



‘Forced Concubinage’ in Zimbabwe

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Introduction

'Forced concubinage', as the phrase suggests, is a situation in which women are coerced into a 'sexual partnership' with a man and/or compelled to perform the "wifely" duties expected by the partnered male. Involuntary or forced concubinage may take the form of sexual slavery, human trafficking, rape and other forms of sexual violence. It occurs predominantly, but not exclusively, in areas of conflict, whether violent or non-violent. Forced concubinage is a gross violation of human rights which must be prevented, and, if it occurs, must be investigated and punished. In Zimbabwe, forced concubinage is manifest in two main forms; namely, politically motivated rape of women and human trafficking. This piece seeks to reiterate the obligations of the state with regard to these forms of violence and to recommend some of the possible ways of addressing the violations.

Background to forced concubinage

Rape and sexual violence have accompanied warfare in virtually every known historical era.¹ Before the 19th century military circles supported the notion that all persons, including unarmed women and children, were still the enemy, with the belligerent having conquering rights over them.² That "to the victor goes the spoils" was accepted and women were regarded as such spoils.³ Institutionalised sexual slavery and enforced prostitution have been documented in a number of wars, one of the most well known examples being "comfort women" - a euphemism for the close to 200,000 women who served in the Japanese army's brothels as sex slaves during the Second World War and were subjected to many forms of abuse.⁴

The war crime Tribunals in Yugoslavia and Rwanda revealed that combatants used rape and sexual assault as a means of waging war and helped focus the world's attention on this horrendous facet of war.⁵ In Bosnia-Herzegovina, mass rapes and the forced impregnations of women were adopted as part of the process of "ethnic cleansing".⁶ As a result of the evidence of such atrocities, the international instruments that form the normative framework of the criminalisation of sexual violence against women emerged.

The Human Rights Framework

The United Nations Special Rapporteur on Violence against Women has commented in official reports that violence against women appears in three forms, namely, violence in the community; violence perpetrated or condoned by the state; and violence in the private sphere. Violence in the community includes sexual assault; sexual harassment; violence within institutions; trafficking and forced prostitution; violence against women

¹ BM Levinson, V H Matthews & T Frymer-Kensky *Gender and Law in the Hebrew Bible and the Ancient Near East* (2009) p. 203.

² K D Askin *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997) p. 26–27.

³ Askin *War Crimes Against Women* (As above) p. 10–21.

⁴ http://www.religioustolerance.org/sla_japa.htm (Accessed on 24 May 2010).

⁵ *Prosecutor v. Anto Furundzija* - Trial Chamber II - Judgment - IT-95-17/1 [1998] ICTY 3 (10 December 1998) para 165-169 and *The Prosecutor v. Jean-Paul Akayesu* Judgment - ICTR-96-4-T [1998] ICTR 2 (2 September 1998) Para 10A of the indictment.

⁶ *Furundzija Case* (As above).

migrant workers; and pornography.⁷ Violence perpetrated or condoned by the state takes the form of gender-based violence during armed and low-level conflict; custodial violence; violence against refugees and internally displaced persons (IDPs); and violence against women from indigenous and minority groups.⁸ Violence in the private sphere includes domestic violence and forced marriage. Forced concubinage fits into all three categories because it can be perpetrated by both state and non-state actors for purely economic gain or for political reasons. It can also be committed as politically motivated acts by state actors. Forced concubinage infringes upon the rights of women to freedom of movement⁹ and to personal liberty¹⁰ through forcefully detaining the women at bases and in brothels or elsewhere.

Forced concubinage is universally deplored because it infringes several human rights norms and goes against every basic tenet of human dignity. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the European Convention on the Rights and Freedoms of Man (ECHR) and the Inter-American Convention on Human Rights (IACHR) all make provision for rights that are violated in a situation of forced concubinage. Among the rights infringed are the right to liberty and security of the person,¹¹ freedom of movement,¹² freedom from slavery,¹³ as well as freedom from inhumane and degrading treatment.¹⁴ Article 6 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) specifically prohibits trafficking in persons - which may take the form of forced concubinage. The Beijing Platform for Action¹⁵ likewise addresses this issue within its "twelve critical areas of concern".

The United Nations Security Council (UNSC) has adopted a number of Resolutions which treat the issue of sexual violence in times of conflict as a human security challenge. These are Resolution 1325 of 2000 and Resolution 1820 of 2008. Resolution 1325, on Women, Peace, and Security, acknowledged the impact of war on women, and emphasized the need to include women in conflict resolution and peace processes in order to achieve sustainable peace.¹⁶ Having been adopted against a background of widespread perpetration of gender-based crimes with impunity for war crimes, crimes against humanity, and other gross violations of human rights against women, Resolution 1325 emphasized "*the responsibility of all States to put an end to*

⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk 15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) - A critical Review A.HRC.11.6.Add.5.pdf (27 May 2009) p. 9.

⁸ Report of the Special Rapporteur (As above) p. 10.

⁹ Section 22(1) of the Constitution of Zimbabwe S.I 1979/1600 of the United Kingdom (the Constitution).

¹⁰ Section 13(1) of the Constitution.

¹¹ Article 6 ACHPR, Article 9 ICCPR, Article 5 ECHR, Article 7 IACHR and Article 3 UDHR.

¹² Article 12 ACHPR, Article 12 ICCPR, Article 22 IACHR and Article 13 UDHR.

¹³ Article 5 ACHPR, Article ICCPR Article 4 ECHR, Article 6 IACHR and Article 4 UDHR.

¹⁴ Article 5 ACHPR, Article 7 ICCPR, Article 3 ECHR, Article 5(2) IACHR and Article 5 UDHR.

¹⁵ Adopted at the United Nations 4th World Conference on women in Beijing in 1995. It called on governments to take steps to prevent, eliminate and respond to violence against women.

¹⁶ United Nations Security Council Resolution 1325 on Women, Peace and Security Adopted by the Security Council at its 4213th meeting, 31 October 2000. http://www.un.org/events/res_1325e.pdf.

*impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual violence against women and girls’.*¹⁷

To complement Resolution 1325, Resolution 1820 recognised rape as a weapon of war and a threat to international security, noting that “*women and girls are particularly targeted by the use of sexual violence including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.*”¹⁸ It gave credence to the security threat to women in conflict, and provides a clear mandate to international and local governing bodies as well as civil actors. It also notes that rape and other forms of sexual violence can constitute war crimes, crimes against humanity, or a constitutive act with respect to genocide. It calls upon member states of the UN to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

In making sexual violence a security concern, these Resolutions placed it on the same political footing as other crimes against humanity in conflict situations. Thus, the UN Secretary General can report on the implementation of the Resolutions, specifically identifying countries where sexual violence is being used as a weapon of conflict. Although these Resolutions have targeted violations in situations of war, they could be equally applicable in situations where violence is perpetrated by state and non-state actors, with or without state sanction, and in the situations of countries which are not at war, as is the case in Zimbabwe.

State Responsibility

All the instruments discussed above can only be effective where there is compliance, implementation, and accountability by states. National governments bear the primary responsibility of curbing forced concubinage as manifested in the use of sexual violence as a weapon of conflict, sexual slavery in human trafficking and forced marriage. The prosecution of offenders in local courts gives the impression of intolerance for such acts. However, where a government is itself the biggest perpetrator of these heinous crimes, or it does not censure such behaviour, then the violations can continue to be perpetrated unchecked.

A core component of the measure of a state’s responsibility lies in the determination of whether a state has exercised due diligence. The standard for due diligence has long been part of international law. It found its first expression in the Inter-American System of Human Rights¹⁹ and was incorporated into General Recommendation 19 of the Committee on the Elimination of all forms of Discrimination against Women

¹⁷ Para 11 of the Resolution.

¹⁸United Nations Resolution 1820 on Women, Peace and Security June 2008
http://www.ifuw.org/advocacy/docs/UN_SC_Resolution1820.pdf.

¹⁹ Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, 29 July 1988, Series C: Decisions and Judgments, No. 04.

(Committee on CEDAW).²⁰ The standard explains that due diligence should involve a concerted effort by the state to ensure that violations do not occur; or that if violations have occurred, they have been addressed. It also entails a state's efforts to put in place all possible mechanisms to ensure that violations do not recur.

A report on due diligence by the Special Rapporteur on Violence against Women stated that the obligation on states to prevent violence against women includes specific recognition by way of ratification of relevant treaties and enactment of special legislation.²¹ It also encourages going beyond penal responses so as to ensure positive action by the state, through policies, programmes, the creation of special mechanisms, such as ombudspersons/commissions, public education campaigns, sensitisation of agencies engaged with operationalising women's rights programmes, or collection of data to assess the de facto status of the problem.

In fulfilling their duty to protect, states ought to establish or promote institutional arrangements that provide the services essential to respond to violence against women, such as counselling, shelter, health care, crisis support, restraining orders, and financial aid to victims of violence, ensuring their accessibility to women from marginalised groups.²² They must also punish perpetrators, investigate and prosecute cases of violence or abuse, observe the rule of law, and endeavour to secure convictions with appropriate sentencing in exercising their duty to fulfil.²³

The Declaration on the Elimination of Violence against Women (DEVAW) further expanded state accountability to include violence against women by private actors (in addition to state actors) in the private or public sphere, thus placing upon the state the duty to prevent, investigate, punish, and provide compensation for all acts of violence against women wherever they occur. DEVAW²⁴ obliges states to exercise due diligence in preventing, investigating, and punishing acts of violence against women, whether those acts are perpetrated by the State or by private persons in accordance with national legislation;²⁵ and to punish and provide redress for the wrongs caused to women who are subjected to violence; including informing victims of and providing them with access to mechanisms of justice, as well as just and effective remedies for the harm that they have suffered.

CEDAW also creates obligations on States Parties to:

²⁰ CEDAW General Recommendation 19 stipulates that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

²¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk - Addendum-Political economy and violence against women [A/HRC/11/6/Add.6](http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.11.6.Add.6.pdf) 23 June 2009 <http://www2.ohchr.org/english/issues/women/rapporteur/docs/A.HRC.11.6.Add.6.pdf>. E/CN.4/2006/61 para 110-112.

²² Report on due diligence (as above).

²³ Report on due diligence (as above).

²⁴ Declaration on the Elimination of all Forms of Violence Against Women (DEVAW) General Assembly A/RES/48/104 85th plenary meeting 20 December 1993.

²⁵ Article 4 (c).

- *condemn discrimination against women in all its forms and to agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.*²⁶
- *adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*²⁷
- *establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.*²⁸
- *refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*²⁹
- *take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*³⁰

General Recommendation 19 of the CEDAW Committee stipulates that *States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.*

Having ratified CEDAW,³¹ and bearing the responsibilities discussed above, the government of Zimbabwe should work to eliminate all forms of violence against women, forced concubinage included. The Trial Chamber of the Special Court for Sierra Leone indicted six former leaders of rebel groups in Sierra Leone on charges of 'forced marriage'.³² This was the first time that an international court recognised forced marriage as a category of inhuman acts constituting crimes against humanity. Such a precedent and many others appear relevant to the situation in Zimbabwe in seeking an effective remedy for victims.

Zimbabwe

Forced concubinage takes three main forms in Zimbabwe namely; rape, human trafficking, and forced marriage. Politically motivated rape and sexual exploitation of women is a constant feature of election periods

²⁶ Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Adopted and opened for signature, ratification and accession by General Assembly A/RES/34/180 of 18 December 1979.

²⁷ Article 2(b) CEDAW.

²⁸ Article 2 (c) CEDAW.

²⁹ Article 2 (d) CEDAW.

³⁰ Article 2 (f) CEDAW.

³¹ Zimbabwe acceded to CEDAW on 13 May 1991.

³² *Prosecutor v Brima, Kamara and Kanu* Case No SCSL 04—16-PT, Decision on Prosecution Request for leave to amend the indictment (May 6, 2004).

in Zimbabwe. Human trafficking for purposes of sexual exploitation has also increased in the face of difficult economic conditions placing women and children at risk. Although forced marriage has significantly decreased, it still remains a concern. This report will focus on the two most predominant forms of forced concubinage, namely, politically motivated rape and human trafficking.

Politically motivated rape

Forced concubinage finds its place in the contemporary history of Zimbabwe beginning with the liberation struggle. It involved the forced conscription or kidnapping of young girls to wash, cook, porter, and have sex with soldiers and militiamen during the Second *Chimurenga*, where the young women were known as *chimbwidos*.³³ Similar trends of violence involving the use of girls and women during the Mozambique liberation struggle have been described as "the forced concubinage of girls and women, treated as 'war booty' and as property to be used or distributed by the highest ranking male."³⁴

More recently, forced concubinage has been used as a political tool. This intensified in 2002 when the ruling Zimbabwe National Union Patriotic Front (ZANU PF) led-government introduced the National Youth Service Programme (NYSP). The 1979 National Service Act regulates recruitment of youths into national service, stating that; "18 years [is] the lower age limit for recruitment into regular national service and ... for emergency national service" for recruits and volunteers.³⁵ At its inception the NYSP was ostensibly intended to foster five values in trainees, namely, a sense of national identity, patriotism, unity and oneness, discipline, and self reliance.³⁶ In July 2002, the government announced the NYSP as a compulsory exercise for all school leavers from January 2003.³⁷ Contrary to the values that were supposed to be instilled in the youths that went to these training centres, trainees committed serious human rights violations against women and girls.³⁸ Girls were allegedly raped at the training centres, including by officials and their male counterparts for whom they also carried out menial household chores.³⁹ Some of the girls were as young as 11 or 12 years old.⁴⁰ By early 2002, an estimated 1000 women and girls were held in the training camps which became regarded by many as militia camps for sexual purposes.⁴¹

³³ Catholic Commission for Justice and Peace in Rhodesia *The Man in the Middle: Torture, Resettlement and Eviction and Civil War in Rhodesia*.

³⁴ C Thompson *Mozambique: Soldiers of misfortune* Southern Africa Report SAR, Vol 13 No 2, March 1998 p. 22.

³⁵ Report of Zimbabwe to UN Committee on the Rights of the Child, UN Doc. CRC/C/3/Add.35, 12 October 1995, <http://www.ohchr.org>. However, the same report says elsewhere that "Direct recruitment of children less than 16 years of age into the army is prohibited by the National Service Act of 1979. The Act provides for 16 years as the lower age limit for recruitment into regular national service and 18 years for emergency national service."

³⁶ Ministry of Youth Development: <http://www.mydgc.gov.zw/nys.htm>. (Accessed on 28 May 2010).

³⁷ "National service to be compulsory", *The Herald*, Harare, 2 July 2002, <http://www.herald.co.zw>. (accessed 23 May 2010).

³⁸ Solidarity Peace Trust, *National youth service training – "shaping youth in a truly Zimbabwean manner": An overview of youth militia training and activities in Zimbabwe, October 2000 - August 2003*, 5 September 2003, http://www.zim-movement.org/docs/SPT_html_0903.htm.

³⁹ IRIN, "Zimbabwe: Green Bombers' deserting poor conditions in camps" 23 January 2004, <http://www.irinnews.org>

⁴⁰ US Department of State, *Country Reports on Human Rights Practices 2003*, February 2004, <http://www.state.gov/g/drl/hr/c1470.htm>;

Hilary Anderson, "Zimbabwe's torture training camps", BBC News, 27 February 2004.

⁴¹ Zimbabwe Women Lawyers' Association, quoted in Amnesty International (AI), *Zimbabwe: Assault and sexual violence by militia*, 5 April 2002, <http://web.amnesty.org/library/engindex>.

Those who escaped the training camps related horrific stories as to what transpires within the confines of the camps, including forced sexual concubinage.⁴² One young girl recalled:

*"There were about 25 men. One of them asked me if I'd ever slept with a man. I said no, and he said: 'Today you start, come and show us the white in you.' He stuck his hand in my mouth to stop me screaming. When he had finished he peed on me."*⁴³

One of the youths recruited to the camps recalled,

*"There were about 200 of us in the camp and we called ourselves 'the Taliban'. Our doctrine was to be against the white man, he was our worst enemy, and our hero was bin Laden because of the way he stood up against the West. We were trained to be vigilant, always looking for opposition supporters, and were told if we saw anyone with an MDC T-shirt we must assault them with whips, catapults, steel bars. The idea was to instil fear in people so they would be frightened to vote and to take revenge against those who had. Then ...they said it is the women who are behind this campaign to bring back white rule. They told us to take them to the bush, that they are daughters of dogs and coconuts, and to bring young ones back to the camp to service us. When I said we can't do this, that these are our sisters, they accused me of being a 'sell-out' and beat me."*⁴⁴

The Minister of the then Ministry of Youth Development in March 2004, Brigadier Ambrose Mutinhiri, denied that military training was compulsory, or was included in the NYSP, alleging that the government "*believe[d] firmly in the protection of children, especially the girl child*".⁴⁵ The NYSP became the training ground for what has come to be known as the 'youth militia' and, from 2002 onwards, allegations of murder, torture, rape, and the destruction of property were linked to these youths.⁴⁶ The youth militia have been described as '*a group of young recruits indoctrinated under a compulsory national youth service training program, trained in torture and killing techniques and employed in the violent repression of opposition parties*'.⁴⁷ They have been documented as being responsible for the bulk of violations against civilians. In 2002, there were reports of women and girls being raped because they were wives, girlfriends, or daughters to political activists.⁴⁸

Before the formal training of the youth militia, ZANU (PF) youths had occupied and established 'bases' on invaded farms in a land reform exercise that saw the majority of white farmers and farm workers driven off

⁴² Solidarity Peace Trust report *"Shaping youths in a truly Zimbabwean manner"* 2003.

⁴³ Extracted from the Sunday Telegraph 25 August 2002 in Rape Camps in Zimbabwe by Christine Lamb <http://www.christinalamb.net/pages/articles/Zimbabwe.html> (Accessed on 25 February 2010).

⁴⁴ Extract from Article by Christina Lamb: *Rape Camps in Zimbabwe* (as above).

⁴⁵ "National service programme voluntary, says Mutinhiri", *The Herald*, Harare, 6 April 2004; BBC, "Zimbabwe defends 'secret camps'", 5 March 2004.

⁴⁶ Physicians for Human Rights Denmark, *Post Presidential Election March to May 2002: "We'll make them run"*, 21 May 2002, http://www.phrusa.org/healthrights/word_docs/zimbabwe1.doc.

⁴⁷ The Coalition to stop the use of child soldiers Africa Regional Review: *Child Soldiers Global Report* (2004) p.111.

⁴⁸ N Hentoff. *The Washington Times*. 23 December 2002 *Who will speak for Zimbabwe's blacks?* (Accessed on www.zimbabwesituation.com on 19 May 2010).

their farms in the years between 2000 and 2002.⁴⁹ A report on patterns of gender based violence in Zimbabwe showed that incidents, which reportedly took place at these in bases, included allegations of forced concubinage.⁵⁰ One woman who was forced to become part of the youth militia recalled that:

*"They were given money to go to the township and drink, so that they would be drunk when they went out beating people, I was even forced to drink. I don't know how much money they were given, but they always had enough that they were drunk. I think some of them smoked mbanje (marijuana)".*⁵¹

Violence against women, including rape and other forms of sexual violence increased significantly during election periods. Women and girls were taken to camps known as bases where they were detained and subjected to violent abuse. Even though there are very few documented reports by women who were raped and subjected to other forms of sexual abuses at the bases, the number of victims is believed to be large. A report by the Research and Advocacy Unit suggested that 2% of women in Zimbabwe had personally experienced politically motivated rape at bases and sometimes in their homes.⁵² This was endorsed by a second study, based on focused discussions with 150 women nationwide.⁵³

The findings in the testimonies gathered by AIDS Free World revealed that the rape of women at these bases was a *'brutal, orchestrated campaign of rape and torture perpetrated by Mugabe's ZANU-PF youth militia, agents of Zimbabwe's Central Intelligence Organization (CIO), and people who identify themselves as veterans of the liberation war (known as war veterans) affiliated with ZANU-PF.'*⁵⁴ The AIDS Free World research revealed a systematic pattern of violence against women accompanying elections periods starting with the 2000 Parliamentary elections (when the MDC presented ZANU-PF with its first serious electoral challenge) and continuing through 2002 when Morgan Tsvangirai first ran for president. The rapes documented by AIDS-Free World revealed a dramatic increase of rapes in 2008 as compared with 2007. There was a surge in frequency – some 64% - occurring between the March Presidential election and the June Presidential runoff election.⁵⁵

⁴⁹ Zimbabwe Human Rights NGO Forum: *Politically motivated violence in Zimbabwe 2000–2001. A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM. (2001).

⁵⁰ Zimbabwe Human Rights NGO Forum *"A Woman's Place is in the Home?" –Gender Based Violence and Opposition Politics in Zimbabwe*. 16 days of Activism against Gender Based Violence (December 2006).

⁵¹ A P Reeler *The role of militia groups in maintaining ZANU PF's political power* (March 2003) p.12.

⁵² RAU (2010), *Preying on the "Weaker" Sex: Political Violence against Women in Zimbabwe*. Report produced by IDASA (An African Democracy Institute), the International Center for Transitional Justice [ICTJ] and the Research and Advocacy Unit [RAU]. November 2010. HARARE: RESEARCH & ADVOCACY UNIT.

⁵³ RAU (2010), *"When the going gets tough the man gets going!" Zimbabwean Women's views on Politics, Governance, Political Violence, and Transitional Justice*. Report produced by the Research and Advocacy Unit [RAU], Idasa [Institute for Democracy in Africa], and the International Center for Transitional Justice [ICTJ]. November 2010. HARARE: RESEARCH & ADVOCACY UNIT.

⁵⁴ Aids Free World *Electing to rape: Sexual Terror in Mugabe's Zimbabwe* (December 2009) p.10. This report is supported by RAU & ZADHR (2010) *No Hiding Place: Political Motivated Rape Against Women in Zimbabwe*. December 2010 HARARE: RESEARCH & ADVOCACY UNIT

⁵⁵ Aids Free World Report (as above) p.11.

The women interviewed, in aggregate, were raped at least 380 times by 241 different ZANU-PF youth militia and war veterans throughout the country.⁵⁶ Each woman, on average, was raped five times, although this may be an underestimate given that some women fell unconscious during the violent rapes, and therefore lost count of the number of rapists and rapes at some point.⁵⁷ The nature of the relationships exposed by the interviews in that report showed elements of forced concubinage as the women were locked up or forcefully detained, raped every day by different men, and forced to do menial household chores such as cooking, fetching water and firewood, and washing the clothes for their captors.⁵⁸ They were thus forced to live as concubines, taking care of the men's needs including capitulating to forced sexual encounters.

Human Trafficking

The Special Rapporteur on Violence against Women defines human trafficking as "the occurrence of non-consensual transportation for the purpose of slavery-like practices or forced labour".⁵⁹ Where women are involved, human trafficking involves, among other things, the buying and selling of women and children for purposes of sexual exploitation. They are kept in bondage and forced to live as prostitutes creating as much wealth as possible for their "owners".⁶⁰

Within the global system of human rights there are a number of instruments dealing with the problem of human trafficking. The 1948 Universal Declaration of Human Rights places emphasis on the equality, liberty, security, freedom (including from slavery or servitude) of all human beings.⁶¹ Slavery and slave-like practices are also denounced in the International Covenant on Civil and Political Rights (ICCPR).⁶² The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) creates an obligation on states to punish traffickers.⁶³ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) encourages States to take legislative and other measures "to suppress all forms of traffic in women and exploitation of prostitution of women."⁶⁴ The United Nations Convention against Transnational Organised Crime (UNTOC) obliges states to punish certain offences which constitute organised crime, among them human trafficking.⁶⁵ The main focus of the Convention comes through comprehensive regulations covering mutual extradition of suspects as well as international legal assistance in the prosecution of criminals. This convention is supplemented by the Protocol to Prevent,

⁵⁶ Aids Free World Report (as above) p.11.

⁵⁷ Aids Free World Report (as above) p.17.

⁵⁸ Aids Free World Report (as above) p.22-23.

⁵⁹ E/CN.4/2000/68, para. 13, p. 9 - Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

(i) By threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:

(ii) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).

⁶⁰ Country Narrative (as above) The pimps own the women and girls as sex slaves. They sell them off to as many men as possible every day for sex and the pimps get to keep all the money. The woman or girl cannot escape, is kept under tight security and has absolutely no contact with the outside world, except through the pimp.

⁶¹ UDHR Article 1 as read with Articles 3 and 4.

⁶² ICCPR Article 8.

⁶³ This Convention was approved by General Assembly resolution 317(IV) of 2 December 1949. It entered into force on 25 July 1951, in accordance with article 24 of the Resolution.

⁶⁴ CEDAW Article 6.

⁶⁵ Adopted through General Assembly Resolution 55/25 of 15 November 2000.

Suppress and Punish Trafficking in Persons, the only universal instrument that addresses all aspects of trafficking of persons.⁶⁶ Zimbabwe is not signatory to the Protocol. In fact Zimbabwe is one of only two Southern African countries (Angola being the other) that has not ratified the Protocol.

Zimbabwe is a source and transit country for women and children trafficked for purposes of sexual exploitation and forced labour.⁶⁷ Women and children are trafficked from the Democratic Republic of Congo, Malawi and Mozambique to South Africa through Zimbabwe.⁶⁸ It is also a source country because Zimbabwean women and girls are trafficked for sexual exploitation in brothels to neighbouring Botswana, Mozambique, South Africa, and Zambia.⁶⁹ Some of them are lured to Egypt, the United Kingdom, the United States, and Canada with false promises of employment and end up in bondage for sexual exploitation.⁷⁰ The 'look east' policy of the government⁷¹ is also alleged to have contributed to the increase in human trafficking as young women and girls are lured with false promises of jobs to Asian countries, especially China, where they are then be sold as "wives" and prostitutes.⁷² The trafficking situation has, over the years, been worsened by the socio-economic crisis in Zimbabwe in which the currency devalued, inflation reached shocking heights, and families could barely afford the basics of life. Young women from poor backgrounds are particularly vulnerable as they are desperate for better opportunities outside the country.⁷³ This makes them extremely vulnerable to traffickers who manipulate the women's vulnerability to their advantage.

Zimbabwe's Legislative Framework

Zimbabwe has legislative provisions which, if used diligently, could provide a remedy for victims of politically motivated rape. The Constitution of Zimbabwe enshrines the rights to freedom from inhumane and degrading treatment⁷⁴, freedom of movement, the right to liberty and security of the person, as well as freedom from slavery. Both rape and forced prostitution violate these constitutionally guaranteed rights and ought to be punished. Section 36 of the Criminal Law (Codification and Reform) Act,⁷⁵ prohibits public violence and describes it as the 'actions by any person acting alone or in concert with one or more other persons, forcibly and to a serious extent disturbs the peace, security or order of the public or any section of the public';⁷⁶ or 'invades the rights of other people';⁷⁷ 'intending such disturbance or invasion or realising that there is a real

⁶⁶ The Protocol was adopted by the United Nations General Assembly in on 12 November 2000 along with the Convention against Transnational Organised Crime and came into force in on 25 December 2003.

⁶⁷ 'Human trafficking and Modern Day Slavery' <http://gvnet.com/humantrafficking/Zimbabwe.htm>.(accessed on 3 July 2010).

⁶⁸ Country Narrative (as above).

⁶⁹ Country Narrative Trafficking in persons Report 2009. US State Department (June 2008) <http://gvnet.com/humantraffickin/Zimbabwe-2htm> (accessed on 13 May 2010).

⁷⁰ Country Narrative (as above).

⁷¹ In which the government developed a policy to trade more with Asian-Pacific States than Western Europe and North America owing to the bad relations existing between the government of Zimbabwe and the West over bad governance and human rights abuses.

⁷² S Kwenda 'Zimbabwe Young girls lured and sold for sex in Asia' <http://www.afrika.no/Detailed/11783.html> (accessed on 19 June 2010).

⁷³ Country narrative (as above).

⁷⁴ Section 15(1) of the Constitution.

⁷⁵ Criminal Law (Codification and Reform) Act [Chapter 9:23] of 2004.

⁷⁶ Section 36(1) (a) of the Criminal Code.

⁷⁷ Section 36 (1) (b) of the Criminal Code.

risk or possibility that such disturbance or invasion may occur'.⁷⁸ This provision has been and could be used to apprehend perpetrators of political violence against women as an invasion of their rights.

Rape on its own is a crime in Zimbabwean law. It is defined as:

*"the act of a male person to knowingly have sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse the female person has not consented to it; and the male person knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it."*⁷⁹

Rape carries a sentence of imprisonment for life or any shorter period as the judiciary may decide from case to case.⁸⁰

The Global report on trafficking in persons reiterates that Zimbabwe does not have a specific provision on human trafficking.⁸¹ Despite the fact that the Zimbabwean Criminal Code criminalises sexual exploitation, the absence of a specific provision on human trafficking creates a huge deficit in the legal framework. Consequently, the only way to prosecute traffickers would be to use the provisions scattered in the Criminal Code, the Immigration Act, the Labour Act and the Children's Act⁸² addressing specific aspects of the process of trafficking. This fragmented approach makes the offence very difficult to prosecute and as a result few prosecutions or convictions for trafficking in persons in Zimbabwe are recorded. This legislative void is compounded by government denial of the gravity of the problem through rejection of assertions by organisations dealing with the issue that human trafficking is a growing phenomenon.⁸³

Conclusions and Recommendations

The legislative framework for addressing the challenge of forced concubinage is inadequate. In Zimbabwe human trafficking is not generally acknowledged as many who encounter the problem do not recognise it as such. Trafficking is linked exclusively to prostitution, but patterns in the past two decades have shown that trafficking serves bonded labour, including within the sex trade, forced marriage and other slavery-like practices. There is therefore a need to de-link trafficking from conventional perceptions of it as prostitution and to ensure that the human rights of trafficked women are at the centre of approaches to trafficking.

⁷⁸ The penalty for public violence are a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

⁷⁹ Section 65 of the Criminal Code.

⁸⁰ Section 65(b) Criminal Code.

⁸¹ United Nations Office on Drugs and Crime (UNODC) and Global Initiative to Fight Human Trafficking (UNGIFT) February 2009.

⁸² The Criminal Law (Codification and Reform) Act [Chapter 9:23] The Immigration Act [Chapter 4:02] The Labour Act [Chapter 28:01] and The Children's Act [Chapter 5:06].

⁸³ Saul Chaminuka (The Zimbabwean) Zimbabwe- A center for human trafficking http://www.zimbabwesituation.com/nov23a_2006.html. (Accessed on 10 July 2010).

The Zimbabwe government is aware that the problem of trafficking exists but efforts to combat it are minimal. Zimbabwe has sent representatives to meetings discussing the problem of trafficking - for instance, the Southern African Development Community (SADC) Ministerial Conference on the Development of a Strategic Plan of Action to Combat Trafficking in Persons, Especially Women and Children in the SADC Region held on 28th of May 2009.⁸⁴ Some government officials have also attended close to 10 International Organisation for Migration (IOM) workshops touching on the problem.⁸⁵ However, the fact that the government does not give specialised anti-trafficking training for the police means that they are not sensitised in dealing with trafficking victims. This is evident in the way police apprehend all women suspected to be 'prostitutes' and re-victimise them by imprisoning them and subjecting them to ridicule. Clearly government efforts to address human trafficking are inadequate because of the multifaceted nature of the problem.⁸⁶

The following measures are necessary if the government is to address the problem of forced concubinage effectively:

- *Prosecution of all perpetrators of rape, sexual violence, trafficking for purposes of sexual exploitation including forced prostitution and forced marriage;*
- *No amnesties must be granted for perpetrators of politically motivated sexual violence;*
- *Establishment of service programmes including counselling and access to medical care for the rehabilitation of women and girls who were subjected to rape, sexual slavery (forced concubinage) during the election periods conflict and for victims of trafficking;*
- *Establishment of restitution and compensation mechanisms for all victims of rape and sexual exploitation;*
- *Ratification and domestication of the Protocol on the Suppression of Trafficking in Persons.*
- *Advancement of comprehensive anti-trafficking legislation;*
- *Increased awareness-raising campaigns for government officials and the general public on the nature of trafficking of women and children for purposes of sexual exploitation;*
- *Existence of an independent, innovative and dynamic judiciary which progressively and effectively interprets regional and international human rights instruments in the furtherance of human rights even where state officials are involved.*

⁸⁴ <http://www.sadc.int/index/browse/page/531> (Accessed on 3 July 2010).

⁸⁵ Country Narrative (as above) The lack of understanding by the police has seen them treating women apprehended for prostitution as criminals. If the police had knowledge of the enormity of the problem of human trafficking in the country they would not send these women back to their terrible fate but offer them protection and even use them in investigations to apprehend the perpetrators of the crime.

⁸⁶ Country Narrative (as above).