



**Australian Government**

**Refugee Review Tribunal**

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# Country Advice

## Zambia

Zambia – ZMB37685 – Tonga Ethnic Group – Death customs – Polygamy – Women – Widows – Sexual cleansing – Property inheritance – State protection

24 November 2010

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- 1. Please provide background and demographic information on the ethnic composition of Zambia and in particular the Tonga speaking people. Please include where they come from, what is their level of adherence to their traditional beliefs, and what is their relationship and standing within the modern Zambian community.**

The seven main ethnic groups in Zambia are the Bemba, Kaonde, Lozi, Lunda, Luvale, Ngoni and Tonga, which are further divided into 73 ethnic sub-groups.<sup>1</sup> The three sub-groups of the Tonga are the Valley Tonga, the Plateau Tonga, and the Toka Leyas. The Tonga people are one of the largest ethnic groups in Zambia, and are thought to be Zambia's earliest inhabitants, settling in the region more than 900 years ago.<sup>2</sup> According to Minority Rights Group International (MRG), there are 1.7 million Tonga people in Zambia, constituting 16.8 percent of the population.<sup>3</sup> The Tonga belong to the Bantu group of peoples and their Chitonga language is part of the Bantu language family. They live in the Southern Province of Zambia, along the Kafue and Zambezi Rivers.<sup>4</sup>

The various ethnic groups in Zambia retain strong ties to their tribes, although are united by a strong national identity. Zambia's unified national identity has meant that many tribes have co-existed peacefully for a number of years. Factors contributing to the effective relationships between tribes include the large amount of open bushland which prevents tribes from infringing on one another, and a strong interaction between tribes in urban areas, where it is not uncommon for members to marry outside of their ethnic group.<sup>5</sup>

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<sup>1</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1

<sup>2</sup> Kürschner, E. et al. 2000, 'Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia', Humboldt University Berlin website, November, p.14 <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010 – Attachment 2

<sup>3</sup> 'Zambia Overview' (undated), Minority Rights Group International website <http://www.minorityrights.org/3922/zambia/zambia-overview.html> – Accessed 19 November 2010 – Attachment 3

<sup>4</sup> 'Tonga' (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>5</sup> 'Zambia' (undated), Countries and Their Cultures website <http://www.everyculture.com/To-Z/Zambia.html> – Accessed 23 November 2010 – Attachment 5

The name ‘Tonga’ means independent,<sup>6</sup> representing the Tonga people’s original structure as independent family units. Although chieftainship was not traditionally part of the Tonga structure, chieftaincy is now a significant part of Tonga life.<sup>7</sup> According to local tradition, a powerful chief descended from heaven and arrived in the town of Monze, calling for Tonga people to settle in his chiefdom. It is believed that the chief, referred to as the first Chief Monze, “had the power to heal, to cause rain, and to keep the peace...by frustrating enemies through his communication with the spirits of the ancestors”.<sup>8</sup>

According to Tonga tradition, the first Chief Monze did not die, but vanished into ‘Gonde’, thick bushland where Tonga shrines are located. Gonde is now the burial place for all Tonga chiefs, although only two chiefs are buried there. A significant Tonga ceremony is the Lwiindi Gonde Ceremony, held in south-west Monze on the last Sunday in June, and celebrated with music, dance and prayer.<sup>9</sup> Drumming, singing and dancing are also common at ceremonies such as beer parties, funerals and naming rituals.<sup>10</sup>

Traditional Tonga beliefs include witchcraft, sorcery, and ancestor worship. Although many Tonga have converted to Christianity, a large number “practice both Christianity and traditional religious beliefs”. One widely held belief is “that at death each person leaves a shade or spirit, a muzimu. The muzimu commutes between the spirit world and the world of humans”.<sup>11</sup> Some Tonga people infected with HIV are believed to have been ‘bewitched’ by a malicious individual who has sent the disease via evil spirits. HIV-positive individuals are often ‘purified’ or expelled from the community. There is thought to be a strong relationship between witchcraft and “revenge, punishment, blame, stigmatisation and even killing”.<sup>12</sup>

Initiation rituals for children upon reaching adolescence are common among the Tonga. Girls are trained for their future roles as wives, which may include living away from the village for a period of time and being given a new name to signify adulthood. Girls are eligible for marriage at the age of 14 or 15, and prospective husbands must pay a dowry to her family, commonly in the form of cattle. Following marriage, girls move to their husband’s village. The Tonga family includes extended relatives who share household tasks and raising children. Having many children is important in Tonga culture, and polygamy is traditionally encouraged, although the practice is becoming less common.<sup>13</sup>

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<sup>6</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>7</sup> Brown, S. (undated), ‘Zambian Cultural Heritage – The Tonga People – Their Traditions and Customs’, Ezine Articles website <http://ezinearticles.com/?Zambian-Cultural-Heritage---The-Tonga-People---Their-Traditions-and-Customs&id=2448636> – Accessed 16 November 2010 – Attachment 6

<sup>8</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>9</sup> Brown, S. (undated), ‘Zambian Cultural Heritage – The Tonga People – Their Traditions and Customs’, Ezine Articles website <http://ezinearticles.com/?Zambian-Cultural-Heritage---The-Tonga-People---Their-Traditions-and-Customs&id=2448636> – Accessed 16 November 2010 – Attachment 6

<sup>10</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>11</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>12</sup> Kürschner, E. et al. 2000, ‘Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia’, Humboldt University Berlin website, November, p.14 <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010 – Attachment 2

<sup>13</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4; ‘The Tonga People’ (undated), Engelbrechts in Zambia (Missionary Ventures International Zambia) website

The matrilineal system followed by the Tonga people means that the maternal uncle holds a powerful position in the extended family structure.<sup>14</sup>

## **2. Please provide information on the customs and traditions associated with the death customs of the Tonga speaking people of Zambia.**

As mentioned in the response to question one, “there is a well-developed cult of the ‘shades’, or muzimu” in Tonga culture. It is believed that upon death, a person leaves behind a muzimu, a ‘shade’ or spirit that “commutes between the spirit world and the world of humans”.<sup>15</sup>

Information provided by Missionary Ventures International (Zambia) indicates that funerals are significant ceremonies for the Tonga people. Dancing, singing, and drumming are used to express grief. During the funeral, or mourning period, “the men sit outside and the women inside the house of the deceased. Family and friends arrive to show respect and condolences, and those that can, will contribute food or money to cover the costs over this time. Certain ceremonies need to be performed to make sure the spirit of the deceased is happy and at rest. After the burial the people will leave to go back to their families. If the husband who has died has a brother, he will often claim the widow and children as a ‘second’ family”.<sup>16</sup>

A study conducted on inheritance in Zambia in 2001 found that “harmful mourning rites are still persistent, such as the one calling for the surviving spouse to be covered with a blanket throughout the whole funeral period until after burial. Other practices include no eating or bathing until after the day of burial”.<sup>17</sup>

## **3. Please advise the status of, the extent of and the legality of polygamy in Zambia.**

The US Department of State reported in March 2010 that “[p]olygamy is legally permitted under customary law if the first wife agrees to it at the time of her wedding or both families agree and the man has paid a dowry”.<sup>18</sup> A 2007 report by the World Organisation Against Torture similarly advises that polygamy is permitted under customary law, although is defined as bigamy and declared illegal under Article 166 of the Penal Code.<sup>19</sup> In 2005, the Immigration and Refugee Board of Canada (IRB) cited an article that claimed

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<http://mvzambia.com/Engelbrechts/The%20Tonga%20People.html> – Accessed 18 November 2010 – Attachment 7

<sup>14</sup> Kürschner, E. et al. 2000, ‘Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia’, Humboldt University Berlin website, November, p.14 <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010 – Attachment 2

<sup>15</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>16</sup> ‘The Tonga People’ (undated), Engelbrechts in Zambia (Missionary Ventures International Zambia) website <http://mvzambia.com/Engelbrechts/The%20Tonga%20People.html> – Accessed 18 November 2010 – Attachment 7

<sup>17</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, p.13 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>18</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1

<sup>19</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, p.12 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

that in Zambia, “[c]ustomary law allows polygamous marriages and entrenches the view of women as minors before the law”<sup>20</sup>.

The World Organisation Against Torture reported in 2007 that polygamy is widespread in Zambia, particularly in rural areas.<sup>21</sup> A 2006 report on customary land inheritance in Zambia also stated that “[p]olygamous marriages are very common in Zambia [and] contribute a lot to inequality especially in terms of rights to property and inheritance”.<sup>22</sup> According to the Countries and Their Cultures website, polygamy among the Tonga people was traditionally encouraged, although it is becoming less common.<sup>23</sup> Missionary Ventures International (Zambia) similarly reports that polygamy is still practiced by the Tonga people, although generally only by chiefs and local leaders who are able to financially support more than one family.<sup>24</sup>

An article in Zambian newspaper *The Post* in 2006 describes one woman’s polygamous marriage, which her husband claims is normal within the Nyika tribe. Anna, the first wife in the marriage, claimed that in line with tradition, “her husband married the second wife without her consent”.<sup>25</sup>

#### **4. Please provide some background information on Chief Hamusonde’s chieftom in the Monze District of southern Zambia. For example, what is it and how does it relate to other chieftoms and Zambia generally?**

Chieftainship is believed to be “an integral of Tonga politics”.<sup>26</sup> Tribal chiefs in the Zambian customary criminal justice system have no formal status and exist parallel to the formal legal system. Tribal chiefs’ courts within the informal customary legal system are widely utilised despite not being recognised by the state; locals prefer to take cases to customary courts headed by tribal chiefs as they are considered fairer and are more

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<sup>20</sup> Immigration and Refugee Board of Canada 2005, ZMB43484.E – *Zambia: Forced marriages, particularly within the Bemba ethnic group, and availability of state protection; existence, among the Bemba people, of the practices called “Ichisungu” and “Ndembo” prior to such a marriage, and if so, information on how those practices are conducted, including the persons who conduct them*, 13 April – Attachment 9

<sup>21</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, p.12 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>22</sup> Nsemiwe, N. 2006, ‘Gender Dimensions of Land Customary Inheritance under Customary Tenure in Zambia’, International Federation of Surveyors website, October, pp.8-9 [http://www.fig.net/pub/monthly\\_articles/october\\_2006/nsemiwe\\_october\\_2006.pdf](http://www.fig.net/pub/monthly_articles/october_2006/nsemiwe_october_2006.pdf) – Accessed 18 November 2010 – Attachment 10

<sup>23</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>24</sup> ‘The Tonga People’ (undated), Engelbrechts in Zambia (Missionary Ventures International Zambia) website <http://mvzambia.com/Engelbrechts/The%20Tonga%20People.html> – Accessed 18 November 2010 – Attachment 7

<sup>25</sup> Silwamba, D. 2006, ‘Bauleni Resident Urges Govt to Ban Polygamy’, AllAfrica Global Media, source: *The Post*, 14 June <http://allafrica.com/stories/200606140344.html> – Accessed 18 November 2010 – Attachment 11

<sup>26</sup> Brown, S. (undated), ‘Zambian Cultural Heritage – The Tonga People – Their Traditions and Customs’, Ezine Articles website <http://ezinearticles.com/?Zambian-Cultural-Heritage---The-Tonga-People---Their-Traditions-and-Customs&id=2448636> – Accessed 16 November 2010 – Attachment 6

familiar.<sup>27</sup> Zambia's Land Act 1995 recognises tribal chiefs only as custodians of the land, although it is likely that they play a role in regulating land acquisition.<sup>28</sup>

Chief Hamusonde's chiefdom is in Bweengwa in the Monze district of Zambia's Southern Province. Limited information was found on how his chiefdom relates to others in Zambia; however, one 2009 article in the *Lusaka Times* reports a land dispute between chief Hamusonde and chief Mwanachingwala of Mazabuka district in the Southern Province. According to chief Mwanachingwala, "the land that chief Hamusonde is claiming does not belong to his chiefdom, as the map clearly indicates that it is in Mwanachingwala's chiefdom". Traditional leaders of chiefdoms bordering chief Mwanachingwala's were called on to attend a meeting to resolve the dispute.<sup>29</sup>

In addition, a 2009 article on the Zambian House of Chiefs website reports that "senior chief Hamusonde of Bweengwa" in Monze is demanding that Chief Monze be "restored as paramount chief of the Tonga speaking people of Southern Province". Monze House of Chiefs chairperson Mutenguna Muleza highlighted the importance of restoring the paramount chief as "a unifying factor for the Tonga people". Chief Hamusonde stated that "[w]e want unity among the Tonga speaking people...our traditional ceremonies are not coherent because...we lack a paramount chief".<sup>30</sup>

**5. Deleted.**

**6. Deleted.**

**7. Please provide information on the "cleansing ritual", the "naming ritual" and the "property grabbing" (presumably distribution of deceased estates) in Zambia.**

**Cleansing rituals**

Sexual cleansing is a traditional custom of the Tonga people, who believe that "the ritual frees a widow from her husband's ghost".<sup>31</sup> The act of cleansing a widow is referred to by the Tonga as 'kusalazya'.<sup>32</sup> In March 2010 the US Department of State reported that "'sexual cleansing', in which a widow is compelled to have sexual relations with her late

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<sup>27</sup> Robins, S. 2009, 'A place for tradition in an effective criminal justice system: Customary justice in Sierra Leone, Tanzania and Zambia', Policy Brief No. 17, Institute for Security Studies, October <http://www.iss.co.za/uploads/NO17OCT09.PDF> – Accessed 19 November 2010 – Attachment 12

<sup>28</sup> Nsemiwe, N. 2006, 'Gender Dimensions of Land Customary Inheritance under Customary Tenure in Zambia', International Federation of Surveyors website, October, p.7 [http://www.fig.net/pub/monthly\\_articles/october\\_2006/nsemiwe\\_october\\_2006.pdf](http://www.fig.net/pub/monthly_articles/october_2006/nsemiwe_october_2006.pdf) – Accessed 18 November 2010 – Attachment 10

<sup>29</sup> 'Zambia: Two Southern province chiefs lock horns over land dispute' 2009, *Lusaka Times*, 12 June <http://www.lusakatimes.com/2009/06/12/two-southern-province-chiefs-lock-horns-over-land-dispute/> – Accessed 16 November 2010 – Attachment 13

<sup>30</sup> 'Pursuing honour and recognition' 2009, House of Chiefs website, 8 April <http://www.houseofchiefs.com/2009/04/pursuing-honour-and-recognition.html> – Accessed 22 November 2010 – Attachment 14

<sup>31</sup> Hambuba, C. 2006, 'Zambia: Widow defies 'sexual cleansing' custom', Women Living Under Muslim Laws website, source: Women's eNews, 26 November <http://www.wluml.org/node/3363> – Accessed 16 November 2010 – Attachment 16

<sup>32</sup> Mwenda, K. K. 2008, 'African Customary Law and Customs: Changes in the Culture of Sexual Cleansing of Widows and the Marrying of a Deceased Brother's Widow', *Gonzaga Journal of International Law*, Volume 11, 2 February, pp.13, 15-16 <http://www.gonzagajil.org/pdf/volume11/Mwenda/Mwenda.doc> – Accessed 16 November 2010 – Attachment 17

husband's relatives as part of a cleansing ritual, continued as a practice under customary law".<sup>33</sup> Freedom House reported in 2007 that the practice of 'cleansing' involves either a widower cleansing himself through "sex with a member of his deceased wife's family", preferably a virgin, or forcing a widow to have sex with her deceased husband's brother. The practice continues to occur across Zambia, contributing to the spread of HIV/AIDS.<sup>34</sup>

A 2000 report on HIV/AIDS in the Southern Province of Zambia also highlights the effect on the spread of the disease of traditional practices such as widow cleansing, whereby a widow or widower is cleansed through sexual intercourse with the deceased's relative. The practice of sexual cleansing is aimed at expelling evil spirits from the widow or widower which are believed to have caused the spouse's death. Those who undergo or carry out cleansing rituals are often motivated by "the fear of being haunted by the spirits of the deceased, coercion from relatives and the fear of being rejected by society".<sup>35</sup>

The World Organisation Against Torture describes sexual cleansing as a persistent custom of ritual purification which discriminates against women. Cleansing rituals are carried out "in order to appease the spirit of the deceased husband", and have long been tolerated by widows and endorsed by traditional leaders.<sup>36</sup> Through sexual cleansing, "a widow is inherited by her in-laws after she has sex with one of her dead husband's male relatives. A 2006 news article describes how a 79 year old widow, Theresa Chilala, refused to undergo sexual cleansing and be 'inherited' by her deceased husband's family. Chilala's in-laws forced her to leave her husband's property, seized her livestock, and continued to bury the bodies of dead relatives on her new property for the next 16 years".<sup>37</sup>

Nevertheless, it is reported that "[i]n an effort to curb the spread of AIDS, the sexual cleansing ritual is being abolished in more and more Tonga communities... A modified ritual is taking hold instead. Called the "kucuta," a man rubs his private parts against the widow, but does not have conventional sex with her".<sup>38</sup> A 2008 journal article on the culture of sexual cleansing similarly reports that "[a]lthough most Tonga-speaking dialects... have sexual cleansing as a part of their culture, more recently, people are beginning to shy away from practices of sexual cleansing". In "some Tonga-speaking dialects in Zambia, the act of sexual cleansing can be dispensed with or substituted

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<sup>33</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1

<sup>34</sup> Freedom House 2007, 'Countries at the Crossroads – Zambia', UNHCR Refworld website, 25 September <http://www.unhcr.org/refworld/docid/4738692e5d.html> – Accessed 19 November 2010 – Attachment 18; 'The Criminal Justice System in Zambia. Enhancing the Delivery of Security in Africa, Chapter 6: Customary Justice' 2009, African Human Security Initiative, Monograph No. 159, Institute for Security Studies, April <http://www.iss.co.za/pgcontent.php?UID=2609> – Accessed 16 November 2010 – Attachment 19; Mwizabi, G. 2004, 'The Ugly Face of Sexual Cleansing', AllAfrica Global Media, *Times of Zambia*, 26 November <http://allafrica.com/stories/200411290912.html> – Accessed 19 November 2010 – Attachment 20

<sup>35</sup> Kürschner, E. et al. 2000, 'Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia', Humboldt University Berlin website, November, p.16 <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010 – Attachment 2

<sup>36</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women's Rights*, UNHCR Refworld website, 26 June, pp.12-13 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>37</sup> Hambuba, C. 2006, 'Zambia: Widow defies 'sexual cleansing' custom', Women Living Under Muslim Laws website, source: Women's eNews, 26 November <http://www.wluml.org/node/3363> – Accessed 16 November 2010 – Attachment 16

<sup>38</sup> Hambuba, C. 2006, 'Zambia: Widow defies 'sexual cleansing' custom', Women Living Under Muslim Laws website, source: Women's eNews, 26 November <http://www.wluml.org/node/3363> – Accessed 16 November 2010 – Attachment 16

through non-sexual practices of cleansing a widow”. Such practices can include one or a combination of the following, carried out by a close relative/s of the deceased:

- Smearing the widow with white powder or cornmeal;
- Reciting blessings to release the spirit of her deceased husband;
- Bathing the widow in water infused with traditional herbs; and/or
- Sitting the widow on a mat with her legs bound and stretched out, and reciting blessings whilst walking over her legs.<sup>39</sup>

### **Property/land grabbing**

Under customary law, property inheritance rights are afforded to the family of a deceased male. Zambia’s Intestate Succession Act stipulates that in dividing up a man’s estate, his children will share equally in 50 percent, his widow will receive 20 percent, his parents will receive 20 percent, and the remainder of his relatives share in 10 percent. In polygamous marriages, “[t]he widow’s share must be divided proportionally with other women who can prove a spousal relationship with the deceased man”. Property grabbing from widows by the deceased’s relatives remains widespread. Although considered by the courts to be a criminal offence which attracts up to three years’ imprisonment, most cases of property grabbing are decided in local courts, which override the provisions of the Intestate Succession Act and hand down minimal fines. Widows in such cases often “receive little or nothing from the estate”.<sup>40</sup>

Human Rights Watch similarly reports that although women’s inheritance rights are protected under the Intestate Succession Act, which “provides that a widow should receive 20 percent of her deceased husband’s estate, and that it is illegal to evict a surviving spouse from a matrimonial home”, poor enforcement of statutory law and the precedence given to customary law often undermines such protection. Furthermore, ethnic customs often dictate that “the right to inherit property...rests with the deceased man’s family”.<sup>41</sup>

A September 2010 article similarly reports that in Zambia, a widow’s in-laws “often use the tradition of property grabbing to evict a wife and children in order to take advantage of the newly vacant shelter. Property grabbing remains common here despite the fact that a 1989 law outlawed the practice. Here, poverty fuels the cycle of property grabbing and many local courts over-step legal bounds in order to rule based on cultural norms”. Furthermore, “local court judges do lack effective training to rule on property cases and as

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<sup>39</sup> Mwenda, K. K. 2008, ‘African Customary Law and Customs: Changes in the Culture of Sexual Cleansing of Widows and the Marrying of a Deceased Brother’s Widow’, *Gonzaga Journal of International Law*, Volume 11, 2 February, pp.13, 15-16 <http://www.gonzagajil.org/pdf/volume11/Mwenda/Mwenda.doc> – Accessed 16 November 2010 – Attachment 17

<sup>40</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1; ‘The Criminal Justice System in Zambia. Enhancing the Delivery of Security in Africa, Chapter 6: Customary Justice’ 2009, African Human Security Initiative, Monograph No. 159, Institute for Security Studies, April <http://www.iss.co.za/pgcontent.php?UID=2609> – Accessed 16 November 2010 – Attachment 19

<sup>41</sup> Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women’s HIV Treatment in Zambia*, December – Attachment 21

a result often rule based on their understanding of traditional and cultural norms and practices, rather than the law”.<sup>42</sup>

In a 2008 *Times of Zambia* report, Justice for Widows and Orphans Project (JWOP) communications officer Felix Kunda explained that “the provisions in Zambia are such that the surviving spouse inherits 20 per cent of the deceased’s estate and, together with the children, the house”. However, “land under customary tenure is excluded and cannot be inherited”. In these cases, “the deceased man’s relatives typically grab his property, including his house...[M]any widows accept the loss of property, a share of which is rightfully theirs, because the emotional costs of challenging in-laws is too high”.<sup>43</sup> A 2007 report on widow’s access to land in Zambia indicates that “[t]o some extent, older widows are protected against loss of land compared to younger widows”.<sup>44</sup>

A 2006 report on customary land inheritance in Zambia states that women, particularly widows, face problems of land grabbing due to inheritance laws and cultural traditions which deny women from owning land without her father’s or husband’s consent. The report cites the Zambia Land Alliance, which noted that among various Zambian communities, “the tendency to dispossess and remove widows and orphans from family land upon the death of a husband/father, was widespread”. A newspaper article referred to in the same report stated that many widows are being evicted from their land in favour of their deceased husband’s brothers. It is argued that “[w]idows normally accept loss of property because they are scared of being bewitched, some do not know their rights especially towards property, while others find it is difficult to challenge in-laws”.<sup>45</sup> Additionally, a 2006 report indicates that “families of the deceased often threaten the surviving spouses with bewitchment if the widow does not hand over the property”.<sup>46</sup>

In Tonga communities, customary land inheritance is closely related to widow inheritance, where “a brother or another close relative may inherit the property of the deceased spouse and also take over the widow”.<sup>47</sup> A widow’s in-laws may also force them to undergo sexual cleansing rituals in exchange for property rights, resulting in some widows giving up their property in order to avoid the practice.<sup>48</sup> In 2004 the *Times of Zambia* reported that a 60 year old widow in Monze district not only contracted HIV from a sexual

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<sup>42</sup> Mweetwa, D. 2010, ‘Property Grabbing Forces Zambian Widows into Poverty’, *Global Press Institute*, 21 September <http://www.globalpressinstitute.org/global-news/africa/zambia/property-grabbing-forces-zambian-widows-poverty> – Accessed 24 November 2010 – Attachment 39

<sup>43</sup> ‘Women’s Access to Land Vital in Poverty Fight’ 2008, AllAfrica Global Media, source: *Times of Zambia*, 13 May – Attachment 22

<sup>44</sup> Chapoto, A. et al. 2007, ‘Security of Widows’ Access to Land in the Era of HIV/AIDS: Panel Survey Evidence from Zambia’, Policy Synthesis Food Security Research Project – Zambia: Number 22, US Agency for International Development website, September [http://pdf.usaid.gov/pdf\\_docs/PNADK254.pdf](http://pdf.usaid.gov/pdf_docs/PNADK254.pdf) – Accessed 24 November 2010 – Attachment 41

<sup>45</sup> Nsemiwe, N. 2006, ‘Gender Dimensions of Land Customary Inheritance under Customary Tenure in Zambia’, International Federation of Surveyors website, October, pp.4-5, 7-9 [http://www.fig.net/pub/monthly\\_articles/october\\_2006/nsemiwe\\_october\\_2006.pdf](http://www.fig.net/pub/monthly_articles/october_2006/nsemiwe_october_2006.pdf) – Accessed 18 November 2010 – Attachment 10

<sup>46</sup> Varga, C. A. 2006, ‘A Network Approach to Women’s Property and Inheritance Rights in the Context of HIV/AIDS: The Case of the Justice for Widows and Orphans Project in Zambia’, AIDSLEX website, November, p.9 [http://www.aidslex.org/site\\_documents/WG-0041E.pdf](http://www.aidslex.org/site_documents/WG-0041E.pdf) – Accessed 24 November 2010 – Attachment 40

<sup>47</sup> Kürschner, E. et al. 2000, ‘Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia’, Humboldt University Berlin website, November, p.16 <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010 – Attachment 2

<sup>48</sup> Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women’s HIV Treatment in Zambia*, December – Attachment 21



cleansing ritual following the death of her husband, but also fell victim to property grabbing by her husband's relatives.<sup>49</sup>

### **Naming rituals**

The only reference found to traditional Tonga naming rituals is on the Countries and Their Cultures website, which states that “[d]rumming, singing, and dancing at...naming ceremonies are frequent activities among the Tonga”.<sup>50</sup>

### **8. Please provide information on local laws regarding “cleansing rituals”, including whether the law permits it and whether the law requires condoms be used during such rituals.**

Although sexual cleansing is prohibited under Zambia's Penal Code, sexual cleansing rituals are permitted under customary law.<sup>51</sup> Nevertheless, many local leaders such as tribal chiefs have forbidden the practice of sexual cleansing due to its contribution to the spread of HIV/AIDS.<sup>52</sup>

Traditional rules in the Central Province ruled in 2005 to ban sexual cleansing, instead encouraging the use of non-sexual cleansing methods for widows and widowers. The leaders issued a statement ruling that “[c]onsidering the magnitude of the HIV/AIDS pandemic in the country and the devastating impact it is having on the socio-economic development of our people and communities; ... In recognition of our influence, authority and custodianship of the traditional norms and customs, we do hereby ban the practice of sexual cleansing and encourage alternative methods such as use of mealie meal and wearing of beads.”<sup>53</sup> Tonga leader Chief Monze similarly banned sexual cleansing in his area in order to minimise the spread of HIV/AIDS.<sup>54</sup>

Local courts have also recommended against sexual cleansing. In 2006, the Lusaka Local Court advised families to avoid sexual cleansing rituals as they encourage the spread of HIV/AIDS.<sup>55</sup> However, a 2006 news report indicates that although officially discouraged in some communities, sexual cleansing rituals continue to be practiced in secret.<sup>56</sup> No

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<sup>49</sup> Mwizabi, G. 2004, ‘The Ugly Face of Sexual Cleansing’, AllAfrica Global Media, *Times of Zambia*, 26 November <http://allafrica.com/stories/200411290912.html> – Accessed 19 November 2010 – Attachment 20

<sup>50</sup> ‘Tonga’ (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010 – Attachment 4

<sup>51</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1; Freedom House 2010, ‘Freedom in the World: Zambia’, Freedom House website <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7951> – Accessed 16 November 2010 – Attachment 23

<sup>52</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1

<sup>53</sup> ‘Central Chiefs Ban Sexual Cleansing’ 2005, AllAfrica Global Media, source: *Times of Zambia*, 10 October <http://allafrica.com/stories/200510100697.html> – Accessed 16 November 2010 – Attachment 24

<sup>54</sup> Mwizabi, G. 2004, ‘The Ugly Face of Sexual Cleansing’, AllAfrica Global Media, *Times of Zambia*, 26 November <http://allafrica.com/stories/200411290912.html> – Accessed 19 November 2010 – Attachment 20

<sup>55</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women's Rights*, UNHCR Refworld website, 26 June, pp.12-13 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>56</sup> Hambuba, C. 2006, ‘Zambia: Widow defies ‘sexual cleansing’ custom’, Women Living Under Muslim Laws website, source: Women's eNews, 26 November <http://www.wluml.org/node/3363> – Accessed 16 November 2010 – Attachment 16

information was located on whether the law requires that condoms are used during sexual cleansing rituals.

It is also relevant to note that the custom of a male sibling inheriting the widow of his deceased brother is permitted under the Deceased Brother's Widow's Marriage Act of 1926. The scope of the Act is limited "to marriages between a deceased brother's widow and the deceased's sibling". In addition, "such a marriage can be declared void only for reasons not to do with affinity". However, where this inheritance is proven under customary law to be unjust, the marriage can be declared void, for example, if a widow is deemed to be too old to marry a much younger sibling of the deceased, or if it is proven that either the widow or the deceased's brother did not consent or were coerced into the marriage.<sup>57</sup>

**9. Please discuss whether there are songs played on radio and television in Zambia regarding "unclean widows" called "Muka-mfwilwa", and how they warn men to stay away from them and how it encourages women to go back to their in-laws and be cleansed.**

Two *Times of Zambia* articles from 2007 describe a song entitled Mukamfwilwa (widow), which was a hit for John Mwansa in 1979. The song is about a promiscuous, or 'scarlet', widow who frequents bars, beer halls, and hotels. The articles report that the song was played throughout the 2006 elections with reference to parliamentary candidate Barbara Chibulu, a widow. Chibulu claimed that Patriotic Front (PF) cadres played the song every morning in order to discredit her and damage her election campaign. It was argued that "Mukamfwilwa was the song of the day from August 15 to September 28, 2006. Thousands of people heard the song and insults from PF".<sup>58</sup>

An article on the UKZambians website states that John Mwansa wrote the song in reference to the widowed wife of his best friend, a former Zambian footballer, who "was seen around hotels and bars soon after [her husband's] burial".<sup>59</sup>

**10. Please provide information on "widowed women in Zambia" as a possible particular social group.**

A September 2007 report on widows' access to land in Zambia states that in 2004, 12.3 percent of rural Zambian households were headed by widows, which had increased from 9.4 percent in 2001.<sup>60</sup>

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<sup>57</sup> Mwenda, K. K. 2008, 'African Customary Law and Customs: Changes in the Culture of Sexual Cleansing of Widows and the Marrying of a Deceased Brother's Widow', *Gonzaga Journal of International Law*, Volume 11, 2 February, p.25 <http://www.gonzagajil.org/pdf/volume11/Mwenda/Mwenda.doc> – Accessed 16 November 2010 – Attachment 17

<sup>58</sup> "Mukamfwilwa' Song Was Offensive – Cries Barbara' 2007, AllAfrica Global Media, source: *Times of Zambia*, 15 February <http://allafrica.com/stories/200702150392.html> – Accessed 16 November 2010 – Attachment 25; Kapata, N. 2007, 'MMD's Barbara Chibulu, 44 Cadres Held', AllAfrica Global Media, source: *Times of Zambia*, 19 June <http://allafrica.com/stories/200706190640.html> – Accessed 16 November 2010 – Attachment 26

<sup>59</sup> 'Down Memory Lane With Uncle Ronnie – Week 3' 2009, UKZambians website, 24 July <http://ukzambians.co.uk/home/?p=1150> – Accessed 22 November 2010 – Attachment 27

<sup>60</sup> Chapoto, A. et al. 2007, 'Security of Widows' Access to Land in the Era of HIV/AIDS: Panel Survey Evidence from Zambia', Policy Synthesis Food Security Research Project – Zambia: Number 22, US Agency for International Development website, September [http://pdf.usaid.gov/pdf\\_docs/PNADK254.pdf](http://pdf.usaid.gov/pdf_docs/PNADK254.pdf) – Accessed 24 November 2010 – Attachment 41

The *Times of Zambia* reported in 2007 that widowhood in African society “represents a ‘social death’ for women”, robbing women of their status, confining them to the outskirts of society, and exposing them to discrimination and stigma. While unmarried women are “under the control of their fathers”, and “married women belong to their husbands”, widows are often trampled, overlooked, and unprotected. As outcasts, widows are “vulnerable to physical, sexual, and mental abuse...as if they are in some way responsible for their husband’s death and must be made to suffer for the rest of their lives”. As a widow, a woman loses her position in the family, resulting in “abandonment, destitution, and dishonour”. Furthermore, widows are subject to ‘levirate’ marriages with their deceased husband’s brothers, with refusal often met by physical and sexual abuse, including cleansing rituals, and expulsion from the family home.<sup>61</sup>

The children of widows, particularly girls, also suffer significantly as poverty often forces widows to withdraw them from school, leaving them vulnerable to labour exploitation and early marriage. Poverty can also lead to ill-health from malnutrition and a lack of access to adequate health care. Nevertheless, the *Times of Zambia* reports “an astonishing ignorance about and lack of public concern for the suffering of widows and their families on the part of governments, the international community, and civil society, and even women’s organizations”.<sup>62</sup>

In Zambia, the Justice for Widows and Orphans Project (JWOP) was formed in 2001 with the aim of raising awareness and improving the plight of widows and orphans across the country. The organisation is funded by the government of Finland through its embassy in Zambia, and operates in a number of districts, including Monze and Lusaka. JWOP communications officer Felix Kunda states that “the plight of widows and orphans renders them extremely vulnerability to property grabbing, dispossession and destitution upon the death of a husband. This situation is exacerbated by HIV/AIDS and the victims often lack the power to seek legal and social redress to their situation”. Kunda advises that previously, “widows and orphans were looked after and integrated into society”; however, “various socialisation processes” have meant that “widows and orphans have been disadvantaged because of the difficulties in the quest to enjoy human rights”.<sup>63</sup>

One of the objectives of JWOP is to educate widows on their legal rights under the Intestate Succession Act “so that they are not exploited, harassed and down trodden when their beloved husbands are no more”. Interpretations of local customs and traditions in many African societies, including Zambia, often take precedence over statutory laws such as the Intestate Succession Act.<sup>64</sup> An October 2009 report on customary law in Zambia highlights the tendency for local courts to bypass the Act, “leaving widows receiving little or nothing from their dead husband’s estate”.<sup>65</sup>

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<sup>61</sup> Kuyela, T. 2007, ‘Alleviating the Pangs of Widowhood’, AllAfrica Global Media, *Times of Zambia*, 14 February <http://allafrica.com/stories/200702140501.html> – Accessed 22 November 2010 – Attachment 28

<sup>62</sup> Kuyela, T. 2007, ‘Alleviating the Pangs of Widowhood’, AllAfrica Global Media, *Times of Zambia*, 14 February <http://allafrica.com/stories/200702140501.html> – Accessed 22 November 2010 – Attachment 28

<sup>63</sup> Kuyela, T. 2007, ‘Alleviating the Pangs of Widowhood’, AllAfrica Global Media, *Times of Zambia*, 14 February <http://allafrica.com/stories/200702140501.html> – Accessed 22 November 2010 – Attachment 28

<sup>64</sup> Kuyela, T. 2007, ‘Alleviating the Pangs of Widowhood’, AllAfrica Global Media, *Times of Zambia*, 14 February <http://allafrica.com/stories/200702140501.html> – Accessed 22 November 2010 – Attachment 28

<sup>65</sup> Robins, S. 2009, ‘A place for tradition in an effective criminal justice system: Customary justice in Sierra Leone, Tanzania and Zambia’, Policy Brief No. 17, Institute for Security Studies, October <http://www.iss.co.za/uploads/NO17OCT09.PDF> – Accessed 19 November 2010 – Attachment 12

## 11. Please provide information on the treatment of women and especially widows in the Tonga speaking ethnic group in Zambia.

Limited information was found on the treatment of Tonga women specifically, although a number of sources indicate that women in Zambia generally experience widespread domestic violence, rape, and sexual harassment. The World Organisation Against Torture reports that domestic violence committed by members of a woman's in-laws is often exacerbated by dowry and bride-price traditions. In addition, harmful practices such as dry sex, incest, forced abortion, and widow cleansing occur in various communities. Traditional norms and practices prevent many women from reporting such abuse, while cultural beliefs about a woman's role in society provide justification for continuing violence.<sup>66</sup>

The Zambian Police's Victim Support Unit documented "229 cases of rape, 34 cases of attempted rape, and 141 cases of indecent assault" in 2008. Out of these cases, 72 resulted in convictions.<sup>67</sup> In December 2007, the Young Women's Christian Association (YWCA) in Zambia reported that they had recorded 874 domestic violence cases since 2006, with husbands and relatives named as the perpetrators in approximately 75 percent of cases.<sup>68</sup> In November 2006, the YMCA reported that it received 10 cases of domestic violence against women each week. Furthermore, a joint study by a number of non-governmental organisations found that "almost half of married women aged over 15 reported being battered or physically abused by their husbands, and 53 percent of women overall experienced physical violence".<sup>69</sup>

Women in Zambia suffer from discrimination in access to health care, economic participation, employment, education, political participation, property ownership, and inheritance rights. Lack of access to information contributed to discrimination against women in exercising reproductive rights including accessing contraception, maternal care, and HIV/AIDS testing and treatment. The control of women by their husbands, who often hold the decision-making power in terms of health-care, limits women's ability to access such information and treatment, and to negotiate safe sex and condom use.<sup>70</sup> The Countries and Their Cultures entry on Zambia states that "[m]en have most of the power. There has been an effort to gain greater influence for women's rights, but it is difficult to incorporate programs that change traditional beliefs".<sup>71</sup>

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<sup>66</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1; Freedom House 2010, 'Freedom in the World: Zambia', Freedom House website <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7951> – Accessed 16 November 2010 – Attachment 23; Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia*, December – Attachment 21; World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women's Rights*, UNHCR Refworld website, 26 June, pp.18-19 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>67</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Sections 1c, 6 – Attachment 1

<sup>68</sup> 'Thinking of legal protection for women' 2007, *IRIN News*, 19 December – Attachment 29

<sup>69</sup> 'More than 10 girls raped every week' 2006, *IRIN News*, 27 November – Attachment 30

<sup>70</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1; Freedom House 2010, 'Freedom in the World: Zambia', Freedom House website <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7951> – Accessed 16 November 2010 – Attachment 23; Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia*, December – Attachment 21

<sup>71</sup> 'Zambia' (undated), Countries and Their Cultures website <http://www.everyculture.com/To-Z/Zambia.html> – Accessed 23 November 2010 – Attachment 5

Human Rights Watch reported in 2007 that women in Zambia have a low socio-economic and political status. Only 59.7 percent of women are literate, and many women are engaged in low-paid and low-skilled jobs. Women are also poorly represented in government.<sup>72</sup> Customary courts in Zambia generally consider women to be subordinate regarding rights to property and marriage. Women also require male consent to access financial credit.<sup>73</sup> Limited property and land ownership rights, along with fear of property-grabbing and loss of their homes, often prevents women from leaving abusive relationships.<sup>74</sup> Furthermore, widows are often the most disadvantaged in this area, and therefore are among the poorest in Zambian society.<sup>75</sup>

## **12. Please provide information on the existence and activities of the women's lobby group in Lusaka.**

The Zambia National Women's Lobby Group (referred to as both ZNWL and NWLG) was formed in July 1991 by 100 women with the aim of promoting women's "representation and participation in decision making at all levels through advocacy, lobbying and capacity building for women in Zambia". The group's headquarters is located at 14 Mushemi Road, Longacres, Lusaka. The ZNWL is supported by a number of international donor agencies, including Oxfam and the Global Fund for Women, and currently has 4,000 members throughout Zambia.<sup>76</sup>

The ZNWL is focused on "increasing women's participation in decision making in Local Government...through training and public awareness on the importance of getting women involved in making decisions within their communities".<sup>77</sup> Activities of the group include "training of women who want to stand for political office and other decision making positions...[educating] the electorate on the benefits of voting for women members, [and creating] awareness on the part of women to stand as candidates".<sup>78</sup> In addition, the ZNWL "spearheaded the production of a Women's Rights Charter in order to advance the human rights of women in Zambia".<sup>79</sup>

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<sup>72</sup> Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia*, December – Attachment 21

<sup>73</sup> Freedom House 2010, 'Freedom in the World: Zambia', Freedom House website <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7951> – Accessed 16 November 2010 – Attachment 23; Kachingwe, K. 2010, 'Need to Mainstream Gender Equality into all Policies', *Inter Press Service (IPS)*, 29 June – Attachment 31

<sup>74</sup> 'Thinking of legal protection for women' 2007, *IRIN News*, 19 December – Attachment 29

<sup>75</sup> 'Women's Access to Land Vital in Poverty Fight' 2008, AllAfrica Global Media, source: *Times of Zambia*, 13 May – Attachment 22

<sup>76</sup> 'Zambia National Women's Lobby Group, NWLG National office' 2006, Wiser Earth website, 11 May <http://www.wiserearth.org/organization/view/c394eb9c24a8311ad2d095f0117c7586> – Accessed 18 November 2010 – Attachment 32; 'Zambia National Women's Lobby' (undated), Hivos (Humanist Institute for Development Cooperation) Online website <http://www.hivos.nl/dut/community/partner/10001908> – Accessed 18 November 2010 – Attachment 33

<sup>77</sup> 'Zambia National Women's Lobby Group, NWLG National office' 2006, Wiser Earth website, 11 May <http://www.wiserearth.org/organization/view/c394eb9c24a8311ad2d095f0117c7586> – Accessed 18 November 2010 – Attachment 32

<sup>78</sup> 'Zambia National Women's Lobby' (undated), Hivos (Humanist Institute for Development Cooperation) Online website

<http://www.hivos.nl/dut/community/partner/10001908> – Accessed 18 November 2010 – Attachment 33

<sup>79</sup> 'Zambia National Women's Lobby Group, NWLG National office' 2006, Wiser Earth website, 11 May <http://www.wiserearth.org/organization/view/c394eb9c24a8311ad2d095f0117c7586> – Accessed 18 November 2010 – Attachment 32

A July 2010 news article reports that the ZNWL is planning to increase women's representation in decision-making positions in the 2011 Zambian general elections. The group is running a campaign named "50 percent of women and men in leadership for equitable development", with the aim of encouraging political parties to nominate women as 50 percent of their electoral candidates.<sup>80</sup>

### **13. Please provide general information on the effectiveness of police and state protection, and the extent of corruption in Zambia, particularly in respect to the protection of widowed or single women.**

#### **Corruption in Zambia**

Zambia was rated 3.6 out of 10 on Transparency International's Corruption Perceptions Index for 2010, where 10 is the least corrupt and 0 is highly corrupt.<sup>81</sup> Freedom House reported in 2010 that "[a]llegations of police corruption, brutality, and even torture are widespread, and security forces have generally operated with impunity".<sup>82</sup> Information on Zambia provided on the Countries and Their Cultures website similarly indicates that "[g]overnment corruption...is crippling the country at all levels. From bribes to payoffs at a local roadblock, corruption exists".<sup>83</sup>

According to the US Department of State, officials, particularly police, continued to engage in corrupt practices and demand bribes despite the existence of criminal penalties for corruption. The government has made some improvements in fighting corruption, announcing a National Anti-Corruption Policy in August 2009; however, there is still a widespread public perception that corruption is prevalent in the majority of government institutions.<sup>84</sup>

#### **Police and state protection of women**

The law in Zambia prohibits rape, and perpetrators can be sentenced to life imprisonment; however, the law is not effectively enforced. Spousal rape is not prohibited by law, and cases cannot be prosecuted under the provisions of the penal code that criminalise rape. Domestic violence is also not specifically prohibited by law, although cases can be prosecuted under general assault provisions of the penal code, which attract sentences ranging from 2 to 25 years imprisonment. However, these provisions are ineffective in protecting women as they require evidence of grievous bodily harm or the use of a weapon.<sup>85</sup>

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<sup>80</sup> Kachingwe, K. 2010, 'Calls for Political Parties to Field 50 Percent Female Candidates', *IPS News*, 22 July <http://ipsnews.net/news.asp?idnews=52239> – Accessed 18 November 2010 – Attachment 34

<sup>81</sup> Transparency International 2010, 'Corruption Perceptions Index 2010', Transparency International website, October [http://www.transparency.org/content/download/55725/890310/CPI\\_report\\_ForWeb.pdf](http://www.transparency.org/content/download/55725/890310/CPI_report_ForWeb.pdf) – Accessed 22 November 2010 – Attachment 35

<sup>82</sup> Freedom House 2010, 'Freedom in the World: Zambia', Freedom House website <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7951> – Accessed 16 November 2010 – Attachment 23

<sup>83</sup> 'Zambia' (undated), Countries and Their Cultures website <http://www.everyculture.com/To-Z/Zambia.html> – Accessed 23 November 2010 – Attachment 5

<sup>84</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 4 – Attachment 1

<sup>85</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1; Human Rights Watch 2007, *Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia*, December – Attachment 21; World Organisation Against Torture 2007,

In 2006, a Sexual Offences and Gender Violence Bill was drafted by a number of non-governmental organisations to provide protection from violence against women and children. The bill proposes amendments to criminal law, defines gender-based violence including marital rape, widow inheritance and property-grabbing, and imposes particular sentences for rape resulting in HIV infection. The bill provides minimum mandatory sentences of 15 years imprisonment for rape and 3 years for indecent assault.<sup>86</sup> The bill was expected to be debated in parliament in January 2009,<sup>87</sup> although a March 2010 survey completed for UNAIDS by the Zambian National AIDS Committee Officer indicates that the bill is still in the draft stage.<sup>88</sup> In addition, the YMCA in Zambia reported in December 2009 that they would continue to “lobby and advocate for the enactment of the gender-based violence bill”.<sup>89</sup>

The government has implemented a gender-based hotline, violence shelters, drop-in centres, and police training in gender-based assault. Perpetrators of sexual harassment in the workplace have also been effectively prosecuted. The Zambian Police’s Victim Support Unit, established to address abuses such as domestic violence, also handled cases of ill-treatment of widows and property grabbing.<sup>90</sup> However, police are often reluctant to investigate allegations of domestic violence, instead, encouraging reconciliation between the parties involved.<sup>91</sup>

In addition, women in Zambia reportedly experience ill-treatment at the hands of state authorities such as police officers, usually in the form of sexual violence or degrading treatment including “being forced to parade naked in front of groups of male law enforcement officials”.<sup>92</sup> Human rights groups have also reported that “police occasionally demanded sex from female detainees as a condition for their release. There also were reports that police officers raped women and young girls while they were in custody”.<sup>93</sup> Furthermore, police and judicial authorities are not bound by recommendations of the

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*Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, pp.17-21 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>86</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, pp.17-21 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>87</sup> Human Rights Watch 2008, ‘Zambia: Curbing Sexual and Gender-Based Violence’, UNHCR Refworld website, 16 December <http://www.unhcr.org/refworld/docid/494b62e917.html> – Accessed 23 November 2010 – Attachment 36

<sup>88</sup> Chirwa, B. 2010, ‘Survey Response Details’, UNAIDS website, 31 March [http://data.unaids.org/pub/Report/2010/zambia\\_2010\\_ncpi\\_en.pdf](http://data.unaids.org/pub/Report/2010/zambia_2010_ncpi_en.pdf) – Accessed 23 November 2010 – Attachment 37

<sup>89</sup> ‘Marital problems are the most common reported to us – Young Women Christian Association’ 2009, *Zambian Chronicle*, 29 December <http://zambianchronicle.com/?m=200912> – Accessed 23 November 2010 – Attachment 38

<sup>90</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Section 6 – Attachment 1

<sup>91</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, pp.17-21 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>92</sup> World Organisation Against Torture 2007, *Human Rights Violations in Zambia – Part II: Women’s Rights*, UNHCR Refworld website, 26 June, pp.17-21 <http://www.unhcr.org/refworld/docid/46af4d550.html> – Accessed 16 November 2010 – Attachment 8

<sup>93</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March, Sections 1c, 6 – Attachment 1

Police Complaints Authority. Perpetrators in such cases are rarely punished and victims are unlikely to receive compensation.<sup>94</sup>

Local customary and traditional laws also continue to discriminate against women and treat them as subordinates in terms of land and property ownership, inheritance rights, and marriage. A lack of legislation on preventing early marriages and dowries also leaves many young girls vulnerable to abuse, although the government has carried out advocacy tours to educate people against bride-price violence.<sup>95</sup>

In 2002 Theresa Chilala, a widow forced off her land after refusing to undergo a sexual cleansing ritual lodged a case with the Zambia's Lands Tribunal, a court based on customary law. Chilala hoped that the court would prevent her in-laws from continuing to bury dead relatives on her new property and allow her to return to her deceased husband's land. The court ruled against the widow, although local chiefs provided some protection by banning her in-laws from burying people on her property. Women's legal advocate Florence Shakafuswa argued that "this is only one case of where customary and sexually discriminatory laws are violating international rights treaties that the government has signed".<sup>96</sup>

## Attachments

1. US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zambia*, 11 March.
2. Kürschner, E. et al. 2000, 'Incorporating HIV/AIDS Concerns into Participatory Rural Extension: A Multi-Sectoral Approach for Southern Province, Zambia', Humboldt University Berlin website, November <http://edoc.hu-berlin.de/series/sle/s188/PDF/s188.pdf> – Accessed 19 November 2010.
3. 'Zambia Overview' (undated), Minority Rights Group International website <http://www.minorityrights.org/3922/zambia/zambia-overview.html> – Accessed 19 November 2010.
4. 'Tonga' (undated), Countries and Their Cultures website <http://www.everyculture.com/wc/Tajikistan-to-Zimbabwe/Tonga.html> – Accessed 16 November 2010.
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