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on civil and  
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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic report of States parties due in 1998**

**ZAMBIA\* \*\***

[16 January 2006]

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\* This document contains the third periodic report of Zambia, due on 30 June 1998. For the second periodic report and the summary records of the meetings at which the Committee considered those reports, see documents CCPR/C/63/Add.3 and CCPR/C/SR.1487-1489.

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## **GLOSSARY/ABBREVIATIONS**

APPB	Arrest and Prisoner's Property Book
CCJDP	Catholic Commission of Development for Justice and Peace
CMR	Child Mortality Rate
CRCO	Constitutional Review Commission
CRC	Convention on the Rights of the Child
CRAIDS	Community Response to HIV/AIDS
CSO	Central Statistics Office
CSOs	Civil Society Organisations
DEC	Drug Enforcement Commission
ERTC	Electoral Reform Technical Committee
FBOs	Faith Based Organisations
FFTUZ	Federation of Free Trade Unions of Zambia
FODEP	Foundation for Democratic Process
GIDD	Gender In Development Division
GRZ	Government of the Republic of Zambia
HRC	Human Rights Commission
IMR	Infant Mortality Rate
MDGs	Millennium Development Goals
MISA	Media Institute of Southern Africa, Zambia Chapter
MMD	Movement for Multi Party Democracy
NCP	National Child Policy
NGOs	Non-Governmental Organisations
NPA	National Plan of Action
NYP	National Youth Policy

OMU	Offender Management Unit
PAZA	Press Association of Zambia
Penalty Units	Equivalent to K180.00
PFZ	Prison Fellowship of Zambia
PLPSU	Police Legal and Professional Standards Unit
PPCA	Police Public Complaints Authority
PRSP	Poverty Reduction Strategy Paper
PWAS	Public Welfare Assistance Scheme
SADC	Southern African Development Community
STI	Sexually Transmitted Infections
TNDP	Transitional National Development Plan
UTH	University Teaching Hospital
UMR	Under Five Mortality Rate
UNIP	United National Independence Party
UNZA	University of Zambia
VCT	Voluntary Counseling and Testing
VSU	Victim Support Unit
YWCA	Young Women's Christian Association
ZANARA	Zambia National Response to HIV/AIDS
ZCTU	Zambia Congress of Trade Unions
ZDF	Zambia Army, Zambia Air Force and Zambia National Service
ZNBC	Zambia National Broadcasting Corporation

**CHAPTER 1****Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

1. Zambia attained her independence from Britain in 1964. At independence, Zambia adopted a Constitution that provided for a multi-party democratic system. In 1973 Zambia adopted a new Constitution, which introduced a one-party system of Government. All political parties except the then ruling United National Independence Party (UNIP) were proscribed. From the late 1980s Zambia experienced important political and constitutional developments. Those developments culminated in the amendment of the 1973 Constitution by the repealing of Article 4, which provided for UNIP as the sole political party. On 31 October 1991, multiparty presidential and general elections were held which ushered into power the newly formed Movement for Multiparty Democracy (MMD) the ruling party. On 27<sup>th</sup> December 2001, Presidential and General elections were held which gave MMD a further mandate of five years.
2. The Zambian Constitution provides for fundamental rights and freedoms in Part III. It also expressly provides for safeguards against violation of fundamental rights and freedoms of the individual by the State. In addition to Part III of the Constitution, 1996 constitutional amendments introduced Directive Principles of State Policy. These principles are of particular significance in relation to economic, social and cultural rights and are intended to guide the executive, legislature and judiciary in developing and implementing national policies; in making and enacting laws; and, in the application of the Constitution and any other law.
3. The Zambian economy is heavily dependent on copper and cobalt mining. Copper and other metal exports account for about 75 per cent of the country's foreign exchange earnings.
4. Zambia's economic policies have faced a number of challenges in the past three decades. The last decade witnessed staggering increases in oil prices coupled with the fall of copper prices, which adversely affected the economy. The experiences of the past three decades show that sustained improvements in living standards require the country's economic policy to be set in a medium term context, with appropriate consideration for the relative strengths of the different economic policies. The medium-term fiscal objectives aim at enhancing domestic



resource mobilization for the social and poverty programs and for investment in infrastructure. These objectives are consistent with lowering inflation to the single digit level and to moving towards a sustainable external current account deficit.

## CHAPTER 2

### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

5. The State party has taken the following legislative, judicial and administrative measures to implement the provisions of Article 2.

### A. Legislative measures

#### **The Constitution**

6. Article 11 of the Constitution, Chapter 1 recognizes and declares that every person in Zambia is entitled to all fundamental rights and freedoms. Article 11 reads:

“It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) Life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, expression, assembly, movement and association;
- (c) Protection of young persons from exploitation;
- (d) Protection for the privacy of his home and other property without compensation;

and the provisions of this part shall have effect for the purpose of affording protection to these rights and freedoms subject to such limitations of that protection as are contained in this Part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

7. The rights contained in the Covenant accrue to every person in Zambia as declared and recognized in Article 11 of the Constitution.

8. Further, Article 23(1) prohibits the enactment of a law that makes any provision that is discriminatory either of itself or in its effect. Article 23 (2) prohibits any person acting by virtue of any written law or in performance of the functions of any public office or authority, from treating any person in a discriminatory manner.

9. Article 23 (3) of the Constitution defines the term “discriminatory” as meaning:

“... affording different treatment to different persons attributable, wholly or mainly to their respective description by race, tribe, sex, place of origin, marital status, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

10. Article 23 (4) provides instances under which Article 23 (1) shall not apply. It states -

“Clause (1) shall not apply to any law so far as that law makes provision -

- (a) For the appropriation of the general revenues of the Republic;
- (b) With respect to persons who are not citizens of Zambia;
- (c) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) For the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(e) Whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justified in a democratic society.”

11. According to Article 23 (5) of the Constitution no law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

### **Industrial and Labour Relations Act**

12. Section 108 (1) of the Industrial and Labour Relations Act, Chapter 269 prohibits an employer from terminating the services of an employee or imposing any other penalty or disadvantage on any employee on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee.

13. The Act further prescribes remedies for persons who have been discriminated against. Section 108 (2) states:

“Any employee who has reasonable cause to believe that the employee’s services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the court.

Provided that the court may extend the thirty-day period for a further three months after the date on which the complainant has exhausted the administrative channels available to him.”

14. Section 108(3) states that the Court shall if it finds in favour of the complainant –

- (a) Grant to the complainant damages or compensation for loss of employment; or
- (b) Make an order for re-employment or re-instatement in accordance with the gravity of the circumstances of each case.

### **Penal Code**

15. Section 70 of the Penal Code, Chapter 87 explicitly criminalizes certain acts of racial discrimination. It provides -

“Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction for a period not exceeding two years”.

## Persons with Disabilities Act

16. Under the Persons with Disabilities Act Chapter 65, disability is defined as follows:

“any restriction resulting from impairment or inability to perform any activity in a manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other trained animals trained for that purpose.”

17. A person with disability is defined as:

“a person with physical, mental or sensory disability, including a visual, hearing or speech functional disability”.

18. The Act prohibits discrimination of any kind and provides as follows:

Section 19(1) for the purposes of this Part, “discrimination” means:

- “(i) Treating a person with a disability less favourably from a person without a disability;
- (ii) Treating a person with a disability less favourably from another person without a disability;
- (iii) Requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over;  
or
- (iv) Not providing different services or conditions required for that disability.”

19. An employer is required to treat a person with a disability differently from a person without a disability when –

- “(a) Advertising for employment;
- (b) Recruiting persons for employment;
- (c) Offering terms of conditions of employment;
- (d) Considering promotion, transferring or training such persons; or
- (e) Providing any other benefits related to employment.”

20. A learning institution will be considered guilty of discriminating against a person with a disability if that institution:

- “(a) Refuses or fails to accept, to admit such person on the ground of his disability;

- (b) Gives terms or conditions on which it is prepared to admit such a person because of his disability;
- (c) Denies or limits any person with a disability access to any benefit provided by that learning institution;
- (d) Expels that student or pupil on the grounds of his disability; or
- (e) Discriminates against the person in any other way on grounds of that person's disability."

### **Public Order Act**

21. Section 13 of the Public Order Act, Chapter 113 criminalises the uttering of any words or doing any acts or thing with intent to excite enmity between one or more sections of the community on the one hand, and any other section or section of community on the other hand, with intent to encourage any person or persons to do any act or acts or to omit to do any act or acts so as to defeat the purpose of intention of any law in force in Zambia or any part thereof.

### **Education Act**

22. Section 16 (1) (b) of the Education Act, Chapter 134 empowers the Minister to cancel registration of any private school that conducts itself in a manner that is detrimental to the interests of peace, order or to the physical, mental or moral welfare of the persons receiving instruction thereat.

### **Zambia National Broadcasting Corporation Act**

23. Section 31 of the Zambia National Broadcasting Corporation Act, Chapter 154 empowers the Minister to cancel at any time or refuse to issue a licence or to renew a licence issued to a broadcaster or operator of a diffusion service in terms of the Act, if he is satisfied, after inquiry, that the cancellation or the refusal to issue or renew the licence is justified in the public interest.

24. Section 27 of the same Act, read together with Section 60 (1) (f), (g) and (j) of the Penal Code, empowers the Minister to prohibit the broadcasting of seditious programmes.

### **Societies Act**

25. Section 8 of the Societies Act, Chapter 119, empowers the Registrar of Societies to refuse to register any society where it appears that such society has among its objects or is likely to pursue or to be used for any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia or that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration or exemption from registration of such society.

26. Section 13 of the same Act, empowers the Minister of Home Affairs "to de-register any society that has among its objects or in his opinion is likely to pursue or to be used for any unlawful purpose." By implication, this Section can be invoked to prohibit practices of racial discrimination by any groups of persons or societies.

## **B. Judicial measures**

27. Article 28 of the Constitution gives the right to anyone whose rights have been or are likely to be violated, including violations based on prohibited grounds of discrimination to petition the High Court for a remedy. Article 28 (1) reads in part:

“... If any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall:

(a) Hear and determine any such application;

(b) Determine any question arising in the case of any person which is referred to it in pursuance of clause (2);

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Articles 11 to 26 inclusive”.

28. Courts have powers to award the following remedies where anyone has successfully established that his or her rights under Part III of the Constitution have been violated. These are -

(i) Damages;

(ii) Declaration;

(iii) Mandamus; or

(iv) Habeas corpus.

## **C. Administrative measures**

### **Human Rights Commission**

29. Article 125 of the Constitution establishes a Human Rights Commission (HRC) which is mandated to promote and protect human rights. The functions and powers of the HRC are outlined in Section 9 and 10 of the Human Rights Commission Act No. 39 of 1996. These are:

(a) To investigate human rights violations;

(b) To investigate any mal-administration of justice;

(c) To propose effective measures to prevent human rights abuses;

(d) To visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;

(e) To establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuses in order to enhance the respect for and protection of human rights; and

(f) To do all such things as are incidental or conducive to the attainment of the functions of the Commission.

30. The powers of the Commission under Section 10 are to investigate any human rights abuses either on its own volition or on receipt of a complaint or allegation by:

- (i) An aggrieved person acting in such person's own interest;
- (ii) An association acting in the interest of its members;
- (iii) A person acting on behalf of an aggrieved person; or
- (iv) A person acting on behalf of and in the interest of a group or class of persons.

### **Commission for Investigations**

31. The State Party established the Commission for Investigations in 1973 by Article 117(3) of the Second Republican Constitution of Zambia. Currently the Commission derives its legal status from Article 90 of the Constitution and the Commission for Investigations Act No. 20 of 1991.

32. The functions of the Commission for Investigations are to receive and investigate complaints from the public against acts of injustice or mal-administration perpetrated by senior Government officials, heads of parastatal institutions and local authorities. The Commission ensures fairness by promoting social justice in the administration of public institutions. This facilitates the efficient and effective delivery of services to the people. The Commission also ensures compliance with laid down administrative procedures, practices and ethics for public officials. It equally initiates corrective action in public institutions in order to enhance effective administration. It thereafter recommends corrective and appropriate remedies to the respondents and reports the same to the President and Parliament. The Committee may wish to note that the corrective actions include suggesting appropriate amendments to rules, regulations or statutes under which a complaint was made.

33. The enforcement mechanism of the Commission's reports is laid down in Section 21(i) of the Commission for Investigations Act which, provides:

“The President may on receipt of the report of the Commission or any investigation conducted by it, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the Commission as he thinks fit”.

34. The Investigator General, who is the Chairperson of the Commission for Investigations, is also known as the Ombudsman of Zambia. The Investigator General is a person who qualifies to hold office of High Court Judge but does not perform any judicial function.

The Investigator-General has powers to receive complaints from members of the public and investigate these complaints provided that they fall within his competence. In the process of investigating the Ombudsman has general access to any public documents relevant to the investigations. The Ombudsman may also commence investigations on his own initiative.

35. The type of cases that the Commission for Investigations deals with, among others, relate to appointments, transfers, promotions of Government staff and awarding of contracts.

### **Constitutional Review Commission**

36. The State party constituted a Constitutional Review Commission (CRCO) in August 2003 to inter alia -

(a) Collect views on what type of Constitution Zambia should enact, considering that the Constitution should exalt and effectively entrench and promote the legal and institutional protection of fundamental human rights;

(b) Recommend appropriate ways and means of entrenching and protecting human rights, the rule of law and good governance in the Constitution;

(c) Examine and recommend the elimination of provisions which are perceived to be discriminatory in the Constitution;

(d) Recommend provisions to ensure the competence, impartiality and independence of the judiciary and access of the public to justice; and

(e) Examine and recommend to what extent issues of gender equality should be addressed in the Zambian Constitution.

### **D. Factors and difficulties**

37. Generally, most people living in Zambia are not aware of their rights, the provisions of the Covenant and other human rights instruments and thus find it difficult to seek redress when their rights are violated.

38. Zambia is currently going through economic difficulties; in this regard most institutions involved in the implementation of Article 2 of the Covenant are constrained by inadequate human, financial and material resources, which make it difficult for them to fully discharge their mandates.

39. A challenge still remains for the State party with regard to Article 23 of the Constitution that allows discrimination in adoption, marriage, divorce and devolution of property laws.

40. The State party has had challenges insofar as family attitudes towards children with disabilities are concerned. Family attitudes have not been favourable to children with disabilities. Some communities within the State party look upon a disabled child as a curse or a punishment from God. Others believe it is as a result of parents engaging in witchcraft.



Therefore, from a false sense of shame or embarrassment, many parents do not divulge information on their disabled children; as a result, their children's problems remain unknown and untreated. This is compounded by the lack of a system of identifying disabled children. Reliable statistical information on disabilities is not readily available.

### CHAPTER 3

#### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

41. The Committee is invited to note that all men and women are guaranteed equal human rights in Zambia. However, the State party is mindful that gender inequalities still exist in its territory. Notwithstanding, appropriate legislative, judicial and administrative measures have been put in place as follows.

#### A. Legislative measures

##### The Constitution

42. As earlier reported, Article 11 of the Constitution provides for protection from discrimination on the grounds of *inter alia*, sex and marital status.

43. The Committee is invited to note that the State party has started the process of incorporating the Convention on the Elimination of all forms of Discrimination against Women into its domestic legislation.

#### B. Judicial measures

44. Zambian Courts have had opportunity to develop jurisprudence on the equality of men and women.

45. In the celebrated case of *Edith Zewelani Nawakwi Vs the Attorney General 1990/HP/1724*, the appellant petitioned the High Court to make a number of declarations, including the following:

- (i) That she has been and continues to be unfairly discriminated on the ground of sex; and
- (ii) A single-parent family headed by a female be recognized as a family unit in the Zambian society.

46. In hearing the matter, the High Court observed that a mother in Zambian society was less likely to be treated on an equal footing as a father. The High Court also observed that the Government practice that required a mother to obtain a father's letter of consent in acquiring a passport or travel document for a child was discriminatory. The High Court held that:

“it is not at all justified from whatever angle the issue is looked at, for a father to treat himself or to be treated by the institutions of society to be more entitled to the affairs of his children than the mother of that child or those children. The mother is as much an authority over the affairs of her children as the father is”.

47. The final decision of the Court was that a mother of a child does not need to get the consent of the father in order to have her children included in her passport.

48. This decision influenced Government’s policy on granting a child a passport or a travel document to either parent.

### **C. Administrative measures**

49. A number of administrative measures aimed at promoting equal rights of men and women have been taken as follows.

#### **Institutional mechanisms for gender equity and equality**

50. The State party has set up institutional mechanisms to facilitate the mainstreaming of gender in national planning and programming. This consists of the Gender In Development Division at Cabinet Office (the national gender machinery); Parliamentary Select Committee on Legal Affairs, Governance, Human Rights and Gender Matters (charged with the responsibility of scrutinizing programmes of the Executive in order to ensure that gender issues are given priority and prominence); Gender Focal Points in Line Ministries, Provincial Administration and Government Departments (specifically dealing with mainstreaming gender into policies, programmes and projects in their respective Institutions/Ministries).

51. The setting up of this institutional mechanism is aimed at addressing the gender imbalances, which impede the attainment of civil and political rights, particularly among women and children.

#### **National Gender Policy**

52. A National Gender Policy was adopted in 2000 by Government whose aim is to achieve full participation of men and women in the decision-making process of the country at all levels; and ensure equal opportunities in the social, economic and political spheres between females and males in order to ensure equality and equity.

53. In addition, a Strategic Plan of Action (2004) for the National Gender Policy was developed in order to ensure the systematic implementation of gender and development programmes in the country.

#### **Poverty Reduction Strategy Paper (PRSP) and Transitional National Development Plan (TNDP)**

54. The PRSP and the TNDP are the principle development programmes, which outline the development of priority areas of concern in Zambia. Both the PRSP and the TNDP focus on achieving gender equity and equality as a means of achieving sustainable development.

55. The PRSP and TNDP have, among others, identified the following objectives in order to redress gender imbalances in socio-economic development, that is:

- (a) Develop specific strategies regarding men's and women's access to and control over land;
- (b) Promote and facilitate men's and women's access to information and economic resources;
- (c) Eliminate gender imbalances in access to and opportunities for financial resources; and
- (d) Enhance men's and women's participation in decision-making processes.

56. The achievement of these objectives is intended to facilitate the attainment of gender equality and consequently increase the opportunities for the enjoyment of civil and political rights for men and women.

### **Gender equality in education and training**

57. Government remains committed to attaining equity and equality in the education and training sectors. However, Government is mindful that gender imbalances continue to persist in the education sector. Statistics from Zambia's Millennium Development Goals Progress Report 2003 indicate that the Primary Net Enrolment Ratio dropped by 4 percentage points between 1990 and 2003. It also indicates that the proportion of Grade 1 pupils reaching Grade 7 increased from 64 percent in 2000 to 73 percent in 2003. The gender gap in enrolment remained unchanged at 2 percentage points between 2000 and 2003. Similarly, during the same period, the gender gap in completion rates remained high at 14 percentage points.

58. In addition, female literacy rates continue to be lower than those of males. The gender gaps in the education sector have greatly contributed to the limited enjoyment of civil and political rights, especially by women and girls.

59. In order to address these imbalances, the State party has embarked on the following measures.

#### *(i) Education Policy*

60. The Education Policy of 1996, *inter alia*, aims at providing equal access of boys and girls to education opportunities, by providing free primary education and 50/50 enrolment of boys and girls of eligible age at Grade 1. The Policy also provides for the increased participation of girls at secondary school by adopting lower cut off points at Grades 7 and 9.

#### *(ii) Programme for the Advancement of Girl-Child Education (PAGE)*

61. The programme aims at addressing disparities between boys and girls in relation to access; enrolment; progression; retention and completion in the education sector. The programme also aims at encouraging girls to equitably participate in the country's development process.

(iii) *Re-entry Policy*

62. Government adopted a Re-entry Policy in 1997 which allows girls who fall pregnant to re-enter its education system after delivery. Counselling is provided to those girls that return to school and to the other pupils so as to avoid stigmatisation of the returning girls.

(iv) *Public Service Training Policy*

63. Government adopted the Public Service Training Policy in 1996, which provides guidelines for planning, conducting, monitoring and evaluating training undertaken by public servants. One of the objectives of this Policy is to address the observed gender imbalances in the Public Service, especially at senior and specialist levels. The Policy provides the framework for ensuring that women in the Public Service are given an equal opportunity to progress in their careers and acquire the relevant skills in order to enhance their participation in public life.

(v) *Bursary scheme*

64. Government has established a bursary scheme for excelling females who are accepted to pursue studies at tertiary level. As an affirmative action, Government has apportioned 25 percent of the bursary scheme at the University of Zambia to females.

65. Government remains committed to the attainment of the Millennium Development Goals, which *inter alia*, are to achieve universal primary education by 2015 as a means of redressing the imbalances observed in the education and training sector between females and males.

### **Review of customary law**

66. With regard to the application of customary laws in matters of personal status, marriage, divorce and inheritance rights; Government has constituted a process, through the Zambia Law Development Commission, to review and codify customary law. This will ensure the standardised application of customary law, considering the need to guarantee equal rights to men and women.

### **Violence against women**

67. The State party has instituted the following measures to address gender violence and particularly violence against women and children as follows.

(i) *The Victim Support Unit (VSU)*

68. This is a specialised Unit within the Zambia Police Service, created in 1994, which deals with cases related to property grabbing; spouse battering and sexual abuse. The Unit has been established in all police stations and posts countrywide and is accessible to everyone.

(ii) *The Sex Crimes Unit*

69. The Zambia Police Service has also established the Sex Crimes Unit in order to deal with cases of sexual assault; defilement and rape in the country.

(iii) *Strengthening of laws and enforcement mechanisms*

70. Government has initiated the process of strengthening laws such as the Penal Code in order to combat gender based violence.

**Participation in politics and the public sector**

71. Government acknowledges the low levels of female participation in politics in comparison to its commitment to achieving 30 per cent female representation in politics as contained in the SADC Declaration on Gender and Development (1997).

72. Statistics indicate that women have been under represented at all levels of decision making in Government, Parliament, the Private Sector, Special Committees, Religious Groupings, Boards and other institutions in the community.

73. At Cabinet level, there are a total of 20 Cabinet Ministers comprising 15 males and 5 females representing 25 per cent of women Cabinet Ministers. At Deputy Minister and Permanent Secretary level, female representation still remains low at 8.9 and 19 per cent respectively. In the Judiciary a similar trend is observed with female Court judges comprising 22 per cent of the Supreme Court and Puisne Judges.

74. A trend analysis of female representation in Parliament shows that there has been a steady increase from 4.8 per cent (1988 – 1991) to 6.7 per cent (1991 – 1996) to 12 percent (2004 – 2005).

75. As a way of redressing the gender inequalities in political participation and ensuring transparency in the electoral process, the State party has initiated electoral reforms through the Electoral Reforms Technical Committee (ERTC).

**D. Other measures**

76. Civil Society Organisations (CSOs) have been supplementing Government efforts in ensuring the attainment of equality and equity between men and women. Some of these measures include the establishment of drop-in centres and shelters for battered women and abused children, and providing counselling services to victims and perpetrators of violence; and implementation of sensitisation programmes targeting female politicians and political parties to ensure increased participation of women in decision-making processes.

**E. Factors and difficulties**

77. In spite of the above intervention aimed at ensuring equality between the sexes, the State Party faces difficulties by the application of customary law, which has the tendency of suppressing women's rights. Customary law is usually biased against women and places them at a disadvantage. In addition women continue to have lesser access than men to opportunities in public life and positions of influence.

## CHAPTER 4

### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

### A. Legislative measures

#### The Constitution

78. Article 30 (1) of the Constitution mandates the President, in consultation with Cabinet, to declare a State of public emergency. The National Assembly is required to pass a resolution to support the powers of the President exercised under Article 30 (1) of the Constitution. During a State of emergency fundamental rights and freedoms are protected.

79. The following rights contained in Article 25 of the Constitution are non derogable:

(a) The right to life under Article 12 of the Constitution which is similar to Article 6 of the Covenant;

(b) Freedom from torture or cruel, inhuman or degrading treatment or punishment under Article 15 of the Constitution which is similar to Article 7 of the Covenant; and

(c) Freedom from slavery and forced labour under Article 14 of the Constitution which is similar to Article 8 paragraphs 1 and 2 of the Covenant.

80. Article 25 of the Constitution provides for the right to freedom of conscience including freedom of thought and religion similar to Article 19 of the Covenant. This right, however, is derogable in a State of emergency.

81. The Zambian Constitution does not provide for the non derogation of rights contained in Articles 11, 15 and 16 of the Covenant.

### **Defence Forces**

82. During a State of emergency the functions of the Zambia Defence Forces and the Zambia Police Service as stipulated in the Defence Act Chapter 106 and the Zambia Police Act Chapter 107 respectively, include preserving and defending the sovereignty and territorial integrity of Zambia; cooperating with the civilian authority in cases of national disasters; protecting the life and property of the country; and preserving law and order.

### **Preservation of Public Security Act**

83. Once a State of emergency has been declared under Article 30 of the Constitution, the provisions of the Preservation of Public Security Act, Chapter 112 are invoked. Section 3 (2) of the Act provides as follows:

“(2) The President may, for the preservation of public security by regulation –

(a) Make provision for the prohibition of the publication and dissemination of matters prejudicial to public security, and, to the extent necessary for that purpose, for the regulation and control of the production, publishing, sale, supply, distribution and possession of publication;

(b) Make provision for the prohibition, restriction and control of assemblies;

(c) Make provision for the prohibition restriction and control of residence, movement and transport of persons, the possession, acquisition, use and transport of movable property, and the entry to, egress from, occupation and use of immovable property;

(d) Make provision for the regulation, control and maintenance of supplies and services; or

(e) Make provision for, and authorize the doing of such other things as appear to him to be strictly required by the exigencies of the situation in Zambia.”

84. If the President is satisfied that the situation in Zambia is so grave he may make regulations to provide for the detention of persons; or requiring persons to work and render services in national interest. Section 4 of the Preservation of Public Security Act provides for the payment of compensation and remuneration to persons affected by the regulations.

### **The 1997 Declaration of a State of Emergency**

85. Government declared a State of emergency immediately after the 28<sup>th</sup> October, 1997 abortive coup d'etat. This State of emergency was in force for a period of almost one year before the declaration was lifted. During that period a number of persons mainly from

the defence forces and a few opposition political party members were detained under Regulation 33 (6) of the Preservation of Public Security Act. The State party regrets that the proclamation of the State of emergency in 1997 was not notified to the Secretary General of the United Nations in accordance with Article 4 paragraph 3 of the Covenant.

86. This inadvertent lack of adherence to procedure obviously created lack of clarity on the nature of the declaration of the State of emergency itself; and the rights which were derogated from during the period.

### **B. Judicial measures**

87. In the case of *Dean Namulya Mun'gomba Vs Attorney-General 1997/HP/2617* the appellant then President of Zambia Democratic Congress (ZDC), an opposition party, was arrested and detained under emergency regulations following the abortive coup d'état of 28 October, 1997 for an indefinite period. He applied for a writ of habeas corpus subjiciendum and also argued that the President had abused his powers in declaring a State of emergency as the facts on the ground did not justify the declaration.

88. In obiter, the Court observed that toppling a democratically elected Government by mutiny, force or other undemocratic means was a very grave situation which called for the proclamation of a State of emergency in the country.

89. The Court held that it had no jurisdiction to inquire into the reasons or discretion of the President in declaring a State of emergency. It also held that the detention or imprisonment of the appellant could not be legally justified, hence his application was granted.

### **C. Administrative measures**

90. The State party constituted the Japhet Banda Commission of Inquiry to inquire into the allegations of torture that surfaced during the 1997 State of emergency in the matter of *Teddy Phiri and 58 Others Vs The People, Appeal Case No. 74-131/2002*.

91. The accused had illegally entered Zambia National Broadcasting Corporation premises to broadcast their illegal take over of Government. The accused were arrested detained and charged with treason. During trial, the accused claimed that they had been tortured by police officers. The Banda Commission found evidence of torture and following the findings, 1 Commissioner of Police, 2 Deputy Commissioners of Police were dismissed from the Police Service while 22 subordinate officers were reprimanded that is either demotion in rank, forfeiture of salary or transfer of officer to a lesser station than rank.

### **D. Factors and difficulties**

92. The State party does not have similar non derogable rights as those contained in Article 4 of the Covenant and could therefore be considered as not fully complying with the Covenant.



## CHAPTER 5

### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

93. The State party does not have legislation that would provide the opportunity for destruction of fundamental rights and freedoms recognized in the Covenant.

94. In fact, fundamental rights and freedoms are protected by Article 11 of the Constitution as earlier stated. The only circumstances in which Article 5 (1) of the Covenant can be suspended is in terms of Article 25 of the Constitution which states –

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23 or 24 to the extent that it is shown that the law in question authorizes the taking during any period when the Republic is at war or when a declaration under Article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.”

95. It must be emphasised that even under a State of emergency, violations of human rights or destruction thereof are neither permissible nor acceptable by the State party. In this regard, the Committee may wish to note that the derogation contained in Article 25 of the Constitution does not affect the rights that are fundamental to the State party, that is, the right to life (Article 12), protection from slavery and forced labour (Article 14), protection from inhuman treatment (Article 15), and provisions to secure the protection of law (Article 18).

96. If any individual or group of persons attempted to destroy any of the rights in the Covenant in the State party; such individuals would be subject to penalties under the Penal Code and the constitutional prohibitions.

97. Zambia does not have within its domestic law, provisions that might conflict with the Covenant and other international agreements. It is the practice of the State party that if its domestic law conflicts with international law commitments, its domestic law shall be adapted to international law, thus ensuring harmony and uniformity of law.

## CHAPTER 6

### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### Right to life

98. The right to life in Zambia is considered as the most important basic human right. It therefore deserves utmost guarantee and protection. In order to achieve the right to life, the following measures have been taken.

#### A. Legislative measures

#### The Constitution

99. The right to life is protected by Article 12 of the Constitution which provides –
- “(1) A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.
  - (2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case-

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war; or

(d) In order to prevent the commission by that person of a criminal offence.”

100. The right to life in Zambia is protected from the moment of conception, according to Article 12 (2) of the Constitution. However, Zambia still maintains the death penalty as provided in Article 12 (1) of the Constitution and is not a State party to the Second Optional Protocol of the Covenant. A discussion of the death penalty will be taken in the succeeding paragraphs.

### **Penal Code**

101. The Penal Code Chapter 87 protects the right to life through the following prohibitions:

(a) Section 151: Prohibits inducing miscarriages in women;

(b) Section 152: Prohibits a woman from inducing her own miscarriage; and

(c) Section 203: Prohibits the practice of infanticide.

### **Public Health Act**

102. The Public Health Act, Chapter 295, protects the right to life by providing for the prevention and suppression of diseases in Zambia, thereby protecting a great number of lives when there is an epidemic. Section 9 (1) of the Act reads:

“(1) The provisions of this Act, unless otherwise expressed, shall, so far as they concern notifiable infectious diseases, apply to anthrax, blackwater fever, epidemic cerebro-spinal meningitis or cerebro-spinal fever, asiatic cholera, diphtheria or membranous croup, dysentery, enteric or typhoid fever (including para-typhoid fever), erysipelas, glanders, leprosy, plague, acute anterior poliomyelitis, puerperal fever (including septicaemia, pyaemia, septic pelvic cellulitis or other serious septic condition occurring during the puerperal state), rabies, relapsing fever, scarlatina or scarlet fever, sleeping sickness or human trypanosomiasis, smallpox or any disease resembling smallpox, typhus fever, all forms of tuberculosis which are clinically recognisable apart from reaction to the tuberculin test, undulant fever and yellow fever.

- (2) The Minister may, by statutory notice-
- (a) Declare that any infectious disease other than those specified in subsection (1) shall be notifiable diseases under this Act;
  - (b) Declare that only such provisions of this Act as are mentioned in such notice shall apply to any notifiable infectious disease;
  - (c) Restrict the provisions of this Act, as regards the notification of any disease, to the district of any Local Authority or to any area defined in such notice.”

### **Environmental Protection and Pollution Control Act**

103. Section 6 of the Environmental Protection and Pollution Control Act, Chapter 204 establishes the Environmental Council, which *inter alia* has the responsibility to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment as follows:

- “(a) Advise the Government on the formulation of policies relating to good management of natural resources and the environment;
- (b) Recommend measures aimed at controlling pollution resulting from industrial processes or otherwise;
- (c) Advise on any aspect of conservation;
- (d) Advise on the need to conduct and promote research analysis, surveys, studies, investigations and training, of personnel, in the field of environmental conservation protection and pollution control;
- (e) Receive and review reports and make recommendations to the Government on environmental matters;
- (f) Conduct studies and make recommendations on standards relating to the improvement of the environment and the maintenance of a sound ecological system ...”

### **National Food and Nutrition Commission Act**

104. The National Food and Nutrition Commission established under the National Food and Nutrition Commission Act, Chapter 308 was set up to ensure the enjoyment of the right to life. The objectives of the Commission are set out in the Schedule of the Act as follows -

“Section (3) (2) Schedule –

- (a) To reduce mortality due directly or indirectly to malnutrition in children focus public attention on the nutritional needs of children and youth;
- (b) To improve the nutritional status of vulnerable groups (mothers, infants, school and pre-school children);

- (c) To create community interest in better nutrition, to arouse public awareness of the serious impact of malnutrition and to instil public confidence in the solutions to the problems;
- (d) To reduce the incidence of malnutrition and under-nutrition by providing enough highly nourishing food, at all seasons of the year, to ensure a long, healthy life and diets conducive to maximum intelligence and mental health;
- (e) To make provision in relation to nutrition for the rapidly growing population;
- (f) To ensure adequacy of diets in institutions;
- (g) To provide food consumption and nutrition data on a representative national scale;
- (h) To incorporate the concept of improvement of nutrition in food and agricultural development planning;
- (i) To take all necessary steps to facilitate the implementation of Government's approved policy in relation to the national food and nutrition programme;
- (j) To collate all information already available regarding food and nutrition in Zambia;
- (k) To assist in the co-ordination of training in food and nutrition at professional, supervisory and field levels;
- (l) To initiate studies relating to food and nutrition, especially those relating to children and youth, and make recommendations on solutions to these problems;
- (m) To arrange for execution of work, either directly or through agencies, in relation to subjects relating to food and nutrition which are not part of any ministerial portfolio;
- (n) To establish a nutrition library;
- (o) To maintain statistical records of national nutrition;
- (p) To stimulate public relation activities in relation to the National Food and Nutrition Programme and, in particular, to focus public attention on the nutritional needs of children and youth;
- (q) To liaise with International Agencies and friendly Governments regarding aid to the programme subject to the Government's procedures laid down in this connection.”

### **Food and Drugs Act**

105. The enjoyment of the right to life is also promoted by the Food and Drugs Act Chapter 303, which in Sections 3 and 8 prohibits the sale of poisonous food and harmful drugs respectively. It creates offences for any person who sells or administers the above.

### **Measures to reduce threat of war**

106. Since independence in 1964, Zambia has never engaged in any warfare. The State party prides itself in being a peaceful nation with peace loving citizens and if there were any threats of war, Zambia would consider as top priority, diplomatic channels of settlement rather than engaging in military warfare.

107. In terms of legislation, Article 29 of the Constitution requires the President to consult with Cabinet, before a declaration of war can be made. Further Parliament is required to enact legislation providing for the conditions and circumstances in which a declaration of war has been made shall operate. Since the State party has never witnessed any warfare, Article 29 of the Constitution has never been invoked.

### **B. Judicial measures**

108. Zambian Courts abhor the deprivation of the right to life and will in proved cases impose capital punishment against perpetrators.

### **C. Administrative measures**

#### **National Health Policy**

109. The National Health Policy aims at providing Zambians with equity of access to effective and quality health care as close to the family as possible. Primary health care is considered as the most basic strategy to achieve this. The Policy encourages intersectional collaboration between the Ministry of Health and CSOs. The Policy strives to encourage preventive, promotive, curative and rehabilitative services and encourages individuals to take responsibility of their health.

110. The Policy also aims at improving child health and reducing child mortality. The State Party, through the Ministry of Health and its partners has embarked on massive nation-wide health campaigns for children under five, on radio and national television. The campaign includes giving vaccinations and medicines to children below the age of five, free of charge at all Government health centres. Child health weeks are held every six months to boost the immunization of children and to provide free intervention for prevention of malaria.

#### **HIV/AIDS**

111. In Zambia, HIV/AIDS has become increasingly wide spread with an estimated adult HIV prevalence of 16 per cent. HIV infection among females between 30 to 34 years stands at (22%) while that for males between 35 to 39 years is (29%). Young women aged 15 to 19 are 5 times

more likely to be infected compared to males in the same age group. It is also estimated that 25 per cent of pregnant women are HIV positive and that approximately 40 per cent of babies born are HIV positive, (source ZHDS, 2002). To address the HIV/AIDS pandemic the State party is in the process of developing a National HIV/AIDS/STI/TB Policy.

### **National HIV/AIDS/STI/TB Council**

112. The National HIV/AIDS/STI/TB Council was established by Act No 10 of 2002. The Act defines the functions of the Council, its composition and mandate in matters of HIV/AIDS/STI/TB. Some of these functions include:

- (a) Developing a data bank for HIV/AIDS/STI/TB;
- (b) Developing guidelines for securing the human rights of persons with HIV and AIDS;
- (c) Strengthening collaboration between the Council and Traditional Health Practitioners Association of Zambia in dealing with HIV/AIDS; and
- (d) Assisting communities to create District Multi-Sectoral HIV/AIDS task force committees in order to address issues pertaining to HIV/AIDS activities.

### **HIV/AIDS intervention**

113. Government has put in place measures aimed at reducing HIV/AIDS infection through blood transfusion. In order to provide safe blood the number of screening centres increased from 33 in 1987 to 90 centres in 2004.

### **Anti-Retro-Viral Therapy (ART)**

114. Government has embarked on a programme to mitigate the effects of HIV by making available medication to prevent opportunistic infections for people infected with HIV. The number of people receiving anti-retro viral therapy reached 12,000 in June 2004. The figure has shown a steady rise from 2,833 in March 2004, 5,586 in May 2004 to 12,000 in June. Government implemented the administration of ARVs in three phases. Phase I was implemented at major hospitals (Ndola and UTH), Phase II included all provincial hospitals and Phase III is yet to be implemented.

### **Scaling up of HIV/AIDS activities**

115. Government introduced measures aimed at providing free treatment for all persons infected with Sexually Transmitted Infections (STIs) and Tuberculosis (TB). In addition programmes such as the Zambia National Response to HIV/AIDS (ZANARA) and Community Response to HIV/AIDS (CRAIDS) have been put in place. These oblige all organizations to implement HIV/AIDS activities at the workplace.

### **Mother to child transmission of HIV**

116. Pregnant women at both clinics and health centres are encouraged to go for Voluntary Counselling and Testing (VCT). Pregnant women who are HIV positive are provided with a drug, *nave rapine* to reduce the risk of HIV infection from mother to child at birth.

### **Antenatal care**

117. The State Party, in an effort to protect the life of a child at birth, provides free antenatal care services for pregnant women. Women are advised on the nutritional standards to adhere to during pregnancy. This measure helps to increase the chances of child survival at birth and a child's good health during the first five years of its life. All pregnant women are free to visit their local antenatal clinics during their pregnancy.

### **Safe motherhood**

118. Safe motherhood is addressed by providing affordable quality care for the mother and the new born baby as close to the family as possible. Intervention includes the putting in place of measures to improve maternal and neonatal deaths. The integrated reproductive health programme works through partnerships that have been established between Central Board of Health and the United Nations Population Fund (UNFPA).

### **Family planning services**

119. The State party acknowledges the fact that adequate quality and equitable dispensation of reproductive health services is basic in ensuring safe mother hood, guaranteeing child health and reducing maternal and child mortality. As a means of lowering maternal mortality, child mortality and increasing life expectancy, the State party has through Ministry of Health Integrated Health Project increased family planning services among the young rural population in order to encourage families and couples, to child space.

### **Statistics on child health and life expectancy**

120. Government continues to monitor and evaluate the impact of these policies and programmes through various surveys. The population censuses remain the major source of demographic information. The 1980, 1990 and 2000 population censuses provided information on child mortality rates, based on reports of the mothers, of the survival of their children by sex.

121. Table 1.0 below presents various mortality indicators in Zambia from 1980 to 2000. Overall, Infant Mortality Rate<sup>1</sup> (IMR) declined in Zambia, by about 12 per cent, though still higher than the 1980 figure. IMR increased by about 24 per cent between 1980 and 1990, from 99 to 123 deaths per 1000 children, respectively. In 2000, IMR was recorded at 110 deaths per 1000 children. This implies that 11 children died more in 2000 than in 1980, for every 1000 children.



122. Statistics indicate that overall Child Mortality Rate<sup>2</sup> (CMR) declined slightly between 1990 and 2000, by about 13 per cent, from 95 to 82 deaths per 1000 live births, respectively. The 2000 levels, however, were still higher than the 1980 levels, by about 16 per cent (82 compared with 71 deaths per 1000 live births).

**Table 1.0**

**Childhood mortality indicators, by sex of child,  
residence and province, 1980-2000**

Characteristics	Infant mortality rate (per '000)			Child mortality rate (per '000)			Under-five mortality rate (per '000)		
	1980	1990	2000	1980	1990	2000	1980	1990	2000
Zambia	99	123	110	71	95	82	121	151	162
Sex of child:									
Male	101	127	120	73	98	91	124	157	169
Female	94	120	100	66	91	72	115	146	155
Residence:									
Rural	106	133	117	78	104	89	132	164	180
Urban	89	106	91	61	77	64	108	128	126
Province:									
Central	81	105	100	54	77	72	100	129	144
Copperbelt	87	109	91	59	81	63	97	132	126
Eastern	128	149	129	99	120	100	177	206	196
Luapula	127	161	132	99	132	103	161	199	224
Lusaka	87	106	88	60	78	60	106	129	126
Northern	104	137	130	75	108	101	127	169	180
North-Western	77	103	83	50	75	56	95	126	137
Southern	94	97	93	66	69	65	115	118	138
Western	106	141	140	77	113	111	132	175	201

*Source: CSO Census of Population and Housing, 2000.*

123. Under-Five Mortality Rate<sup>3</sup> continued to increase between 1980 and 2000. It increased by about 7 per cent, from 151 to 162 deaths per 1000 children between 1990 and 2000, respectively.

124. Statistics show that life expectancy,<sup>4</sup> which is also a mortality indicator, recorded an increase between 1990 and 2000 (Table 1.1). In 1990 life expectancy was 47 years and by 2000 it increased to 50 years. This increase is still lower than the 1980 estimate of 52 years. As will be seen from Table 1.1 the female life expectancy is higher than that of males; that is 53, 48 and 52 years in 1980, 1990 and 2000 respectively, as compared to the male life expectancy, which was recorded at 52, 46 and 48 years in 1980, 1990 and 2000 respectively.

**Table 1.1****Life expectancy at birth, by sex, residence and province, 1980-2000**

Characteristics	Life expectancy at birth (years)		
	1980	1990	2000
Zambia	52	47	50
Sex:			
Male	52	46	48
Female	53	48	52
Residence:			
Rural	50	45	48
Urban	54	51	54
Province:			
Central	56	51	52
Copperbelt	55	50	54
Eastern	46	42	46
Luapula	46	40	45
Lusaka	55	50	54
Northern	51	44	46
North-Western	57	51	56
Southern	53	53	53
Western	51	43	44

*Source: CSO Census of Population and Housing, 2000.*

#### **D. Factors and difficulties**

125. Zambia is challenged by the high child mortality rates especially in the rural areas. This is coupled with inadequate health personnel (nurses, doctors and midwives); inadequate access to health centres, distance to health centres, ambulance services and poor road network. In addition there is high prevalence of malaria and HIV/AIDS in the country which has impacted negatively on the State party's limited resources.

##### **1. Arbitrary deprivation of life**

126. Zambia condemns the practice of arbitrary deprivation of life or extra judicial killings. In order to ensure that such killings do not occur, the following measures have been put in place.

##### **(a) Legislative measures**

###### **The Constitution**

127. The Constitution in Article 12 protects the right to life which can be limited in terms of Article 12 (3) earlier stated.

## **Penal Code**

128. The Penal Code also prohibits the use of excessive force which might culminate into arbitrary deprivation of life in Sections 17 and 18. Section 17 relates to the defence of a person's life or property whilst Section 18 restricts the use of excessive force when effecting arrests.

### **(b) Judicial measures**

129. As earlier stated Zambian courts will decisively deal with cases based on arbitrary deprivation of life which are mostly characteristic of murder.

### **(c) Administrative measures**

## **Police Service**

130. Service Instructions and Service Standing orders that *inter alia* aim at ensuring the prevention of arbitrary force in the Police Service were developed by the State party. These operating instructions are augmented by Section 24 of the Zambia Police Act (to be discussed in the ensuing paragraphs) and Sections 17 and 18 of the Penal Code.

## **Prisons Service**

131. Section 22 of the Prisons Act, Chapter 97, ensures that any death in prisons (other than lawful execution) is investigated into by a coroner. This Section acts as a safeguard against extra judicial killings in prisons.

## **Police Public Complaints Authority**

132. The State party established the Police Public Complaints Authority (PPCA) following amendments to the Zambia Police Act. The Authority became operational on 7<sup>th</sup> May 2003 and is tasked with the responsibility of performing the following functions:

- (a) To receive all complaints against police actions;
- (b) To investigate all complaints against police actions which result in serious injury or death of a person;
- (c) To submit its findings, recommendations and directions to:
  - (i) The Director of Public Prosecutions for consideration of possible criminal prosecution;
  - (ii) The Inspector-General of Police for disciplinary action or other administrative action; or
  - (iii) The Anti-Corruption Commission or any other relevant body or authority.

133. The PPCA has the power to investigate all complaints referred to it by –
- (a) An aggrieved person directly or indirectly affected by police action;
  - (b) An association acting in the interests of its members; and
  - (c) A person acting on behalf of an aggrieved person, body or organization.

134. So far the PPCA has received 825 complaints and made 45 rulings in which, 13 officers involved were found to have abused their authority and dismissed from the Police Service. The cases before the PPCA range from false imprisonment, unlawful detention to abuse of authority by individual police officers.

**(d) Factors and difficulties**

135. The State party regrets that acts of arbitrary deprivation of life may occur in its territory at the hands of overzealous individuals acting in their own capacity.

**Rules and regulations governing the use of firearms by law enforcement agents**

*Police Service*

136. The use of firearms is regulated by Section 24 of the Zambia Police Act which states that a firearm can only be used against –

- “(a) A person in lawful custody charged with or convicted of a felony who attempts or escapes from lawful custody;
- (b) Any person who by force rescues or attempts to rescue any other person from lawful custody;
- (c) Any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person:

Provided that if a firearm is used, reasonable warning would be given to such person.”

*Prisons Service*

137. The use of firearms in the Prisons Service is regulated by Section 29 of the Act. A firearm may be used against a prisoner (and his accomplice if any) who is-

- “(i) Escaping or attempting to escape;
- (ii) Engaged in a combined outbreak or in an attempt to force, break open the prison or cells; and
- (iii) Using violence on a prison officer or another prisoner or other person in the vicinity.”

138. The resort to use of a fire arm under the Act can only be done if reasonable warning has been given to such person.

#### *Defence Forces*

139. Zambia is a party to the Geneva Conventions of 1949 and the Additional 1977 Protocols on Humanitarian Law. Although, the State party has not yet incorporated the Conventions and Additional Protocols into domestic legislation, its defence forces incorporate the principles of the Conventions and Additional Protocols in their operations.

#### **Disappearance of persons**

140. Zambia has never experienced forced disappearances within its territory.

### **2. Death penalty**

141. Zambian legislation contains the death penalty as a severe form of punishment although; in practice, Government has not exercised the death penalty since 1997.

#### **(a) Legislative measures**

##### **The Constitution**

142. Article 59 of the Constitution entitles a person to seek pardon or commutation of sentence where the death penalty has been imposed on that person.

##### **Penal Code**

143. The death penalty is only mandatory in cases of treason, murder and aggravated robbery as provided in the Penal Code in Sections 43; 200 and 294 respectively. It is the view of the State party that these are the most serious crimes in its territory.

144. The sentence of death in murder cases depends on the circumstances of the case. If extenuating circumstances are proved by the accused in the proceedings, the charge will be reduced to manslaughter as provided in Section 201(b) of the Penal Code. In this case the accused will be given a sentence other than the death penalty.

145. The sentence of death with respect to aggravated robbery will only be imposed if there was a presence or use of a firearm.

146. Section 25 (2) of the Penal Code states that persons under the age of 18 cannot be sentenced to death. They may however, be detained in corrective institutions at Presidential pleasure. The release from such institutions is left to the discretion of the President in consultation with relevant authorities, as provided in Section 25(3) of the Penal Code.

147. Section 25 (4) of the Penal Code states that the death penalty cannot be imposed on a pregnant woman. Only a maximum sentence of life imprisonment can be imposed. In practice, Section 25 of the Penal Code has been fully adhered to.

**(b) Judicial measures**

148. The High Court has original jurisdiction to hear and determine *inter alia* offences of treason, aggravated robbery and murder. All appeals from the High Court lie with the Supreme Court which has the power to confirm or quash the death penalty or reduce it to a lesser sentence.

149. The procedures observed in imposing the death penalty by the Courts are set out in Sections 303 – 306 of the Criminal Procedure Code, Chapter 88. There are:-

(a) Where a person is sentenced to death, the sentence is death by hanging;

(b) Before a sentence of death is executed a certificate under the hand of the Registrar or the Clerk of Court naming and describing the person must be produced as sufficient authority for the death penalty;

(c) Once the sentence of death has been pronounced an automatic appeal lies from the High Court to the Supreme Court in favour of the accused within 14 days from the date of sentence. The Judge is under an obligation to inform the President of the death sentence in writing;

(d) The President on the advice of the Advisory Committee on the Prerogative of Mercy and after all appeals have been exhausted in Courts, can pardon such an offender or issue a death warrant or commutation of sentence;

(e) Where a death warrant, or order, for pardon is issued by the President, that warrant shall serve as sufficient authority for treatment of the accused; and

(f) Where a woman alleges to be pregnant, it is left to the discretion of the Court to determine such pregnancy and if found pregnant, the Court shall not pass the death sentence.

**(c) Administrative measures**

**Statistics on the death penalty**

150. In Zambia, the death penalty hitherto only exists in statute because since 1997, the State party has adopted a form of moratorium in that it does not execute condemned prisoners. The table below represents statistics on the death penalty at Kabwe Maximum Prison from 1997 to date.

**Table 1.2**

**Death sentences pronounced/carried out/commuted by sex**

Year	No. of death sentences pronounced by courts	Male	Female	No. of sentences carried out	No. of sentences commuted
1997	33	33	-	08	
1998	37	37	-	-	
1999	94	94	-	-	
2000	40	40	-	-	
2001	28	28	-	-	
2002	56	56	-	-	
2003	49	48	01	-	
2004	36	36	-	-	22
Total	255	254	01	08	22

*Source: Ministry of Home Affairs 2004.*

151. As earlier stated the State party appointed the CRCO that has among its terms of reference, establishing the desirability of the death penalty. Such initiatives are healthy in discussing the death penalty and reaching national consensus on the matter.

**(d) Factors and difficulties**

152. One of the challenges that the State party faces with regard to the question of the death penalty is the absence of consensus on the issue.

**CHAPTER 7**

**Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

153. In the year 2002 Zambia submitted her Initial Report on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Zambia has also submitted her First Periodic Report on the said Convention. The Committee is referred to these reports in considering Article 7.

154. In addition, the following measures that aim at complying with Article 7 have been put in place.

**A. Legislative measures**

**The Constitution**

155. Article 15 of the Constitution prohibits torture by providing that –

“A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.”

156. Other than this constitutional prohibition, Zambia has not yet incorporated the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment into domestic legislation. Therefore, torture is not defined, criminalized nor are there penalties to avoid acts of torture. However, the process of incorporating the Convention into Zambian legislation began in September 2004 with the preparation of a Cabinet Memorandum.

## **Prisons Act**

### *Treatment of persons on death row*

157. As earlier stated a person sentenced to death is kept at Kabwe Maximum Security Prison. Before admission to Kabwe Prison, such person is thoroughly searched and all prohibited articles found on him are removed. After admission, searches are carried out on all prisoners twice a day. This is to ensure that prisoners do not keep articles that may injure or harm them and others. Every prisoner under sentence of death has the right to appeal against his sentence. He also has the right to see a Minister of Religion; and is entitled to food, bedding, clothes, tobacco, cigarettes, and other luxuries from outside, as may be approved by the Commissioner of Prisons.

158. A prisoner under the death sentence has the right to visitors, however, in the sight and hearing of prison officers. Where the prisoners' relatives or friends are unable to visit the prisoner due to financial constraints, the officer-in-charge may recommend to the Commissioner of Prisons that the whole or part of the cost of such friends and relatives be met by Prisons Service. This is limited to three friends or relatives. A prisoner under the death sentence is entitled to medical attention inside and outside prison premises on the authority of the Commissioner of Prisons. A prisoner who becomes mentally challenged will be transferred to a mental health institution upon medical certification. A prisoner under the death sentence is entitled to petition the President on any matter.

### *Solitary confinement*

159. According to Section 95 of the Prisons Act, solitary confinement is only limited to minor prison offences and can take one of the following forms -

- “(a) Confinement in a separate cell for a period not exceeding three days;
- (b) Confinement in a separate cell with penal diet for a period not exceeding three days;
- (c) Reduced diet with or without confinement in a separate cell for a period not exceeding seven days;
- (d) Forfeiture of remission of sentence not exceeding three days of the total remission earned; and
- (e) Extra work for a period not exceeding three days.”



*Contact rights of prisoners*

160. According to Section 128 of the Prisons Act, all prisoners are entitled to send and receive letters and to receive visits. This is subject to restrictions which may be necessary for the maintenance of discipline and order in prisons and the prevention of crimes. The Prisons Act also makes provision for prisoners who are non Zambian and those that are dangerously ill to be visited, Sections 138 and 139 of the Act respectively. Further Section 135 of the Prisons Act provides for visits by lawyers.

**Zambia Police Act**

161. Following amendments to the Zambia Police Act (Amendment) Act No. 14 of 1999; a Custody officer was introduced in all Police stations and posts. A Custody officer holds the rank of Inspector. His role is to ensure that –

- (a) A person in police custody is treated in a decent and humane way;
- (b) A person in police custody who requires medical attention has access to medical facilities;
- (c) Police cells or other places used for the custody of persons are in clean and habitable conditions;
- (d) Necessary provisions and other facilities used by a person in custody are in hygienic conditions;
- (e) A suspect's name is recorded, the offence for which the person is arrested is stated as well as the condition of the person; and
- (f) Recommendations as to that person's well-being as are necessary, are taken including the requirement for that person to have medical attention.

162. Every person in police custody is first presented to the Custody officer who has to assess and record such person's physical condition before detention in police cells. This acts as a check to deter overzealous police officers from abusing suspects.

**Corporal punishment**

163. Corporal punishment was outlawed in Zambia by the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003; the Penal Code (Amendment) Act No. 10 of 2003, the Education (Amendment) Act No. 11 of 2003 and the Prisons (Amendment) Act No.16 of 2004.

**Existing legislation on the prohibition of cruel or inhuman punishment**

164. The Penal Code contains the following provisions that aim at prohibiting cruel or inhuman punishment –

(a) Section 229: “Any person who unlawfully causes grievous harm to another is guilty of a felony and is liable to imprisonment for 7 years”;

(b) Section 230: “Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for 14 years”;

(c) Section 231: “Any person who unlawfully, and with intent to injure or annoy another, causes any poison or other noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, is guilty of a felony and is liable to imprisonment for 14 years”;

(d) Section 247: “Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for 1 year”; and

(e) Section 248: “Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for 1 year.”

165. In the foregoing provisions, the term “any person” includes both private persons and public officials or persons acting in an official capacity.

## **B. Judicial measures**

### **Corporal punishment**

166. In the case of *John Banda Vs the People, HPA/6/1998*, the Appellant pleaded guilty to and was convicted of malicious damage to property. In addition to one month simple imprisonment suspended for twelve months, the Appellant was ordered to receive ten strokes of the cane in accordance with Sections 24 (c) and 27 of the Penal Code, which provided for corporal punishment. In holding Sections 24 (c) and 27 of the Penal Code as unconstitutional, Justice E. E. Chulu stated:

“Upon consideration of the law before me, I hasten to point out that the Republican Constitution, which is a written Constitution of Zambia, is the Supreme law of the land, and consequently, all other laws derive their force of law from it, and are therefore subordinated to it. This being the legal position, it cannot therefore be doubted that unless the Constitution is specifically amended, any provisions of an Act of Parliament that contravenes provisions of the Constitution is null and void. Article 15 of the Constitution is couched in very clear and unambiguous language, that no person shall be subjected to torture or to inhuman or degrading punishment or other like treatment. On the contrary, it cannot be doubted that the provisions of Section 14 (c) and 27 of the Penal Code which permit the infliction or imposition of corporal punishment of offenders are in total contravention, and conflict with the above provisions of Article 15 of the Constitution.”

167. Judge Chulu further stated that due to the unconstitutionality of Sections 24 (c) and 27 of the Penal Code, the provisions should be severed from the Penal Code, and thus quashed the sentence.

### **Derivative evidence**

168. Derivative evidence is admissible in courts if it is relevant to the facts in issue. This principle was laid down in the case of *Liswaniso Vs the People (1976) ZR 297 (SC)* in which illegally obtained evidence was admitted. The Supreme Court held that although the law must strive to balance the interests of the individual to be protected from illegal invasions of his liberties by the authorities, on one hand, and the interests of the State to bring to justice persons guilty of criminal conduct, on the other hand, the answer does not lie in the exclusion of evidence of a relevant fact. The Court stated *inter alia*:

“On the authorities, it is our considered view that (the rule of law relating to involuntary confessions apart) evidence illegally obtained, e.g. as a result of an illegal search and seizure or as a result of an inadmissible confession is, if relevant, admissible on the ground that such evidence is a fact (i.e. true) regardless of whether or not it violates a provision of the Constitution (or some other law) ... But we wish to make it abundantly clear that any illegal or irregular invasions by the police or anyone else are not to be condoned and anyone guilty of such an invasion may be visited by criminal or civil sanctions. It seems to us good law that an involuntary confession should as a general rule be excluded because of the danger that it might be untrue but that the evidence of anything obtained as a result of an illegal act should be admissible because it is a relevant fact and therefore trustworthy. It would be difficult to appreciate how a Court could consciously close its eyes to a relevant fact that has been presented before it.”

### **C. Administrative measures**

169. As earlier discussed, the HRC and PPCA whose functions are to *inter alia* investigate human rights abuses have been established. In addition, the Police Legal and Professional Standards Unit (PLPSU) was established in July 2003 to investigate corruption, arbitrary arrests and detention and other unprofessional behaviour within the Police Service.

170. The PLPSU has the power to recommend to the Inspector General of Police action to be taken against any erring officer(s). The PLPSU is headed by the Assistant Commissioner of Police (Legal). So far the PLPSU has dealt with cases brought before it and has recommended the discipline of 3 officers. The PLPSU is guided by the Police Act, Service Instructions and Service Standing Orders.

171. As earlier stated the State party appointed the Japhet Banda Commission of Inquiry during the matter of *The People Vs Teddy Phiri and 58 others 1997* to inquire into allegations of torture.

### **Psychiatric care**

172. Psychiatric care is administered by psychiatric nurses and doctors who are supervised by the Chief Medical Officer. The type of psychiatric care given includes administering medication, bathing, supervising meals, psychotherapy, occupational therapy (rehabilitation) and outings. The diet is mixed and includes proteins, carbohydrates and starch from various food sources.

173. The ideal ratio of staff to patients is 1 registered nurse to 3 patients and 1 enrolled nurse to 6 patients. However, due to inadequate staffing levels, nurses at times have to deal with more than 30 patients at a time. Nursing staff work under very difficult circumstances as most tools of trade and medicines are not easily available. Nevertheless, staff are instructed not to mistreat patients. In the event that they mistreat patients, such staff will be liable to disciplinary action. Disciplinary action includes suspension, dismissal or criminal prosecution depending on the severity of the matter.

### **Medical experimentation**

174. The State party established a Health Research Unit at the University Teaching Hospital (U.T.H.) whose role is to carry out clinical trials such as testing new drugs or research into new disease on patients with their written consent. The Ethic Guidelines used by the Health Research Unit are premised on the "International Ethical Guidelines for Biomedical Research involving Human Subjects, prepared by the Council for International Organisations on Medical Services in collaboration with World Health Organisation 1993".

### **D. Factors and difficulties**

175. The non domestication of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment presents difficulties for the State party, to the extent that torture and other cruel treatments may not be adequately addressed.

## **CHAPTER 8**

### **Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude:
  - (a) No one shall be required to perform forced or compulsory labour;
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

176. The State party has taken measures to prevent all manifestations of slavery and any resurgent form of slavery or servitude as follows.

## **Slavery and servitude**

### **A. Legislative measures**

#### **The Constitution**

177. Article 14 of the Constitution protects individuals from slavery and servitude by providing that a person shall not be held in slavery or servitude. Further, a person shall not be required to perform forced labour. Article 24 (1) of the Constitution also provides that a young person shall not be employed in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development.

#### **Penal Code**

178. The Penal Code provides that -

- (a) Section 261: A person who trades, accepts, receives or detains a person as a slave is guilty of a felony and is liable to imprisonment for 7 years;
- (b) Section 263: A person who unlawfully compels any person into forced labour is guilty of a misdemeanour;
- (c) Section 262: Any person who habitually trades in slaves is guilty of a felony and is liable to imprisonment for 10 years;
- (d) Section 110: Any person who procures or attempts to procure a woman below the age of 21 as a prostitute in a brothel in Zambia or elsewhere is guilty of a misdemeanour;

(e) Section 141: Any person who by threats or intimidation procures or attempts to procure any woman or girl for unlawful carnal connection and or administers any drug matter with intent to stupefy or overpower such girl or woman is guilty of a misdemeanour;

(f) Section 142: Any person who is the owner or occupier of premises who uses his premises for men to have unlawful carnal knowledge of girls under 12 years of age is liable to imprisonment for 5 years unless it can be shown that such person did believe that the girl was of or above 12 years; and

(g) Section 144: Any person who detains any woman or girl against her will to have unlawful carnal knowledge with a man on his premises or brothel is guilty of a misdemeanour.

### **Narcotic Drugs and Psychotropic Substances Act**

179. The Act prohibits -

(a) Section 14: Any person from inducing another person from taking any narcotic drug or psychotropic substance. Upon conviction such person is liable to imprisonment for a term not exceeding 10 years; and

(b) Section 16: Any person who occupies or controls premises from administering narcotic drugs or psychotropic substances. Upon conviction such person is liable to imprisonment for a term not exceeding 5 years.

180. It is worth noting that the provisions of the Penal Code and the Narcotic Drugs and Psychotropic Substances Act cover acts of both private individuals and public officials.

### **Employment of Young Persons and Children Act**

181. The Employment of Young Persons and Children Act, Chapter 274, prohibits children from being employed in any type of work which by its nature or the circumstances in which it is carried out constitutes a worst form of labour. Further, Government has enacted the Employment of Young Persons and Children's (Amendment) Act No.10 of 2004 to implement the International Labour Organisation Convention on the Minimum Age and the International Labour Organisation Convention on the Worst Forms of Child Labour. Worst forms of child labour include slavery, sale and trafficking in children, pornographic performances, production and trafficking of illegal drugs and use of children in armed conflict.

182. However, a child between 13 and 15 years may be engaged in light work which is not likely to harm that child's health or development; or which is not prejudicial to that child's attendance at an institution of learning or participation in vocational orientation.

## **Forced or compulsory labour**

### **Penal Code**

183. Hard labour exists as a form of punishment as provided in Article 14 of the Constitution and as provided under Section 26 (1) of the Penal Code, which states –

“All imprisonment shall be with or without hard labour in the discretion of the Court, unless the imposition of imprisonment only without hard labour is expressly prescribed by law.”

184. In determining the imposition of hard labour, Courts will take into account the severity of the offence, its prevalence and whether the accused is a first offender or not. Hard labour will not be imposed on a person who is physically challenged.

### **Work or other service under article 8 (3) (C) of the Covenant**

#### **Persons under detention**

185. In Zambian prisons or cells, there are 2 categories of inmates namely prisoners and unconvicted inmates. Only prisoners can perform work or service stipulated in Article 8 (3) (c) (i). These works are provided in Section 76 (1) of the Prisons Act which states -

“(1) Civil prisoners and unconvicted prisoners shall be required to keep their cells, the precincts thereof and the furniture, clothing and utensils therein, clean.

(2) Appellant prisoners shall be required to keep their cells, the precincts thereof and the furniture, clothing and utensils therein, clean and to perform such labour as the officer in charge, with the approval of the Commissioner, may direct.”

186. In addition, Section 154 (2) and (3) of the Prisons Act make it possible for a prisoner to be hired out or placed at the disposal of a parastatal organization, a public company, a statutory corporation or a public institution. There is a proviso that such prisoners shall work under the supervision or control of a prisons officer or other public officer. Where a prisoner is hired out such prisoner is entitled to be paid wages.

187. According to Section 156 of the Prisons Act, no prisoner shall be required to do any labour on Sundays or public holidays except such labour as may be necessary for keeping the prison premises clean and for cooking prisoners' rations. Prisoners of the Jewish faith are not compelled to work on Saturdays if they make a claim for such exemption. Prisoners of the Orthodox Muslim faith are allowed to observe the fast of Ramadan and during such fast such prisoners work in reduced tasks. In addition, the Commissioner of Prisons may issue other religious holidays for prisoners who are members of other religious communities as he thinks fit.

### **Persons on conditional release**

188. Persons on conditional release may be subject to community service provided for in Section 4 of the Penal Code (Amendment) Act No. 12 of 2000 and Section 306A and B of the Criminal Procedure Code (Amendment) Act No. 13 of 2000.

189. A Court may make an order for community service where in the case of an adult; the offence is a misdemeanour and is punishable by imprisonment. Before making an order for community service, the Court shall consider the report submitted by a superior police officer or other person or institution as the Court may consider appropriate as regards the character, antecedents, home surroundings, health or medical condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed.

190. An order for community service shall specify –

- (a) The number of hours to be worked;
- (b) The days on which the work is to be performed;
- (c) The period of community service;
- (d) The place where the offender is to perform community service;
- (e) That the offender shall, during the period of community service, be under the supervision of an authorized officer; and
- (f) Any other special terms and conditions of the order.

191. Where an offender, who has been ordered to perform community service, is found by a medical officer to be medically unfit to perform community service, the authorized officer shall report to the Court which shall -

- (a) Vary the order to suit the circumstances of the case;
- (b) Impose on the offender a fine not exceeding three hundred penalty units; or
- (c) Send the offender to prison for the period the offender is liable, subject nevertheless to a reduction of the number of days, if any, for which community service has already been performed.

### **Compulsory military service and conscientious objection to military service**

192. The practice of compulsory military service does not exist in Zambia. The enlistment procedure found in Section 14 of the Defence Act, Chapter 106 is voluntary. A recruiting officer cannot enlist any person in the Regular Force unless he is satisfied that the person intending to be enlisted understands the general conditions of engagement and wishes to be enlisted. In addition



a recruiting officer can not enlist a person under the apparent age of 18 unless consent to the enlistment has been given in writing by his parent or guardian or where the parents or guardian are dead or unknown, by the Town Clerk or Council Secretary of the district in which such person resides.

### **B. Judicial measures**

193. There are no judicial measures to report on.

### **C. Administrative measures**

#### **Prisons Service**

194. Hard labour is administered by the Prisons Service. It takes into consideration the following -

- (i) The health of the prisoner;
- (ii) The skills of the prisoner; and
- (iii) The type of work depending on the skills.

195. Works include gardening, tailoring, carpentry and foundry. These works must be within the limits of the law and should not amount to torture, other cruel, inhuman or degrading treatment or punishment.

### **D. Factors and difficulties**

196. In spite of the measures that exist for remuneration of prisoners who perform hard labour; Government is not able to pay such prisoners their wages due to limited financial resources.

197. Though community service punishments have been enacted, there is need for more implementation of the same.

## **CHAPTER 9**

### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial

within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

198. The right to liberty is not absolute in Zambia and may be limited in certain circumstances.

## **Persons deprived of liberty**

### **A. Legislative measures**

#### **The Constitution**

199. According to Article 13 of the Constitution, a person shall not be deprived of his personal liberty except under the following cases:

(a) In execution of a sentence or order of a court, in respect of a criminal offence of which he has been convicted;

(b) In contempt of court;

(c) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(d) Under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of 18 years;

(e) For the purpose of preventing the spread of an infectious or contagious disease;

(f) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; or

(g) For the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person.

### **Immigration Control and Deportation Act**

200. A person's liberty can also be restricted under the Immigration Control and Deportation Act Chapter 123. Section 25 of the Act gives the Immigration Department the power to detain any person who upon reasonable suspicion and grounds is a prohibited immigrant for a period not exceeding 14 days.

201. Section 26 of the Act, further authorizes the Immigration department to detain and deport from Zambia, any person who is a holder of a valid temporary permit, who has committed a fundamental breach of peace.

### **Mental Disorders Act**

202. Under the Mental Disorders Act, Chapter 305 a person's liberty can be deprived under the authority of a warrant or order of the Minister, a Judge or a Magistrate. Before an order is made a Magistrate must satisfy himself that the detained person is apparently mentally challenged and has become dangerous to himself or to others; or is wandering at large and is unable to take care of himself.

### **Conditions that apply to persons deprived of their liberty**

203. Article 18 (1) of the Constitution is instructive on the conditions that apply to persons deprived of their liberty, (see Chapter 14). The practice on the ground is that when an individual is arrested, his rights will be explained and the offence read out to him by the arresting officer. Further, Section 33 (1) of the Criminal Procedure Code obliges the arresting officer to present an accused person within 24 hours to Court. However, it is difficult to ensure the 24 hour time limit because of logistical problems such as transport, Court infrastructure and human resource. As such most accused persons are not taken to Court in time.

204. When a person has been detained, such person is availed telephone services and other contacts to his lawyer, family or friends. This acts as a safeguard against the danger of disappearances.

205. The length of time in which a person can be detained while awaiting trial depends on the Courts and is not defined by law. The only requirement is that a detained person must appear in Court fortnightly subsequent to his initial appearance. Pre-trial detention is not the rule in every case except for those cases which are notailable as established by law.

206. Persons detained under emergency regulations are entitled to apply for a writ of habeas corpus in the High Court as provided in Article 13(3) of the Constitution.

### **Bail**

207. The conditions regarding bail are set out in Section 123 of the Criminal Procedure Code. Bail will not be given in the following circumstances, that is -

- (i) Murder, treason or any other offence carrying a possible or mandatory capital penalty;

- (ii) Misprision of treason or treason-felony;
- (iii) Aggravated robbery;
- (iv) Trafficking in narcotic and psychotropic substances;
- (v) Theft of motor vehicle; and
- (vi) Espionage.

208. Section 123 (1) of the Criminal Procedure Code requires a person who has made an application for bail to meet the following conditions –

- (a) Providing a surety or sureties as a case may be;
- (b) A person must be of fixed abode;
- (c) A person must make an undertaking not to interfere with State witnesses; and
- (d) A person may be requested to pay a sum of money or bail granted in own recognizance.

### **B. Judicial measures**

#### **Bail**

209. Bail in Zambia is not a right and depends upon the discretion of the Court. In the case of *Chetankumar Shantkal Parekh Vs the People, SCZ Judgement No. 11 of 1995*, the appellant appeared before the Subordinate Court on a charge of unlawful possession of drugs. The Magistrate Court refused to grant bail citing Section 43 of the Narcotic Drugs and Psychotropic Substances Act, which forbids the granting of bail in any “cognizable offence” under the Act. The appellant further made a bail application to the High Court which was also refused. The appellant then appealed to the Supreme Court arguing that this blanket denial of bail under the Act, which applies to any and all drug offences, violates Article 13 of the Constitution.

210. The Supreme Court held that there was nothing unconstitutional in a provision that prohibited or restricted the grant of bail pending trial. It further held that as long as a trial did not become unreasonably delayed, it is constitutionally permissible to deprive one’s liberty without the allowance of bail.

#### **Habeas corpus**

211. As earlier stated habeas corpus is granted in cases where an accused person has been over detained and has never appeared before court.

### **Judicial review**

212. Mandamus is a remedy that exists under Section 344 of the Criminal Procedure Code. It compels the performance of a public duty by an inferior Court given at the direction of a superior Court.

213. Certiorari is an order of a higher Court aimed at quashing the decision of an inferior Court or tribunal. In the matter of *Ludwig Sondashi Vs the Speaker of the National Assembly 1998/HP/111* the applicant who was a Member of Parliament was suspended from the National Assembly on account of a statement that he made to the press that “in a democracy, coups can sometimes be positive and may be necessary and may also be helpful”. This was in the aftermath of the abortive coup d’etat of October 1997.

214. The applicant challenged this action by way of judicial review. He applied for an order of certiorari to quash the decision of the House to suspend him from his parliamentary duties and further in the alternative that the decision was null and void as it was made in bad faith and in contravention of Articles 20, 64, 65 and 71 of the Constitution of Zambia as read with Sections 19 and 28 of the National Assembly (Powers and Privileges) Act, Chapter 12.

215. The two issues that had to be determined by the Court were:

- (i) Whether the applicant’s freedom of expression guaranteed under Article 20 of the Constitution was contravened; and
- (ii) Whether, if the answer to the first question was in the affirmative, the Court had the jurisdiction to grant the applicant the relief he was seeking.

216. The High Court held that by Article 28 of the Constitution, it had jurisdiction to hear and determine applications made to enforce the Bill of Rights, Part III of the Constitution. The Court also held that the applicant’s freedom of expression had been infringed upon and quashed the charges against him.

217. Compensation is available to a person who was unlawfully detained and seeks damages in tort for false imprisonment.

### **C. Administrative measures**

218. As earlier reported the PPCA and the PLPSU deal with *inter alia* matters relating to abuse of authority by police officers.

### **D. Factors and difficulties**

219. Although Zambian legislation provides for bail, its conditions are not easily met by some accused persons because of financial constraints.

220. The State party recognizes that criminal court proceedings may be prolonged by non availability of witnesses on the part of both the State and defence; non availability of the accused or the magistrate; and lack of adequate court rooms especially for magistrates.

## CHAPTER 10

### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

221. The right and respect for the inherent dignity of a human person is considered extremely important in Zambia; and is protected through the following measures:

#### Detention in prisons

##### A. Legislative measures

#### Prisons Act

222. The State party endeavours to treat prisoners in a humane way through the provision of health, exercise, food, education, access to the outside world, access to family and lawyer in accordance with the Prisons Act.

223. The procedures for receiving and investigating complaints for prisoners lie with the Judicature and the HRC.

224. Prisons visits are conducted by Judges, Magistrates, the Minister and Deputy Minister of Home Affairs, and Provincial Ministers. During such visits -

(a) All books, papers and records relating to the management and discipline of the prisons are inspected;

(b) Every part of the prison is visited in order to check on every prisoner in confinement;

(c) Inspections and tests are done on the quality and quantity of prisoners' food;

- (d) An assessment is conducted to ensure that standing orders and rules are observed; and
- (e) Complaints or requests made by a prisoners are taken down.

### **Detention in psychiatric institutions**

#### *Mental Disorders Act*

225. As earlier stated, the Mental Disorders Act provides for the care of persons who are mentally challenged. These persons are usually hospitalized at Chainama Hills Mental Hospital, which is the largest psychiatric institution in Zambia.

226. The places of detention, that is either prisons or psychiatric institutions are run as public institutions and regulated by their respective Acts. Officers who administer these institutions are public officers and medical personnel respectively. These officers are tasked with the responsibility of ensuring the humane treatment of detained persons.

### **Classification of offenders**

227. According to Section 60 of the Prisons Act male and female prisoners should be kept apart and confined in separate prisons or in separate parts of the same prison.

228. Convicted and unconvicted prisoners of each sex are divided into the following classes:

- (a) Young prisoners;
- (b) Adults;
- (c) First offenders;
- (d) Prisoners with previous convictions; and
- (e) Prisoners suspected or certified as being of unsound mind.

229. In practice segregation of accused persons from convicted offenders is not fully achievable due to inadequate prisons infrastructure.

### **Treatment accorded to accused persons as compared to convicted persons**

230. Section 87 of the Prisons Act permits an unconvicted prisoner to maintain himself and arrange for the purchase of or receive food, clothing and other necessities as he may require from the outside. Section 89 of the Prisons Act provides that an unconvicted prisoner, who does not provide himself with food and clothing, should receive the normal prisons food, clothing and other necessities. Rule 104 of the Prisons Act provides that every prisoner should be dressed in appropriate prison clothing whereas; Rule 163 (1) provides that an unconvicted prisoner shall be permitted to wear his own clothing.

### **Charges against juvenile persons**

231. The Juveniles Act, Chapter 53 makes provision for the custody and protection of juveniles in need of care and for the correction of juvenile delinquents. A juvenile is defined as a person under the age of 19. There is no definitive time frame within which an arrested juvenile should be brought before Court. However, there is an obligation for the competent authority to expedite proceedings in respect of a juvenile.

232. Sections 58 to 64 provide for the procedure to be followed in matters relating to juvenile offenders. These are summarised as follows:

- (i) A juvenile must be accompanied by his parent or guardian;
- (ii) Proceedings are held in camera;
- (iii) A juvenile is not allowed to sit in the accused's dock except if he is charged with an adult. In this case a juvenile will be deemed to be an adult;
- (iv) The offence that is alleged to have been committed by the juvenile needs to be carefully explained to him;
- (v) The procedures in the Court room must be informal and not strict as in an ordinary Court;
- (vi) The terminology used in the Court is ordinary and not very legal. For instance, a juvenile is referred to as "a juvenile offender" or a "child in conflict with the law";
- (vii) All offences against juveniles are triable in the Subordinate Court except for murder which is triable in the High Court;
- (viii) The sentencing of a juvenile offender cannot be passed without a social welfare report; and
- (ix) A juvenile can either be placed on supervisory probation under the care of a social welfare officer; or sent to a reformatory or approved school for reformation. In practice, juveniles are sometimes kept with adult offenders because prisons lack adequate capacity to hold offenders.

233. The detention or imprisonment of juveniles is a measure that is taken as a last resort.

### **Principles of reformation and social rehabilitation of prisoners**

234. Remission - Section 109 of the Prisons Act provides that a convicted criminal prisoner may upon good conduct earn a remission of one-third of his sentence(s).

235. Parole - Government is in the process of introducing parole in the Prisons Amendment Bill.



236. Extension Service - an extension service programme exists for the purposes of providing post imprisonment programmes for discharged prisoners. Extension services are administered by persons who are professionally qualified in social welfare.

### **B. Judicial measures**

237. There are no judicial measures to report on.

### **C. Administrative measures**

238. The Prisons Service has established mechanisms for ensuring the rehabilitation of inmates as follows:

(a) Offender Management Unit (OMU) in the Prisons Service which assesses the rehabilitation needs of prisoners by applying appropriate programmes such as counselling or vocational skills training. The OMU is also entrusted with the responsibility of preparing inmates for discharge and successful re-integration into society after imprisonment;

(b) Prisons industries provide training in skills such as carpentry, tailoring, upholstering and agriculture. Inmates are trade tested to address certification needs; and

(c) In an effort to include the community in the rehabilitation of prisoners, the Prisons Service has allowed Faith Based Organizations (FBOs) and NGOs such as the Prisons Fellowship of Zambia to conduct a number of activities in prisons. These include counselling of prisoners by the Catholic Church, Seventh Day Adventist, Anglican and Muslim Faith; and training prisoners in agricultural skills.

### **Accessibility of information to prisoners**

239. Rule 110 of the Prisons Act makes it an obligation for every prisoner to have a copy of Prisons Rules. These Rules cover the treatment of prisoners of one's class, earnings and privileges, submitting petitions or making complaints if any, provision of food, clothing, bedding and other necessities and the disciplinary requirements of the prison. The Rules are also available in local languages, that is, Bemba, Nyanja, Lozi and Tonga. These Rules are supposed to be posted in every prison and in places accessible to all prisoners. Upon admission of a prisoner to prison, prisons authorities are required to read out these Rules to him within 24 hours of his admission.

### **D. Factors and difficulties**

240. Due to limited financial resources, Government is unable to meet its obligations to prisons such as providing suitable prison accommodation, adequate diet, bedding, clothing, water and sanitation.

## CHAPTER 11

### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

241. There is no legislation in Zambia which justifies imprisonment of an individual merely on the ground of inability to fulfil contractual obligations unlike what was reported in the Second Periodic Report. As earlier stated in Article 13 (1) of the Constitution a person's liberty can only be deprived in those circumstances that do not include contractual obligations. Damages for breach of contractual obligations only exist in tort and as such a plaintiff can only pursue a civil remedy.

242. However, Government is aware that there may be arbitrary arrests made against persons who fail to fulfil contractual obligations. Overzealous individual police officers who may not be fully aware of the rights in the Constitution or the penalties in the Penal Code usually have a tendency of making such arrests. Redress for violation of rights of persons who are aggrieved can be pursued under Article 28 of the Constitution and or through the administrative procedures of the PPCA and the PLPSU.

## CHAPTER 12

### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

243. The Constitution sets the legal basis upon which every person lawfully in Zambia is entitled to the right to movement and freedom to choose one's residence. People are free to move around the country and to change their residence at any particular time. Zambia is a multi-ethnic country whose citizens live in harmony, inter marry between tribes, and reside or work in any place of their choice.

### A. Legislative measures

#### The Constitution

244. Article 22 of the Constitution provides that every person in Zambia has the right to move freely throughout Zambia; reside in any part of Zambia; and leave Zambia and return to Zambia, except where that person has been lawfully detained.

### **Refugees (Control) Act**

245. Restrictions exist on the right to freedom of movement under Section 12 (1) of the Refugees (Control) Act, Chapter 120. These restrictions require refugees to reside within a reception area or refugee settlement.

### **Passport Bill**

246. Government is currently enacting a Passport Bill whose objective will be to legalise and control the issuance of passports. Previously, there was no legislation regulating the issuance of passports.

247. The State party does not in any way hinder the free movement of persons in Zambia and citizens to any part of the world, unless a person is facing criminal prosecution in Courts of law. This is so because the person will be expected to attend Court regularly. The withdrawal of a passport is sufficient guarantee that the person will be available for Court proceedings. Further, public officials can only travel on Government business abroad if they have been granted authority to travel by the Secretary to Cabinet. This must be distinguished from the travel of such public officials in their private capacity where Government authority to travel abroad is not necessary.

### **B. Judicial measures**

248. There are no judicial measures to report on.

### **C. Administrative measures**

#### **Commission for Refugees**

249. The above office is established under the Ministry of Home Affairs. Its mandate is to legalise the stay of refugees and look into their welfare.

#### **Passport and Citizenship Office**

250. The main function of this office is to control the issuance of passports and travel documents. Upon issuance of a passport or a travel document any person is free to travel to any foreign country subject to visa conditions.

### **D. Factors and difficulties**

251. The State party is challenged by the upkeep and maintenance of prohibited immigrants that continue re-entering the country. Repatriation of these prohibited immigrants is very costly.

## CHAPTER 13

### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

252. Lawful aliens in Zambia are protected from arbitrary expulsion as follows.

#### A. Legislative measures

##### Refugees (Control) Act

253. The principle of non-refoulement exists under Sections 10 and 11 of the Refugees (Control) Act which oblige the Minister of Home Affairs and Courts of law not to make an order for the return of a refugee to a country where he is likely to face persecution.

##### Immigration and Deportation Act

254. According to Section 26 (2) of the Immigration and Deportation Act Chapter 123, a lawful immigrant can be deported if he breaches fundamental Zambian legislation and by his conduct is likely to endanger the peace and good order of the country.

255. Section 3 of the Act gives authority to a competent officer to arrest without warrant, detain and deport a prohibited immigrant from Zambia.

256. Section 23 of the Act requires a Deportation Notice to be served to the prohibited immigrant setting out the period within which such person is required to leave Zambia, that is, usually within 7 days; and the route of travel out of Zambia.

257. If a person fails to comply with Section 23 of the Act, Section 26 obliges a competent officer to detain such person without warrant and keep him in detention until the earliest opportunity arises for that person to leave Zambia.

258. Section 24 of the Act gives an opportunity to an aggrieved person to appeal to the Minister of Home Affairs against his deportation. In addition, an aggrieved person can appeal to the High Court for redress.

#### B. Judicial measures

259. In the case of *Roy Clarke vs the Attorney General No. 2004/HP/003*, the brief facts were that on 5 January 2004 the Minister of Home Affairs in his address to the Movement of Multi Party Democracy (MMD) cadres, indicated that one Roy Clarke would not remain in the country for more than 24 hours. This followed an article entitled "Mfuwe" which Roy Clarke had submitted to and published by the Post News Paper on 1 January 2004. The article depicted the

President of the Republic of Zambia, his Ministers and the people of Zambia as monkeys, elephants, snakes and animals in derogatory and what were considered to be racist terms. This article was followed by a publication in the Zambia Daily Mail and the Post Newspaper of a statement by the Home Affairs Permanent Secretary that he had recommended the deportation of Roy Clarke to the Minister of Home Affairs. Mr. Roy Clarke is a British citizen who has lived in Zambia for more than forty years as an established resident. He is married to a Zambian woman with whom he has children and grandchildren. Mr. Clarke applied to the High Court for Judicial Review.

260. The Court quashed the deportation order for being unconstitutional, unprocedural and unreasonable and made the following observations:

“In case of Mr. Clarke, Mr. Mmembe the Managing Editor of the Post Newspapers adopted the satire article and published it because it is not unlawful such (sic) publication did not trigger coercive powers. Mr. Clarke’s activities are lawful and if he were a Zambian he would have not been punished. Our Constitution does not create one set of offences for aliens, and other offences for Zambians. Equality is the symbol of liberty ... It would not be powerfully appealing to this Court for the Government to deport aliens for reasons forbidden by the Constitution. i.e.; constriction of freedom of expression and discriminating the alien because of his origin and race”.

261. The State party has appealed against the judgment.

### C. Administrative measures

262. The Immigration Department under the Ministry of Home Affairs is mandated to effect the removal and deportation of prohibited immigrants in accordance with the Immigration and Deportation Act. Officers in the Department are under an obligation to inform the prohibited immigrants of their rights and channels of appeal against deportation.

263. The table below shows the number of expulsions that were carried out in the period under review:

**Table 1.3**

#### **Expulsions of Aliens, Zambia 1999-2004**

Year	No. of expulsions	No. of expulsions reviewed by court	No. of expulsions reviewed by the Minister
1999	42	2	25
2000	15	3	21
2001	48	3	31
2002	50	6	17
2003	33	4	15
2004	40	14	21
Total	228	32	130

*Source: Immigration Department 2004.*

264. The table reveals that the year with the least expulsions was 2000 at 15 and the highest was 2002, with 50 people expelled. The total number of expulsions cases reviewed by the Courts in the period 1999 – 2004 was 32 and the total reviewed by the Minister was 130.

#### **D. Factors and difficulties**

265. There are no detention centres for prohibited immigrants who as a result are kept in prisons.

### **CHAPTER 14**

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

266. All persons in Zambia are treated equally before Courts and tribunals through the following measures:

#### **A. Legislative measures**

##### **The Constitution**

267. Article 18 states -

“(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed”.

268. Constitutional Bail is created by Article 13 (3) of the Constitution which states -

“Any person who is arrested or detained –

(a) For the purpose of bringing him before a court in execution of an order of a court; or

(b) Upon reasonable suspicion of his having committed or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial”.

### **High Court Act**

269. Section 10 of the High Court Act, Chapter 27 enshrines into Court process, the principles of common law which enunciate the principles of natural justice. These principles entail fair hearing before the Courts of law, tribunals and quasi-judicial bodies.



## **Criminal Procedure Code**

270. Section 33 (1) of the Criminal Procedure Code states that a suspect must be taken before a competent Court within 24 hours of his arrest. If the matter is not of a serious nature, such a person should be released on Police bond. This measure ensures that a suspect is brought before a competent Court within reasonable time. The provision applies to all suspects without distinction.

271. In terms of Section 204, an accused person can elect to remain silent. In this event, a plea of “not guilty” will be entered by the Court.

272. Section 277 of the Criminal Procedure Code provides for special pleas in bar –

“(1) Any accused person against whom an information is filed may plead -

(a) That he has been previously convicted or acquitted, as the case may be, of the same offence; or

(b) That he has been granted a pardon for his offence.

(2) If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.”

### **B. Judicial measures**

273. The case of *Dean Mung’omba Vs. Attorney General* earlier reported is instructive on the matter.

### **C. Administrative measures**

274. In order to avoid over detention of suspects and to ensure expediency in dealing with cases; Magistrates have developed a procedure obliging police officers to table a book known as the “Arrest and Prisoners’ Property Book” (APPB) weekly. The APPB keeps a record of all suspects kept in police custody and informs the Magistrate of the status of the suspect. By this measure the Magistrate is able to check and compel police officers to bring suspects timely to Court.

275. The HRC and PPCA as already stated continue to offer administrative relief to victims of violations of human rights.

### **D. Factors and difficulties**

276. Suspects are not usually taken to Court in time for their initial appearance after they have been arrested. This is due to inadequate resources, transport, financial, infrastructure and human, available to the Police Service, Prisons Service and Judiciary.

277. The case flow management information system is not effective among the justice institutions.

278. In some cases, law enforcement officers are not knowledgeable in human rights.

## CHAPTER 15

### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### A. Legislative measures

#### The Constitution

279. Zambian laws cannot be enforced in retrospect. Article 18 (4) of the Constitution provides that:

“A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.”

#### B. Judicial measures

280. The case of *The People Vs Xavier Chungu SSP/2002* illustrates the principle of non-retrospective application of laws. In this matter, the accused was arrested for the theft of six motor vehicles and at the time of his arrest the offence was bailable. However, during trial the Criminal Procedure Code was amended to remove the condition of bail for theft of motor vehicle. The accused made an application to Court for bail which was granted as the non-bailable condition could not be applied in retrospect.

#### C. Administrative measures

281. There are no administrative measures to report on.

#### D. Factors and difficulties

282. Most people in Zambia are not aware of their rights at law.

## CHAPTER 16

### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

283. Everyone in Zambia has the right to recognition as a person at law.

#### A. Legislative measures

#### The Constitution

284. A person is recognized as an individual before birth. This recognition of personality at law continues for the life of that person. Article 12 (2) of the Constitution provides that:

“A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose”.

#### B. Judicial measures

285. There are no judicial measures to report on.

#### C. Administrative measures

286. There are no administrative measures to report on.

#### D. Factors and difficulties

287. The State party is challenged by a number of illegal abortions that limit the right to life of an unborn child.

## CHAPTER 17

### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

288. The right to privacy of home, family, correspondence and property is protected in Zambia.

#### A. Legislative measures

#### The Constitution

289. According to Article 17 of the Constitution, a person can not be subjected to the search of his person or his property and or the entry by others on his premises. However, the right

may be limited for the purpose of maintaining public order, health and morality; protecting the rights or freedoms of other persons; or enforcing the judgement of the Court in civil proceedings.

### **Penal Code**

290. The Penal Code prohibits the unlawful interference of a person's privacy, family, home or correspondence as follows –

(a) Section 137: A person who unlawfully or indecently assaults any woman or girl is guilty of a felony and liable to imprisonment for 14 years;

(b) Section 138: A person who has unlawful carnal knowledge of a girl under the age of 16 is guilty of a felony and is liable to imprisonment for life;

(c) Section 139: A person who attempts or has unlawful carnal knowledge of a mentally challenged female is guilty of a felony and is liable to imprisonment for 14 years;

(d) Section 166: Any person who engages in bigamy is guilty of a felony and is liable to imprisonment for 5 years;

(e) Section 173: Any person who illegally uses violence to intimidate a person or members of his household or injures his property or persistently stalks a person or hides, deprives, hinders another person of his property is guilty of an offence. In addition any person who watches or besets another person on any premises is liable to a fine not exceeding three thousand penalty units or to imprisonment not exceeding 6 months or to both;

(f) Section 265: A person who fraudulently and without claim of right takes or converts anything capable of being stolen is guilty of an offence and subject to penalties in the Code;

(g) Section 274: Any person who steals postal matter, any chattel, money or valuable security contained in any postal matter is liable to imprisonment for 10 years;

(h) Section 306: Any person who unlawfully enters into or upon any property in possession of another is guilty of criminal trespass even if that person had lawfully entered but thereafter becomes a nuisance. The offender is liable to imprisonment for 1 year.

### **Criminal Procedure Code**

291. The procedures that authorise interference of a person's privacy are contained in Sections 23 and 24 of the Criminal Procedure Code.

292. Section 23 of the Criminal Procedure Code authorises any police officer to stop, search and detain any vessel, aircraft or vehicle upon which he has reasonable suspicion that a stolen or unlawfully obtained item may be found therein. This also extends to persons who are suspected of having stolen goods and or being in possession. The police officer may seize such goods.

293. Whenever it is necessary to cause a female to be searched, such search can only be made by another female with strict regard to decency as contained in Section 24 of the Criminal Procedure Code.

### **Zambia Police Act**

294. According to Section 15 of the Zambia Police Act, a person's home can be searched under a Court order which must first be obtained before the search. The police officer conducting a search of private premises under the Court order must produce his police identity card to any person found on the premises. If the thing for which the search is made is found it shall be seized and taken before the nearest Magistrate empowered to take cognizance of the offences.

295. Only police officers above the rank of sub-inspector can conduct searches with a warrant. Before a search is conducted, the officer-in-charge of a particular station must be informed of that search in order to ensure that an appropriately ranked officer is appointed to head the search party.

296. In Zambia the competent bodies authorized to undertake searches are the Judicature, Police Service and Drug Enforcement Commission.

297. The term 'home' in Zambia relates to a person's usual place of residence, be it a dwelling house, boarding house, or a shelter, which comprises of a family that is either nuclear or extended, that makes common provision for food and other essentials.

### **B. Judicial measures**

298. Zambian courts generally frown on unlawful interference of a person's privacy, family, home or correspondence. Remedies available to victims of unlawful interference include compensation, restitution and damages in both criminal and civil proceedings.

### **C. Administrative measures**

299. Administrative remedies are provided by the PPCA and PLPSU.

### **D. Factors and difficulties**

300. There are a lot of sexual offences against women and girls which in the advent of the HIV/AIDS pandemic create difficulties for the State party, as this scourge negatively impacts on the country's limited resources.

301. Zambian legislation does not provide for sexual assault against men and boys.

302. Some law enforcement agents are not comprehensively anchored in human rights knowledge.

## CHAPTER 18

### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

303. The State party protects the freedom of conscience, religion and the freedom to manifest such religion either alone or in community with others.

#### A. Legislative measures

##### The Constitution

304. Article 19 of the Constitution guarantees the freedom of conscience which includes the freedom of thought and religion, the freedom to change one's religion or belief and the freedom either alone or in community with others in public and in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

305. It further states that a minor attending any place of education is not required to receive religious instruction or to take part in any religious ceremony or observance except with the consent of his parent or guardian, especially where the instruction or religious ceremony is different from his own.

306. Religious communities or denominations are free to provide religious instructions to anyone enlisted in the community. In addition a person cannot be compelled to take any oath which is contrary to his religion or belief.

307. The Constitution in its Preamble declares Zambia a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience or religion. Although the dominant religion in Zambia is Christianity, the Preamble has no legal effect and by no means does it imply that Christianity is a State religion.

308. The State party tolerates the practice of other major religions such as Islam, Hinduism, Buddhism and the Bahai Faith. Members of these religions are free to exercise their freedom

of worship. The Committee may wish to note that these religious institutions have established their own places of worship throughout the country and are also free to establish educational institutions such as schools, colleges and universities.

309. In Zambia people are free to attend educational institutions of their choice, including those not of their faith.

310. All religions in Zambia have various publications which are accessed through their places of worship, libraries and other distribution points. For example, Jehovahs Witnesses produce their publications at a place called Bethel city and use the same place to distribute the same. The Islamic Society has libraries where materials on Islam can be accessed. The Bahai Faith has a Secondary school where their faith is propagated. The Catholic Church produces publications on its faith and teachings, which are distributed at catholic bookshops around the country. The Seventh Day Adventist Church has schools around the country such as Rusangu Secondary School. All these religions exist side by side and in harmony with one another. Zambia has never experienced religious intolerance.

### **Penal Code**

311. The Penal Code creates offences relating to religion as follows:

(a) Section 128: A person who destroys, damages or defiles any place of worship with the intention of insulting the religion of any class of persons shall be guilty of a misdemeanour;

(b) Section 129: A person who voluntarily causes disturbance to any religious assembly shall be guilty of a misdemeanour;

(c) Section 130: Any person who intentionally wounds the feelings of any person by insulting their religion or commits any trespass in any place set or funeral rites shall be guilty of a misdemeanour;

(d) Section 131: Any person who intentionally wounds the religious feelings of any person by uttering words, sounds or inappropriate gestures within the sight of that person shall be guilty of a misdemeanour and is liable to imprisonment for 1 year.

### **B. Judicial measures**

312. The practice of conscientious objection in the meaning of Article 18 of the Covenant does not exist in Zambia. However, the Committee may wish to note that the case of *Kachasu Vs the Attorney-General (1967)* as reported in the Second Periodical Report remains instructive on the right of freedom of conscience and religion.

### **C. Administrative measures**

313. There are no measures to report on.

#### **D. Factors and difficulties**

314. The proliferation of churches makes it difficult for Government to ascertain the genuineness of their doctrine and liturgy, largely due to limited resources in the Office of the Registrar of Societies.

### **CHAPTER 19**

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

315. The right to freedom of expression is guaranteed through the following measures:

#### **A. Legislative measures**

##### **The Constitution**

316. Article 20 of the Constitution states –

“(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

(2) Subject to the provisions of this Constitution, a law shall not make any provision that derogates from freedom of the press”.

317. There is no interference with the absolute nature of the right to hold opinions. However, restrictions are placed on the freedom of expression, based on considerations that are reasonable and justifiable in a democratic society. These include protecting the reputations of others, persons involved in legal proceedings, preventing disclosure of confidential information and regulating the interests of persons at educational institutions.



## **Defamation Act**

318. Section 3 of the Defamation Act Chapter 68, provides for civil defamation of character of an individual in an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him. Further, an action for slander can also lie in respect of words imputing unchastity or adultery of a woman or girl.

319. Section 14 of the Act states that a defamatory statement published by or on behalf of a candidate in any election to any local authority or to the National Assembly shall not be deemed to be published as a privileged document immune from Court proceedings.

## **Penal Code**

320. The Penal Code creates the following libel offences:

“69. Any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years; and

191. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed ‘libel’”.

## **B. Judicial measures**

321. In the matter of *Fred M'membe and Bright Mwape Vs The People Appeal No. 87 and 197 of 1995*, the appellants were charged in a Magistrate's Court with defamation of the President, Section 69 of the Penal Code. The appellants requested the Magistrate to refer the matter to the High Court in order to determine the constitutionality of Section 69 of the Penal Code viz Articles 20 and 23 of the Constitution. It was their contention that Section 69 of the Penal Code violated Articles 20 and 23 of the Constitution.

322. The Court held *inter alia that*:

- (i) No one could seriously dispute that side by side with the freedom of speech was the equally very important public interest in the maintenance of the public character of public men for the proper conduct of public affairs which requires that they be protected from destructive attacks upon their honour and character. When the public person was the Head of State the public interest was even more self-evident;
- (ii) There was nothing in Article 20 which immunized defamation: a law met the test of being reasonably required if it had as its aim at least one of the interests or purposes listed in Article 20 (3);
- (iii) Section 69 of the Penal Code was not unconstitutional and ordered that the trials proceed before the Subordinate Courts.

323. In the Case of *Zambia Daily Mail Limited Vs Charles Banda, SCZ Judgement No. 35 of 1999*, the appellant Newspaper published an advertisement and article, both based upon press conferences, which implied that the respondent, a radio journalist, took money from the Zambia Independent Monitoring Team (ZIMT) to broadcast information favourable to ZIMT's position. The advertisement was captioned, "Betrayal of a Nation. Press statement by Isaac Zimba – Vice President ZIMT". Following publication, the respondent was suspended from his job and his case was investigated by the Anti-Corruption Commission. He was subsequently acquitted of the allegations and thereafter sought for an apology from the Newspaper, which was refused.

324. The respondent brought an action before the High Court in which he was awarded K30 million in general damages and K30 million in exemplary damages. The Newspaper appealed against the judgement.

325. On appeal, the Supreme Court agreed with the High Court on the liability of the Newspaper. It held that the defamatory nature of the articles was clear as the Newspaper showed clear malice by not investigating the articles and by the subsequent treatment of the respondent. However, the Court reduced the award of damages both general and exemplary in half.

### **C. Administrative measures**

326. In order to ensure press freedom, the following measures have been put in place -

- (i) Generally, journalists in Zambia are free to exercise their profession in any form of media and on any subject including politics as long as they confine themselves to the legislative provisions outlined above;
- (ii) The Media Institute of Southern Africa (MISA) Zambia Chapter (formerly known as Zambia Independent Media Association) is the mother body of Independent Media Organisations in Zambia. It regulates the journalism standards of private media whilst State media is regulated by the Press Association of Zambia (PAZA);
- (iii) All journalists in Zambia are guided by an Ethical Code of Conduct which regulates the journalism working system. Journalists are expected to follow these laid down procedures. Sanctions apply for non adherence to these procedures under the Defamation Act and Penal Code as stated above; and
- (iv) Foreign journalists have access to information which is in the domain of the general public. Other sources of information include the Internet, presence of international correspondents such as Reuters, British Broadcasting Corporation (BBC), Cable News Network (CNN), Canal France International (CFI), Voice of America (VOA), Radio France and microwave links. A number of foreign newspapers and periodicals are equally circulated in the country through direct importation by the business community. These include among others, the Financial Mail, Weekly Standard, Washington Post, Focus on Africa, New African and Africa Confidential.

#### **D. Factors and difficulties**

327. Some of the journalists are inadequately trained and are not able to accurately report on events and issues.

328. Some media organizations do not have adequate equipment such as cameras, Dictaphones, transmitters, microphones, heavy duty equipment and transport in order to conduct effective coverage and transmission.

### **CHAPTER 20**

#### **Article 20**

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

329. Zambia abhors propaganda and has put in place the measures below, in addition to those stated in Chapter 2.

#### **A. Legislative measures**

##### **The Constitution**

330. The Constitution prohibits discrimination of all forms including that which is based on race, tribe, creed, ethnic or national origin in Articles 11 and 23 as reported earlier.

#### **B. Judicial measures**

331. Hitherto, no person, group or organization has ever been prosecuted for racial propaganda, promotion of ideas or theories based on racial superiority.

#### **C. Administrative measures**

332. The HRC's mandate *inter alia* includes educating persons of their human rights. Through these programmes, the HRC emphasizes the principle of non-discrimination as being fundamental to the co-existence of different tribal groupings in Zambia.

### **CHAPTER 21**

#### **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

333. The right to freedom of assembly and association is protected through the following measures.

#### **A. Legislative measures**

##### **The Constitution**

334. Article 21 (1) of the Constitution guarantees the freedom of assembly and association as follows -

“(1) Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests”.

335. According to Article 21 (2), freedom of assembly and association is limited by considerations that are necessary in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights of other persons or in the registration of political parties or trade unions.

336. In practice, citizens and non-citizens resident in Zambia are free to associate in different forms, which include, political parties, trade unions, religious gatherings of different faiths, social clubs and associations, fora advocating particular issues of public interests, cooperatives and student unions.

##### **Societies Act**

337. The Societies Act regulates the registration of political parties, NGOs, clubs and other forms of associations, through the Registrar of Societies.

##### **Penal Code**

338. Section 74 of the Penal Code prohibits lawful assemblers from engaging in activities that are likely to breach the peace.

##### **Public Order Act**

339. The Public Order Act (Amendment) Act No. 1 of 1996, regulates the conduct of assemblies, rallies and processions in Section 5 (4), (5), (6) and (7):

“(4) Any person intending to assemble or to convene a public meeting, procession or demonstration shall notify the police in writing of such intent fourteen days before the meeting.

(5) The notice required under subsection (4) shall be in the prescribed form and shall contain an undertaking by the persons intending to assemble or convene a public meeting, procession or demonstration that order and peace shall be maintained through the observance of the following conditions:

- (a) That they have been informed by the Police that the site for the meeting has not already been granted to another convener for the holding of a public meeting, procession or demonstration;
- (b) That the route and the width of the route is suitable for the holding of processions in accordance with the width and route specifications for such purposes as specified by the Minister by statutory order;
- (c) Marshals of a number sufficient to monitor the public meeting, procession or demonstration are available and shall cooperate with the police to ensure peace and order;
- (d) That the commencement, duration and destination of the public meeting, procession or demonstration shall be notified to the police;
- (e) That the public meeting; procession or demonstration shall not create a risk to security or public safety, a breach of the peace or disaffection amongst the inhabitants of that neighbourhood; and
- (f) That the conveners of the public meeting, procession or demonstration have been assured by the police that at the time the proposed activity shall be held it will be possible for it to be adequately policed.”
- (6) Where it is not possible for the Police to adequately police any particular public meeting, procession or demonstration, the regulating officer of the area shall, at least five days before the date of the public meeting, procession or demonstration, inform the conveners of the public meeting, procession or demonstration writing the reasons for the inability of the police to police the public meeting, procession or demonstration and shall propose an alternative date and time for the holding of such public meeting, procession or demonstration.
- (7) Where the police notify the conveners of a public meeting, procession or demonstration that it is not possible for the police to adequately police any proposed public meeting, procession or demonstration, such public meeting, procession or demonstration shall not be held.”

340. Where a permit has been denied, the conveners of an assembly can appeal to the Minister of Home Affairs if they are unsatisfied with the reasons given by the regulating officer as provided in Section 5 (8) of the Act. If still dissatisfied, the conveners can appeal to the High Court within 30 days, of the Minister’s decision as stated in Section 5 (9) of the Act.

## **B. Judicial measures**

341. In *Christine Mulundika and 7 others Vs. the People S.C.Z. Appeal No. 95/1995*, the applicant and seven others, including the former Republican President, Dr. Kenneth Kaunda, were charged in a Magistrate’s Court with unlawful assembly contrary to Section 5 of the Public Order Act. The then Section 5 of the Act required that any person who wished to hold a public

meeting, procession or demonstration must apply to the police for a permit. The Police were entitled to reject the application, or if they decided to allow the said event, they would impose conditions. Among these conditions persons needed to be vetted before addressing a public meeting and the matters to be discussed equally needed to be identified. Section 7 of the Public Order Act made it an offence to contravene Section 5, which was punishable by imprisonment of up to 6 months or a fine not exceeding one thousand five hundred penalty units, or to both.

342. The applicants argued that Sections 5 and 7 of the Public Order Act were unconstitutional as they infringed the guarantees of freedom of expression and assembly in the Constitution. The Magistrate's Court stayed the criminal proceedings until the constitutional issue was dealt with by the High Court. The High Court declined to declare the two sections unconstitutional.

343. The Supreme Court struck down Sections 5 and 7 of the then Public Order Act for being unconstitutional as they infringed on the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively. The Court held that Section 5 was not reasonably justiciable in a democratic society.

344. Following that decision, the Public Order Act was amended.

345. In the matter of *Resident Doctors Association of Zambia and 51 Others Vs The Attorney-General*, the petitioners commenced proceedings before the High Court pursuant to Article 28 of the Constitution. On 27<sup>th</sup> April 2000, the petitioners conducted a demonstration in order to raise public awareness on the situation in public hospitals and the doctors' conditions of service. Prior to the demonstration the petitioners on 20<sup>th</sup> April, 2000 had given written notification to the Police Commanding Officer, Lusaka, of their intention to demonstrate. The Commanding Officer rejected the petitioners' written notice alleging that the demonstration was likely to cause a breach of the peace. Following the refusal, the petitioners requested the Commanding officer to suggest an alternative date, a request that he denied.

346. The petitioners then informed the Commanding officer that they would go ahead with the demonstration and requested police presence.

347. During the demonstration, the police disrupted the petitioners and asked them to disperse on the ground that the demonstration was illegal. The petitioners refused to disperse and they were subsequently arrested and later charged with conduct likely to cause breach of peace.

348. The petitioners contended:

(a) That their freedom of expression as guaranteed by Article 20 of the Constitution had been violated;

(b) That their freedom of assembly and association as guaranteed by Article 21 of the Constitution had been violated by police action and conduct; and

(c) That the police action was in its entirety in breach of the Public Order (Amendment) Act No. 36 of 1996.

349. The Court held *inter alia* that –

- (i) The march by the petitioners was proper and fell squarely within the ambit of Articles 20 and 21 of the Constitution. Therefore, the rejection of the notification was null and void and unconstitutional thereby entitling the petitioners to redress for the violation;
- (ii) The Regulating officer or the police have no power to refuse notification on the basis that a public meeting demonstration or procession will cause a breach of the peace;
- (iii) The police action and conduct violated the petitioners' freedoms of expression and assembly and association guaranteed in Articles 20 and 21 of the Constitution; and
- (iv) The police action and conduct was a breach of the Public Order Act as amended by Acts No. 1 and 36 of 1996.

### **C. Administrative measures**

350. Police officers are under an obligation to adhere to the Public Order Act when granting conveners of assembly's permits. In addition the Zambia Police Force Instructions provide rules on how to police assemblies considering the need to maintain peace and safety for both assemblers and the general public. Police officers are not allowed to use firearms, but to employ other restraining methods in case of violence, such as the use of teargas.

351. In practice, although instructions are given to police officers, it is difficult to determine the attitude of police officers towards assemblies.

352. Although assemblies have been generally peaceful in Zambia there have been circumstances where violence was used against demonstrators by overzealous police officers. These include:

(a) The alleged shooting of former President Kaunda and Rodger Chongwe in 1995, which occurred during a public rally at Kabwe, Central Province. The matter was brought to the attention of the Police high command and investigated. This resulted in the dismissal of the Provincial Police Commander;

(b) University of Zambia students' demonstration over their welfare in 2000. The police applied excessive force against students in quelling a peaceful demonstration. The Senior Assistant Commissioner of Police who was in charge on that particular day was dismissed from the Service. In addition, two students who suffered from excessive force applied by police officers on that day have sued the Attorney-General. Their matters are before the High Court;

(c) A demonstration over the constitutional review process organised in contravention of the Public Order Act resulted in some persons being harassed by over-zealous police officers in December 2004. At the time of reporting the matter was still being investigated by the Police high command, and some Members of Parliament and Civil Society representatives who took part in this demonstration are appearing in Court for the offence of unlawful assembly. They are on bail pending trial.

#### **D. Other measures**

353. It is Zambia's view that freedom of assembly and expression are entwined. This position is established by the measures that have been stated above.

#### **E. Factors and difficulties**

354. Zambia recognizes that it still has difficulties in the application of the Public Order Act especially in the interpretation of the Act by some police officers, politicians and members of the public. At times overzealous individual police officers might apply excessive force on peaceful assemblers. Some demonstrators have not followed the provisions of the Act thereby putting the Police command in an awkward situation.

### **CHAPTER 22**

#### **Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

355. Individuals in Zambia have the right to form and belong to trade unions of their choice.

#### **A. Legislative measures**

##### **The Constitution**

356. Article 21 of the Constitution as stated in Chapter 21 provides for the right to freedom of association.

##### **Industrial and Labour Relations Act**

##### **Trade unions**

357. Section 5 of the Industrial and Labour Relations Act (Amendment) Act, No. 30 of 1997 provides for the rights of employees in respect of trade union membership and its activities. It states:



“Notwithstanding anything to the contrary contained in any other written law and subject only to the provisions of the Constitution and this Act, every employee shall have the following rights:

- (a) The right to take part in the formation of a trade union;
- (b) The right to be a member of a trade union of that employee’s choice;
- (c) The right at any appropriate time to take part in the activities of a trade union including any activities as or with a view to becoming an officer of the trade union, seeking election or accepting appointment;
- (d) The right to obtain leave of absence from work in the exercise of the rights provided for in paragraph (c ) and the leave applied for shall not be unreasonably withheld by the employer;
- (e) The right not to be prevented, dismissed, penalized, victimized or discriminated against or deterred from exercising the right conferred on the employer under this Act;
- (f) The right of any employee not to be a member of a trade union or be required to relinquish membership;
- (g) The right not to be dismissed, victimized or prejudiced for exercising or for the anticipated exercise of any right recognized by this Act or any other law relating to employment or for participating in any proceedings relating thereto; and
- (h) The right not to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service or if on request, the employee voluntarily waives the right specified under this Act.”

358. Essential service is defined as any service relating to the generation, supply or distribution of electricity; any hospital or medical service; any service relating to the supply and distribution of water; any sewerage service; any fire brigade; or any service for the maintenance of safe and sound conditions in a mine.

359. Currently there are 27 trade unions in Zambia and as at 2002, the total membership of these trade unions stood at 230, 503.

#### **Application procedure for trade unions**

360. Section 5 of the Industrial and Labour Relations (Amendment) Act states that every trade union shall within six months from the date of formation and subject to Section 9, apply to the Labour Commissioner for registration. Section 9 states that an application to register a group of employees as a trade union shall be submitted to the Labour Commissioner. An

application to register a group of employees as a trade union needs to be signed by not less than 50 supporters or such lesser number as may be prescribed by the Minister and shall be accompanied by:

(a) Two duly certified copies of the constitution of the proposed trade union;  
and

(b) Such other information or document as may be determined by the Labour Commissioner, by notice in writing addressed and delivered to the executive officer of the trade union, within such period as may be determined by the Labour Commissioner and specified in such notice.

361. According to Section 11 of the Act, trade unions in Zambia are free to join national federations. There are two national federations, namely, the Zambia Congress of Trade Unions (ZCTU) and the Federation of Free Trade Unions of Zambia (FFTUZ). There are no restrictions placed on any trade union that wishes to affiliate itself internationally.

### **Strike action**

362. Section 101 of the Act prohibits strike action unless taken in accordance with the Section as follows:

“No employee, trade union or other person shall take part in a strike which:

(a) Has not been authorized by a strike ballot taken in the manner provided by the constitution of a trade union under this Act; or

(b) Is not in contemplation or furtherance of a collective dispute to which the employee or trade union is a party.”

363. Section 107 of the Act, provides that no employee, trade union or other person shall take part in a strike which is likely to hinder or interfere with the carrying out of any essential service. If a person engaged in an essential service goes on strike, he shall not be eligible for payment of his salary.

364. Section 2 of the Industrial and Labour Relations Act does not apply to the Zambia Defence Force; Zambia Police Service; Zambia Prisons Service; Zambia Security Intelligence Service; and Judges, Registrars of the Court, Magistrates and Local Court Justices.

### **Zambia Police Act**

365. Section 28 of the Zambia Police Act, prohibits police officers from forming trade unions or becoming members of trade unions. Any police officer who contravenes Section 28 of the Act shall be guilty of an offence and is liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment for a period not exceeding 3 months, or to both. A police officer can also be dismissed from the Service.

## **Prisons Act**

366. Section 39 of the Prisons Act prohibits prisons officers from forming or becoming members of trade unions. Any prisons officer who contravenes Section 39 of the Act shall be guilty of an offence and is liable upon conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a period not exceeding 3 months, or to both. A prisons officer can also be dismissed from the Service.

### **B. Judicial measures**

367. There are no judicial measures to report on.

### **C. Administrative measures**

368. There are no administrative measures to report on.

### **D. Factors and difficulties**

369. The State party has experienced situations where persons who perform essential services have taken illegal strike action, thus creating difficulty in Government's delivery of essential services.

## **CHAPTER 23**

### **Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

370. The family in Zambia is considered as the basic fundamental unit of society, and as such, is entitled to protection by the State. It is composed of two main structures, the nuclear and the extended family. The nuclear family is composed of a husband, wife and children and is more pronounced in urban areas. The extended family includes paternal and maternal grand parents, uncles, aunts, nieces, nephews and other relations. Marriage is considered important to the existence of the family.

## **A. Legislative measures**

### **The Constitution**

371. Article 24 of the Constitution provides for the protection of young persons from exploitation, inside and outside the family.

### **Marriage Act**

372. The Marriage Act Chapter 50 provides for the minimum age of 21 for either male or female at which they can enter into marriage without restrictions. Under this Act a marriage is monogamous. Married couples are not permitted to enter into other marriages whilst the first marriage subsists. The Act also provides for the protection of spouses and children upon dissolution of marriage.

### **Juveniles Act**

373. The Juveniles Act provides for care and protection of children and juveniles in need of care; a system of adjudication correction and rehabilitation for juveniles who are in conflict with the law; and the establishment of children's institutions such as orphanages.

### **Adoption Act**

374. The Adoption Act Chapter 54 provides regulations, which must be followed when a person intends to adopt a child. The major objective of the Act is to ensure the protection and best interests of the child.

### **Wills and Administration of Testate Estate Act**

375. The Wills and Administration of Testate Estate Act Chapter 60 provides for the protection of the family, in so far as a testator's estate is to be distributed to the beneficiaries.

## **B. Judicial measures**

376. In the case of *Re Wills and Administration of Testate Estates Act between Isaac Tantameni Chali (Executor of the Will of the Late Mwalla Mwalla) v. Liseli Mwalla (SCZ Judgement No. 6 of 1997)*, the executor appealed against an order of the High Court varying the terms of the deceased's will. The testator had made no provision for the respondent and her brother. The trial judge relied on the provisions of Section 20 (1) of the Wills and Administration of Testate Estates Act, which states that if, upon application made by or on behalf of a dependant of the testator, the Court was of the opinion that the testator had not made reasonable provision, whether during his lifetime or by his will, for the maintenance of the dependant, and that hardship would thereby be caused, the Court may, notwithstanding the provisions of the will order that such reasonable provision as the Court thinks fit shall be made out of the testator's estate for the maintenance of that dependant.

377. The Supreme Court held that the respondent was in law not covered by the definitions of 'dependant' or 'child'. Section 3 of the Act defines dependant to mean a wife, husband, child or parent, and although the term 'child' is not defined in the Act, the age of a minor is given as a person who has not attained the age of 18.

### C. Administrative measures

#### Public Welfare Assistance Scheme

378. The Public Welfare Assistance Scheme (PWAS) implemented by the Ministry of Community Development and Social Services, provides for the protection of vulnerable families through the provision of various services, which include: bursaries schemes for children whose families are unable to send them to school; medical schemes and food security packs.

379. The Table below shows the total number of beneficiaries of the Scheme, from 1995 to 2003:

**Table 1.4**

#### **Beneficiaries of the Public Welfare Assistance Scheme (PWAS)**

Year	Total	Male	Female	Male %	Female %
1995	127 407	51 959	75 448	40.78	59.22
1996	130 072	53 418	76 654	41.07	58.93
1997	35 081	13 638	21 443	38.88	61.12
1999	59 423	25 201	34 222	42.41	57.59
2000	59 424	25 202	34 222	42.41	57.59
2001	95 043	40 260	54 783	42.36	57.64
2002	108 983	44 915	64 068	41.21	58.79
2003	105 043	43 361	61 682	41.28	58.72
<b>Total</b>	<b>720 476</b>	<b>297 954</b>	<b>422 522</b>		

*Source: Ministry of Community Development and Social Services.*

The Ministry also oversees the protection and promotion of cultural traditions, which are key in maintaining the family systems, and consequently, ensures sustained extended family protection.

#### Victim Support Unit

380. As earlier reported, the VSU in addressing domestic disputes helps to protect the family.

#### National Housing Policy

381. The 1996 National Housing Policy was put in place to provide measures on adequate and affordable housing for all persons in Zambia.

### **Family planning policy**

382. The State party has in place a family planning policy framework. The policy focuses on an integrated approach to implementing family planning services which are accessible to all individuals, without discrimination. The policy also encourages male responsibility in reproductive health.

### **Child health**

383. The Committee is referred to Chapter 6 of this Report.

## **D. Other measures**

### **Civil Society Organisations**

384. CSOs are instrumental in supplementing efforts in ensuring the protection of the family. They provide support in terms of drop-in-centres and orphanages for vulnerable children; and victims of domestic violence.

### **The extended family system**

385. The extended family system plays a major role in protecting and maintaining the larger family. Dependants who are unable to get support from their immediate family are cared for through this system.

## **E. Factors and difficulties**

386. Despite all the measures and efforts of various stakeholders, there have been a number of difficulties encountered as follows:

(a) The simultaneous practice of statutory and customary laws in Zambia has created a number of challenges in so far as the protection of the family is concerned. In most cases couples married under statutory law also undergo customary marriage rituals. In such cases, it becomes difficult to arbitrate in cases of family disputes and or divorce. This is because most of the parties to the disputes tend to prefer customary law as it provides for a number of provisions, which can be exploited at the expense of the family;

(b) Duality in laws with customary law allowing for one to enter into marriage upon the attainment of puberty provided there is parental consent violates the child's rights, mostly the girl child;

(c) The disintegration of the extended family system as a result of high poverty levels; HIV and AIDS related deaths result in limited support being provided to members of vulnerable families. This trend at times has contributed to the emergence of child headed households; or children being forced to engage in illicit activities and the street syndrome;

(d) The limited financial resources available to the Ministry of Community Development and Social Services to enable it fully implement the PWAS; and

(f) Most pieces of legislation do not recognize the extended family concept.

## CHAPTER 24

### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

387. The Committee is referred to Zambia's Initial Report on the Convention on the Rights of the Child (CRC). In addition, Zambia is in the process of incorporating the CRC into domestic legislation.

### A. Legislative measures

#### Citizenship

388. Article 5 of the Constitution provides for the grant of citizenship to children born of Zambian citizens.

#### Death penalty

389. As earlier stated, the death penalty cannot be imposed on persons under the age of 18.

#### Acts of violence and cruel and inhuman treatment

390. Section 46 of the Juveniles Act prohibits cruelty to juveniles. These acts include ill treatment, neglect, abandonment and causing unnecessary suffering or injury to the health of a juvenile. Any person found guilty of cruelty is liable to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding 2 years or to both.

#### Access to appropriate information

391. Generally children access information through educative and entertaining programmes on both radio and television. There are, also, books written and sold in various outlets specifically for children although magazines, newspapers and other literature are not easily accessible in rural areas due to shortage of materials.

### Age of capacity

392. Age of capacity in Zambia is defined under different circumstances:

(a) A person is regarded as a child under customary law if he has not yet reached puberty;

(b) Under the Juveniles Act, a child is a person who has not attained the age of 16; a young person is a person who has attained the age of 16 but has not attained age 19; a juvenile is a person who has not yet attained the age of 19;

(c) Section 3 of the National Registration Act, Chapter 126, entitles a person to obtain a national registration card at the age of 16. Article 75 (1) of the Constitution, entitles every Zambian who is 18 years to vote;

(d) According to the Penal Code an 8 year old child is criminally responsible for his actions;

(e) Although there is no minimum legal age for consent in medical treatment or surgery a person below 21 years requires the written consent of his parent or guardian;

(f) The Employment of Young Persons and Children Act prohibits the employment of children below the age of 14 unless the employment is in an enterprise where members are of the same family;

(g) The Apprenticeship Act, Chapter 275, provides for engagement of a person between ages 16 and 21, provided that the person is under the tutorship of an adult;

(h) The Marriage Act sets the legal age of marriage at 21. Anyone below that age requires the written consent of a parent or guardian. On the other hand, customary law allows the contracting of marriage after attainment of puberty but with parental consent;

(i) Acceptance of a child's testimony in court for civil and criminal cases is dependent upon the Magistrates assessment of the child's competence through a *voire dire*. The Judges' Rules demand that the Court must be satisfied that a child understands the nature of an oath and the importance of telling the truth. Once this is established, the child's evidence is admissible in both criminal and civil cases;

(j) The Rules of the English Supreme Court are used in Zambia regarding children lodging complaints and seeking redress. Anyone below the age of 18 lodging a complaint or seeking redress must commence proceedings through a "next of friend", who is understood to be a parent, guardian or Court appointed trustee;

(k) The Wills and Administration of Testate Estates Act, and the Intestate Succession Act, define a minor as a person who has not attained the age of 18. However, a minor can only conduct property transactions upon attainment of 21 years as provided by the Trust Restriction Act, Chapter 63;



(l) The Societies Act requires that a person should not be less than 21 years before forming an association;

(m) The Constitution guarantees freedom of conscience, thought and religious worship irrespective of age; and

(n) Under the Liquor Licensing Act, Chapter 167, sale of alcohol to a person below the age of 18 is prohibited.

### **Non discrimination**

393. As earlier stated, Article 23 of the Constitution prohibits discrimination. Although no specific reference to children is made, the absolute prohibition contained in the Constitution conveys protection of children's rights. Children of foreigners, refugees and asylum seekers are also protected by the same prohibition.

### **Inheritance rights**

394. The Intestate Succession Act provides a uniform intestate succession law to cover a situation where a person dies without having made a will. It makes adequate financial and other provisions for the surviving spouse 20 per cent, children 50 per cent, dependents 10 per cent and parents 20 per cent of an intestate. The essence of this Act is to protect children against property-grabbing and, therefore, preserve sufficient resources for their survival.

### **Measures to assist the family**

395. Children have the legal right to maintenance from their parents. In preserving the best interests of the child, the Affiliation and Maintenance of Children Act, Chapter 64, provides for Court orders concerning paternity and maintenance of children.

### **Right to be registered and to have a name**

396. Every child in Zambia has a right to a name and it is generally believed that a child should be named within the first week of birth. A child may be named after an ancestor, who is living or dead, and may be given both traditional and non-traditional names. The majority of Zambian traditional names have a meaning and are used to enhance the child's identity.

397. In recognition of a child's right to a name, the registration of birth procedures requires a child's forename and surname. Although it is possible to register a child before a name is given, the parents or guardian have 2 years to register the child's name. The Births and Deaths Registration Act, Chapter 51, provides for compulsory registration of all children born in Zambia, without distinction of origin of descent. This registration is free if done within the prescribed period of the month after the birth of the child. Registration after a period of more than 12 months after the child's birth requires the written approval of the Registrar General.

398. Zambian legislation permits natural or adoptive parents or a legal guardian to change a child's name. An adopted child may change his or her name to that of the adoptive parents or may retain his or her original name after the adoption order. These procedures are done in accordance with the English Rules of the Supreme Court.

### **B. Judicial measures**

399. Zambian Courts generally look with favour at cases relating to the maintenance of children. In the case of *Lisulo Vs Lisulo SCZ No. 21 of 1998*, the Court refused to reverse an order for maintenance to the 3 children of the appellant. The children had been granted monthly maintenance allowance of K700, 000 each. The appellant claimed that he was not a rich man but did not prove that he was unable to finance the maintenance of his children. The Court refused to allow the appellant's appeal because there were insufficient grounds to prove the appellant's arguments.

400. The Court held that –

“in maintenance cases, if circumstances change, a proper application must be made before the proper forum to alter the order and it cannot be by way of review. Litigation must come to an end and successful parties must enjoy the fruits of their judgement”.

### **C. Administrative measures**

401. Three policy instruments have been put in place to promote child welfare in the country, that is, the National Child Policy, National Plan of Action and National Youth Policy. These policy frameworks constitute core guidelines for improving the welfare and quality of life of children as well as protecting their survival and developmental rights:

(a) One of the aims of the National Child Policy (NCP) is to provide guidelines for improving the welfare and quality of life of children by consolidating all existing and proposed legislation pertaining to children, taking into consideration the provisions of the CRC;

(b) The National Youth Policy (NYP) covers children and young persons and is administered by the Ministry of Sports, Youth and Child Development; and

(c) The National Plan of Action (NPA) provides guidelines for achieving total development of children through various survival, developmental and protective rights.

### **D. Factors and difficulties**

402. Economic difficulties combined with rapid social change have limited the ability of Government to address economic, social and geographical disparities affecting disadvantaged children in society. The State party regrets that comprehensive disaggregated data on disadvantaged and vulnerable children is not available.

## CHAPTER 25

### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

403. Article 1 (2) of the Constitution sets the basis of sovereignty of the Zambian people by providing that “all power resides in the people who shall exercise their sovereignty through the democratic institutions of the State in accordance with this Constitution”.

### Exercise of political rights by citizens

#### A. Legislative measures

#### The Constitution

404. Article 113 (e) of the Constitution makes it a duty for every citizen to vote in national and local government elections. Article 113 (d) of the Constitution further makes it a duty of every citizen to promote democracy and the rule of law.

405. Article 34 of the Constitution stipulates that the election to the office of the President is by direct universal adult suffrage and secret ballot. In order to qualify for presidency one must be a Zambian citizen; his parents must be Zambians by birth or descent; has attained the age of 35; is a member of or sponsored by a political party; qualified to be a member of the National Assembly; and has been domiciled in Zambia for a period of at least 20 years.

406. Article 62 creates the Legislative arm of Government whose power vests in Parliament, which consists of the President and National Assembly.

407. Article 64 of the Constitution states that in order to stand as Member of the National Assembly, one must be a citizen of Zambia, has attained the age of 21 and is literate and conversant with the official language of Zambia. The election to National Assembly is by direct universal adult suffrage and secret ballot.

#### Local Government Act

408. Under the Local Government Act, Chapter 281, a person can be elected to the local government if he is an established resident of Zambia, has attained the age of 18, pays rate

taxes, has resided in a particular area for a minimum period of 3 years and is a registered voter in that ward. The election to local government is by direct universal adult suffrage and secret ballot.

### **Access to public office**

409. Article 23 (1) of the Constitution states that subject to clause (5) a law shall not make any provision that is discriminatory in itself or its effect. Article 23 (5) serves to protect national security by restricting access to certain public offices. It would not be healthy for instance to open the Presidency or defence to participation of non-nationals as this is purely a citizen's right.

### **Electoral system**

410. The Electoral Act, Chapter 13, makes provision relating to elections to the office of the President and National Assembly; empowering the Electoral Commission to make regulations providing for the registration of voters and for the manner of conducting elections.

411. In exercising the right to vote, Section 8 of the Electoral Act provides that elections to the office of President shall be held in every constituency in Zambia. Although not explicitly stated in the Act, elections to the National Assembly are also held in every constituency.

412. According to Section 17 (2) of the Electoral Act the Electoral Commission is empowered to do the following:

- “(a) The division of constituencies into polling districts;
- (b) The establishment of polling stations in polling districts;
- (c) The registration of voters;
- (d) The preparation of, and the form of, registers to be used in the registration of voters;
- (e) The manner of ascertaining whether persons applying for registration as voters are qualified for registration or for their inclusion in a register for a particular constituency;
- (f) The making and determination of appeals, claims and objections with respect to the registration of voters;
- (g) The correction, amendment and certification of registers of voters;
- (h) The circumstances in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters or one polling district to that of another polling district and the restoration of names of registers of voters;

- (i) The nomination of candidates for any election and the manner of establishing and recording that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;
- (j) The making and determination of appeals against the rejection of nominations by a returning officer;
- (k) The publication of the names of candidates whose nominations are accepted;
- (l) The payment of election fees by candidates, and the circumstances in which such fees are to be returned;
- (m) The use of symbols at an election;
- (n) The appointment of, and the duties of, election agents and polling agents;
- (o) The equipment and facilities to be provided at polling stations;
- (p) The persons who may be admitted to polling stations;
- (q) The manner and procedure of voting at an election;
- (r) The manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (s) The manner in which persons who are blind, or otherwise incapacitated, may vote;
- (t) Voting by persons employed on election duties on the day of an election;
- (u) The maintenance of secrecy at elections;
- (v) The postponement of, and the adjournment and extension of, time for a poll in case of riot or open violence at an election;
- (w) The administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (x) The procedure to be followed at the conclusion of a poll in an election;
- (y) The procedure for counting votes in an election, and the circumstances in which votes in an election may be rejected by a returning officer as invalid;
- (z) For the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly;

- (aa) The procedure to be followed where only one person is duly nominated for election to the office of President, or in a constituency for election to the National Assembly;
- (bb) The declaration, notification and publication of the results of an election;
- (cc) The custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;
- (dd) Election expenses and the return of election expenses;
- (ee) The notification and publication of any casual vacancy in the elected membership of the National Assembly and the fixing of a date for an election to fill such vacancy;
- (ff) The fixing of a date for an election of a President or an election following a dissolution of the National Assembly;
- (gg) The forms and records to be used for any of the purposes of this Act;
- (hh) Any matter to be prescribed by or under this Act.

413. In practice, the Electoral Commission of Zambia faces a number of financial and human constraints that limit its operations. Since elections are a very costly exercise, Zambia has integrated local government elections into the presidential and parliamentary elections. In the last elections of 2001 the State party, experienced delays in voting in some parts of the country and some disputed electoral results.

414. With regard to petitions on the election of President, Article 41 (2) of the Constitution provides that –

“Where any question arises as to whether-

- (a) Any provision of this Constitution or any law relating to election of a President has been complied with; and
- (b) The validity of person elected as President under Article 34 is in question; such matter shall be referred to and determined by the full bench of the Supreme Court”.

415. Section 18 of the Electoral Act provides an opportunity to losing candidates in a National Assembly election to petition the Court.

### **B. Judicial measures**

416. In the case of *Akashambatwa Mbikusita Lewanika and Others Vs Frederick Jacob Titus Chiluba, SCZ Judgement No. 14 of 1998*, the petitioners challenged the election of the respondent as President of Zambia and the validity of the election process pursuant to Article 41 of the Constitution of Zambia.

417. The petitioners alleged that the elections had been carried out in an irregular manner citing claims of bribery, malpractices, and flaws in the electoral system. The Court found that some of the claims were credible claims of bribery and irregularities, but that these were isolated and not done with the knowledge or consent of the respondent. It was the Courts view that these incidents were insufficient to affect the outcome of the election and did not prevent the majority of Zambians from selecting the President of their choice.

418. The Court ruled in favour of the respondent and did not award costs because of the importance of the issues raised, which are pertinent to the proper functioning of a democracy.

### **C. Administrative measures**

419. As earlier reported, Government is undertaking a review of the Constitution and the entire electoral system. In 2003 Government appointed the CRCO and the ERTC respectively.

420. The ERTC has been tasked to analyse and make recommendations on the legal framework of the electoral process in the country; examine legislation that impacts on the electoral process such as the Public Order Act and media laws in relation to elections; and examine the electoral code of conduct in order to recommend necessary modifications that will establish suitable and efficacious electoral rules.

421. CRCO and ERTC are composed of independent and broad representation which includes members from Government, CSOs, including churches, media, local authorities, legal practitioners, law enforcement agencies and the Electoral Commission of Zambia.

### **Rules and regulations governing equal access to public service in the country**

422. Generally all persons in Zambia are eligible to apply for employment as long as they meet the qualification criteria for the stated job. Vacancies are usually advertised through electronic and print media.

423. The Service Commissions Act Chapter 259 provides for the functions and powers of the Judicial Service Commission, Public Service Commission, Teaching Service Commission and Police and Prisons Service Commission, which employ persons to public service.

### **D. Factors and difficulties**

424. The Electoral Commission is limited in its operations by inadequate resources, resulting in management flaws creating electoral disputes.

425. Most women are unable to take part in elections as representatives due to their limited access to resources.

426. The provision of civic education in the country is limited especially in local languages.

## CHAPTER 26

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

427. The State party endeavours to guarantee equal protection of the law to all individuals through the following measures:

#### A. Legislative measures

##### The Constitution

428. As earlier stated, discrimination is prohibited by Article 11 of the Constitution.

##### Legal Aid Act

429. Legal aid is created under Chapter 34 and is established to assist litigants or accused persons who do not have sufficient funds to engage private lawyers. Legal aid is granted free of charge to the most vulnerable members of society, although where a person is able to make a contribution a fee of K50, 000 will be requested to meet disbursements. The Legal Aid Department is in the process of being decentralised to enable it reach out to a greater part of the population. Further, the Legal Aid Department is also in the process of being hived off from Government with a view to making it autonomous.

#### B. Judicial measures

430. There are no judicial measures to report on.

#### C. Administrative measures

431. The Committee is invited to take note of the procedures that exist under the HRC and Commission for Investigations, as already discussed.

#### D. Other measures

432. Government has created an enabling environment for members of the public to form any organizations that promote equality before the law and protect human rights. Through the Societies Act, a number of NGOs have been registered, which among other things sensitise and educate members of the public on issues of human rights and also offer legal assistance to the vulnerable. Some of these NGOs include the WILSA, FODEP and YWCA.



### **E. Factors and difficulties**

433. Some of the factors and difficulties experienced by the State party in guarantying equality before the law include the following:

(a) Though the Legal Aid Department is set up for the benefit of the entire population, it is restricted in its operation by serious financial constrains, which limit its ability to reach out to a wider section of the population;

(b) Generally, most people in Zambia are not aware of the institutions and instruments set forth by Government to protect their rights. Usually, people do not come forth to complain in the event that their rights are violated;

(c) There is limited collaboration between relevant Government institutions and CSOs involved in activities aimed at promoting equality before the law; and

(d) Very few people are aware of the functions of the Commission for Investigations and the Legal Aid Department.

### **CHAPTER 27**

#### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

434. Zambia does not have minorities or indigenous groups living within the country that profess or practice their own religion, ethnicity or lingual different from the majority.

### **CONCLUSION**

435. In concluding, Zambia wishes to draw the Committee's attention to the capacity of the State party to prepare its Report within the guidelines of the Covenant. The State party is fully committed to realizing the obligations contained in the Covenant but recognizes that more measures need to be undertaken and implemented for the purposes.

436. The State party is severely constrained by the following factors:

(a) HIV/AIDS pandemic whose negative effects permeate the human resource distribution, create the problem of orphans and continue to diminish the inadequate health resources;

(b) Low levels of human rights knowledge among law enforcement agents and the general public that circumvent the application of the Covenant in the country;

(c) Economic decline mainly due to the diminishing output from the mining industry thereby contributing to the unsatisfactory enjoyment of human rights within the country;

(d) High rates of unemployment and inadequate resources for social services that negatively impact on the family; and

(e) Negative cultural practices and archaic laws that affect the equality of men and women.

437. However, the State party is pleased to note the positive measures that have been recorded since its previous Report which include –

(a) The Constitutional Review Commission that was mandated to deal with the Zambian Bill of Rights contained in the Republican Constitution;

(b) The creation of the Human Rights Commission; Police Public Complaints Authority; Police Legal and Professional Standards Unit; Victim Support Unit and Sex Crimes Unit;

(c) The creation of the Gender in Development Division and implementing strategies such as the National Gender Policy and National Plan of Action;

(d) The abolition of corporal punishment and the removal of cruel punishment in the Zambian penal system;

(e) The amendment of the Public Order Act in order to make it more responsive to the needs of assemblers;

(f) The constitution of the Electoral Reforms Technical Committee to analyse the suitability of electoral rules and practices in the country; and

(g) Measures taken to reduce child mortality and malnutrition thereby increasing life expectancy.

### Notes

<sup>1</sup> Infant Mortality Rate, refers to the number of deaths among infants aged below one year per thousand (1,000) live births per year.

<sup>2</sup> Child Mortality Rate, refers to the number of deaths among children aged between exact age one and five years per thousand (1000) live births per year.

<sup>3</sup> Under-five Mortality Rate, refers to the number of deaths among children aged below five years per thousand (1000) live births per year. It constitutes both infant and child mortality.

<sup>4</sup> Life expectancy refers to the average number of years a newly born child is expected to live, if the current existing mortality conditions were to prevail for a long time.

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