Times of Zambia, July 11, 1995; Barclay's Bank of Zambia Specimen Signature Card.
5. Violence Against Women: Zambian Perspectives, Young Women's Christian Association (YWCA) Council of Zambia, 1994.
6. "Lucy Sichone dares police," Times of Zambia, March 7, 1996; Memorandum from Sara Longwe to Women's Environment and Development organization (WEDO), dated 7 March 1996, entitled "Post Beijing Monitoring: Implementing the Contract with World's Women: Turning Words into Action."
7. "NGOs feel constitution is gender biased," Zambia Daily Mail, March 7, 1996; "Women 'plot' rights charter," Zambia Daily Mail, November 10, 1995; "Be tough with wife killers," Zambia Daily Mail, August 18, 1995.
8. First NGO Report to the UN Committee on the Elimination of Discrimination Against Women (CEDAW), Non-Government Organization Coordinating Committee of Zambia (NGOCC), 1992.
9. Position of Women's Human Rights in Zambia As Seen By Women for Change, Dr. Michelo Hansungule, Assistant Dean for Post Graduate Studies, School of Law, University of Zambia, and Coordinator of the Human Rights Programme, 1996.