

Zambia

## Anti-Gender-Based Violence Act, 2010

Act 1 of 2011

Legislation as at 15 April 2011

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## Zambia

# Anti-Gender-Based Violence Act, 2010

## Act 1 of 2011

*Published on 15 April 2011*

**Assented to on 12 April 2011**

**Commenced on 15 April 2011**

*[This is the version of this document from 15 April 2011.]*

**An Act to provide for the protection of victims of gender-based violence; constitute the Anti-Gender-Based Violence Committee; establish the Anti-Gender-Based Violence Fund; and provide for matters connected with, or incidental to, the foregoing.**

ENACTED by the Parliament of Zambia.

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Anti-Gender-Based Violence Act, 2010.

#### 2. Application of relevant Acts

- (1) An act of gender-based violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other written law.

*[Cap. 88; Cap. 87]*

- (2) Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other written law the provisions of this Act shall prevail to the extent of the inconsistency.

*[Cap. 1]*

#### 3. Interpretation

- (1) In this Act, unless the context otherwise requires—

"**abuse**" means conduct that harms or is likely to cause harm to the safety, health or wellbeing of a person;

"**aggravated**" in relation to gender-based violence, means any act of gender-based violence which—

- (a) causes the victim to suffer wounding or grievous bodily harm; or
- (b) the court otherwise considers to be so serious as to be aggravated, taking into account—
  - (i) whether a weapon was used;
  - (ii) evidence of pre-meditation;
  - (iii) whether the victim is particularly vulnerable;
  - (iv) any failure, by the police, the court or any official body, to respond to previous warnings; and
  - (v) any other consideration the court considers appropriate;

"**applicant**" means a victim who applies for a protection order, or on whose behalf an application for a protection order is made, under this Act;

"**associated respondent**" means a person associated with a person against whom an application for a protection order is made;

"**care institution**" includes an educational institution;

"**child**" means a person below sixteen years;

"**court**" means a subordinate court;

"**domestic relationship**" means a relationship, between a victim and a respondent in any of the following ways:

- (a) the victim and the respondent are or were married to each other, under any law, custom or religion;
- (b) the victim cohabits with the respondent in a relationship in the nature of a marriage notwithstanding that they are not married, were not married to each other or could not or cannot be married to each other;
- (c) the victim is engaged to the respondent, courting the respondent or in an actual or perceived romantic, intimate, cordial or sexual relationship of any duration;
- (d) the victim and the respondent are parents of a child, are expecting a child together or are foster parents to a child;
- (e) the victim and the respondent are family members related by consanguinity, affinity or adoption, or would be so related if they are married either customarily or under any law or religion, or are able to be married, or if they are living together as spouses although they are not married;
- (f) the victim and the respondent, share or shared the same residence or are co-tenants;
- (g) the victim is a house-help in the household of the respondent;
- (h) the victim lives in or attends a public or private care institution and is under the care and control of the respondent; or
- (i) the victim is in a relationship with the respondent determined by the court to be a domestic relationship;

"**economic abuse**" means—

- (a) the unreasonable deprivation of any economic or financial resources to which a victim, or a family member or dependant of the victim is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, medical expenses or school fees and mortgage bond repayments or rent payments in respect of a shared household;
- (b) denying a person the right to seek employment or to engage in an income-generating activity;
- (c) unreasonably depriving a victim, a family member or dependant of the victim, of property in which the victim, family member or dependant of the victim has an interest or a reasonable expectation of use, or unreasonably disposing of such property; or
- (d) intentionally destroying or damaging property in which the victim of gender-based violence, a family member or a dependant of the victim of gender-based violence has an interest or a reasonable expectation of use;

**"emergency monetary relief"** means compensation for monetary loss suffered by a victim of gender-based violence at the time of the issue of a protection order as a result of the gender-based violence, including, as appropriate—

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) relocation and accommodation expenses; and
- (d) household necessities;

**"emotional, verbal and psychological abuse"** means a pattern of degrading or humiliating conduct towards a person, including—

- (a) insults, ridicule or name-calling;
- (b) threats to cause emotional pain or distress;
- (c) the exhibition of obsessive possessiveness which is such as to constitute a serious invasion of the person's privacy, liberty, integrity or security; or
- (d) any act, omission or behaviour constituting gender-based violence which, when committed in the presence of minor members of the family, is likely to cause them mental injury;

**"gender"** means female or male and the role individuals play in society as a result of their sex and status;

**"gender-based violence"** means any physical, mental, social or economic abuse against a person because of that person's gender, and includes—

- (a) violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to the person, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life; and
- (b) actual or threatened physical, mental, social or economic abuse that occurs in a domestic relationship;

**"harassment"** means engaging in a pattern of conduct that induces in a person the fear of imminent harm or feelings of annoyance and aggravation, including—

- (a) sexual contact without the consent of the person with whom the contact is made and making unwanted sexual advances;
- (b) following, pursuing or accosting a person or making persistent, unwelcome communication with a person and includes—
  - (i) watching, loitering outside or near a building where the harassed person resides, works, carries on business, studies or happens to be;
  - (ii) repeatedly making phone calls or using a third party to make phone calls to the harassed person, whether or not conversation ensues;
  - (iii) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other offensive objects or messages to the harassed person; or
  - (iv) engaging in any other menacing behaviour;

**"HIV"** means human immunodeficiency virus;

**"household chattels"** include jewellery, clothes, books, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, motor vehicles, other than vehicles used wholly for commercial purposes, and household livestock;

"**imminent harm**" in relation to an applicant, includes harm that the applicant fears is likely to happen taking into consideration the history of the respondent's violent behaviour towards the complainant or other relevant factors;

"**interim protection order**" means an order made by the court under subsection (6) of section twelve pending the final determination of an application;

"**intimidation**" means intentionally inducing fear of imminent harm in a person whether by words or actions and whether by oneself or by the use of a third party by—

- (a) threatening to abuse that person or a third party;
- (b) threatening to damage, destroy or dispose of property in which that person or a third party has a material interest; or
- (c) exhibiting a weapon before that person;

"**marriage**" includes marriage under any law, custom or religion;

"**next friend**" means a person who intervenes to assist a victim who is a child or who has a mental disability to bring a legal action;

"**order**" means a protection order or other order that the court may make under this Act;

"**physical abuse**" means physical assault or use of physical force against another person, including the forcible confinement or detention of another person and the deprivation of another person of access to adequate food, water, clothing, shelter, rest, or subjecting another person to torture or other cruel, inhuman or degrading treatment or punishment;

"**physical, mental, social or economic abuse**" means any act, omission or behaviour or threat of any such act, omission or behaviour which results in death or is likely to result in the direct infliction of physical, sexual or mental injury to any person, and includes—

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal or psychological abuse, including any conduct that makes another person feel constantly unhappy, humiliated, ridiculed, afraid or depressed or to feel inadequate or worthless;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) controlling behaviour such as isolating a person from the person's family and friends, monitoring the person's movement and restricting the person's access to information or assistance;
- (i) malicious damage to property;
- (j) forcible entry into a person's residence, where the parties do not share the same residence;
- (k) depriving a person of, or hindering a person from access to or a reasonable share of the use of the facilities associated with the person's residence or forcible entry into a person's room or into a room occupied by a person, where the parties share the same residence;
- (l) the unreasonable disposal of household effects or other property in which a person has interest;

- (m) abuse delivered from the following cultural or customary rites or practices:
  - (i) forced virginity testing;
  - (ii) female genital mutilation;
  - (iii) pledging of a person for purposes of appeasing spirits;
  - (iv) forced marriage;
  - (v) sexual cleansing;
  - (vi) child marriage;
  - (vii) forced spouse inheritance; or
  - (viii) sexual intercourse between persons within the prohibited relations of affinity or consanguinity;
- (n) abuse perpetrated on a person by virtue of the person's age, physical or mental incapacity, disability or illness;
- (o) conduct that in any way harms or may harm another person, including any omission that results in harm and either—
  - (i) endangers the safety, health or well-being of another person;
  - (ii) undermines another person's privacy, integrity or security; or
  - (iii) detracts or is likely to detract from another person's dignity or worth as a human being; and
- (p) trafficking in persons;

"**place of safety**" means premises where the welfare of a victim of gender-based violence is assured;

"**protection order**" means an order made by the court under sections thirteen, fourteen, fifteen and seventeen on the final determination of an application;

"**respondent**" means a person against whom an application for a protection order is made or against whom a protection order has been granted;

"**sexual abuse**" includes the engagement of another person in sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person's sexual integrity, or sexual contact by a person aware of being infected with HIV or any other sexually transmitted infection with another person without that other person being given prior information of the infection;

"**stalking**" includes following, pursuing or accosting a person; and

"**victim**" means a person against whom an act of gender-based violence has been, is being or is likely to be committed.

- (2) A court shall, in determining whether a person is in a domestic relationship, have regard to—
  - (a) the place where the person's time is ordinarily spent;
  - (b) the manner in which the person's time is spent; and
  - (c) the duration of the relationship.
- (3) Without prejudice to subsection (1), a person is in a domestic relationship where the person—
  - (a) is providing refuge to a victim whom a respondent seeks to attack; or
  - (b) is acting as an agent of the respondent or encouraging the respondent to commit an act of gender-based violence.

## **Part II – Filing of, and dealing with, complaints of gender-based violence**

### **4. Number of acts amounting to gender-based violence**

A single act may amount to gender-based violence.

### **5. Duty to assist or inform victim of rights, etc.**

A police officer, labour inspector, social worker, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, teacher, employer or other person or institution with information concerning the commission of an act of gender-based violence shall—

- (a) inform a victim of the victim's rights and any basic support which may be available to assist the victim;
- (b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances; and
- (c) advise the victim of the victim's right to lodge a complaint against the respondent including remedies available to the victim under this Act.

### **6. Filing of complaint to police**

- (1) A victim of gender-based violence may file a complaint about the gender-based violence.
- (2) A child or a person with a mental disability may be assisted by a next friend to file a complaint of gender-based violence.
- (3) Notwithstanding subsection (1), a complaint of gender-based violence may be filed by any other person or institution with information about the gender-based violence where the intervention is in the interest of the victim.
- (4) A complaint of gender-based violence shall be filed with the police at the place—
  - (a) where the offender resides;
  - (b) where the victim resides;
  - (c) where the gender-based violence occurred or is occurring or is likely to occur;
  - (d) if the victim has left the victim's usual place of abode, where the victim is residing temporarily; or
  - (e) that is convenient for the person filing the complaint.

### **7. Police to respond promptly**

A police officer shall respond promptly to a request by any person for assistance from gender-based violence and shall offer such protection as the circumstances of the case or the person who made the report requires even when the person reporting is not the victim of the gender-based violence.

### **8. Police assistance after receipt of complaint**

- (1) Where a police officer receives a complaint under subsection (4) of section six, the police officer shall—
  - (a) interview the parties and witnesses to the gender-based violence;
  - (b) record the complaint in detail and provide the victim with an extract of the complaint, upon request, in a language the victim understands;

- (c) assist the victim to obtain medical treatment, where necessary;
  - (d) assist the victim to a place of safety as the circumstances of the case or as the victim requires where the victim expresses concern about safety;
  - (e) protect the victim to enable the victim retrieve personal belongings, where applicable; and
  - (f) assist and advise the victim to preserve evidence.
- (2) Where one of the parties or witnesses to an act of gender-based violence, a complaint of which has been made under subsection (4) of section six, is a child, a police officer who receives the complaint shall interview the child in the presence of—
- (a) the parent or guardian of the child; or
  - (b) a next friend, where the parent or guardian is the respondent.
- (3) Police assistance to a victim under paragraph (c) of subsection (1) consists of issuing a medical form to the victim and, where necessary, sending the victim to a health facility.
- (4) A victim of gender-based violence who is assisted by the police to obtain medical treatment under paragraph (c) of subsection (1), shall be entitled to free medical treatment at a public health facility and a free medical report within a reasonable period of time.
- (5) Family mediation or intervention shall not be a bar to the investigation or prosecution of a complaint of gender-based violence.
- (6) For the purposes of this section, "health facility" has the meaning assigned to it in the Health Professions Act, 2009.

*[Act No. 24 of 2009]*

## 9. Arrest by police

A police officer may, without a warrant, arrest a person where the police officer has reasonable grounds to believe that the person—

- (a) is committing, or has committed, an offence under this Act;
- (b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence;
- (c) unless arrested, will—
  - (i) escape or cause an unreasonable delay, trouble or expense in being made answerable to justice;
  - (ii) interfere with the witnesses; or
  - (iii) tamper with, or destroy, relevant evidence or material;
- (d) is willfully obstructing the police officer in the execution of police duties; or
- (e) has contravened or is contravening an order issued under this Act.

## Part III – Protection orders

### 10. Application for protection order

- (1) A victim may, in the prescribed manner, apply to a court for a protection order to prevent—
- (a) a respondent;
  - (b) an associated respondent; or

- (c) both a respondent and an associated respondent;
- from carrying out a threat of gender-based violence against the victim or to prevent the respondent, an associated respondent, or both, from further committing acts which constitute gender-based violence against the victim.
- (2) If the victim is not represented by a legal representative, the clerk of court shall inform the applicant—
- (a) of the remedies available to the victim in terms of this Act; and
  - (b) of the procedure for lodging an application for a protection order.
- (3) Notwithstanding subsection (1) and any other law, and subject to subsections (4) and (5), where a victim is for any reason unable to apply for a protection order personally, any other person with information about the gender-based violence may assist the victim to apply for a protection order.
- (4) Where the gender-based violence involves a child or a person with a mental disability the application shall be made by—
- (a) a person with whom the child or person with a mental disability normally resides or resides on a regular basis;
  - (b) a parent or guardian of the child with a mental disability;
  - (c) a social worker;
  - (d) a police officer or probation officer;
  - (e) a medical officer;
  - (f) a representative of a non-governmental organisation; or
  - (g) an institution with information about the gender-based violence.
- (5) A person who assists a victim to make an application shall—
- (a) obtain the victim's consent, in writing, except where the victim—
    - (i) is a child;
    - (ii) has a mental disability;
    - (iii) is unconscious; or
    - (iv) is a person whom the court is satisfied is unable to provide the required consent; and
  - (b) seek the leave of the court to make an application without the consent of the victim.
- (6) The application may be filed in a court situated where—
- (a) the victim resides, carries on business or is employed;
  - (b) the respondent resides, carries on business or is employed;
  - (c) the act of gender-based violence occurred or is occurring or is likely to occur; or
  - (d) the victim is residing temporarily, if the victim has left the victim's usual place of abode.
- (7) An application or action shall be commenced in the prescribed manner and form.
- (8) A court before which criminal proceedings in relation to gender-based violence are pending may, on its own motion, considering the circumstances of the case, or on an application by the victim, issue a protection order in respect of the victim.

## 11. Conduct of proceedings

- (1) Notwithstanding any other law, proceedings for a protection order shall be held in chambers in the presence of the parties, their legal representatives and any other person permitted by the court to be present.
- (2) Notwithstanding subsection (1), where the court is of the opinion that the presence of the respondent is likely to have a serious adverse effect on the victim or a witness, the court may take such steps as it considers necessary to separate the respondent from the victim or the witness.
- (3) Subject to subsection (3) of section ten, the court shall consider an application for a protection order within a period of fourteen days of the filing of the application, and may, for such purpose—
  - (a) enquire whether an interim protection order or protection order has at any time been issued to either of the parties;
  - (b) call for any evidence whether oral or by affidavit, as it considers necessary including medical evidence supported by a police report forming the basis on which a victim's examination was conducted; or
  - (c) examine any witness before the court.
- (4) Where a respondent is not represented by a legal representative, the respondent shall not address the applicant directly but shall address the applicant through the court.
- (5) A person who utters a false statement in an affidavit knowing the statement to be false commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding three years.
- (6) The court may request a report on any of the parties to the proceedings and the report shall be prepared and submitted to the court by a social worker, probation officer or other person appointed by the court, as appropriate.
- (7) The report shall contain details of the circumstances of the gender-based violence, an assessment of the effect of the violence and any other information considered expedient by the social worker, probation officer or other person appointed by the court.

## 12. Interim protection order

- (1) Where an application is made *ex parte* to the court for a protection order, the court shall issue an interim protection order if it considers the order to be in the best interest of the applicant.
- (2) In determining whether it is in the best interest of the applicant to issue an interim protection order, the court shall take into account—
  - (a) whether there is a risk of harm to the applicant or a relation or friend of the applicant if the order is not made immediately;
  - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
  - (c) whether there is reason to believe that the respondent is deliberately evading service of notice of the proceedings and the applicant, or any person in a domestic relationship with the respondent, will be prejudiced by the delay involved in effecting service.
- (3) An interim protection order shall be for a period of three months and the court may, where it thinks fit, extend it for a period not exceeding three months.
- (4) The court shall, when making an interim protection order where the respondent is not already before the court, summon the respondent to appear within the period of three months referred to in subsection (3) to show cause why the interim order should not be made final.

- (5) If the respondent fails to appear before the court in accordance with subsection (4), the order shall become final.
- (6) Where an application is made on notice to the court for a protection order and the court is of the opinion that—
  - (a) the respondent is committing, has committed or is likely to commit an act of gender-based violence; and
  - (b) the applicant will suffer significant harm if a protection order is not issued;the court may issue an interim protection order pending the consideration of the order applied for.
- (7) Where the court grants an interim protection order, it shall apply the provisions of section thirteen and subsection (1) of section fifteen and may apply any of the provisions contained in section fourteen.

### 13. Issuance of protection order

The court may issue a protection order to prohibit a respondent from committing or threatening to commit an act of gender-based violence personally or otherwise, against an applicant or a relation or associate of the applicant.

### 14. Effect of protection order

A protection order may prohibit the respondent or an associated respondent, or both, from—

- (a) physically assaulting or using physical force against the applicant or any relation, friend, a legal representative or any other person associated with the applicant;
- (b) forcibly confining or detaining the applicant or any relation or friend of the applicant;
- (c) depriving the applicant access to adequate food, water, clothing, shelter or rest;
- (d) forcing the applicant to engage in any sexual contact, whether married or not;
- (e) engaging in any sexual conduct that abuses, humiliates or degrades the complainant or otherwise violates the applicant's integrity, whether married or not;
- (f) depriving or threatening to deprive the applicant of—
  - (i) economic or financial resources to which the applicant is entitled by law, including house mortgage repayments or rent payments or any other payments; and
  - (ii) household chattels required by the applicant as a matter of necessity;
- (g) contacting the applicant at work or other places frequented by the applicant;
- (h) contacting the applicant by telephone or any other form of communication;
- (i) disposing of, or threatening to dispose of, movable or immovable property in which the applicant has an interest;
- (j) destroying or damaging, or threatening to destroy or damage, property in which the applicant has an interest;
- (k) hiding or hindering the use of property in which the applicant has an interest;
- (l) threatening to abuse the applicant;
- (m) harassing the applicant;
- (n) entering the applicant's residence without consent, where the parties do not share the same residence;

- (o) emotionally, verbally or psychologically abusing the applicant;
- (p) coming within one hundred metres of the applicant;
- (q) enlisting the assistance of another person to commit an act of gender-based violence against the applicant; or
- (r) doing any act which the court considers not in the best interest of the applicant.

## 15. Conditions of protection order

- (1) A protection order may, at the request of the applicant or on the court's own motion, include any or all of the following:
- (a) a provision which—
    - (i) binds the respondent to be of good behaviour;
    - (ii) directs the respondent to seek counselling or other rehabilitative service; or
    - (iii) forbids the respondent to be, except under conditions specified in the order, at or near places frequented by the applicant or by any child or other person in the care of the applicant;
  - (b) a provision directing the respondent to surrender any firearm or other specified weapon in the possession of the respondent to the police, which may also include, if appropriate—
    - (i) a provision suspending any firearm licence in the name of the respondent for the duration of the protection order; or
    - (ii) a provision authorising the police to search for and seize any weapon at any specified place where there is probable cause to believe that the weapon may be located;
  - (c) a provision restraining the applicant or respondent, or both, from taking, converting, damaging, or otherwise dealing in property in which the other party may have an interest or a reasonable expectation of use;
  - (d) a provision temporarily directing the respondent to make periodic payments in respect of the maintenance of the applicant, and of any child of the applicant, if the respondent is legally liable to support the applicant or the child, as an emergency measure where no such maintenance order is already in force, together with such other emergency monetary relief as is appropriate;
  - (e) a provision granting temporary sole custody—
    - (i) of a child of the applicant to any appropriate custodian other than the respondent; or
    - (ii) of any child of the applicant or any child in the care of the applicant to the applicant or to another appropriate custodian if the court is satisfied that that is necessary for the safety of the child in question;
  - (f) a provision temporarily—
    - (i) forbidding contact between the respondent and any child of the applicant;
    - (ii) specifying that contact between the respondent and a child of the applicant, must take place only in the presence and under the supervision of a social worker or a family member designated by the court for that purpose; or
    - (iii) allowing such contact only under specified conditions designed to ensure the safety of the applicant, any child who may be affected, and any other family members;if the court is satisfied that that is reasonably necessary for the safety of the child in question;

- (g) a provision ordering the relocation of the applicant to a shelter to be provided by the Minister responsible for social welfare, or other place of safety, and compelling the respondent to pay rent for the period the applicant resides in such other place of safety if the court is satisfied that that is reasonably necessary for the safety of the applicant or any child or person in the care of the applicant; and
  - (h) any other provisions that the court considers necessary to ensure the safety of the applicant or any child or other person who is affected.
- (2) A court shall not refuse to issue a protection order or impose any other condition solely on the ground that other legal remedies are available to the applicant.

## 16. Modification of protection order

An applicant or respondent may apply to the court which granted an order, for the modification or cancellation of the order.

## 17. Duration of final protection order

A final protection order issued by the court shall not exceed twelve months in the first instance but may, for good cause shown, be extended, modified or rescinded by the court on application by the applicant in the original proceedings.

## 18. Extension of protection order to other persons

- (1) A court may extend a protection order to any person specified in the order other than the applicant if the court is satisfied that—
- (a) the respondent is engaging in or has engaged in conduct, which, if the person specified in the order, were or had been in a domestic relationship with the respondent, the conduct would amount to gender-based violence against the specified person;
  - (b) the respondent's conduct towards the specified person is due, in whole or in part to the applicant's relationship with the specified person; or
  - (c) the extension of the protection order is necessary for the protection of the specified person.

## 19. Grant of protection order not to exclude criminal liability

The grant of a protection order under subsection (8) of section ten does not exclude a person's criminal liability under the Penal Code or any other law.

*[Cap. 87]*

## 20. Occupation order

- (1) Subject to subsections (2) and (3), where the court, in issuing a protection order, considers it expedient to issue an occupation order, the court may issue an order requiring a respondent to vacate the matrimonial home or other home which the respondent shares with the applicant and to continue to pay rent, mortgage payment and maintenance to the applicant.
- (2) The court shall issue an occupation order after it considers a social enquiry report, prepared by a social worker, a probation officer or other person appointed by the court, as appropriate.
- (3) Where the applicant and the respondent are in a marital relationship, the court shall consider the effect of the order or omission of the order on the health, education and development of the family.
- (4) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease, where a residence is rented by a respondent but exclusive occupation is given to the applicant by the court.

- (5) A landlord shall, in furtherance of subsection (4), provide the details of the lease to the applicant on request.

## **21. Appeals**

A person who is aggrieved by a decision of court may appeal to the High Court.

## **22. Power to discharge order**

- (1) A court may discharge an order on an application by an applicant or a respondent in the prescribed manner and form, where the court is satisfied that the circumstances that led to the grant of the order have ceased to exist.
- (2) The discharge of the order may occur even though the order—
  - (a) applies for the benefit of a specified person in the order other than the applicant; or
  - (b) applies against an associated respondent.
- (3) Where an order is discharged under subsection (2), the order shall cease to have effect for the benefit of any specified person or associated respondent as if the specified person or associated respondent had applied for or been granted a discharge of the order.
- (4) Where a discharge order applies for the benefit of a specified person or against an associated respondent, the specified person or associated respondent may apply for the order to be discharged in so far as it applies to them.
- (5) An application may be made under this section for the discharge of an interim order.
- (6) Where an application is made under subsection (5) the court shall, within thirty days of the filing of the application, fix a hearing date.

## **23. Contravention of protection order**

- (1) A person who contravenes an order commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.
- (2) An applicant who, with intent to induce a police officer or a judicial officer to perform any act or exercise any power provided in this Act in relation to a contravention of a protection order, intentionally gives false information to the police officer or judicial officer or fails to provide information to the police officer or judicial officer in order to induce the police officer to do any act or exercise any power under this Act, commits an offence and is liable, upon conviction, to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding one year, or to both.

## **Part IV – Shelters for victims**

### **24. Establishment of shelters for victims**

The Minister responsible for social welfare shall—

- (a) from money appropriated by Parliament for that purpose, establish and operate shelters for victims; and
- (b) ensure an appropriate spread of such shelters throughout Zambia.

## 25. Minimum norms and standards of shelters

A shelter for victims shall comply with the norms and standards as the Minister may, by statutory instrument, prescribe.

## 26. Inspectors of shelters

- (1) The Minister may appoint suitably qualified persons as inspectors to ensure compliance with the norms and standards prescribed pursuant to section twenty-four.
- (2) An inspector shall be provided with a certificate of appointment which shall be produced by the inspector when any person requires it to be produced.
- (3) An inspector may, during an inspection—
  - (a) examine and make copies of any book, records or other documents containing information relevant to the administration or enforcement of this Act;
  - (b) examine any computer and retrieve any information relevant to the administration or enforcement of this Act;
  - (c) open and inspect any package or container;
  - (d) inspect any shelter or facility relevant for the purposes of this Act; and
  - (e) examine or inspect anything relevant to the administration or enforcement of this Act.
- (4) An inspector may, at any reasonable time, for the purposes of performing that inspector's functions under this Act, without warrant, enter into any shelter or other premises which the inspector reasonably believes is being used as a shelter in contravention of this Act.
- (5) A person who—
  - (a) delays or obstructs an inspector in the performance of the inspector's functions;
  - (b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's functions or powers;
  - (c) gives an inspector false or misleading information in answer to any query made by the inspector; or
  - (d) impersonates or falsely presents oneself to be an inspector;commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

## 27. Shelters for child victims

A shelter for child victims—

- (a) shall secure the physical safety of a child victim;
- (b) shall provide temporary basic material support for the care of a child victim;
- (c) shall offer a programme for—
  - (i) the provision of counselling to child victims; and
  - (ii) the provision of rehabilitation services to child victims; and
- (d) shall, in cooperation with the Ministry responsible for education, offer a programme aimed at the provision of education to child victims.

## 28. Shelters for adult victims

A shelter for adult victims—

- (a) shall secure the safety of adult victims;
  - (b) shall offer a programme aimed at—
    - (i) the provision of counselling to adult victims;
    - (ii) the provision of rehabilitation services to adult victims; and
    - (iii) the reintegration of adult victims into their families and communities;
  - (c) may, in cooperation with the Ministry responsible for education, offer a programme aimed at the provision of education to adult victims; and
  - (d) may, in cooperation with the Ministry responsible for vocational training, offer a programme aimed at the provision of skills development training to adult victims.
- (2) A shelter for adult victims that provides accommodation to an adult victim who has a child in the victim's care shall offer a programme aimed at the reception, care and development of such a child.
- (3) Subject to subsection (4), a child referred to in subsection (2) may be cared for at any other premises only with the explicit consent of the adult victim.
- (4) A child referred to in subsection (2) shall be referred to a designated social worker for investigation to determine whether the child is in need of care and protection.

## 29. Assessment of victim

Upon admission of a victim to a shelter, an assessment shall be made by a social worker to determine—

- (a) the risks to the safety and life of the victim;
- (b) the immediate needs of the victim; and
- (c) the long term needs of the victim.

## 30. Rehabilitation of victim

- (1) The Ministry responsible for social welfare shall provide mechanisms and programs for the rehabilitation of victims.
- (2) Victims may receive financial assistance from the Fund under this Act.
- (3) The best interest of the child shall be paramount in any assistance given to rescue, rehabilitate or reintegrate the child.

## Part V – Anti-Gender-Based Violence Committee

### 31. Anti-Gender-Based Violence Committee

- (1) There is hereby established the Anti-Gender-Based Violence Committee.
- (2) The provisions of the Schedule apply in respect to the Committee.
- (3) The Committee shall—
  - (a) monitor the activities of all the relevant institutions on matters connected with gender-based violence;

- (b) make recommendations for a national plan of action against gender-based violence;
- (c) monitor and report on the progress of the national plan of action;
- (d) advise the Minister on policy matters connected with gender-based violence;
- (e) propose and promote strategies to prevent and combat gender-based violence;
- (f) recommend guidelines for disbursements from the Fund; and
- (g) deal with any matter relating to gender-based violence.

## **Part VI – Anti-Gender-Based Violence Fund**

### **32. Establishment of Fund**

- (1) There is hereby established the Anti-Gender-Based Violence Fund.
- (2) The Fund shall consist of—
  - (a) voluntary contributions to the Fund from any person;
  - (b) such monies as Parliament may approve for purposes of the Fund; and
  - (c) any grants from any source within or outside Zambia with approval of the Minister.
- (3) The monies of the Fund shall be applied for—
  - (a) the basic material support of victims; and
  - (b) any other matter connected with the counselling and rehabilitation of victims in their best interest.

### **33. Administration and management of Fund**

- (1) The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Minister responsible for social welfare.
- (2) The Committee shall develop guidelines for the disbursements from the Fund.

### **34. Accounts and audit**

- (1) The Ministers referred to in section thirty-three shall cause to be prepared proper books of account in relation to the Fund.
- (2) The accounts of the Fund for each financial year shall be audited by the Auditor-General and, for that purpose, the Auditor-General and any officer authorised by the Auditor-General shall have access to all books and other records relating to the accounts of the Fund.
- (3) The Auditor-General shall, not later than twelve months after the end of each financial year, submit a report on the accounts of the Fund for that financial year to the Minister.
- (4) The Ministers referred to in subsection (1) of section thirty-three shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report, lay it before the National Assembly.

## Part VII – General provisions

### 35. Service of process

- (1) Subject to subsections (2) and (3), the provisions of the Subordinate Courts Act apply with respect to service of process of any document issued pursuant to this Act and for which service is required.  
*[Cap. 28]*
- (2) Service of process shall be made by the Clerk of court or such other person as the court may order.
- (3) The court shall not direct a complainant to serve any document.

### 36. Settlement of matter out of court

- (1) Where in a criminal trial in respect of gender-based violence which is not aggravated—
  - (a) the complainant expresses the desire to have the matter settled out of court, the court shall refer the case for settlement by any alternative dispute resolution method; or
  - (b) the court is of the opinion that the case can be amicably settled, it may, with the consent of the complainant refer the case for settlement by any alternative dispute resolution method.
- (2) Where any case is referred for settlement under subsection (1), the court shall, in addition—
  - (a) refer the complainant and the offender for counselling;
  - (b) where necessary, require the offender to receive psychiatric help; or
  - (c) after consultation with the Ministry responsible for home affairs, appoint a probation officer to observe and report on the subsequent conduct of the offender to the court.
- (3) Where a probation officer reports that the offender has engaged in any act of gender-based violence after the settlement, the offender shall be brought before the court and shall, subject to section two, be prosecuted.
- (4) In any criminal trial in respect of gender-based violence which is aggravated, the court shall not consider or approve any settlement of the matter out of court, whether in accordance with subsections (1), (2) and (3), or not.

### 37. Proceedings *in camera*

Proceedings under this Act may be held *in camera*.

### 38. Publication of proceedings prohibited

- (1) A person shall not publish a report of proceedings under this Act, other than criminal proceedings, except with the leave of court.
- (2) Where a person reports proceedings under subsection (1), the person shall protect the identity of the complainant and any witness to the proceedings.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

### 39. Public education

The Minister responsible for gender shall, for the purpose of this Act, provide for public education on gender-based violence and the contents of this Act.

#### 40. Rules of court

The Chief Justice may, by rules of court, make provision with respect to the procedure on applications to any court under this Act, and in particular as to—

- (a) the manner and form for the commencement of an action under this Act;
- (b) the giving of notice to persons affected by an application under this Act;
- (c) the joinder of the persons referred to in paragraph (b) as parties to the proceedings;
- (d) the discharge of an order issued pursuant to this Act; and
- (e) the forms necessary for the purposes of this Act.

#### 41. Regulations

- (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may provide for—
  - (a) the training of the police and court officials on gender-based violence;
  - (b) the education and counseling of victims and perpetrators of gender-based violence;
  - (c) places of shelter for victims;
  - (d) enhancement of social welfare services for victims;
  - (e) the modalities for the provision of free medical treatment for victims; and
  - (f) any matter for the effective implementation of this Act.

### Schedule (Section 31 (2))

#### Anti-Gender-Based Violence Committee

##### 1. Composition of Committee

- (1) The Committee shall consist of the following part-time members:
  - (a) one representative each from the Ministries responsible for—
    - (i) social services;
    - (ii) gender;
    - (iii) children and youth;
    - (iv) health; and
    - (v) education;
  - (b) a representative of the Attorney-General;
  - (c) a representative from the Human Rights Commission;
  - (d) a representative of the House of Chiefs;
  - (e) a representative of the Law Association of Zambia;
  - (f) a representative of the Zambia Police Force;

- (g) a representative of a non-governmental organisation dealing with matters concerning gender-based violence; and
  - (h) two other persons.
- (2) The members shall be nominated by their institutions and appointed by the Minister.
- (3) The Chairperson and the Vice-Chairperson shall be appointed by the Minister from amongst the members.

## 2. Tenure of office and vacancies

- (1) Subject to the other provisions of this Act, a member shall hold office for a period of three years from the date of appointment and may be re-appointed for a further like period.
- (2) The office of a member shall become vacant if—
- (a) the member has been absent without reasonable excuse from three consecutive meetings of the Committee of which the member has had notice;
  - (b) the member dies;
  - (c) the member is adjudged bankrupt;
  - (d) the member is removed by the Minister;
  - (e) the member becomes mentally or physically incapable of performing the duties of a member of the Committee; or
  - (f) the member is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term exceeding six months.

## 3. Proceedings of Committee

- (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure.
- (2) The Committee shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairperson may determine.
- (3) Upon giving notice of not less than fourteen days, a meeting of the Committee may be called by the Chairperson and shall be called if not less than one-third of the members so request in writing:
- Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.
- (4) The quorum at any meeting of the Committee shall be one-half of the members.
- (5) There shall preside at any meeting of the Committee—
- (a) the Chairperson;
  - (b) in the absence of the Chairperson, the Vice-Chairperson; or
  - (c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.
- (6) A decision of the Committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.
- (7) Where a member is for any reason unable to attend any meeting of the Committee, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be considered to be a member for the purpose of such meeting.

- (8) The Committee may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.
- (9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.
- (10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee and of any sub-committee established by the Committee.

#### 4. **Sub-committees of Committee**

- (1) The Committee may, for the purpose of performing its functions under this Act, constitute any sub-committee and may delegate to any such sub-committee such of its functions as it thinks fit.
- (2) The Committee may appoint as members of the sub-committees constituted under subparagraph (1), persons who are or are not members of the Committee and such persons shall hold office for such period as the Committee may determine.

#### 5. **Allowances of members**

There shall be paid to the members of the Committee or any sub-committee of the Committee such allowances as the Committee may, with the approval of the Minister, determine.

#### 6. **Disclosure of interest**

- (1) If a member is present at a meeting of the Committee or any sub-committee of the Committee at which any matter in which the member or the member's spouse is directly or indirectly interested in a private capacity, is the subject of consideration, the member shall, as soon as is practicable after the commencement of the meeting, disclose such interest, and shall not, unless the Committee or the sub-committee otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.
- (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

#### 7. **Immunity of members**

No action or other proceedings shall lie or be instituted against any member or any member of a sub-committee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of the member's functions under this Act.

#### 8. **Prohibition of publication or disclosure of information to unauthorised persons**

- (1) A person shall not, without the consent in writing given by, or on behalf of, the Committee, publish or disclose to any other person, otherwise than in the course of the person's duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to the person's knowledge in the course of that person's duties under this Act.
- (2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.
- (3) A person who, having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

#### 9. **Secretariat of Committee**

- (1) The Minister shall appoint a Secretariat of the Committee comprising such staff as the Minister may determine.

- (2) The Secretariat of the Committee shall be based at the Ministry.