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**Harm and Harmonization: Gender-Based Violence and the
Dual Legal System in Zambia**

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Abstract

It is estimated that 47% of Zambian women have experienced gender-based violence at least once in their lifetimes.¹ To combat this alarming statistic, the Zambian government has introduced many pieces of legislation and initiatives that have increased legal and social outlets for survivors of gender-based violence and their families. This paper aims to evaluate these efforts and explore commonly cited factors and implications of gender-based violence in Zambia. More specifically, this paper investigates the ways in which Zambia's dual legal system may be harmonized with respect to gender-based violence, to prevent the eradication of African customary law while promoting human rights.

The paper begins with an introduction to gender-based violence in Zambia and provides a brief overview of the issue of embracing African customary law and human rights. A literature review of works from legal, cultural, and health scholars is then discussed, followed by findings from qualitative interviews. The paper concludes with an evaluation of policy implications, recommendations for further research, and limitations to this study.

¹ Zambia: 47 Percent of Women in Zambia Have Experienced GBV. (2018, February 23). *Lusaka Times*.

Acronyms

AGBV Act	Anti-Gender-Based Violence Act
CSO	Civil Society Organization
GBV	Gender-Based Violence
IPV	Intimate Partner Violence
NGOCC	Non-Governmental Organisations' Co-ordinating Council
NLACW	National Legal Aid Clinic for Women
OSC	One-Stop Center
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNZA	University of Zambia
WiLDAF	Women in Law and Development in Africa
WHO	World Health Organization
VSU	Victim Support Unit
YWCA	Young Women's Christian Association
ZP	Zambia Police

Introduction

The World Health Organization (WHO) estimates that globally, 35% of women experience physical or sexual intimate partner violence (IPV) in their lifetimes.² While this statistic is already alarming, in Zambia it is nearly 50%.³ Resources in Zambia for survivors of IPV and gender-based violence (GBV) vary, from the Victim Support Unit (VSU) in all police stations to the newly-piloted One-Stop Centers (OSCs) where a police officer, nurse, and paralegal are all located in the same building. Legal resources include the Anti-Gender-Based Violence (AGBV) Act of 2011, and the recently-established fast-track courts for GBV cases in Kabwe and Lusaka. The courts are intended to efficiently and sensitively dispense justice for survivors of GBV and allow those cases to be processed separately from other judicial matters.

The AGBV Act and fast-track courts are most accessible in Zambia's urban areas, where statutory law is dominant. For Zambians living in rural towns or villages, matters are more frequently settled in local or customary courts. Customary law is unwritten and thus subject to change, but a troubling trend lingers: many cases that would be considered GBV in statutory courts do not call for criminal recourse in customary courts. In fact, the Director of Local Courts in Lusaka himself wondered, "What is GBV? Husbands and wives fight, this is only natural." Meanwhile, gender rights experts at various NGOs around Lusaka have offered the solution of simply doing away with customary law and only recognizing its statutory counterpart. The problem creates a major bind: How can Zambians preserve the culture and customs of 73 different tribes while also promoting gender equality? How can this dual legal system be harmonized by Zambians, for Zambians?

The qualitative data in this report was collected over a two month period in June and July of 2018 in Lusaka, Zambia. We met with various stakeholders in law, gender, government, and development to gauge their opinions on issues surrounding GBV, fast-track courts, and the dual legal system. The opinions and thoughts of the interviewees are their individual opinions and do not represent the organizations or governments with which they are affiliated.

² World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013).

³ Zambia: 47 Percent of Women in Zambia Have Experienced GBV. (2018, February 23). *Lusaka Times*.

Methodology

In composing this study, literary sources relevant to GBV and the dual legal system were reviewed, and in-depth interviews were conducted with ten stakeholders. All research was pursued in collaboration with the Southern African Institution for Policy and Research, and was advised by Tinenenji Banda, Professor at the University of Zambia School of Law, and Associate Director of Legal Research at the Southern African Institute for Policy and Research.

The literature review consisted of an evaluation of current GBV legislation, history, and statistics in Zambia. Additionally, documents relating to the dual legal system, Zambia's new fast-track courts, and articles authored by relevant stakeholders were consulted. In evaluating this information, the credibility of the sources and their biases were analyzed. When necessary and possible, fact-checks were executed as well to ensure validity of the information.

This research was informed by interviews with ten stakeholders within the GBV arena. All interviewees were experts, representatives, advocates, and policy makers. Contacts were established from snowball sampling, as well as cold-calls and messages. Prior to the beginning of each interview, interviewees were informed of the end-goal of the research and its current progress. All interviews were audio recorded to ensure accuracy in transcription, unless otherwise requested by the stakeholder. Further, interviewees were granted anonymity upon request.

All research was conducted in June and July of 2018 in Lusaka, Zambia.

Literature Review

In the World Health Organization's (WHO) *Researching Violence Against Women*, researchers Mary Ellsberg and Lori Heise find that there is no universal definition for gender-based violence (GBV).⁴ While hundreds of governments, legislative branches, and non-governmental organizations (NGOs) around the world have made attempts to construct a comprehensive definition for what constitutes as GBV, region, perception, discipline, and perspective all contribute to varying understandings of this sensitive topic.

The United Nations (UN) attempts to define GBV as an act that “results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”⁵ The intentionally broad nature of this definition results in varying interpretations, depending on the culture and customs of the community.⁶ In this light, there is a struggle to ensure justice for survivors of GBV in Zambia's rural areas. These struggles range from health issues, like providing appropriate physical and psychosocial support for survivors of GBV, to legal issues like enforcing GBV laws in both urban and rural areas.⁷

Prevalence in Zambia

It is estimated that 47% of Zambian women have experienced GBV at least once in their lifetimes, and 10% of reported GBV cases are sexual in nature.⁸ According to the GBV Baseline Study conducted in 2015, 50.4% of respondents said that GBV is common in their communities. One-third reported that they witnessed an incident of GBV in the previous six months, and 35.5% of community members said they feel that the prevalence of GBV is increasing. Around 75% of all GBV incidents are reported to have occurred in private homes, and 67% of victims were married to the perpetrator at the time of the incident. While acts of GBV can be committed by anyone, 80% of perpetrators were found to be male. Only 69% of respondents reported that survivors of GBV seek help, and 51.5% believe that other survivors report their incidents to the police. The respondents found that

4 Ellsberg, M., & Heise, L. (2005). *Researching Violence Against Women: A Practical Guide for Researchers and Activists*. S.l.: WHO.

5 United States Agency for International Development (USAID) (2016). *United States Strategy to Prevent and Respond to Gender-Based Violence Globally*.

6 Samuels, F., Ndubani, P., Walker, D., & Simbaya, J. (2015). *Baseline Study: Stamping Out and Preventing Gender Based Violence in Zambia*. *Frontiers Group for Evidence Based Decisions*. Page 2.

7 Government of the Republic of Zambia United Nations Joint Programme on Gender-Based Violence (2015). *Gender-Based Violence Training Manual for Local Court & Traditional Court Adjudicators*.

8 Zambia : 47 Percent of Women in Zambia Have Experienced GBV. (2018, February 23).

most survivors of GBV seek informal help via community leaders, relatives, and religious organizations.⁹

Because definitions of GBV can vary depending on the defining party and underreporting is common, confidence in the precision of these statistics is low. The ambiguity and stigma regarding GBV create difficulties when collecting honest and accurate findings. Nonetheless, these epidemic-level statistics are concerning.

Perhaps most alarming is that a higher percentage of women than men agreed that wife beating can be justified. In a study conducted by Roger Klomegah, 83.2% of females reported that wife beating is justified if the wife leaves the house without telling her husband. Only 55.5% of males agreed. Further, 57.3% of females said that wife beating is justified if the wife argues with her partner, while only 37.5% of males agreed.¹⁰ Klomegah writes,

“Paradoxically, women in Zambia hold traditional beliefs about the justification of wife beating under various circumstances and this may be attributed to the socializing and cultural transmission effects within their social system. As explained by resources theory, the use of violence can be influenced by societal norms maintaining its appropriateness as a method of sustaining power... It is therefore, not surprising to observe that more wives than husbands support wife beating on all the categories of cultural beliefs even though they are victims of such practice.”¹¹

Economic Cost

It is undeniable that gender-based violence affects the lived experience of a family within the home. It is important to understand, however, that GBV also has significant economic consequences. A report by the World Bank found that GBV increases “expenditures on service provision, lost income for women and their families, decreased productivity, and negative impacts on future human capital formation.”¹² A separate study by the World Bank indicates that on average, annual GDP is reduced from 1.5 percent due to GBV, which is nearly equal to the average amount of money that their government spends on primary education every year.¹³ According to Jeni Klugman, Director of Gender and Development at

⁹ Baseline Study: Stamping Out and Preventing Gender Based Violence in Zambia, 2015.

¹⁰ Klomegah, Roger (2008). Intimate Partner Violence (IPV) in Zambia: An Examination of Risk Factors and Gender Perceptions. *Journal of Comparative Family Studies*, 39, 567.

¹¹ Klomegah, Roger (2008). Intimate Partner Violence (IPV) in Zambia: An Examination of Risk Factors and Gender Perceptions. *Journal of Comparative Family Studies*, 39, 567.

¹² The World Bank Group (2013). Intimate Partner Violence: Economic Costs and Implications for Growth and Development.

¹³ Ibid.

the World Bank Group, “Violence against women and girls is a global epidemic, with devastating consequence for individuals, communities, societies, and economics. Addressing this challenge head-on promises to significantly advance our efforts to end extreme poverty and increase prosperity for all.”¹⁴ The relationship between IPV and economic costs is direct and substantial. (See Appendix D).

Government Intervention

The Zambian government is aware of these alarmingly high statistics and is making an effort to curb this behavior. Zambia’s Vision 2030, a development plan with the goal of transforming Zambia into a “strong and dynamic middle-income industrial nation,” cites GBV as an area of critical concern for domestic security. In an effort to curb GBV, Vision 2030 plans to focus on social and economic empowerment of women.¹⁵ Further, in Zambia’s 7th National Development Plan, GBV is listed as a “binding constraint to socio-economic transformation and national development.”¹⁶

To execute these goals, the government relies heavily on foreign support. Various NGOs across the country as well as countries like Canada, Sweden, Switzerland, Ireland, United States, and the United Kingdom have all contributed to programs and initiatives to help curb GBV in Zambia.¹⁷

Introduction of the AGBV Act and Fast-Track Courts

The Zambian Parliament enacted the AGBV Act in 2011, a comprehensive framework that allows for protection and support for survivors and prosecution of perpetrators of GBV. The AGBV Act establishes several rules and regulations to moderate GBV in Zambia. It asserts that GBV can be physical, mental, social, or economic abuse, and that a “single act may amount to gender-based violence.” Further, it establishes expedited protective and occupation orders, and a fund to assist survivors of GBV in the cost of legal proceedings and social welfare.¹⁸ While the act itself is civil, it has been closely paired with criminal proceedings and the Zambian penal code.¹⁹

¹⁴ Violence Against Women Exact High Economic Price, World Bank Says. (2013, November 25).

¹⁵ Government of the Republic of Zambia (2006). Vision 2030: A Prosperous and Middle-Income Country by 2030. Page 28.

¹⁶ Government of the Republic of Zambia (2017). Seventh National Development Plan, 2017-2021. Page 30.

¹⁷ UNFPA (2016). Annual Report 2016.

¹⁸ Ministry of Gender. (2011). *The Anti-Gender Based Violence Act*. Lusaka, Zambia: Zambia Government Printing Office.

¹⁹ Tesáková, Elena Lakso. (2017). The Establishment of Fast-Track and User-Friendly Courts in Kabwe and Lusaka to Fight Gender-Based Violence Cases. *Goteborg University*.

Perhaps most significant in the AGBV Act are Sections 40 and 41, which assert that the Chief Justice of the Supreme Court may enact provisions to execute the purposes of the act, and that statutory instruments may be used to carry out the provisions of the Act.²⁰ These sections in the AGBV Act give the Judiciary and the Executive branches the jurisdiction to implement meaningful and substantial changes to the judicial process for survivors of GBV.

After attending the Great Lakes Region Conference in 2012, President Michael Sata instructed the Zambian judiciary to establish fast-track, user friendly courts to handle GBV cases.²¹ As cited by the Zambian government, these fast-track courts were intended to “increase access to justice for victims and alleged perpetrators alike by dealing with cases speedily,” “reduce the time alleged perpetrators are detailed before their cases are heard,” “allow protection for victims from intimidation and from facing alleged perpetrators,” and “be concluded within the shortest possible time without compromising justice”.²² The implementation of such courts was organized in a joint effort by many governmental bodies -- namely the Gender and Child Development Division (now the Ministry of Gender), Ministry of Justice, Ministry of Home Affairs; as well as non-governmental bodies and civil society organizations like the United Nations, Zambia Law Development Commission, Women for Change, NGOCC, and YWCA.²³ The financial support of the fast-track courts came largely from the Government of Zambia, United Nations, and governments of Sweden, Ireland, and United Kingdom. ²⁴ The most significant financial support is from the Swedish government, providing 60,000,000 SEK for the project.²⁵

Implementation of the Fast-Track Courts

On 22 January 2016, Zambia’s first fast-track court was opened in Kabwe, Central Province. From its inception until 15 February 2017, 69 criminal cases were received. The average disposal time for a case was roughly 25 days.²⁶ Less than two months later, on 11 March 2016, Zambia opened their second fast-track court, in Lusaka, Lusaka Province. Since its opening until the end of 2016, 207 criminal cases were received.²⁷ Unfortunately, the time frame for these cases cannot be compared to the average disposal time for GBV cases prior to the introduction of fast-track courts, as no such statistics have been recorded.

²⁰ Ministry of Gender. (2011). *The Anti-Gender Based Violence Act*. Lusaka, Zambia: Zambia Government Printing Office. Page 26.

²¹ Tesáková, 16.

²² ZLDC, ZLDC launches Anti Gender Based Violence Fast Track, supra note 16.

²³ Tesáková, 20.

²⁴ Ibid, 1.

²⁵ Ibid, 21.

²⁶ Ibid, 28.

²⁷ Ibid, 29-30.

The lack of data on previous court proceedings have prevented comparison between these fast-track courts and the main judicial track. However, perceptions from adjudicators, lawyers, and politicians indicate that the fast-track courts have been successful in the effort to increase efficiency of GBV cases. Pending continued political and financial support, there are plans to open four more fast-track courts in Chipata, Livingstone, Mongu, and Ndola.²⁸

Obstacles to Justice in GBV Cases

While the fast-track courts in Lusaka and Kabwe have undoubtedly provided an expedited judicial process for survivors of GBV, many obstacles still remain. The courts face many logistical issues that inhibit their intended function. For example, survivors are supposed to be in a separate area from the accused perpetrator, which allows for an environment that is free of intimidation during the trial process. Further, when court is in session, a video stream would be projected into the courtroom to ensure a fair trial.²⁹ Unfortunately, this arrangement rarely comes to fruition. The equipment is rarely functional, and when it is, many adjudicators fail to follow proper procedure. In an interview with researcher Elena Tesáková, one magistrate went so far as to say he had given up on using this technology altogether.³⁰ When this equipment malfunctions, judges are forced to decide between conducting an efficient trial and ensuring that the survivor of GBV feels as comfortable as possible. As Tesáková explains, this is a difficult decision to make.

Despite the incomplete functionality of these courts, Tesáková indicates that the mere presence of the fast-track courts serves as encouragement for survivors of GBV to pursue their cases in a formal court setting, as they feel that their cases are now being taken seriously. Many judges have taken it upon themselves to make these cases their top priority, and “fast-track” them as best as they can.³¹ However, Tesáková finds that since the introduction of these courts, the sheer number of GBV cases that are reported exceeds court capacity. She explains that more sensitized judges are necessary to optimize efficiency in these fast-track courts.³² While the mere fact that these fast-track courts have been established is a step in the right direction, there is still room for improvement.

Further, according to the GBV Baseline study, fast-track courts seem to only be accessible for those living in more urban areas, closer to Kabwe or Lusaka. While Part II Section 6(4)(e) of the AGBV Act states that complaints of GBV can be filed “at the place that is

²⁸ Chisha, C. (2018, January 14). Chongwe in Escalating Gender-Based Violence Cases. *Zambia Daily Mail*.

²⁹ Tesáková, 29.

³⁰ *Ibid*, 29.

³¹ *Ibid*, 30.

³² *Ibid*.

convenient for the person filing the complaint” sheer travel distance and cost of transportation often inhibit GBV survivors in rural areas from pursuing cases in fast-track courts.

Dual Legal System

In Zambia’s rural areas, many people in low income communities are unaware of their human and legal rights, as well as proper court procedures.³³ Because of this, one of the most discussed contributing factors of GBV is the dissonance of Zambia’s legal system itself. Zambia upholds a dual legal system -- there is statutory, written law and customary, unwritten law. Statutory law is black-letter law, that is formally passed by elected officials within the Zambian government. Customary law is a living code of ethics that adapts to changing ethical norms.

Most customary law is unwritten, allowing it to adjust and modify to modern times. However, when customary law is written down, it is often cited as justification for the eradication of the legal system entirely. When these laws are recorded, they can be perceived to be archaic, or unable to adapt to modern human rights. As Cornell Law School Professor Muna Ndulo posits in his article “African Customary Law, Customs, and Women’s Rights,” this perspective is flawed because all legal systems, even statutory law, adapt to modern perceptions of fairness and human rights.³⁴

According to the Local Courts Act, statutory law prevails over customary law in all circumstances.³⁵ That being said, the Zambian Constitution indicates that customary law generally governs personal and familial matters -- including but not limited to, matters involving adoption, marriage, divorce, burial, and devolution of property upon death.³⁶ Section 12(1)(a) states that local courts may administer “African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law.”³⁷ In rural areas with less access to, and knowledge of, statutory law, customary law can take precedence over written law despite the laws in place that restrict it.

³³ Banda, L. (2017, September 27). Access to Justice by Paralegalism. *Zambia Daily Mail*.

³⁴ Ndulo, Muna. (2011). African Customary Law, Customs, and Women's Rights. *Cornell Law Faculty Publications*, 187, 92.

³⁵ Government of the Republic of Zambia (1996). *The Local Courts Act*. Lusaka, Zambia: Zambia Government Printing Office.

³⁶ Zambia Const., Article 23, Section 4(c).

³⁷ Government of the Republic of Zambia (1996). *The Local Courts Act*. Lusaka, Zambia: Zambia Government Printing Office.

The repugnancy clause has been a hotly debated part of the Zambian Constitution, as the determination for what is “repugnant to natural justice or morality” is inherently subjective and difficult to determine. As Ndulo writes, this clause originated from British colonialism, as a means to oppress the native people by inhibiting their cultural self-determination.³⁸ Since colonialism, there have been many discussions and debates as to whether or not this part of the Constitution is needed anymore. Ndulo explains that there is constant chatter surrounding “what to do” with customary law. Some anti-GBV advocates support its elimination entirely. Ndulo says, “A fundamental question arises as to whether the continued application of customary norms that discriminate against women can be justified with reference to any set of prevailing social norms or traditions or cultural standards.”³⁹ However, Ndulo explains that “most Western understandings of African customary law are influenced by their negative attitudes towards all things African.”⁴⁰

Ndulo posits that the issue with simply doing away with customary law is that it would irreparably damage African cultural traditions. Further, it would be nearly impossible to actually execute. Customary law will permeate African culture regardless of its legitimacy or legality within the Zambian government. It is possible, however, to uphold and preserve Zambian customary law while also embracing human rights and curbing GBV. Ndulo writes, “By enthusiastically joining international human rights instruments and adopting their own African instruments such as the African Human and People Rights Charter and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, African states are embracing the international human rights movements and its universality.”⁴¹

Customary law is a living, breathing entity and thus can be massaged, updated, and changed just like any other system of law without risk of throwing the entire system away. The best practice going forward, Ndulo asserts, is to selectively prune those customary laws which are antithetical to supporting equality and dignity of all persons, while still preserving those important and nondiscriminatory clauses and laws.⁴²

³⁸ Ndulo, Muna. (2011). African Customary Law, Customs, and Women's Rights. *Cornell Law Faculty Publications*, 187, 92.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 91.

⁴¹ *Ibid.*

⁴² *Ibid.*, 115.

Findings

Factors that Influence GBV

One of the most significant factors contributing to GBV in Zambia is the socialization of men, women, and children. According to the director of the National Legal Aid Clinic for Women (NLACW), men and women are taught to believe that men are stronger, more powerful, and “in-charge,” when compared to women. Wives are taught that their wishes and preferences are secondary to that of their partner. This inherent power inequality makes women vulnerable to GBV.

The Programmes Manager in the Women’s Rights division for ActionAid Zambia, explains that this socialization begins at a young age, when boys and girls are in primary school. Although girls are going to school at a higher rate than ever before in Zambia, their education is typically perceived to be secondary to responsibilities within the home. In households where education is not the highest priority, girls must cook, look after their siblings, and clean the home after returning from school every day. These chores often inhibit them from completing their homework. Further, a study conducted by UNICEF found that around the time of their first menses, girls may also drop out of school for lack of feminine hygiene products, and these dropout rates are compounded by their household responsibilities.⁴³

In contrast, boys’ education is prioritized to a greater extent and without such adversity. These educational differences prevail later on in life and cause unequal gender dynamics in education, the job market, generations of families, and beyond.

Child marriages often serve as both a barrier to education for girls and a factor that increases the likelihood of GBV. In many tribes in Zambia, girls are considered to have entered womanhood at the age of their first menstruation. In tribes where child marriage is practiced, these young girls may then enter into marriage with an older man and become pregnant. Currently it is estimated that one in three girls in Zambia are married before the age of 18.⁴⁴ Within these marriages, statutory rape and domestic violence become more likely, as the gender inequity is magnified by the age gap.

Combating child marriages has been a major focus of the Zambian government and various NGOs, and through recent advocacy and policy implementations, the prevalence of child

⁴³ Burgers, L. (2003, November 3). Background and Rationale for School Sanitation and Hygiene Education.

⁴⁴ UNFPA (2016). Annual Report 2016.

marriages has decreased. However, despite this forward progress, child marriage still exists in some parts of the country.

In Article 23 of the Zambian Constitution, it is established that no laws may be discriminatory in any way. However, there are some exceptions to discrimination clauses. Section 4 of Article 23 outlines several areas of law where anti-discrimination clauses do not apply. Noteworthy in the context of GBV is Section 4(c), which explains that discrimination and protections do not apply “with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.”⁴⁵ This rule can be used to justify child marriages, as statutory law is not applicable unless the law is considered “repugnant to natural law.” As explained earlier, this is relatively subjective and difficult to discern.

A further issue, is the potential loophole for child marriages in Section 17 of Zambia’s Marriage Act. It states, “If either party to an intended marriage... is under twenty-one years of age, the written consent of the father...or of the mother...shall be annexed.”⁴⁶ This allows for children as young as 16 to be married off by their parents without the consent of the child.

Issues of GBV do not only exist in child marriages. In traditional marriages, a bride-price, typically referred to as a Lobola, is often paid from the man to the family of his desired wife. According to the Director of Zambia’s Young Women Christian Association, bride-prices often consist of money or livestock, and may vary depending on the age of the woman, education level, family wealth, and virginity status. The Director feels that although bride-prices are heavily intertwined with cultural beliefs, they create uneven power dynamics between husband and wife. They went on to explain, “Now she’s his property. He can treat her anyway he wants.” Additionally, once in marriage, some Zambian culture states that a woman cannot deny sex from her husband. The mentality that non-consensual sex is rape, even in marriage, has not yet been normalized. This lack of reasoning inevitably perpetuates GBV as well.

The Chairperson of the Non-Governmental Organisations’ Co-ordinating Council (NGOCC), echoed these sentiments in a public statement to the Lusaka Times. They said, “The high Lobola fee being charged is considered as a price paid for the transfer of a woman’s sexual and economic rights to her husband and his family. It is no doubt that the high Lobola

⁴⁵ Zambia Const., Article 23, Section 4(c).

⁴⁶ Marriage Act, Zambia. Sect. 17.

charge has a negative effect on the marital stability and has contributed to the rise in child/early marriages and violence against women and girls.”⁴⁷

Some, however, do not see bride-prices as an issue. As explained by an UNZA Law Professor, bride-prices can be a sign of respect, and serve to symbolically join two families together. They explained that bride-prices do not directly cause GBV, and its cultural significance is incredibly valuable.

According to a manager for the YWCA, poverty and lower literacy rates also contribute to higher GBV rates. They noted that “a hungry man is an angry man,” and when money is tight, men often take their anger out on their spouses. Further, they explained that lower literacy rates in rural areas prevent men, women, and children from being aware of their rights and the laws that are in place to protect them. Despite many GBV advocacy pamphlets and campaigns that are introduced to villages and rural areas, an inability to read these educational materials is a major inhibitor to spreading awareness.

Barriers to GBV Education

Almost all our interviewees agreed that education was the key to eliminating GBV. Though the AGBV Act states that GBV cases must be handled in statutory court, this does not always happen. A member of the Women in Law and Development in Africa (WiLDAF) explained that though the AGBV Act has been translated into many local languages and disseminated all across the country, not all local adjudicators are aware that these cases need to be handled in statutory courts. When a case is not brought to these courts, but handled in customary courts, they occasionally conclude with the perpetrator paying a fine, or giving the family of the victim a specific amount of livestock. According to her, reparations of this sort are problematic. She explained that when the punishment of someone who commits GBV is to pay the family, it creates the notion that GBV can be repaid, rather than it being a severe violation of human rights. With heightened sensitization efforts of local magistrates, these cases are more likely to be turned over to the statutory courts, where survivors are guaranteed justice and protection from their perpetrators.

Sensitization beyond legal recourse is also important for local leaders. As a representative of the NLACW said, “traditional chiefs are the gatekeepers of culture. They must be educated so they can spread the word to the community.” The NLACW has significant success in traveling to, and working with local chiefs to encourage the modification of local customary law. They propose teaching progressive thought like considering girls to be women at 18 years old rather than after their first menstruation, which typically occurs

⁴⁷ Longwe, S. H. (2017, February 27). Zambia : NGOCC Supports the Payment Of "LOBOLA". Retrieved from <https://www.lusakatimes.com/2017/02/27/ngocc-supports-payment-lobola/>

around the age of 12 or 13. The NLACW has advocated for this amendment to customary law by underscoring the importance of school, explaining that when women get married at a younger age, they are unable to continue with their studies.

Further advocacy work by NGOs like the NLACW have been educating chiefs and local adjudicators on the basics of the AGBV Act and their obligation to adhere to it.

Support for GBV Survivors

According to a representative of the Zambia Police (ZP) Victim Support Unit (VSU), distance, and cost, and the psychological trauma are major barriers that prevent survivors of GBV from formally reporting their cases to the ZP, or trying their cases in statutory courts. However, many efforts have been made to make this process easier and more comfortable for survivors.

The representative explained victims of GBV may receive free medical treatment at health centers all throughout the country. However, in order to receive this medical attention, victims of GBV must first go to the ZP to report the case, so they can have a notice from the police that informs the health center that they are a victim of GBV, and therefore entitled to free healthcare. This process is not only emotionally exhausting for victims of GBV, as they need to tell many people about their experience, but also costly and time consuming. They went on to say, “When we referred people to go to the police, they never got there. When we referred them to the hospital, they never got there. Because I think there’s this fatigue of going from one place to another and reliving trauma.”

In an effort to make this process easier for victims of GBV, organizations like the United States Agency for International Development (USAID) created and funded one-stop centers (OSCs), which have been established throughout the country. Currently, there are 24 OSCs functioning in Zambia.⁴⁸ CARE Zambia has described OSCs as a space to aid the physical well-being of survivors, and “to address their psychological and emotional needs as well, and in a holistic way. Services provided by OSCs include medical examinations, access to post-exposure HIV prophylaxis (PEP), the provision of emergency contraceptives; psychosocial counseling; legal advice; police support; and referrals for resources such as lodging at safe houses for victims unable to immediately return to their homes.”⁴⁹ The representative gave further detail: “YWCA has One (1) One Stop Centre located in Solwezi and Drop in Centres in other districts such as Lusaka, Kapiri, Kabwe, Kasempa, Kitwe,

⁴⁸ Zambia's Ministry of Health Integrates U.S.-Funded One-Stop Centers into Fight Against Gender-based Violence. (2018, March 07).

⁴⁹ ASAZA Staff. (2013, May). One-Stop Model of Support for Survivors of Gender-Based Violence: Lessons from CARE Zambia.

Ndola, Kalulushi, Monze, Choma, Livingstone, Kazungula, Chipata, Mbala, Kasama, Kaoma, Mongu, Senanga. On an annual basis, YWCA receives approximately 8,000 to 10,000 cases. YWCA also has temporal protective shelters in Lusaka (2), Kitwe, Solwezi, Mongu, Chipata and Kasama. The other One Stop Centers were created under the STOP GBV project that was funded by USAID and ended last year. Approximately 24 OSCs were supported in various districts.”

While OSCs have been a resource to survivors thus far, their introduction into Zambian society has been almost completely funded by international donations. Since USAID’s five year pilot program ended last year, OSCs have had to limit their hours and cut down on staff. According to the ZP representative, the continuity of this facility is integral in providing support to survivors, because GBV is not an issue that is going away any time soon.

Many survivors of GBV who have come to OSCs have been referred by the VSU at their local police department. According to the representative, the VSU has been instrumental in helping survivors receive the help that they need. By having a VSU in nearly every police station across the country, survivors of GBV are treated with more support and confidentiality than ever before.

Despite well-intentioned efforts by the VSU, many stakeholders who work more intimately with survivors of GBV identify significant room for improvement. Upon personal observation, the VSU at the ZP Headquarters is a small room at the end of a dimly lit hallway, where six desks are fit into a confined jigsaw arrangement. All of the desks were filled by men, and though some said that all but one VSU officer leaves the room when a survivor of GBV enters to report a case, others challenged this fact. A representative from Zambia’s Young Women Christian Association said through her interactions with survivors of GBV, she has learned that the VSU is rarely a comfortable space. The VSU representative admitted that the VSU is still in need of more infrastructural support. He explained that in order to guarantee privacy for the survivor, a separate entrance to the VSU would be effective. However, cost and space inhibit these accommodations.

Beyond a facility upgrade, the VSU representative noted that the VSU needs to be prioritized more within the police department, and higher salaries must be offered to VSU officers. Often, police officers who are just beginning their careers will be assigned to the VSU, because it is one of the lowest paying departments within the ZP. From there, officers tend to move up the ranks, and out of the VSU. If an officer has committed an infraction, it is not uncommon for them to be sent to the VSU as “punishment.” As the representative of the VSU identified, in order for GBV to be treated more seriously within Zambian law enforcement, it cannot be relegated -- literally and figuratively -- to the back corner.

Underreporting, Police Responsiveness

The number of GBV cases that are reported to the ZP is rising dramatically (See Appendix D). According to the representative from the VSU, 18,088 cases were reported in Zambia in 2015. By 2017, the number of reported cases had risen to 21,504. The representative from the VSU explained that there are three possibilities for such a drastic increase in reported GBV cases: One is that GBV is on the rise in Zambia. Another is that with the enactment of anti-GBV legislation and the introduction of fast-track courts, more survivors of GBV have begun to trust the judicial process and report cases to authorities. The last possibility, he explained, is that both are happening at the same time.

A representative from the Young Women's Christian Association sees this increasing trend in a positive light. She said, "We are breaking the silence on GBV. This is important to happen." However, she makes it clear that underreporting is still a major issue within the country. She explained that one of the biggest inhibitors to reporting a GBV case is that the perpetrator is often the "breadwinner" for the family. If a case is prosecuted and the perpetrator is sent to prison, the family loses the economic support that it relies on. Because of this, survivors of GBV tend to be very hesitant to turn to the police.

According to a representative from NLACW, many survivors of GBV turn to religious figures, friends, family, and community leaders to cope with the trauma of GBV. When survivors do not prosecute the cases, however, the likelihood that the survivor will experience more GBV in the future dramatically increases. The introduction of fast-track courts has aided in encouraging survivors of GBV to report their cases, as the courts are more user-friendly and sensitive to these types of emotional issues. As the representative from NLACW pointed out, the number of reported GBV cases increased dramatically after 2016, when the fast-track courts were first introduced.

Despite this increase in GBV cases, many are withdrawn prior to, or during the court proceedings. The representative from NLACW explained that many survivors of GBV who are married to the perpetrator often opt to divorce their spouse, rather than prosecute them.

Although there is supposed to be a VSU officer on-call at all times at every police station, GBV reports are often submitted when the VSU is closed, which is on the weekends and at nights. Because of their limited hours, many GBV reports are handled by police officers who are not sensitized on issues of GBV. A representative from WiLDAF said that these officers have reportedly encouraged the GBV survivor to "make-up" with the perpetrator, rather than treating it more seriously. Thus, many cases are also withdrawn after the initial police report is filed. According to a study conducted by Zulu and ActionAid Zambia, only 29% of

police officers in Zambia were familiar with the AGBV Act. Zulu questioned how the ZP could claim to be sensitized to issues of GBV when so few police officers know about such a landmark piece of legislation.

Trust in Courts

One of the provisions in the AGBV Act is that GBV cases do not need to be tried in the courts closest to the survivor, rather than can be tried anywhere in the country.⁵⁰ This allows survivors to pursue their cases in the fast-track courts in Kabwe or Lusaka, and provides greater assurance that there will be no corruption or bias during the court proceedings. The representative from NLACW explained that this part of the AGBV Act increases trust and confidence in the courts, as survivors can try their cases in a court that they feel will provide greater confidentiality, sensitivity, and fairness.

While this option is beneficial to those who want heightened confidentiality, some victims of GBV feel more comfortable when they are in their own community and where travel cost is less of a burden. A representative from the Local Courts in Zambia, explained that in some rural areas, local and traditional courts are the only source of legal justice. Because of this, many GBV cases are simply handled in these courts, rather than in statutory courts, as mandated by law. A representative from the Gender Programme at the United Nations Development Programme (UNDP) said that she believes the introduction of fast-track courts will encourage these GBV survivors in rural areas to pursue their cases in statutory courts. She explained that NGOs like the UNDP must continue to educate local adjudicators on the AGBV Act, their jurisdiction, and overall sensitization to acts of GBV.

Judicial Inconsistencies Between Customary and Statutory Courts

While all interviewees see dissonance between the customary and statutory courts, perceptions of inconsistencies and proposed solutions vary. According to the representative from NLACW, a major issue within customary courts is that legal representation is prohibited. In all matters, the plaintiff and defendant must represent themselves. Because of this unique characteristic of the court, the representative from NLACW underscores the importance of ensuring that all adjudicators are educated in both statutory law and customary law. Without education of black-letter law, local adjudicators will be unaware of their jurisdiction and the statutory laws that supercede customary laws in the area.

⁵⁰ Ministry of Gender. (2011). *The Anti-Gender Based Violence Act*. Lusaka, Zambia: Zambia Government Printing Office.

Further, the representative from Zambia's Young Women Christian Association stressed the importance of having survivors receive legal counseling, so they may choose the legal path for their case. As the representative from the Local Courts in Zambia identified, it can be difficult for local adjudicators to distinguish between GBV and assault. While customary courts do have jurisdiction in assault cases, they do not for cases of GBV. He went on to say that among many local adjudicators, there is a continued perception that GBV is not something to be dealt with in court. Rather, it is a marital quarrel that should be resolved between husband and wife. Hence, prompt legal counseling is incredibly important.

In the context of the dual legal system, many stakeholders believe that the system itself is a mistake, as there are irreconcilable inconsistencies between customary and statutory law. They believe that Zambians are often confused by these inconsistencies, and thus enabled to believe there are loopholes in the law. Further, they believed that the dual legal system has been abused, and the solution is to "bridge the gap" and have one unified legal system.

Others, however, strongly disagree with the notion that customary law must be eradicated. A professor at the University of Zambia School of Law explained that when someone calls for the elimination of customary law, their intentions and understanding of the law must be explored. Unwritten customary law emanates from the people themselves and adapts to changing circumstances. Therefore, it has the potential to align itself with modern conditions. She said, "You cannot say that a system of law that is dynamic is inherently conflictual to human rights." She believes that regardless of whether it is recognized by the government, customary law is not going away any time soon. It is regulated by the people and thus must be naturally developed to align with people's needs.

The representative from WiLDAF agrees with this perspective regarding customary law. She said, "There is a perception among people in Zambia that statutory law has come to erase all traditional practices, but that isn't true. We don't want to get rid of customary law—there's still a rich heritage there we must maintain. In my opinion, we need to keep the good traditional practices and get rid of the ones that are harmful."

Court Efficiency and Specialization

According to all stakeholders, the fast-track courts are a step in the right direction, but there is still need for improvement. Most attribute the issues with the fast-track courts to the fact that they are still in their infancy, and long-term remedies to day-to-day issues are still being evaluated.

According to the representative from WiLDAF, the fast-track courts are unlikely to make any major advancements in the near future. She explained that many parts of the AGBV Act,

which was enacted nearly eight years ago, have still not come to fruition. Namely, the AGBV fund, committed to alleviating the large legal and health costs that emerge from GBV, AGBV Committee, dedicated to proposing more legislation to curb GBV, and an increase in shelters, have not yet been implemented. She said, “My recommendation would be the full implementation of the Anti-Gender-Based-Violence Act. We are supposed to have shelters--we still don’t have shelters. It also provides for the establishment of a fund, but we have not seen the guidelines for the fund, and this is the seventh year since the enactment of the act.” While signing the AGBV Act was a “win” for anti-GBV efforts, the execution of this law is lacking.

Policy Implications

Limitations

After reading hundreds of pages of literature review and interviewing nearly a dozen experts in the fields of GBV and the dual legal system, a number of policy implications have emerged. However, in the discussion of how to best move forward to promote cultural self-determination while curbing GBV in Zambia, we are mindful that our recommendations come from a limited and detached perspective. Upon review of the various limitations that our research has faced, the mere fact that the development of this paper was conducted in less than seven weeks is significant. This time constraint imposed some issues in executing a well-rounded research paper, as we were unable to receive clearance from Zambia’s Institutional Review Board, and therefore limited in our access to various primary stakeholders. Further, the time constraint prevented us from traveling to more rural areas in Zambia and developing a deeper understanding of customary law. Due to the nature of the courts in Zambia, quantitative statistics on fast-track courts, GBV cases, and nationwide court efficiency data was limited. This data would have been useful in developing a more well-rounded study.

Policy implication #1: Enact GBV prevention programs in schools and the workplace that focus on socialization of adolescents and conceptions of masculinity and femininity.

An anti-GBV curriculum in schools and the workplace would be valuable to ensure maximum outreach on the dangers of GBV. Several interviewees proposed the blending of anti-GBV education with that of HIV/AIDS outreach. In doing this, GBV can be framed as a public health issue and a violation of human rights, rather than a personal matter that can be resolved within the home.

A major aspect of the NLACW’s work is that of outreach in rural areas. In conjunction with the Law Association of Zambia and the Royal Norwegian Embassy, the NLACW has

published a series of pamphlets intended to educate men, women, and children on topics like GBV, the Zambian legal system, rights of a child, defilement and incest. These pamphlets are written in simple English, with colorful visuals and questions for engagement. The distribution of this literature must be increased and people must be encouraged to read it. Nearly every one of our interviewees identified education of reimagined gender norms and Zambia's laws as a solution to curb GBV.

Policy implication #2: Increase education of traditional leaders, judges, teachers and police on statutory law, its relationship with customary law, and GBV so the laws are enforced properly.

In May 2015, the Zambian government and United Nations Joint Programme on Gender-Based Violence published "Gender-Based Violence Training Manual for Local Court Adjudicators and Traditional Court Adjudicators," intended to educate these individuals on fast-track courts, the AGBV Act, and their jurisdiction when GBV cases are brought before them. After publication, workshops and guided discussions have been held all over the country by members of CSOs and NGOs like the NLACW and WiLDAF to ensure complete understanding of the content of the manual. Within the manual, there are concrete instructions on how to handle GBV cases, the statutory law surrounding these types of cases, and sensitization of GBV issues. The manual frames GBV as a human rights violation that must be handled seriously and sensitively, rather than treating GBV like any other assault or violence between two people.

It is imperative that these trainings are continued and expanded, to ensure that local court and traditional court adjudicators are fully aware of the laws surrounding GBV. These NGOs and CSOs must continue to make this outreach a priority in their work, and continue to receive funding from bodies like the United Nations and various European embassies.

Policy implication #3: Increase funding and resources for VSUs and OSCs throughout Zambia.

Based on input from various experts who are committed to curbing GBV, increased funding and resources for VSUs and OSCs are essential for their long-term success. Currently, these units rely heavily on financial support from European embassies, NGOs, and CSOs. As these organizations shift their initiatives and focuses, it is imperative that more sustainable and lasting sources for funding are established. From a purely infrastructural perspective, funding must be increased to pay VSU officers more, allow for VSUs to have their own designated office space at every police station, and increase the number of OSCs within the country.

As explained in the findings section of this paper, personal observation indicates that there must also be institutional change within the Unit itself. Moving forward, VSU officers must become even more sensitized to cases of GBV. The intimidating, male-dominated culture that often exists among the ZP must not permeate into the VSU.

Policy implication #4: Prioritize fast-track courts so they become more accessible for people in rural areas.

Currently there are two fast-track courts in Zambia, in the populated cities of Lusaka and Kabwe. While there are some issues and areas for improvement, these courts have been a good start in curbing GBV. Since their introduction, rudimentary statistics indicate that they have been extraordinary successful. More survivors are pursuing the statutory court system to prosecute their GBV cases, and these cases are being handled in an expedited and more user-friendly way.

In order to spread awareness and accessibility of these fast-track courts to all Zambians, and not just those who live close to Kabwe and Lusaka, they must be more of a priority for the Zambian government, and more courts must be opened. The AGBV Act already allows for Zambians to pursue GBV cases in any of Zambia's courts, but the cost of travel from more rural areas to the fast-track courts serves as a barrier for many survivors. Pending financial support, the Judiciary plans to open more fast-track courts throughout the country. By expanding the sheer number of courts in Zambia, they become more accessible for all Zambians.

Policy implication #5: Increase economic and social empowerment programs for women to ensure that cases are not dropped because the survivor is concerned about financial security and well-being.

Along with substantial legislation and government support to curb GBV, there must also be initiatives and programs to empower women and provide them with the independence and confidence that is needed to pursue GBV cases. Many GBV cases are dropped, or not pursued at all, because the victim of GBV feels dependent on the perpetrator for financial and social support. By empowering women both economically and socially, these concerns will be less of a barrier.

Conclusion

Gender-based violence is by no means an issue that is specific to Zambia. Countries all around the world struggle to combat gender-based violence and have employed various

initiatives, laws, and programs in hopes of making a difference and keeping people safe. The issue for Zambia, however, is the execution of these anti-GBV tactics.

When evaluating the legislation that is in place to fight against gender-based violence, seemingly everything has been addressed in the formal system. The AGBV Act is progressive and expansive, and VSUs, OSCs, and fast-track courts are all in place to ensure that survivors of gender-based violence receive the legal and non-legal support that they need. However, in reality, specifically outside of the major cities, execution is sparse. The AGBV Act is not being executed to its fullest extent, as there is still no anti-GBV Committee to handle legal and social issues of GBV, anti-GBV Fund to handle financial barriers to justice, or extensive state-funded shelters for victims. The VSUs and OSCs are underfunded and often lacking in space, and the fast-track courts require more infrastructure, resources, and sensitized judges to handle a large caseload. In the realm of execution, there is need for improvement.

Further, it is evident that there is potential for the dual legal system to be harmonized across the whole country in a way that preserves Zambian culture while promoting gender equality and curbing gender-based violence. A professor at UNZA explained that living customary law is special because it adapts to the times, and modernizes as is necessary. Living customary law can, and often does, promote human rights. A commonly held, but incorrect, belief is that customary law is static, and is repugnant to current cultural norms and rights. This perception, however, originates from Zambia's colonial period when written customary law and its related repugnancy clause were employed as a tactic by Britain to justify the oppression of Zambians. When customary law is written down, it becomes unable to adapt and modify to changing times.

Critics of the Zambian legal system have used this misconception as justification to call for the elimination of customary law entirely. They have referenced written customary law in arguing that, in the context of gender-based violence, it is archaic, and antithetical to gender equality. The effort to curb gender-based violence does not require the eradication of Zambian customary law, but rather the embrace of its nature as a living code of ethics that changes with changing ethical norms. A more nuanced and accurate understanding of customary law is critical before making such a dramatic proposition.

While moving forward and continuing to evaluate the current state of gender-based violence in Zambia and the social and legal avenues for survivors of gender-based violence, further research must be executed. Pairing the qualitative findings of this paper with quantitative findings would be valuable in producing more holistic research. Further, as fast-track courts open in more areas throughout the country, there must be continued evaluation of their effectiveness and execution. Lastly, investigating the current and future

financial dependency that the VSU, OSCs, and fast-track courts rely upon would be meaningful to gaining a deeper understanding of this topic.

Throughout the process of conducting this research, perhaps the most optimism regarding the fight against gender-based violence in Zambia comes from our interviewees working at governmental, judicial, legal, non-governmental organizations. Through our conversations with these individuals, we have found their commitment and dedication to curbing gender-based violence to be admirable. As Zambia continues to face the threat of gender-based violence throughout the country, we trust that their steadfast commitment to making a difference will persist, and that those watching around the world will continue to support their work.

Appendices

Appendix A: Logic Model

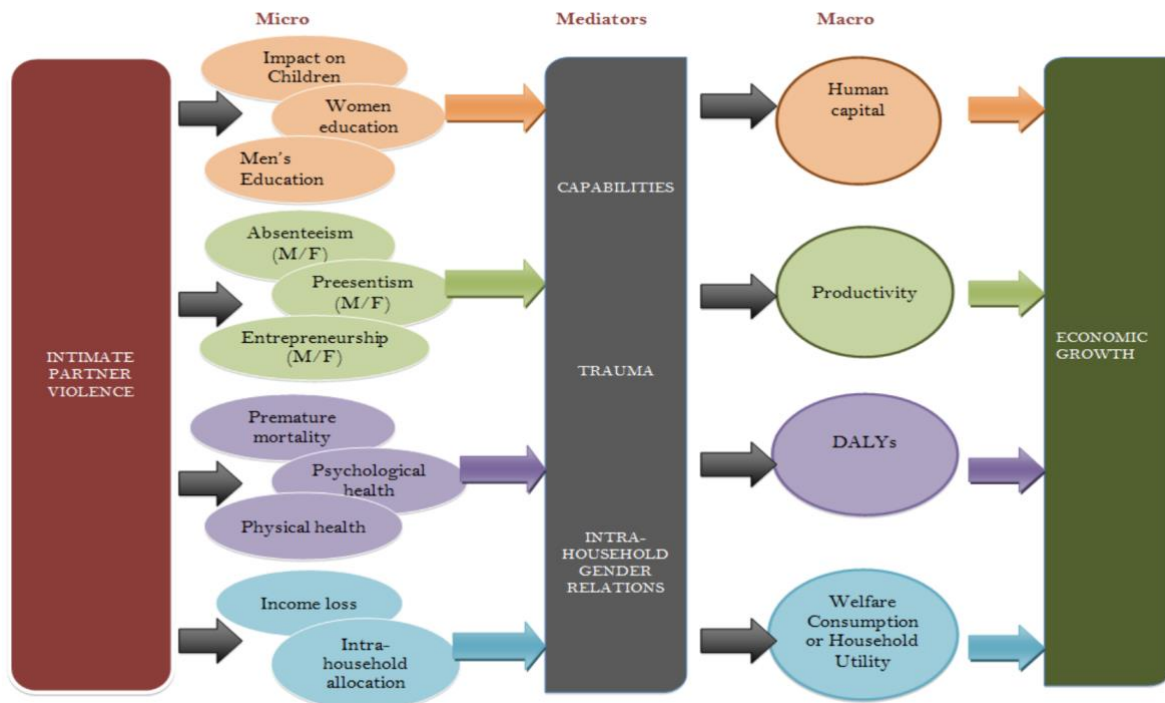
Inputs	Participants	Activities	Short Term	Medium Term	Long Term
Funding	Government and Int'l Donors	Increases to VSU and OSC to improve facilities and hours	Survivors will be able to come forward at any given time; won't be limited by hours	Reporting statistics will become more accurate	Trust in police and VSU will increase; survivors will be able to move past their trauma
Community Organization	Teachers & Educators	Sensitization for teachers & guidance counselors	Students will feel more comfortable reporting incidences of GBV	Justice for GBV survivors in school will be dispensed more often	GBV in schools will decrease
Curriculum Planning	Ministry of Gender	Creation of a GBV prevention curriculum in primary & secondary schools	Students will become more aware of GBV as a human rights violation	GBV in schools will decrease	Girls will drop out of school due to emotional trauma less
Legislation	Ministry of Justice	Prioritization of Fast-Track Court expansion, enhanced data collection on court cases	Reporting will increase with greater access to courts	Justice will be dispensed more efficiently	Would-be perpetrators less likely to commit GBV
Program Implementation	Ministry of Finance	Increase access to income generating activities specifically for women	Increase in economic independence	Standard of living in the home will increase	GBV less likely to occur; woman can feel free to leave if it does

Appendix B: Gender Perceptions on Wife Beating in Zambia (Klomegah)

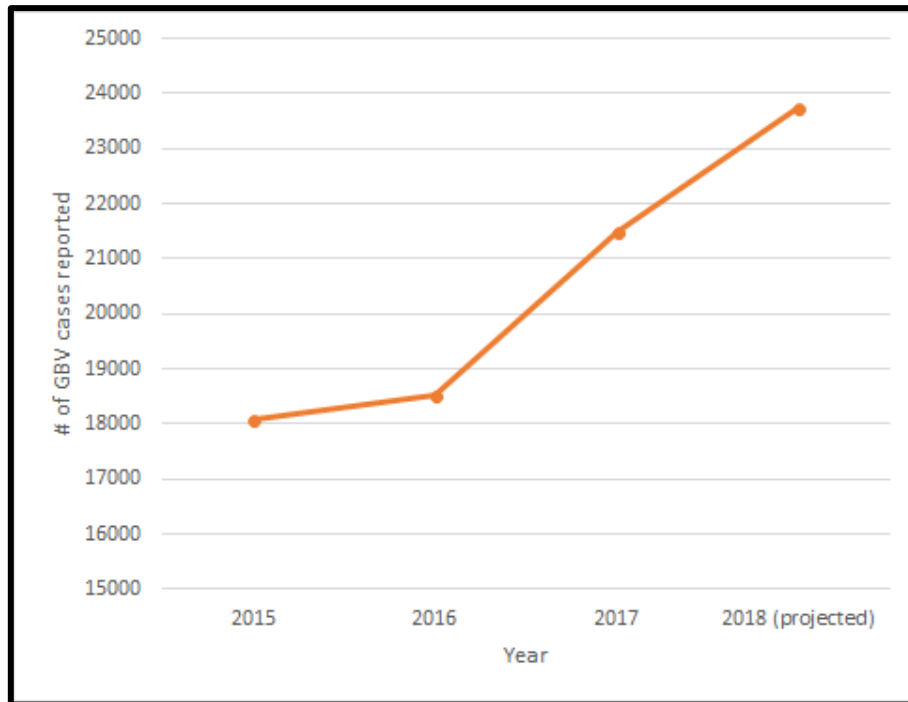
Gender Perceptions on Wife Beating in Zambia.

Cultural Beliefs	Female (N = 4731) % (n)	Male (N = 1239) % (n)
Wife beating justified if she goes out without telling him		
No	16.8 (789)	44.9 (555)
Yes	83.2 (3909)	55.1 (682)
Wife beating justified if she neglects the children		
No	36.5 (1711)	55.5 (687)
Yes	63.5 (2981)	44.5 (551)
Wife beating justified if she argues with him		
No	42.7 (1994)	62.5 (773)
Yes	57.3 (2679)	37.5 (463)
Wife beating justified if she refuses to have sex with him		
No	47.2 (2189)	76.0 (935)
Yes	52.8 (2445)	24.0 (296)
Wife beating justified if she burns the food		
No	51.6 (2426)	77.9 (963)
Yes	48.4 (2271)	22.1 (273)

Appendix C: Economic Cost of IPV (World Bank Group)



Appendix D: Reported GBV Cases in Zambia



List of Stakeholders

University of Zambia School of Law Professor
Coordinator, Victim Support Unit
Director of Local Courts
Gender Programme Coordinator, United Nations Development Programme
Director, National Legal Aid Clinic for Women
Programmes Manager, Young Women's Christian Association
Access to Justice Coordinator, Women in Law and Development in Africa
Director, Young Women's Christian Association
Professor, Cornell University School of Law; Director, Cornell Institute for African Development
Gender & Policy Analyst, ActionAid Zambia

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Deep appreciation is due to our stakeholders and interviewees — all were receptive to our questions, provided valuable insight, and were incredible additions to our research. The amount of passion that so many civil society organizations, NGOs, and government officials contain in the fight to end gender-based violence in Zambia is inspiring. Special thanks is also extended to Elena Lakso Tesáková, whose paper, “The Establishment of Fast-Track and User-Friendly Courts in Kabwe and Lusaka to Fight Gender-Based Violence Cases” informed much of our literature review. Elena was also helpful in personally connecting us with many of our initial stakeholders.

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