



## Human Rights Commission

# The State of Human Rights Report in Zambia

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**"We will not enjoy security without development, we will not enjoy development without security and we will not enjoy either without respect for human rights"**

*Former UN Secretary-General,  
Kofi Annan*

# 2014

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Zambia Human Rights Commission

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# TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	iii
LIST OF ACRONYMS.....	iv
LIST OF TABLES.....	vi
LIST OF FIGURES.....	ix
LIST OF PHOTOGRAPHS.....	ix
GLOSSARY OF TERMS.....	x
EXECUTIVE SUMMARY.....	xiii
<b>CHAPTER 1: INTRODUCTION.....</b>	<b>1</b>
1.1 Establishment and Mandate of the Commission.....	1
1.2 Conceptual Framework of the Commission.....	1
1.3 Rationale and Objectives of the 2014 Report.....	2
1.4 Methodology.....	3
1.5 Outline of the ASHRR 2014.....	6
1.6 Limitations of the ASHRR 2014.....	7
<b>CHAPTER 2: ZAMBIA - HUMAN RIGHTS IN CONTEXT.....</b>	<b>8</b>
2.1 Defining Human Rights.....	8
2.2 Changes to Laws, Policies or Guidelines Related to HR in 2014.....	9
2.3 General Human Rights Situation in 2014.....	11
2.4 Factors limiting the enjoyment of Human Rights in Zambia.....	12
<b>CHAPTER 3: STATE OF CIVIL AND POLITICAL RIGHTS.....</b>	<b>15</b>
3.1 Overview of CPR in 2014.....	15
3.1.1 Protection of Right to Life.....	17
3.1.2. Right to Personal Liberty - Arbitrary Arrest or Unlawful Detention.....	20
3.1.3. Right not to be subjected to Torture, Cruel, Inhuman and/or Degrading Treatment or Punishment.....	23
3.1.4. Status and Conditions of Detention Facilities.....	28
3.1.5. Protection of the Law, Independence of the Judiciary, and Administration of Justice.....	33
3.1.6. Protection of the Freedoms of Expression, Assembly and Association.....	38



3.1.7. Protection of Right to Participate in Public Affairs.....	43
3.1.8. Protection of the Rights of Minority and Vulnerable Groups.....	44
<b>CHAPTER 4: STATE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS.....</b>	<b>51</b>
4.1.1 Right to Education.....	53
4.1.2 Right to Adequate Food.....	56
4.1.3 Right to Adequate Housing.....	60
4.1.4 Right to Health.....	61
<b>CHAPTER 5: The Universal Periodic Review.....</b>	<b>66</b>
The UPR in Zambia.....	67
<b>CHAPTER 6: RECOMMENDATIONS.....</b>	<b>68</b>
<b>REFERENCES.....</b>	<b>71</b>
<b>APPENDICES.....</b>	<b>72</b>
Appendix 1: Zambia's Position in Relation to the Various HR Conventions.....	72
Appendix 2: National Gender Crime Statistics, 2014.....	78
Appendix 3: Overview of the Various ASHRR Produced and Themes.....	79
Appendix 4: Summary of District Findings - Education.....	80
Appendix 5: Key Health indicators (2014).....	83
Appendix 6: Work Plan for Actualising Recommendations.....	85
Appendix 7: Total Number of Questionnaire Administered.....	90
Appendix 8: National Gender Machinery and Process.....	91

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Many thanks go to the United National Development Programme (UNDP) for their financial and technical support in the production of this State of Human Rights Report for 2014.

It is our sincere hope that the issues raised in this report will stimulate debate and rethink of views, approaches and methodologies by all stakeholders as we work towards enhancing human rights in the country.

Florence Chibwasha

## LIST OF ACRONYMS

ACC	Anti-Corruption Commission
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ASHRR	Annual State of Human Rights Report
CAT	Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CPC	Criminal Procedure Code Act
CPR	Civil and Political Rights
CRC	Convention on the Right of the Child
CSO	Civil Society Organisation/Central Statistical Office There may be need to be clear on this. There is a possibility of losing the reader
ESCR	Economic, Social and Cultural Rights
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISHR	International Service for Human Rights
MESVTEE	Ministry of Education, Science, Vocational
MOH	Ministry of Health
NGOs	Non-Governmental Organisations
NHRI	National Human Rights Institutions
SADC	Southern Africa Development Community
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDP	United Nations Development Programme

UPR	Universal Periodic Review
VSU	Victim Support Unit
YWCA	Young Women Christian Association
ZNBC	Zambia National Broadcasting Cooperation
ZP	Zambia Police
ZPPCA	Zambia Police Public Complaints Authority
ZRA	Zambia Revenue Authority



## LIST OF TABLES

Table No.	Table Title	Page
Table 1	Approaches and Deliverables Against Objectives of the ASHRR 2014	16
Table 2	Sampled Districts in each Province	17
Table 3	Summary of Data Collected and Sources of Data	18
Table 4	Changes in the Status of International Human Rights Instruments in 2014	21
Table 5	Provincial Distribution of CPR Related Human Rights Violations	23
Table 6	Funding Summary to HRC from National Budget	25
Table 7	Summary Findings on the Right to Life	29
Table 8	Status of Condemned Prisoners	29
Table 9	Number of Cases of Arbitrary Arrests Reported to the HRC	30
Table 10	Average number of days taken to charge/detain suspects by Police	31
Table 11	Examples of some cases of unlawful detention	31
Table 12	Number of Received Complaints/Cases of Torture or Inhuman or Degrading Treatment or Punishment	33
Table 13	Briefs on Cases of Torture or Inhuman or Degrading Treatment or Punishment	33
Table 14	Briefs on cases of use of unreasonable force	36
Table 15	Summary of Nature of Cases Investigated by the PPCA in 2014	36
Table 16	Summary table of key indicators on prisons	37



Table 17	Percentage of Inmates Who Applied for Bond and Bail at Time of Arrest	39
Table 18	Percent of Inmates Reporting Type of Bond Conditions Set by the Police	40
Table 19	Percentage of Convict respondents and Remandees respondents Who Applied, Qualified or Were Granted Bond at time of Arrest	40
Table 20	Key indicators on the Protection of the Law	42
Table 21	Number of Complaints Concerning the Right to a Fair Trial	43
Table 22	Delays in administration of justice	43
Table 23	Percent of Inmates Who Applied For Bail on First Appearance in Court	44
Table 24	Access to Legal Representation	44
Table 25	Average number of juveniles held in detention during 2014	52
Table 26	Pupil – Teacher ratios and new education facilities built in 2014	60
Table 27	Pupil-Teacher ratios	60
Table 28	Average Number of Scheduled Contact Hours by Grade and Running Agency	61
Table 29	Number of Out of School Children Aged 7-13 by Gender and Year from 2006 to 2013	61
Table 30	School Children receiving supplementary feeding at School	62
Table 31	Trends in nutritional status of children under age 5, Zambia 1992-2014 (%)	64
Table 32	Nutritional trends among women age 15-49 (%)	64
Table 33	Neonatal, post-neonatal, infant, child, and under-five mortality rates for five-year periods preceding the survey, Zambia 2013-14	67



Table 34	Change in Vaccination Provision 1992 - 2014	67
Table 35	Neonatal, infant and under-five mortality rates for the for the five-year period preceding the survey, Zambia (1992-2014)	68
Table 36	Percentage HIV positive among women and men aged 15-49 who were tested, by location	68
Table 37	Adult mortality probabilities* (the probability of dying between the ages of 15 and 50), Zambia 2013-14	68
Table 38	Maternal Mortality: Direct estimates of maternal mortality rates for the seven years preceding the survey, by five-year age groups, Zambia 2013-14	69
Table 39	Trends of Maternal mortality ratio 1996-2014	69

## LIST OF FIGURES

Figure 1	Map of Zambia Showing Location of Districts	15
Figure 2	Women and Men's perceptions of constitutional and legal rights	55
Figure 3	Women and Men's Perceptions on Gender Based Violence in SADC	56
Figure 4	Change in Prices of Food for a Family of Six in Lusaka (2014)	70

## LIST OF PHOTOGRAPHS

Photo 1	A Crumbling Housing Unit in a Police Camp	25
Photo 2	Vocational Training for Prisoners at Mongu Prison	38
Photo 3	Transformation of the new Luwingu State Prison	38
Photo 4	Dilapidated Police cell at a police Station	40
Photo 5	A detainee Ponders His Situation in cell	40
Photo 6	Circumstantial Child with Its Mother in Police Cell	53
Photo 7	An example of a typical housing unit found in Rural Zambia	65

## GLOSSARY OF TERMS

1. **Arbitrary arrest and arbitrary detention** - arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no proper due process of law
2. **Arbitrary or Unlawful Deprivation of Life** - Includes killings in which there is evidence of government involvement without due process of law or of political motivation by government or by opposition groups. Also covers extrajudicial killings (for example, the deliberate, illegal, or excessive use of lethal force by the police, security forces, or other agents of the State), as well as killings committed by police or security forces that resulted in the unintended death of persons without due process of law (for example, mis-targeted bombing or shelling or killing of bystanders). Excludes combat deaths and killings by common criminals, if the likelihood of political motivation can be ruled out
3. **Act** - a single piece of movement or action, usually involving force. Usually, an act is committed by a person (an individual or a group) against another, in which case it is referred to as an act of commission. Act can also mean the non-performance of an expected or required movement or action, in which case it is referred to as an act of omission
4. **Application** – Giving effect to international agreements to specific local situations (either through policy, legislation or judgments). The recognition of the force of an international agreement in a local setting
5. **Death penalty or capital punishment** - Death (usually by hanging) imposed as a punishment for crime.
6. **Disability** - Means a permanent physical, mental, intellectual or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others.
7. **Documentation** - process of systematically recording the results of an investigation or fact-finding in relation to an event or number of events. Fact-finding and documentation are organically related and should not be viewed as separate processes.
8. **Event** - something that happens, with a beginning and an end, and which progresses until its logical conclusion. It can be a single act, a series of related acts, or a combination of related acts happening together. For an event to be included in human rights monitoring, at least one act that it contains should be qualified as a human rights violation
9. **Fact-finding** - process of identifying the violations in an event, and establishing the facts relevant to these violations. Fact-finding and investigation are terms that are used interchangeably.
10. **Feedback** – A written response from an institution responsible for providing or instituting remedies and interventions for human rights violations, defining action taken.
11. **Human rights indicators** - specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and

monitor promotion and protection of human rights.

12. **Human rights monitoring** - the close observation of a situation or individual case carried out so as to determine what further action needs to be taken. Human rights monitoring is undertaken to see whether international human rights standards or norms are met in domestic settings.
13. **Human rights standards** - internationally negotiated or endorsed human rights instruments, whether these are binding or not binding. Binding documents codify or create legal obligations or duties ("hard law"), while non-binding documents make recommendations about norms of conduct and policy ("soft law").
14. **Human rights violation** – an act of commission or omission by the State or by parties insufficiently regulated by the State (Non-State entities).
15. **Inhuman or degrading treatment** - acts that inflict mental or physical suffering, anguish, humiliation, fear or debasement, but that fall short of torture (see number 28).
16. **Involvement** - the participation of a perpetrator in a particular act, whether as one who directly committed it, or otherwise.
17. **Intervening party** - the person (individual or group) or institution that intervenes in an event, such as to aid a victim, or to seek to stop an ongoing violation.
18. **Intervention** - any action by a party designed to change the course of an event or the status of those involved in the event, especially in terms of assistance.
19. **Monitoring** - closely observing a given situation in society over a long period of time to see whether human rights standards are met.
20. **Norms or standards** - common, accepted or agreed-upon characteristics or ways of behaviour of persons, things, events or situations. Norms may not only be "what are" but also "what should be". In this regard, norms can be dictated by agreements which are to be followed or implemented by the parties that entered into the agreements.
21. **Outcome indicators** - indicators that reflect individual and collective attainments in reference to the status of realisation of particular rights in a given context, as well as the extent to which individuals have benefited from interventions and programmes of action. These indicators measure the de facto enjoyment of the rights.
22. **Perpetrator** - the person (individual or group) who commits an act that constitutes a violation. Perpetrators can be a State or non-State entities.
23. **Persons with disabilities** - include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others
24. **Police Bond** – A type of bail for persons in police detention that is given at the discretion of the Officer in Charge of a Police station upon meeting required prerequisites
25. **Process indicators** - indicators that reflect the efforts (occurrences) made at national and local or regional level to implement the structural provisions. This includes national strategies, policy measures, action programmes, training initiatives, campaigns and

other activities aimed at realising particular rights. These indicators measure the de facto implementation of human rights by States.

26. **Ratify/Ratification** - This is the act by which a country that has signed a treaty agrees to be formally bound by its obligations.
27. **Reliability** - consistency in the estimate or the value of an indicator if the data-generating mechanism employed for devising an indicator is repeated.
28. **Reported cases** – Human rights violations reported to a respective human rights institution or any other institution that documents, arbitrates or adjudicates human rights issues.
29. **Role** - a characteristic of a person, which is dependent on a certain context, and thus can change from one setting to another. For instance, a certain person may be a victim in one event and an intervening party in another.
30. **Source** - the person (individual or group) or institution that provides information on human rights violations.
31. **Structural indicators** - indicators that reflect the existence of legal instruments, as well as basic institutional and budgetary mechanisms necessary for facilitating the realisation of the particular rights provisions.
32. **Torture** - any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity
33. **Unlawful detention** - keeping or confining a person in custody without any lawful reason.
34. **Unreasonable force** - any force beyond what's necessary to arrest a suspect and keep police and bystanders safe.
35. **Validity** - the truthfulness of information provided by the estimate or the value of an indicator.
36. **Victim** - person (individual or group) who is the object of an act.

## EXECUTIVE SUMMARY

The Human Rights Commission is a National Human Rights Institution (NHRI) established under Article 125 of the Constitution of Zambia with the mandate of promoting and protecting human rights. Its mission is to *contribute to the promotion of full enjoyment and protection of human rights for all people in Zambia; through advocacy and promotion of human rights, investigation and appropriate redress of human rights violations, and monitoring of compliance with human rights standards*. As part of its research mandate, the Commission has been conducting research studies on human rights thematic issues culminating into the production of Annual State of Human Rights Reports (ASHRR). This 2014 ASHRR was produced on the basis of this mandate.

The main objective of the 2014 ASHRR was to *systematically collect, process, analyse data and produce the report* which would in turn lead to systematic monitoring of developments and observation of key national and international human rights standards. It is expected that this will then generate evidence for effective lobbying and advocacy for policy and legislative reforms that enhance the protection, promotion and respect of human rights in the country. The physical data collection for the report was carried out across the country covering 3 districts in each of the 10 provinces of Zambia.

The report analyses the core sets of human rights i.e, Civil and Political Rights (CPR) and Economic, Cultural and Social Rights. The specific CPR that are addressed in the report are;

- (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 a person's home and other property and from deprivation of property without compensation;

On the other hand, the ESCR discussed in the report are as follows;

- a) Right to adequate food;
- b) Right to enjoyment of the highest attainable standard of physical and mental health;
- c) Right to education; and,
- d) Right to adequate housing.

Methodologically, the 2014 ASHRR is a lot more analytical than the earlier reports and relies on both qualitative and quantitative data collected from all the 10 provinces across the country. In terms of coverage, a total of **189 quantitative questionnaires** were administered to various respondents; judiciary, media, MESVTEE, MOH, Police Service, Prisons Service, Legal Aid Board and HRC. Of these questionnaires, 135 respondents were district based while 47 were provincial respondents and 7 were national respondents (See Appendix 7 for details in form of tables).

In terms of qualitative data; this was collected from the local authorities, the Social Welfare Department, the judiciary, local NGOs, the HRC and relevant government ministries at national level. A total of **111 responded to questionnaires** on human rights performance during the year. The qualitative data collected, was largely used to triangulate the findings from the quantitative questionnaires.



The report also analyses the extent to which Zambia, which has ratified several international and regional instruments for the protection and promotion of human rights and fundamental freedoms, has performed in terms of domesticating these rights into local legislation, guidelines and policy. It is noted overall that the legal frame work in Zambia has remained dualist implying that international legal instruments are not self-executing. As such, they require to be enforced in a court of law.

During the period under review, the report notes that the following steps, which have a bearing on domestication of some of the international human rights instruments, were taken;

- i Launch of Zambia's first **Handbook on Juvenile Law** on the 6<sup>th</sup> August 2014;
- ii Enactment of the **Business Regulatory Act No. 3 of 2014**;
- iii Enactment of Statutory Instrument No. 22 of 2014 providing for the **Legal and Justice Sector Reforms Commission**; and,
- iv Launch of revised gender policy on 11<sup>th</sup> December, 2014.
- v On the negative side, the report argues that the amendment made to the Zambia Revenue Authority Act (No. 10 of 2014) on 23<sup>rd</sup> December, 2014, was regressive for promotion of human rights as it takes away the right of people to get immediate relief in litigation involving the ZRA while the.

In terms of permanent administrative entities that were formed or were abolished in 2014 as part of the process of domesticating regional or international human rights instruments, the status was that there was no change from the previous year.

The report notes that the main challenges faced in the human rights sector is the dualist legal system that Zambia ascribes to. Furthermore, the Bill of Rights in the Constitution continues not to incorporate or protect ESCR which is a major drawback to the recognition and upholding of the interdependence nature of human rights. Other than that, the process of judicial redress in the country is very expensive, difficult and very slow. It has also been noted that the country does not adequately provide resources for human rights promotion and protection.

Several other structural factors impact on the enjoyment of human rights in Zambia. This is more so for the frontline law enforcement officers who are charged with protecting, promoting and supporting human rights. Generally, the state of accommodation for law enforcement officers such as the police and prisons officers is in short supply and when available, is often of poor quality. Equally disturbing are the poor working conditions such as; lack of vital equipment (like radio messaging, vehicles), supplies (like stationery, food, uniforms, etc) for officers.

The four key issues affecting the enjoyment of CPR and ESCR that were raised in the 2014 survey by key informants were;

- The subjective and inconsistent application of the existing laws. For instance, the interpretation of the Public Order Act (POA), Chapter 113 of the laws of Zambia by the police thereby infringing on fundamental rights of association, assembly and expression of citizens;
- High levels of ignorance among citizens of their rights. This cuts across all manner



of rights and as such, makes it difficult for citizens to make claims against the State;

- Poor infrastructure and working conditions for law enforcement agencies. Subsequently, the officers within these agencies have become vulnerable to bribery and corruption which disproportionately affects the poor more than the rich; and,
- Low prioritization of ECSR by the State and other actors. There is no doubt that the importance of the indivisibility and interdependence of all human rights is recognized by the State. However, the State has so far displayed little interest in integrating ESCR in local legislation. As a matter of fact, these rights are perceived to have the potential of being 'too expensive' if they were to be justiciable. Consequently, little effort is being made to inform citizens about them;
- Limited financial resources for Human rights organizations like the HRC and civil society. The financial gaps have contributed to lackluster performance especially with regards to raising awareness about human rights among the most vulnerable groups such as women, children the elderly and persons with disabilities;
- Defining of standards (including indicators, benchmarks and targets) in the absence of laws that provide guidance is very difficult. Human rights institutions therefore are at a loss on how to effectively engage;
- Externally, only few (and usually wealthy countries) have made ESCR justiciable. Besides, the International Covenant on ESCR talks about 'progressive realisation' a situation which puts off pressure on countries to scale up their efforts;<sup>1</sup>
- High levels of poverty and low economic opportunities among the citizens thereby encouraging greater focus to be placed on daily survival as opposed to rights of citizens in relation to the obligations of the State. For instance, due to poverty, some young girls and women prefer to get married than to pursue an education. The poor are generally left out of national dialogues;
- Traditional and cultural norms that promote disempowering practices. For example, early marriages and initiation ceremonies may disturb children's education and their economic opportunities; and,
- High levels of ignorance among citizens of their rights. This cuts across all manner of rights and as such, makes it difficult for citizens to make claims from the state.

The report also notes that Zambia underwent the Universal Periodic Review process on October 30<sup>th</sup>, 2012. Arising from this, the HRC has so far led a team of both governmental and non-governmental stakeholders in developing a monitoring framework for the UPR. During the year under review, arrangements were being made to undertake a comprehensive study to assess the extent of state compliance to the recommendations made.

Finally, the report ends with some recommendations on what needs to be done to improve CPR, ESCR and UPR implementation. The recommendations hinge on three four important actions: undertaking comprehensive reforms within the police and prison services, enactment of appropriate laws and fair application of existing ones; improving awareness of rights among citizens and the options available to access redress and; allocating and disbursing adequate funds towards improvement of facilities like police cells and prisons, improving conditions of work for officers directly involved in human rights issues and provision of human rights training.

<sup>1</sup> Part 9 of the Zambian constitution provides for the progressive realisation of ESCR

[illegible]

## CHAPTER 1: INTRODUCTION

### 1.1 Establishment and Mandate of the Commission

The Human Rights Commission is a National Human Rights Institution (NHRI) established under Article 125 of the Constitution of Zambia with the mandate of promoting and protecting human rights. This is in line with its mission of “*contributing to the promotion of full enjoyment and protection of human rights for all people in Zambia; through advocacy and promotion of human rights, investigation and appropriate redress of human rights violations, and monitoring of compliance with human rights standards.*” More specifically, the Commission’s functions as set out under Section 9 of the Human Rights Commission Act No. 39 of 1996 are to:

- i Investigating human rights violations;
- ii Investigating any maladministration of justice;
- iii Proposing effective measures to prevent human rights abuse;
- iv Visiting prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and making recommendations to redress existing problems;
- v Establishing a continuing programme of research, education, information and rehabilitation of victims of human rights abuses to enhance the respect for and protection of human rights; and,
- v Performing all such duties as are incidental or conducive to the attainment of the functions of the Commission.

The Commission in the execution of the above mandate is guided by the Paris Principles which dictate that an NHRI should have the *mandate to monitor any situation of human rights and be able to advise Government and other stakeholders on human rights issues and their compliance with international standards.* Further, the Principles require the institution to relate to regional and international organisations as well as to educate and inform in the area of human rights.

The Commission is also empowered by section 10 of the Human Rights Commission Act No. 36 of 1996, to investigate any human rights abuses either on its own volition or on receipt of a complaint or allegation by an aggrieved person acting in such person’s own interest; an association acting in the interest of its members; a person acting on behalf of an aggrieved person or a person acting on behalf of and in the interest of a group of or class of persons. However, the Commission may decide not to investigate a complaint or allegation if it is frivolous.

### 1.2 Conceptual Framework of the Commission

The Human Rights Commission has conceptualized its operations around its mandate. It strives to serve people as right holders and the State as the primary duty bearer with the obligation to respect, protect and fulfill human rights. The positive obligation requires the State to protect, promote and fulfill human rights and this connotes the State’s duty of performance while the negative obligation requires the state to abstain from violating human rights through laws, policies and practices and this connotes the state’s duty of forbearance.



The obligation to respect human rights protects individuals from arbitrary interference with the enjoyment of their rights and further prohibits the state from performing, sponsoring or tolerating any practice, policy, or legal measure violating the integrity of individuals or infringing on their freedoms.

The obligation to protect human rights requires the State to *prevent violations* by others and that where violations occur, the State should *prevent/stop further violations* from occurring while the obligation to *fulfill human rights* requires the state to take measures towards realisation of rights. The state therefore is expected to be acting in a manner that is progressively contributing to increased enjoyment of human rights by citizens.

### 1.3 Rationale and Objectives of the 2014 Report

Since 2007, the Commission has been conducting research based monitoring of human rights culminating in the production of Annual State of Human Rights Reports (ASHRR). These reports show the status of human rights in the country and provide recommendations to government and other stakeholders for their intervention so as to align policies, legislation and administrative measures to subsisting human rights standards. From 2013, the Commission decided to take a different direction in terms of the focus of the ASHRR. Future reports were expected to be independently conducted, cover a wider array of human rights issues and be used as an engagement tool with both duty bearers and other stakeholders. The ASHRR of 2013 therefore set a baseline against which future reports would be used to measure progress or regression made in relation to human rights in Zambia. It was however also understood that the methodology of the survey was evolving over time and continuous improvements were expected.

To this end, in early 2014, the Commission engaged a consultant to prepare an ASHRR for the year 2014. This report was for the first time prepared using primary data derived from a national survey covering all the 10 provinces with 3 districts selected in each province. Additionally, respected secondary data from the Central Statistical Office, other studies conducted by the Commission and relevant reports from the target government ministries during the year under review, provided further information.

#### Objectives of the 2014 Report

The main objective of the 2014 ASHRR is to *systematically collect, process, analyse data and produce the 2014 report* which will in turn culminate in the systematic monitoring of developments and observation of key national and international human rights standards. This is then expected to generate evidence for effective lobbying and advocacy for policy and legislative reforms that enhance the protection, promotion and respect for human rights in the country.

### 1.4 Methodology

#### *Data Collection and Sampling*

The research methodology adopted for this assignment encompassed both qualitative and quantitative research methodologies in order to maximize on the quality of information collected and also to triangulate the findings from various sources. To this end, the review of existing literature related to the human rights situation from a legal perspective (existing status) and actual practice. Several documents, including past ASHRR, independent reports on individual components of human rights and commissioned studies (see **annex 1**) were studied. Further, data collection tools were developed and in consultation with the

Commission, were pre-tested in Kafue District before the rollout across the entire country.

The following table illustrates in tabular form how each of the objectives was addressed and the output/deliverable arising.

**Table 1: Approaches and Deliverables against Objectives of the ASHRR 2014**

Objective	Approach	Output/Deliverable
Enable the wider public to understand the fundamental issues of human rights in Zambia	Collect data that has both quantitative figures as well as qualitative data on individual cases of abuses and developments around human rights issues. Also use easy to read language with illustrations, photos and examples.	Case studies  Statistics of actual cases of abuses
Create awareness and stimulate debate on the issues highlighted in the report among decision makers	Provide concrete recommendations on actions to be taken (by various duty bearers) to improve the HR situation and relate them to the various components of HR issues	Short report that is easily digestible by policy makers
Offer concrete policy recommendations to government, civil society and cooperating partners	Offer practical solutions and encourage multi-stakeholder involvement in addressing HR challenges	Short, well written report that has specific recommendations for various target groups
Allow for the design of specific follow up actions based on concrete engagement plans following the launch of the report	Provide a basic action plan in appendix to summarise the issues, required actions and institutions responsible	Developed action plan which will form the basis for monitoring compliance
Create greater visibility and reinforce the position of the human rights commission in Zambia	Propose how the ASHRR can be publicised	Specific approaches for publicizing the report
Strengthen the research and analytical capacities of the Human Rights Commission	Work with members of staff from HRC during the entire assignment as a way of skills transfer	Transferred skills through learning by doing
Offer a unique opportunity for Zambia to address its human rights issues in a comprehensive and holistic way	Recommend for a 're-launch' of the ASHRR with various stakeholders invited and conduct a discussion on specific actions to address HR abuses afterwards	Hold a re-launch meeting and short workshop afterwards
Monitor and evaluate human rights in Zambia in a more systematic way, in particular government's performance in the domestication of its international obligations	Provide a basic action plan in appendix to summarise the issues, required actions and institutions responsible. Maintain but improve on this format annually and track progress on each international HR obligation	Developed action plan which will form the basis for monitoring compliance

The physical data collection was carried out across the country and, in staying consistent with the previous year's report's sampling methods, 3 districts from each of the 10 provinces across Zambia were sampled. These included the provincial capital and two other districts that represented a typically rural and fairly urban district (see table 2 below). This sampling approach was intended to strengthen the survey's capacity to make human rights performance comparisons across districts and provinces with similar socio-economic and demographic characteristics.<sup>2</sup>

**Table 2: Sampled Districts in each Province**

Province	Sampled Districts*
<b>Copperbelt</b>	Luanshya, <b>Ndola</b> , Kitwe
<b>Northern</b>	<b>Kasama</b> , Luwingu, Mbala
<b>Central</b>	<b>Kabwe</b> , Serenje, Mumbwa
<b>Eastern</b>	<b>Chipata</b> , Lundazi, Petauke
<b>Lusaka</b>	<b>Lusaka</b> , Chirundu, Kafue
<b>Muchinga</b>	Mpika, <b>Chinsali</b> , Nakonde
<b>Luapula</b>	<b>Mansa</b> , Mwense, Samfya
<b>North Western</b>	<b>Solwezi</b> , Mufumbwe, Mwinilunga
<b>Western</b>	Sesheke, <b>Mongu</b> , Kaoma
<b>Southern</b>	Livingstone, <b>Choma</b> , Kalomo

*\*Districts in bold lettering are also provincial headquarters. Kasempa was replaced with Mufumbwe for this survey in order to capture a truly rural district perspective in the province*

The 2014 ASHRR is a lot more analytical than the earlier reports and relies on both qualitative and quantitative data collected from all the 10 provinces across the country. In terms of coverage, a total of 189 quantitative questionnaires were administered to various respondents; judiciary, media, MESVTEE, MOH, Police Service, Prisons Service, Legal Aid Board and HRC. Of these questionnaires, 135 respondents were district based while 47 were provincial respondents and 7 were national respondents (See Appendix 7 for tables).

In terms of qualitative data, this was collected from the local authorities, the Social Welfare Department, the judiciary, local NGOs, the HRC and relevant government ministries at national level. A total of 111 respondents provided information on human rights performance during the year (91 from district respondents and 20 from provincial respondents). The qualitative data collected, was largely used to triangulate the findings from the quantitative questionnaires. The survey generally establishes that there is a strong correlation between the qualitative findings and the quantitative findings on key indicators of human rights.

The respondents in all cases were mixed between males and females. The sex of the respondent was however inconsequential to this study because the various departments and organisations do not predetermine the gender of the respondent and as such, the study could not make such pre-determinations either.

<sup>2</sup>In reality, this has not been possible because of data gaps and various variables that have a bearing on the findings for each district.

In terms of physical location of respondents, there was a balance between rural and urban respondents – a fact which was intended in order to capture both urban and rural voices. The educational levels of the respondents were all college and university graduates.

### ***Data Coding, Entry and Analysis***

All the questionnaires approved for data entry were physically and individually screened for completeness, accuracy and consistency. Quantitative questionnaires were analysed using SPSS software while Qualitative data were analysed using a template sorted responses and views in accordance with pre-agreed themes with the Commission. Two formal presentations of preliminary findings were held with the Commission before the report was submitted to the Commission.

### ***Report Writing***

In developing the data collection tools and eventually writing of the report, the two fundamental categories of human rights (ie Civil and Political Rights as well as Economic, Social and Cultural Rights), were the main focus. Although Part III of the Constitution (the Bill of Rights)<sup>3</sup> appears to have a larger focus on only Civil and Political Rights (CPR), this report has taken a deeper interrogation of the extent to which Economic, Social and Cultural Rights (ESCR) are enjoyed. Both of these rights are also in conformity with the provisions of the Universal Declaration of Human Rights (UDHR).<sup>4</sup> The CPR covered in this report are;

- (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 and from deprivation of property without compensation;

The ESCR discussed in the report are as follows;

- e) Right to adequate food;
- f) Right to enjoyment of the highest attainable standard of physical and mental health;
- g) Right to education; and,
- h) Right to adequate housing;

It is understood that these are the core human rights and therefore form a formidable basis for assessment. Operationally, specific indicators relating to the following rights formed the core of the data collection tools.

**Table 3: Summary of Data Collected and Sources of Data**

Data Collection Tool	Information Provider	Type of Data Collected
Quantitative - CPR	Police, Prisons, Judiciary (courts),	Institutional statistics on incidence of various indicators covering the whole year

<sup>3</sup> See the Constitution of Zambia, Part III - Protection of Fundamental Rights and Freedom of the Individual

<sup>4</sup> See <http://www.un.org/en/documents/udhr/>



Quantitative - ESCR	Min of Education, Min of Health,	Institutional statistics on incidence of various indicators covering the whole year
Quantitative – All others	All relevant Government departments	Information specific to those government departments such as that pertaining to freedoms of assembly, police oversight, legal aid, prosecutions, labour force figures
Qualitative - ESCR	Social Welfare Department	Institutional and personal views backed by experience of working in the sector
Qualitative - Land	Councils	Institutional and personal views backed by experience of working in the sector
Qualitative Questionnaire	Civil Society actors, Department and HRC	Individual perspectives and actual experiences on all the human rights indicators

## 1.5 Outline of the ASHRR 2014

The ASHRR 2014 has five chapters. The first chapter is an introductory chapter providing an overview of the background to the survey, data collection methods and objectives of the 2014 study. The second and third chapters address the status of CPR and ESCR in Zambia in 2014 respectively. The subsections within these chapters address the components addressing civil liberties, protection of the right to life, protection of the right to personal property, protection from inhuman or degrading treatment or punishment and torture and protection from arbitrary/unjust deprivation of what?. The fourth chapter provides an analysis of the status of implementation of the Second Universal Periodic Review (UPR) drawing from recommendations that were made by the HRC and various stakeholders in 2014. In the fifth chapter of the report, conclusions are drawn while the last and sixth chapter provides specific recommendations for the various duty bearers.

## 1.6 Limitations of the ASHRR 2014

Compared to the ASHRR of 2013, the 2014 report is more comprehensive in terms of data collected and analysed. It is therefore a much more accurate picture of the state of human rights in 2014. The following limitations however should be taken into account in making deductions about the findings;

- i. The ASHRR methodology is still evolving and consequently, it is expected at this stage that the tools for data collection and methods of collecting data require refinement
- ii. The data presented in the report is largely drawn from government institutions as recorded by government employees with only complimentary qualitative data from Civil Society Organisations (CSOs). There were no interviews conducted with right holders due to time and financial constraints;<sup>5</sup>

<sup>5</sup> Useful complimentary information has however been drawn from various reports prepared by the Commission that were based on primary respondents/duty bearers as respondents



- iii. The data collected (from 30 districts) is only representative of the more than 100 districts in the country. Some of the districts in the sample may not have had some government departments at the time of the survey (for instance Chirundu and Nakonde did not have prisons);
- iv. A few institutions could not provide information in a timely manner and in some cases outrightly refused to participate in the survey on the basis of minor technicalities such as the introductory letter not being addressed directly to them;
- v. In a few cases, the respondents, despite best efforts, did not provide usable information and this data had to be discarded; and,
- vi. At the time of conducting the survey, some institutions such as Ministry of Health were conducting their annual performance assessments thereby constraining the availability of some key staff that could provide data.

## CHAPTER 2: ZAMBIA - HUMAN RIGHTS IN CONTEXT

### 2.1 Defining Human Rights

Human rights can be defined as “universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.”<sup>6</sup> However, the most commonly used definition is that human rights are “claims which every human being is entitled to have and enjoy as of right by virtue of one’s humanity, independently of acts of law without distinction on such grounds as race, tribe, sex, place of origin, marital status, political opinions, colour or creed. They are universal undertakings protecting individuals and groups of individuals from actions by their government or groups of individuals which interfere with fundamental freedoms and human dignity.

This means that every human is qualified to enjoy the rights simply because they are human. They are not earned and cannot be denied. Article 1 of the Universal Declaration of Human Rights (UDHR) states that, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one

<sup>6</sup> See; The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System” approved on behalf of the Administrative Committee on Coordination (ACC) by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16<sup>th</sup> Session, Geneva, March 2000



another in a spirit of brotherhood.” The standards and principles specified by the UDHR have been constantly developed and concretized by the international conventions on human rights, thus greatly promoting the development of the human rights cause.

Zambia is a state party to many international human rights instruments that sets the standards on human rights (see Table 4). The country is further expected to report to the various treaty bodies on its human rights performance against the required standards. The promotion and protection of human rights is achieved through the implementation of various administrative, policy and legal measures aimed at realising the rights contained in the international instruments. Human rights and their protection are as such crucial to political, economic, social and cultural stability of the nation. They are also important to the socio-political enhancement of individuals or groups of individuals, especially with respect to political participation. Human rights are generally categorised into two broad categories i.e, Civil and Political Rights (CPR) and, Economic, Social and Cultural Rights (ESCR).

### ***Civil and Political Rights***

CPRs demand that the government does *not do anything* against its people such as formulating laws that prevent individuals or groups from enjoying their right to fundamental freedoms such as freedom of speech and assembly. However, there are also other CPRs that require government *doing something* such as providing equal access to the administration of justice through the enactment of laws that protect individuals against all forms of maladministration of justice.

### ***Economic, Social and Cultural Rights***

ESCRs on the other hand require government to do something for its people such as provision of a clean environment, acceptable and quality health care, education, housing, etc. Both CPR and ESCR are treated and assessed with the same importance because rights are interdependent, inalienable, universal, and indivisible. They are in the realm of the obligation of the government that include inter alia respecting, protecting and fulfilling rights.

## **2.2 Changes to Laws, Policies or Guidelines Related to HR in 2014**

Zambia has ratified international and regional instruments for the protection and promotion of human rights and fundamental freedoms. The legal frame work in Zambia has however remained dualist implying that international instruments are not self-executing. As such, they require to undergo a process of domestication in order to be enforced in a court of law. . Thus, **an individual cannot use a ratified international human rights instrument to to enforce a right contained therein**. International human rights instruments ratified by Zambia may be used for persuasive purposes and decisions have been made by the courts of law relying on such instruments.<sup>7</sup> Such judicial activism helps in the interpretation of local laws against international human rights standards and may be a basis of policy, administrative and legal reform.

Below are international and regional human rights instruments to which Zambia is a state party. The table further shows the steps that the government took directly or indirectly

<sup>7</sup> For instance, in the case of Michael Sata v Post Newspaper Limited and Another, Former Chief Justice Mathew Ngulube as he then was said:

“I make reference to the international instruments because I am aware of a growing movement towards acceptance of the domestic application of international human rights norms, not only to assist the interpretation of domestic law in domestic litigation, but also because the opinion of other senior courts in various jurisdictions clearly with a similar problem tend to have a persuasive value”.

towards domestication of the instruments during 2014.

**Table 4: Changes in the Status of International Human Rights Instruments in 2014**

Instrument	Date Ratified	Status of Domestication in 2014
ICCPR	10/7/1984	No Change from 2013
1 <sup>st</sup> Optional Protocol	10/7/1984	No Change from 2013
ICESCR	10/07/1984	The passing into law of the Business Regulatory Act No. 3 of 2014
CEDAW	21/07/1985	Revised gender policy launched during year
CRC	05/01/1992	Handbook on Juvenile Law launched*
CERD	05/03/1972	No Change from 2013
CAT	06/11/1998	No Change from 2013
ACHPR	19/01/1984	No Change from 2013
ACRWC	28/02/1992	Handbook on Juvenile Law launched*
UNCRCPD	09/05/2008	No Change from 2013

*\*See text below for specifics on the changes introduced during the year*

The arguments that have been raised with regard to the reluctance by the government to domesticate these instruments include cultural concerns, potential to compromise national security, possibility of abuse and high cost of implementation. Equally important is the tendency in the past, for government to ratify these protocols without sufficient consultation with all stakeholders hence the failure for local buy-in. Some stakeholders therefore would not want to support the process at domestication stage but rather that they be involved in all the stages i.e. from signing, ratification and eventual domestication. A more practical problem involves the cost implications especially for ESCR. Opponents of this position have also argued that there is a lack of political will on some provisions (such as those relating to economic, social and cultural rights). Government on the other hand, fears that it may not have the resources required to fulfil these rights.

During the year under review, the following progressive developments took place that may contribute to the improvement of the human rights situation in the country

- i. Launch of Zambia's first **Handbook on Juvenile Law** on the 6<sup>th</sup> August 2014. The ultimate goal of the Handbook is to help ensure that all juveniles who come into contact with the Zambian justice system have access to the special protections to which they are entitled. The Handbook therefore provides guidance on how juvenile justice should be administered in Zambia in order to comply with international standards for juvenile justice administration. It addresses rights of juveniles as accused persons, access to care, protection from Gender Based Violence (GBV) and juveniles as witnesses in court. The Handbook, if used appropriately will be able to align both law and practice to international standards of treatment of juvenile offenders;
- ii. Enactment of the **Business Regulatory Act No. 3 of 2014** in March 2014. The aim of this Act is to provide for an efficient, cost effective and accessible business licensing system; provide a set of principles and interventions to guide regulatory agencies when regulating and licensing business activities in accordance with the laws under their mandate; provide for the classification of, and criteria for,

licensing; establish an e-register and assign a control number for laws regulating business; provide for the establishment of regulatory services centers, regulatory clearance systems and a single licensing system for business in each sector or group of businesses in a sector among other things. If applied wholesomely, the Act will (from a rights perspective), lead to reduction in corruption in the business environment and cut down on time required to comply with business licensing;

- iii. The coming into force of Statutory Instrument No. 22 of 2014 which provides for the **Legal and Justice Sector Reforms Commission (LJSRC)**. The LJSRC is mandated to go round the country to collect views on reforms in the justice and legal sector. This is a window of hope for all citizens to air their views which will result in policy, administrative and legal reforms in order to improve the promotion and protection of human rights in Zambia. More specifically, two of the tasks of this Commission are to inquire into accessibility and affordability of justice by citizens and the culture of enhancing human rights by law enforcement agencies in conjunction with the judiciary and other stakeholders. These two tasks, among others, (and depending on the outcomes), are seen as progressive in enhancing the enjoyment of human rights. At the time of preparing this report, the Legal and Justice Sector Reforms Commission was still obtaining views from members of the public; and,
- iv. The launch of the revised gender policy on 11<sup>th</sup> December, 2014. The policy has not been widely circulated but according to media reports, it 'gives a clear mandate to the Ministry of Gender and other line ministries to mainstream gender in all sectors'.<sup>8</sup>

In terms of permanent administrative entities or bodies that were formed or were abolished in 2014 as part of the process of domesticating regional or international human rights instruments, the status was that there was no change from the previous year.

## 2.3 General Human Rights Situation in 2014

The human rights situation in Zambia for the period under review has not changed much from 2013. Most of the complaints the Commission received were in the area of Economic Social Cultural Rights, particularly relating to labour disputes. Violations of Civil and Political Rights equally continued being registered by the Commission during the said period. Inspection of detention facilities such as prisons continued being in the spotlight due to high levels of overcrowding which usually resulted in failure to separate different categories of inmates, poor sanitary conditions, poor condition of infrastructure and other service provision. In the area of fundamental freedoms of expression and the press, association and assembly concerns continued being registered regarding violations resulting from political contestation. Sexual Reproductive Health and Rights continue being an area of increasing concern as the rights of the vulnerable especially women and children continued being violated. Of great concern was the rise in incidences of gender based violence, early child marriages and teenage pregnancies especially among school going children.

<sup>8</sup>[www.daily-mail.co.zm/?p=13838](http://www.daily-mail.co.zm/?p=13838) (accessed on 4<sup>th</sup> May, 2015)

Table 5 below shows that there was a marginal decline in the number of human rights cases reported to the HRC during 2014. In 2013, there were 611 cases reported across all the six HRC offices in the country while in 2014, this reduced to 604. The provinces which reported increases in complaints were Northern Province (53), Lusaka (44), Western (17) and Southern (7). On the other hand, Eastern province recorded a decline in reported cases of 47 clients while the Copperbelt province remained stagnant. The majority of people reporting human rights violations were males (67.1%) as opposed to females (32.9%). The number of women reporting violations over the past two years appears to be shrinking – a fact that requires further investigation if the trend continues. Among the provinces, Lusaka had the highest reported cases (183) followed by Kasama with 115 while the lowest reported cases were in Western province (51) and Copperbelt province (63).<sup>9</sup>

The most significant increase in the numbers of males reporting violations was in Northern Province (53) and Lusaka (44). The HRC did not and still have offices in Luapula, Central, Muchinga and North-Western Provinces during 2014.

**Table 5: Provincial Distribution of Human Rights Violations**

Province	Number of Reported Cases 2013		Percentage of Reported Cases 2013		Number of Reported Cases 2014		Percentage of Reported Cases 2014		Change in Reported Cases of HR Abuses	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Copperbelt	30	33	8.1	13.6	47	16	11.6	8.0	+17	-17
Lusaka	91	51	24.7	21.0	133	50	32.8	25.1	+45	-1
Eastern	71	75	19.3	30.9	58	41	14.3	20.6	-13	-34
Northern	18	45	4.9	18.5	71	44	17.5	22.1	+53	-1
Southern	83	38	22.5	15.6	68	25	16.8	12.5	+20	-13
Western	48	20	13.0	8.2	28	23	6.9	11.6	+20	+3
Total	368	243	60.2	39.8	405	199	67.1	32.9	+37	-44

Source: HRC Legal Department

An analysis of the statistics of human rights violations reported to the HRC during the year under review shows that majority of the complaints related to alleged violations of employment and labour rights as well as maladministration of justice.

## 2.4 Factors Limiting the Enjoyment of Human Rights in Zambia

- As noted above, Zambia is a state party to most of the international and regional human rights instruments and some efforts have been made by the State to implement various programmes aimed at domesticating the provisions of such instruments as a way of making human rights enjoyment a reality. It should be

<sup>9</sup> The data is derived from cases reported at the HRC provincial offices located in Ndola, Chipata, Lusaka (Lusaka is also the headquarters of the HRC), Mongu and Livingstone. While data is recorded for the district in which the HRC office is located, it is assumed, for purposes of this analysis that all the districts in the province report to that one office. The other provinces which do not have HRC offices yet have been left out.

understood, however, that there are still a number of limiting factors which have made it difficult to achieve a society in which human rights are strongly promoted, protected and enjoyed. The following are some of the key limitations:

- The **low level of community awareness** about human rights is equally a major challenge. Even where there are clear constitutional provisions and subsidiary laws, policies and other measures that seek to protect the rights of citizens, some people are not aware about these rights and as such, their rights are violated without even realizing that they have recourse. The worst affected are the most vulnerable people (the poor women, children, prisoners, and persons with disability).
- The **long and often expensive process of seeking redress through the judiciary** is often a deterrent. Some commendable efforts have been made though in the last few years through the decentralisation of the Legal Aid Board (LAB) to provincial centres but there is still a long way to go.
- The amount of **funding** for human rights related interventions has generally been low (see Table 6). This is evidenced by the fact that the HRC only has provincial offices in five other provinces of the country (Central, North Western, Luapula and Muchinga provinces do not have offices) besides Lusaka. At the same time, the number of staff in the provincial offices is limited to 2-3 people thus making it difficult to follow up and investigate all cases of human rights violations across vast provincial boundaries;
- The **dualist legal system** that Zambia follows requires domestication of international instruments for them to have the force of law before Zambian courts. Under the dualist system, international instruments are never self-executing after ratification or accession. Generally, citizens and other nationals cannot use the international instruments to compel the government to meet its obligations, including fulfilling recommendations from international treaty bodies. Other than that, the absence of a legal framework or guidelines for the domestication of international instruments has continued to perpetuate the problem;
- ESCR are not part of the Bill of Rights in the **Constitution and therefore not justiciable**. This signifies a major weakness in the Republican Constitution in terms of recognizing and upholding the interdependence of human rights. This has tended to make the protection of human rights lopsided towards CPR. The current draft constitution however tries to correct that by including ESCR in the Bill of Rights. It is hoped that this will be retained once the final constitution is enacted;

**Table 6: Funding Summary to HRC from National Budget**

Year	Actual Allocation (ZMW)	Actual Disbursed (ZMW)	Difference
2012	10,731,059	10,612,619	(118,440)
2013	13,959,403	12,852,275	(1,107,128)
2014	15,743,722	15,232,089	(511,633)

Source: HRC, Accounts Department, 2015.

- Several other **structural factors** impact on the enjoyment of human rights in Zambia. This is more so for the frontline law enforcement officers who are charged with protecting, promoting and supporting human rights. Generally, the state of accommodation for law enforcement officers such as the police and prisons officers is in short supply and when available, is often of poor quality. The photograph below bears testimony to this fact. Equally disturbing are the poor working conditions compounded by lack of vital equipment (like radios, vehicles), supplies (like stationery, food, uniforms, etc) for officers – a situation which in some cases does not significantly distinguish their living environment from that of the inmates in their care.

**Photograph 1: A Crumbling Housing Unit in a Police Camp**

‘Zambia faces several development challenges, in which poverty and unequal access to resources manifest human rights deficiencies. A number of disadvantaged groups tend to be more vulnerable to this. For example, poor people living with disabilities are not only vulnerable to the effects of poverty, but to discrimination in the labour market and in the provision of social services. It is critically important that development efforts in Zambia target the most vulnerable sections of the population. Capacity development is needed to ensure that duty-bearers at district, provincial and national levels meet their obligations, and that rights holders (both individuals and communities) understand and are empowered to claim their rights, in mutually informed and responsible ways. Capacities include skills, abilities, resources, responsibilities, authority and motivation.

- *United Nations Development Assistance Framework for the Republic Of Zambia 2011 – 2015 (p8)*







## CHAPTER 3: STATE OF CIVIL AND POLITICAL RIGHTS

### Introduction

This chapter of the report provides an overview of the extent to which the country adhered to provisions of international and regional human rights instruments to which Zambia is a State Party. The chapter has nine subsections that addresses core CPRs and the information provided for each section includes a short description of the right in question, the findings from the provinces by the survey, specific cases reported to the Commission and a short recommendations section on steps that should be taken to address the existing gaps.

### 3.1 Overview of CPR in 2014

Civil and Political Rights are all those rights that place a duty on government to protect its citizens from anything that may hinder them from the enjoyment of their right to fundamental freedoms. These rights also include those rights that forbid the government from any actions that infringe on enjoyment of rights while at the same time, compel government to be a facilitator of citizens' enjoyment of their CPRs unhindered. In this section, nine specific civil and political related rights have been analysed for the period under review. These are; the right to life, right to personal liberty, right to be protected from torture and other forms of inhuman or degrading treatment and punishment, right not to be detained without trial, security of protection of the law, independence of the judiciary and administration of justice, freedom of expression, assembly and association, right to participate in public affairs and the rights of minority and vulnerable groups (women, children and persons with disabilities). Appendix 1 of the report contains detailed descriptions about the provisions of the core rights that relate to CPR in the context of Zambia. The core CPR instruments are ICCPR, UN Charter and the ACHPR.

***According to Freedom House, the Civil Liberties score for Zambia in 2014 was 4, on a scale of 1 – 7 with 1 being strong and 7 being weak. This is the same score the country got in 2013.***

***(Freedom of the World Report, 2015)***

The International Covenant on Civil and Political Rights (1966), to which Zambia is a signatory, remains the foundational treaty on CPR. These rights can be summarised as follows;

- **Part 1** (Article 1) recognizes the right of all peoples to self-determination, including the right to “freely determine their political status”
- **Part 2** (Articles 2 – 5) obliges parties to legislate where necessary to give effect to the rights, to provide an effective legal remedy for any violation and also requires the rights be recognised ‘without distinction or discrimination.’
- **Part 3** (Articles 6 – 27) lists the specific rights themselves. These include rights to;

- Physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- Liberty and security of the person (Articles 9 – 11);
- Procedural fairness in law, i.e. rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- Individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);
- Prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- Political participation, including the right to the right to vote (Article 25);
- Non-discrimination, minority rights and equality before the law (Articles 26 and 27).

**Part 4** (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant (Articles 41 and 42).

**Part 5** (Articles 46 – 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or “the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources”.

**Part 6** (Articles 48 – 53) governs ratification, entry into force, and amendment of the Covenant.

Although violations related to CPR are quite common in Zambia, the HRC receives more complaints relating to ESCR than those relating to CPR. In fact, an analysis of the cases of human rights violations reported to the HRC during the year under review shows that complaints regarding violations of employment and labour rights were the most common followed by maladministration of justice. Nonetheless, four of the key issues affecting the enjoyment of CPR that were raised in the 2014 survey by key informants were;

- The subjective and inconsistent application of the existing laws - For instance, the interpretation of the Public Order Act (POA), Chapter 113 of the laws of Zambia by the police thereby infringing on fundamental rights of association, assembly and expression of citizens;
- High levels of ignorance among citizens of their rights - This cuts across all manner of rights and as such, makes it difficult for citizens to make claims from the state; and,
- Poor infrastructure and working conditions for law enforcement agencies - Subsequently, the officers within these agencies are vulnerable to bribery and corruption which disproportionately affects the poor more than the rich.

### 3.1.1 Protection of Right to Life

*“Everyone has the right to life, liberty and security of person”*

– Article 3, UDHR

Zambia is a state party to the UDHR (Article 3), ICCPR (Article 6) and ACHPR (Article 4). These human rights instruments are all relevant to protecting the right to life. The Zambian Constitution further recognises the sanctity of human life and thus provides that *a person shall not be arbitrarily or unintentionally deprived of their life unless as provided for by law, or in defence of life or property or to prevent the commission of a crime, to effect arrest or to prevent escape from lawful custody.*<sup>10</sup>

The protection against arbitrary or unlawful deprivation of life as such places a duty on government to put in place measures that not only prevent and punish deprivation of life by criminal acts, but also prevents arbitrary killing by its own security forces or other state agents like the police. During the period under review, there were no reported changes to Zambian laws with regards to the right to life. Existing gaps in the law included the fact that there were no guidelines on what constitutes ‘lawful or proportional’ violence (minimum use of force by law enforcement officers) including in cases where deprivation of life is permitted. This omission is seen as a lacuna that can be abused by those with authority. In addition, prompt and appropriate redress should be provided where a state agent arbitrarily or unlawfully deprives an individual of his or her life.

A specific example of excessive use of force relates to extra judicial killings of suspects by law enforcement officers on the pretext, for example, that suspects attempted to escape from lawful custody or apprehension. Extra judicial killings are by nature unlawful since they bypass the due process of the law.

Another matter of concern as regards the right to life relates to the death penalty which the country has continued to maintain. Despite Zambia being a member of the Human Rights Council which subscribes to abolishment of the death penalty. Capital punishment is still allowed in statutes particularly in the Penal Code for certain offences such as murder and treason. The Criminal Procedure Code Act<sup>11</sup> Chapter 88 of the Laws of Zambia provides for the execution of prisoners sentenced to death under any law providing for such penalty. Although in reality, no death row inmate has been executed since 1997, the law has remained on the statute books.

The ICCPR, allows for death penalty to be imposed for serious crimes, however it also provides in Article 6(6) that nothing in that Article shall be invoked to delay or to prevent the abolition of capital punishment by the state party to the covenant. There is also the Second ICCPR Optional Protocol which Zambia is not yet a party to that prohibits sentencing convicts to death. Therefore, though the law still allows the death penalty as a form of punishment, the trend in international law is a move towards the abolition of capital punishment altogether. It has been argued that being on death row for years is in itself a form of torture, cruel and inhuman treatment. Opponents of the death penalty argue that there is no conclusive evidence so far, that the death penalty acts as a deterrent from commission of serious crimes.<sup>12</sup>

During the Universal Periodic Review (UPR) on Zambia, various countries recommended

<sup>10</sup> Article 12 of the Constitution of Zambia

<sup>11</sup> Section 303 provides that: “When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead”

<sup>12</sup> <http://deathpenalty.procon.org/view.answers.php?questionID=000983> (accessed on 2 May, 2015)

that Zambia should consider removing the death penalty from its statutes.<sup>13</sup> However, the recommendations were not accepted by the Zambian government on grounds that the country was undergoing a constitution review process which would ultimately conclusively address the issue. The draft constitution that was released by the government in 2014 however still maintained the death penalty. The country's reluctance to abolish the death penalty is further seen in the failure to sign the 2<sup>nd</sup> optional protocol of ICCPR which aims at abolishing the death penalty.

## Findings

During the year under review, a total of 3 cases involving deprivation of life were investigated and concluded by the Commission. In a broader sense however, other indicators captured during the survey seem to point to risks that can affect enjoyment of the right to life. For instance, 20 people (from 20 districts) lost their lives during arrests or other acts of apprehending persons by law enforcement officials.<sup>14</sup> Further, 23 districts reported a total of 6,875 violent crimes (that included robbery, rape and assault). In addition, 20 districts reported that a firearm was discharged during the process of an arrest. A total of 1,174 murders were committed across 22 districts with Lusaka district alone contributing 1,116 cases.

**Table 7: Summary findings on the right to life**

#	Indicator description	Total	Avg/ per district	Lowest Count District	Highest Count District
1	Average number of violent crimes reported to the police (n=23 districts)	6,875	299	13 Chinsali	1,805 Mongu
2	The number of people experiencing physical and non-physical abuse or crime, including by law enforcement officials in line of duty (n=18 districts)	2,043	114	1Kalomo/ Livingstone	669 Mongu
3	The number of arrests and other acts of apprehending persons that took place where a firearm was discharged by law enforcement officials (n=20 districts)	184	9	1 Petauke, Mansa	168 Lundazi
4	The number of cases of death that resulted from arrests or other acts of apprehending persons by law enforcement officials (n=20 districts)	20	1	1 Kabwe/ Livingstone	13 Kaoma

<sup>13</sup>International Service for Human Rights (ISHR) website. See <http://www.ishr.ch/news/upr-zambia-drafting-new-constitution-important-opportunity-ensure-full-protection-all> (accessed on 2nd May, 2015)

<sup>14</sup>There was however no follow up question to establish if the people being apprehended had posed a threat to the lives of the arresting officers

5	The number cases of physical injury that resulted from arrests or other acts of apprehending persons by law enforcement officials (n=19 districts)	68	4	1 Mpika/ Kalomo/ Mongu	63 Kaoma
6	The incidence of deaths and crimes related to community and domestic violence ( including homicide, rape, assault) (n=14 districts)	403	29	1Petauke/ Nakonde	332 Lusaka
7	The number of law enforcement officials trained in rules of conduct concerning proportional use of force, arrest, detention, interrogation or punishment (n=20 districts)	132	7	1 Chinsali	46 Kitwe
8	The number of law enforcement officials formally investigated for physical or non-physical abuse or crime that caused death or threatened life in the reporting period (n=22 districts with 94 cases from Lusaka district)	103	5	1 Mumbwa/ Mpika	94 Lusaka
9	The number of murders and life threatening crimes committed (n=22 districts with 1,116 cases from Lusaka district alone)	1,744	79	Solwezi (1)	1,116 Lusaka
10	The number of deaths in custody that occurred among persons detained or imprisoned, by cause of death (e.g. illness, suicide, homicide) (n=22 districts)	3	-	1 each Kabwe/ Livingstone/ Lusaka	-

By maintaining the death penalty, it means that the state is maintaining a statute that potentially deprives people of the right to life. As will be seen from the table below, a total of 399 inmates were on death row in 2014 showing an increase by 82 condemned individuals. Despite the increase in the number of inmates on death row over the years, the capacity of death row cells at Mukobeko Maximum Prison have remained the same, at 48 cells. Quite disturbing also is the low prioritisation given to providing training to prison officers (while on the job) on new developments regarding proportional use of force, arrest, detention and punishment (see Table 8).

**Table 8: Status of Condemned Prisoners**

Description of the indicator	Findings 2013	Findings 2014
Number of convicted inmates on death row	317	399
Average time on death row ( in years)	6-8 years	No response
Number of former death row inmates with commuted sentences	-	0
Number of death row inmates executed	0	0
Number of death row inmates pardoned <sup>1</sup>	0	0
Number of law enforcement officers who received training in rules of conduct concerning proportional use of force, arrest, detention, interrogation or punishment	0	0

### 3.1.2. Right to Personal Liberty - Arbitrary Arrest or Unlawful Detention

*'No one shall be subjected to arbitrary arrest, detention or exile'*

- **Article 9, UDHR**

Arbitrary arrest or detention is the arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no proper due process of law. The Working Group on Arbitrary Detention<sup>15</sup> considered as arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States (Resolution 1991/42, as clarified by resolution 1997/50)

The law in Zambia provides that people who are suspected of having committed an offence can be arrested. However, the law is also clear that such arrested persons are *presumed innocent until proven otherwise*. The law further provides that persons arrested must be presented before the courts of law within the stipulated time of 24 hours otherwise they have to be released.

Given the foregoing therefore, the arrest or detention of a person in itself is not a human rights violation. It only becomes a violation if the rights of such an individual are violated in the process such arrests are made without adequate investigations being done to collect evidence to be adduced in court or where detained individuals are locked up in detention for periods exceeding the mandatory 24 hours.

In as far as the legal time limit is concerned for an arrested or detained individual to be informed of the reasons of his/her arrest or detention, the law has an obvious lacuna which has been exploited by law enforcement officers to the detriment of suspects' rights. It states that this can be done "as soon as reasonably practicable" according to section 33 of the Criminal Procedure Code. Depending on one's interpretation therefore, a person may find himself/herself in detention for periods longer than the 24 hours specified in statutes.

### Findings

Many international human rights instruments are relevant to the protection of the right to personal liberty. These include UDHR, ICCPR and ACHPR. The provisions in international instruments are more or less replicated in the Zambian Constitution though Article 9 (3)

<sup>15</sup> See <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

of the ICCPR which states that “it shall not be the general rule that persons awaiting trial shall be detained in custody” was reported to be often violated as evidenced by the numbers of people charged with bailable offences who remain in detention.<sup>16</sup> In 2014, 11 cases of arbitrary arrest were investigated and concluded by the HRC compared to 6 in 2013. Of these 11 cases, 7 were referred (recommended) to appropriate government institutions with 4 of the reported cases being effectively responded to.

**Table 9: Cases of Arbitrary Arrests Reported**

Description	Number in 2013	Number in 2014
Investigated and concluded	6	11
Cases where recommendations were made	-	7
Cases responded to effectively by relevant government body	-	4

Besides, the annual averages provided in a survey on *The Application of Bail and Bond Legislation* in 2014 established that at the time of that survey, the average number of days taken to charge a suspect across all 10 provinces was 5 days while the suspects were kept in police custody for an average of 14 days (see **Table 10** below).<sup>17</sup> The implication on human rights for detention without charge is obvious - the affected individuals are deprived of their right to liberty. In addition, the lengthy period of being kept in detention does not comply with the provisions of Article 9 (3) of the ICCPR.

**Table 10: Average number of days taken to charge/detain suspects by police**

Province	Average number of days taken to charge suspects (at Police station)	Average number of days kept in Police custody/detention
Central	5	13
Copperbelt	4	13
Eastern	4	12
Luapula	7	6
Lusaka	5	22
Northern	6	7
North-Western	6	9
Southern	4	11
Western	8	14
<b>Zambia</b>	<b>5</b>	<b>14</b>

Source: HRC (2014); A survey Report on the Application of Bond and Bail Legislation in Zambia, Lusaka

The table below provides a snapshot of the individual cases reported across 6 provinces. In some cases, the detentions complied to legally stipulated 24 hours period but the reasons for such detention qualify to be categorised as human rights violations.

<sup>16</sup> ICCPR, Article 9(3)

<sup>17</sup> See HRC (2014); A Survey Report on the Application of Bond and Bail Legislation in Zambia, Lusaka





Table 11: Examples of some cases of unlawful detention\*

Date of detention	Duration of detention (days)	Specific location of detention	Violation committed	Reasons for detention	Detaining institution	Effect on the victim
December, 2014	1 day	Chipata, Eastern Province	Arbitrary and unlawful detention	Complainant worked for ZSIC Life Assurance and he had reasonable belief that his contract had been adjusted from temporary to that of pensionable conditions. As he queried the decision of the company not to provide his dues, he ended up being detained for 'conduct likely to cause a breach of peace.'	Zambia Police	Loss of personal liberty
30/4/14 -30/5/14	30 days	Chipata, Eastern Province	Unlawful detention	Accusation of misappropriation of money meant for the Ncwala Ceremony	Zambia Police	Loss of liberty Threat to health
02/04/2009	13 days	Lusaka, Lusaka Province	Unlawful detention	To 'assist police with investigations'	Zambia Police	Loss of 4 teeth due to beatings in police cells, physical injuries
30/12/13	8 days	Zimba, Southern Province	Unlawful detention	Detention pending investigation of a matter and protection of suspects from aggrieved members of the public.	Zambia Police	Violation of the right to liberty as the accused had not been formally charged.
-	1 day	Mongu	Unlawful detention, Arbitrary arrest	Failure to pay admission of guilt fine. The complainant was being detained for the offence alleged to have been committed by his wife.	Zambia Police	Loss of income Loss of personal liberty
22/07/2014	3 days	Mongu	Detention without recourse to the law	Non-appearance of the complainant	Zambia Police	Loss of income Separation from his family. Loss of personal liberty
22/07/2014	3 days	Mongu	Arbitrary arrest, Detained without a charge	He was suspected to be an accomplice in a theft case. He was detained to purportedly help police with investigation	Zambia Police	Loss of income Loss of right to personal liberty
/05/2014	92 days	Senanga	Detention without recourse of the law	The officer who was handling the matter did not hand over the docket when he was transferred to Mongu	Zambia Police	Loss of time and income Loss of right to personal liberty



Nov,2013	120 days	Ndola	Unlawful detention	The arresting officer did not take the Complainant to court	Zambia Police	He lost his job, deprivation of personal liberty,
12/8/2014	1 day	Ndola	Unlawful detention	Alleged to have had no proper documents from Immigration Department	Zambia Police	Loss of business businessman,
06.02.14	4 days	Mazabuka	Unlawful detention	Sureties in a court case were detained by a magistrate despite the accused person being present in court and not jumping bail.	Zambia Police	Unnecessary deprivation of liberty
09.06.14	-	Mumbwa Police Station	Unlawful detention	Complainant alleged unlawful detention arising out of a report linking him to theft of livestock	Zambia Police	Suffered body injuries, deprivation of liberty

### 3.1.3. Right not to be subjected to Torture, Cruel, Inhuman and/or Degrading Treatment or Punishment

*'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'*

#### Article 5, UDHR

This right has a special status in international human rights law and is subject to no restrictions or provisos in any circumstances. In addition to freedom from torture, cruel, inhuman and/or degrading treatment or punishment, this Article also protects people from being subjected to medical or scientific experimentation without their consent. Torture is the most serious of the prohibited acts of ill treatment: it involves a very high degree of pain and suffering that is intentionally inflicted for a particular purpose (e.g. extracting a confession). Cruel and/or inhuman treatment also entails severe suffering of the victim, though of a lesser scale than 'torture', while degrading treatment is characterised by extreme humiliation of the victim<sup>18</sup>. Torture is also prohibited under Article 15<sup>19</sup> of the Constitution.

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>20</sup> Further, Article 7 of the ICCPR states that "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" while Article 2 of CAT clearly states that "each state

<sup>18</sup> HUMAN RIGHTS TRANSLATED: A Business Reference Guide, 2008.

<sup>19</sup> Article 15 of the Constitution of Zambia states that:

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

<sup>20</sup> Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” However, no law in Zambia defines the term torture or recognises torture as a crime as required by Article 4 of the CAT.<sup>21</sup>

## Findings in 2014

Cases that would otherwise qualify as torture based on UNCAT and ACHPR are treated as mere assault in Zambia because of this inadequacy in domestication of relevant instruments. Consequently, these cases are not given the proper weight in the law to enable the courts met out the appropriate penalties. It was therefore difficult, during the data collection process, to confidently attribute torture to its rightful place. During the year under review, a total of 17 cases of what qualifies to be torture were investigated by the HRC and 3 recommendations were made for action to be taken against the perpetrators to relevant bodies. Two of the cases led to prosecutions (see Table 12).

**Table 12: Number of received complaints/cases of torture or inhuman treatment\***

*\*Please note that the numbers of prosecutions in the table (are significantly different because feedback from the relevant institutions is not always consistent*

Description	Number in 2013	Number in 2014
Investigated and concluded by HRC	-	17
Cases where recommendations were made	-	3
Cases responded to effectively by relevant government body	0	1
Number of prosecutions	0	2

Below are some of the specific cases of torture that were reported to the Commission. It will be observed that some of the cases were quite cruel.

**Table 13: Briefs on cases of torture or inhuman treatment**

Names of victims	Description of Violation	Location of act/ violation	Perpetrators	Effect on the victim
Luka Musanya	He was detained at Emmasdale Police Station where his K690 was retained and never given back to him. He also alleged that he was beaten by a known police officer on 24.12.14	Lusaka	Police officers	Sustained a swollen face and painful body
Davies Musukwa	On December 10, the Complainant was picked up by police within the premises of his house in Kanyama and accused of being idle and disorderly on (16.02.15)	Lusaka	Torture by officers at Kanyama	Sustained a broken leg

<sup>21</sup> Community Law Centre, Zambian Human Rights Commission and Open Society Initiative for Southern Africa, 2011

John Siame	He was shot by police blinding his eye.	Solwezi	Tortured by CID officers during interrogation	Lost his left eye
Emelly Manyoni and Ben Sikwela	Tortured by police while in police custody as suspects in a theft case	Mazabuka	Police during interrogation	Sustained body injuries
Jacob Banda	The Complainant was beaten up by a taxi driver who also tied him with a rope and put him into the trunk of his motor vehicle, to take him to the police for allegedly breaking the rear lamp of his motor vehicle from where his vehicle was parked. Discovered on the scene complainant was accused to be the one who broke the vehicle, hence he faced the wrath of the taxi driver.	Chipata	Patrick Phiri	Loss of liberty and personal security  Subjected to cruel inhuman treatment and assault.
Watson Phiri	He was tortured by police at Emmasdale police station whilst in detention on allegation of theft of cash	Lusaka	Police Officers at Emmasdale	Sustained swollen legs and body pains.
Mukuka Chisha	Torture	Kasama	Unnamed Prison Warders	-Fractured limbs -hallucinations
Emmanuel Kupeta	Torture	Isoka	Scot Chanda (a prison warder)	-Physical injury -fear/trauma
Andrew Namunji	The Complainant was beaten by three police officers using the butt of the gun. These beatings were administered on two separate incidences. The complainant is said to have been beaten after his apprehension on the night of 21 <sup>st</sup> August 2014.	Namwala	Unknown Namwala Police Officers	Suffered multiple body injuries which included a swollen left eye, painful back and general body pains.
Chrispin Liwakala and others	The Complainant narrated that he and in the company of others, was confronted by officers from ZAWA. The officers lined them up and began interrogating them over an alleged incident which resulted into the death of one of the ZAWA officers and began to beat the complainants as well as other community members as a means of extracting information regarding the death of the ZAWA officer	Kazungula	Zambia Wildlife Authority (ZAWA)	Abrasions and general body pains as evidenced by medical report

Kamizhi Mbambo	The Complainant was a convict serving a sentence of 5 years for the offence of stock theft. He alleged that on the night of 14 August 2013 he was tortured by fellow prisoners. He further alleged that the fellow prisoners were acting under the instruction of a named prison officer	Mongu	Fellow inmates	Physical Injuries (fractured arm)
Mr. and Mrs. Numwa	The Complainants alleged that three policemen arrested them (the wife was pregnant at the time). At the police station they were beaten and made to sit in a container of water from morning to 22:00 hours. They further alleged that they were detained in custody for 4 days and because of the beatings, the wife lost the three months old pregnancy	Mongu	Police Officers	Body pains, trauma and psychological pain
Danny Likashi and Others	The Complainants were serving prisoners. They alleged to have been beaten on different dates for various offences.	Kaoma	The Officer-In-Charge	Body pains and physical injuries
Christopher Chilekwa and Cassius Chisenga	Torture	Chingola	Officers from Chingola Central police station	One of the victims sustained a broken elbow while the other sustained limb injuries
Moses Chishimba	Torture	Luanshya	Officers from Luanshya police station	Internal injuries and a swollen face

## Use of Unreasonable Force

The authority by law enforcement officers to use minimum force represents one of the most misunderstood powers granted to representatives of government. Law enforcement officers are authorized to use reasonable force to apprehend and solve crimes. The bottom line however is the reasonableness standard that has to be mirrored against when applying force in the enforcement of the law. One of the obvious problems created by this standard is determining the appropriate levels of reasonableness. Unfortunately, this has created an exploitable 'grey area' that has resulted in officers using excessive force even in circumstances that cannot be clearly justified on the measure of reasonableness. In Zambia, the law allows law enforcement officers to use minimum force in apprehending suspects when necessary but it does not state what would be considered as minimum force, thereby leaving room for misinterpretation of the law leading to cases where officers

have been cited for excessive use of force. The Criminal Procedure Code provides” if a person forcibly resists the endeavour to arrest him or attempts to evade arrest, such police Officer or other person may use all means reasonably necessary to effect the arrest”<sup>22</sup>.

Even though the law provides for circumstances where reasonable and necessary means (force) can be used as a procedural safeguard, “members of the Police and security forces regularly use excessive force when apprehending, interrogating and holding criminal suspects....” beatings and other treatment by the Police Officers are in most instances not subject to serious investigation and offenders are rarely disciplined or prosecuted. Thus the legally and authorised use of reasonable and necessary force in criminal proceedings has transcended into regular and excessive torture of the accused as well as suspects by law enforcement officers”<sup>23</sup>

This weakness in law has tended to promote and perpetuate excessive use of force on people thereby amounting to violation of human rights.

## Findings

A total of 3 cases regarding unreasonable use of force were investigated by the Commission. In **Table 14**, two of the cases involving unreasonable use of force are documented. The case involving an UNZA student resulted not only in serious head injuries for the student involved but also the destruction by fire of two floors of a student hostel after police fired teargas canisters in the building.

**Table 14: Briefs on cases of use of unreasonable force**

Date	Names of victims	Description of Violation	Location of act/violation	Perpetrators	Effect on the victim
July 2014	Lizwe Ndhlovu	Injured when police in Lusaka used excessive force on demonstrating UNZA students. The police officers without due care threw tear gas canisters into the UNZA Clinic while bonafide patients were being treated	UNZA, Lusaka	Police Officers	Sustained serious head injuries
June 2014	Unnamed	Tear gas canisters were deliberately thrown into the University of Zambia Clinic as Police were attempting to apprehend rioting UNZA students. The clinic had patients receiving treatment at the time	UNZA, Lusaka	Police Officers	Some patients sustained injuries, lost consciousness, traumatized

<sup>22</sup> Criminal Procedure Code, CAP 88 of the Laws of Zambia, section 18 (2)

<sup>23</sup> Zimba Gamaliel, Confessions, A Guise of Torture? *Its Legal Administration and Review of the Case Law*, 2005

-	The complainant (a child) alleged that he was staying with his mother, his father picked him up and took him to the police station and requested an officer to institute discipline in him. The child was then beaten on his head, hand, and back by the unknown police officer	Libuyu Police Station (Livingstone)	Libuyu Police station officer	Visible bruises on back and forehead.
Charles Kazungo				

**Table 15** below also provides useful insights into reported cases of alleged misconduct against police in execution of their duties during the year. A total of 196 cases were reported to the Police Public Complaints Authority (PPCA). The table also shows that serious human rights violations such as unlawful detention (27 cases) and torture (20 cases) were part of the cases reported. This corroborates earlier evidence that these violations are occurring and perpetrated by the Police.

**Table 15: Summary of Nature of Cases Investigated by the PPCA in 2014\***

Nature of cases	Lusaka	Luapula	Central	North-western	Muchinga/Northern	Western	CB	Total
<b>Unlawful Detention</b>	8	2	5	1	3	4	4	27
<b>Brutality/Torture</b>	5	1	3	4	0	3	4	20
<b>Police Inaction</b>	10	1	10	4	3	10	5	43
<b>Unprofessional conduct</b>	42	3	12	9	9	11	13	99
<b>Abuse of Authority</b>	3	1	1	0	0	0	2	7
<b>Death in Police Custody</b>	0	0	0	0	0	0	0	0
<b>Totals</b>	<b>68</b>	<b>8</b>	<b>31</b>	<b>18</b>	<b>15</b>	<b>28</b>	<b>28</b>	<b>196</b>

Source: Police Public Complaints Authority (PPCA) \*Data for some provinces was not availed by the PPCA.

### 3.14 Status and Conditions of Detention Facilities

#### (i) Prisons

The poor state of prisons in Zambia is a well documented issue.<sup>24</sup> This is despite Zambia being a state party to a number of international and regional human rights treaties which seek to promote and protect the rights of persons in detention. Notwithstanding

<sup>24</sup> See HRC (2014); 2013-2014 Monitoring Visits Report on Children in Prisons and Police Detention Facilities in Zambia and HRC (2014); A Survey Report on the Application of Bond and Bail Legislation in Zambia.

the efforts the country has taken to align itself with international norms regarding treatment of prisoners, enormous discrepancies continue to exist between *de jure* and *de facto* compliance with both international and national norms regarding the treatment of prisoners. Most of the problems regarding prisons and prisoners emanates from the severe congestion, deplorable state of prisons infrastructure and simply lack of investment in both new and old prisons infrastructure. This has been compounded by an ineffective and inefficient justice system which has tended to unnecessarily keep detainees for longer periods in prisons before and during trial.<sup>25</sup>

## Findings

During the survey, a total of 22 prisons were visited and data collected from each of the prisons. In total, the prisons that were surveyed held 5,178 prisoners against an official capacity of 2,513 implying that there were on average, more than twice the number of prisoners in each prison. None of the prisoners was being held *incommunicado* during the year while 3 prison officers had been investigated for physical or non-physical abuse or crime against detained or imprisoned persons. Although respondents (prison officers) noted that nearly 82% of the prisoners were in accommodations meeting legally stipulated standards, the reality is that the overcrowding in prisons already indicates that all the prisoners (except for a few prisons) were living in conditions which were below stipulated minimum standards.

**Table 16: Summary table of key indicators on prisons**

#	Indicator	Totals	District Avg
1	Number of accused persons released from pre-and trial detentions in exchange for bond or due to non-filling of charges ( n=18 districts)	349	19
2	Number of prisoners arrested, adjudicated, convicted or were serving sentence for violent crime (including homicide, rape, assault) (n=22 districts)	3,043	138
3	Number of custodial staff (warders) formally investigated for physical or non-physical abuse or crime on detained or imprisoned persons (n=22 districts)	3	N/A
4	The actual average prison occupancy compared to capacity (n=21 districts)	2,513: 5,178 1:2	N/A
5	Number of detained and imprisoned persons who were in accommodations meeting legally stipulated requirements (n=22 districts)*	4,238	424
6	Prisoners: Prison officer ratio ( n=21 districts)	8:1	N/A
7	Number of juveniles <sup>2</sup> in detention during the year (22 = districts)	1,136	52
8	Number of prisons with offender management unit (n=22 districts)	20 (91%)	1
9	Number of prisons with facilities for the disabled (n=22 districts)	0	0

*\*Please note that this is being reported as responded to by the prison authorities who were key respondents. The reality however is that very few prisons meet international standards for detention facilities*

From **Table 16**, the key indicators of interest are also the prisoner to prison officer ratios which stood at 8:1 and the prison capacity against actual occupancy ratio which stood at 1:2. Of interest as well is the high number of juveniles that were kept in detention during the year when considered in relation to the sample number of prisons. This large number of juveniles who were detained during the year includes those not yet transferred (upon

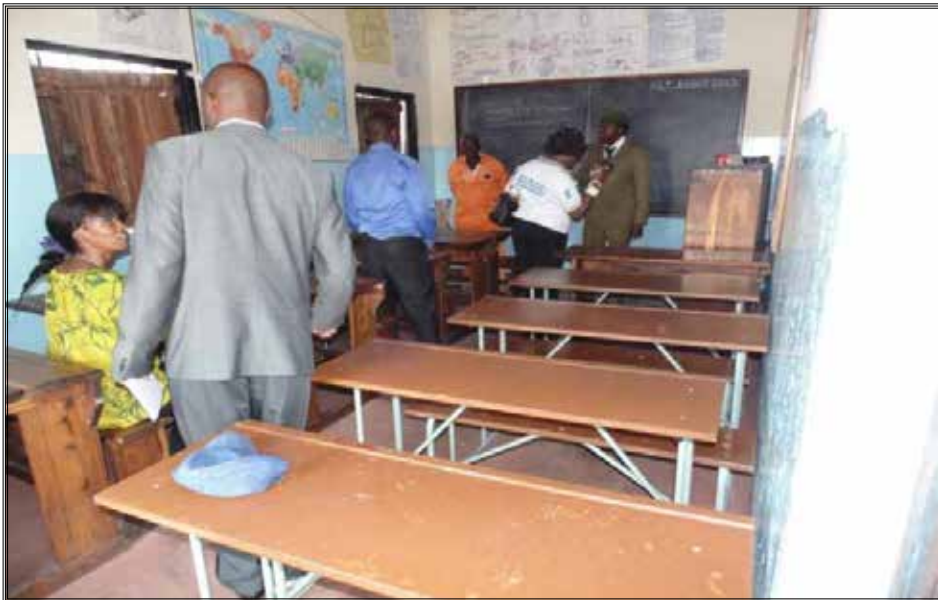
<sup>25</sup> Ibid



confirmation by the courts) to appropriate juvenile facilities at Mazabuka and Katombora. All these indicators point to substantial pressure being placed on the prison officers (due to staff shortages and overcrowding). As a matter of fact, the problem of overcrowding appears to be endemic with no sign of reducing in the short term. In 2013 for instance, of the 33 prisons visited, statistics showed that they had 277% more inmates than their carrying capacity. In 2014, the level of overcrowding for the same districts shows that there was a slight decline to 206%.<sup>26</sup>

The large number of prisoners being overseen by one officer pauses a significant risk especially in an instance where a riot or break out occurred.<sup>27</sup> On a positive note however, some prisons like Lusaka Central Prison and Mongu Central Prison had impressive programmes for vocational training of prisoners for life after serving their sentences.

**Photograph 2: Vocational Training for Prisoners at Mongu Prison**



These programmes included formal education i.e vocational diplomas from Ministry of Education Vocational Training and Early Education and practical skills in agriculture for instance. The photographs below demonstrate the change that has occurred in the prison conditions at Luwingu State Prison after a new prison was built.

<sup>26</sup> It should be noted however that the occupancy figures used in 2013 related to a specific time during the year when the prison inspection was conducted by the HRC

<sup>27</sup> Anecdotal evidence points to much higher national prison officer to prisoner ratios than what was given from the sampled districts



**Photograph 3: Transformation of the new Luwingu State Prison****Luwingu State Prison before reconstruction****Luwingu State Prison after reconstruction**

In line with the UPR recommendation number 102.38 though, the financial allocation for rehabilitation programmes of prisoners was reported by all prisons officials as being inadequate to thoroughly address existing problems.

### **(ii) Police Cell Conditions**

Like the case of prisons, the physical state of police holding cells generally remained bad in the year under review. The holding cells were overcrowded, lacked proper hygiene and sanitation, were dilapidated and did not have mattresses for sleeping on among other deficiencies. This environment creates frustration and is a perfect breeding ground for abuses even among the inmates themselves. The Police's Officer in Charge at each Police station is authorised by law, to grant police bond to detainees should they apply for it and meet the minimum requirements. However, as can be seen from the table below, overall, less than half of convicts and remandee respondents interviewed in a separate survey applied for bond in the first place.

**Table17: Percentage of inmates who applied for bond and bail at time of arrest**

Province	Convict Respondents (%)	Remandee Respondents (%)
Central	37.2	34.4
Copper belt	55.3	35.3
Eastern	42.9	24.6
Luapula	32.4	39.3
Lusaka	32.4	37.6
Northern	41.8	30.4
North-Western	54.2	36.2
Southern	31.1	34.4
Western	50.0	47.7

Source: HRC (2014); A survey Report on the Application of Bond and Bail Legislation in Zambia, Lusaka

The disturbing reality unfortunately is that some people were not applying for bond because they were not aware of their right to bond (men, 21.9%, women 36.6% and Juveniles, 19.7%). At the same time, 17.8% of men, 16.9% of women and 34.7% of juveniles, were simply afraid to apply for bond.<sup>28</sup> This suggests that a lot more needs to be done to educate citizens about

<sup>28</sup>HRC (2013); Promoting Pre-Trial Justice in Zambia: A Survey Report on the Committal Process, 2013

their rights to bond and bail.

The photographs below show the state of dilapidation at one of the police stations. This state of disrepair, as argued earlier, has the potential to lead to hostility and hardening of individuals that are kept in these conditions such that they are more likely to re-offend after being released.

**Photograph 4: Dilapidated police cell at a police station in Muchinga province**



**Photograph 5: A detainee ponders his situation in a cell in Muchinga province**



Another disadvantage that inmates face concerns the conditions that are set for bond by the Police. Quite often, the sureties that are required to sign for bond for a detainee are expected to be ‘government employees’ – which is not a legal requirement. According to Section 33 of Criminal Procedures Code Act Chapter 88 of the Laws of Zambia, the law states in part that ‘...unless the offence appears to the officer (Officer in Charge of a police station) to be of a serious nature, release the person, on his executing a bond, **with or without sureties**, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond....’. The demand for sureties in most cases therefore places many detainees at an obvious disadvantage merely because they may not have someone who qualifies to sign a Police Bond under this imposed criterion. Indeed as **Table 18** shows, 15% of convicts and 18% of remandees that got bail/bond in 2014 had to meet this criteria to secure their release at the time of their arrest.

**Table 18: Percent of inmates reporting type of bond/bail conditions**

Conditions	Convict Respondents	Remandee Respondents
Own recognisance	15.3	38.2
Cash bail	19.4	17.3
Two working sureties	68.4	49.1
Sureties employed by government	15.3	18.2
Unconditional bail	3.1	7.3

*Source: HRC, Report on Application of Bond and Bail Legislation in Zambia, 2014*

The table below provides an interesting overview of the application of bond in Zambia. The overall picture shows that just about a third of convicts and remandees interviewed applied for bond during the time their case was before the police or courts. Out of the respondents a third of convicts had met bail conditions whilst only a fifth of remandees had met the conditions. Slightly more convicts (32.7%) were granted bond compared to 28.2% of remandees. Provincial differences were quite significant and any attempts at addressing this issue needs

to focus on why two thirds of remandees and convicts did not bother to apply for bond at all as well as why some provinces were less likely to grant Police bonds compared to others.

**Table 19: Percentage of convict respondents and remandee respondents who applied, qualified or were granted bond at time of arrest**

Province	Convict Respondents			Remandee Respondents		
	% of convicts who applied for bond	% of convicts who met bond conditions	% of convicts who were granted bond	% of remandees who applied for bond	% of remandees who met bond conditions	% of remandees who were granted police bond
Central	37.2	25.0	37.0	34.4	13.0	27.8
Copperbelt	55.3	18.4	42.7	35.3	26.3	30.0
Eastern	42.9	28.0	25.7	24.6	-	18.4
Luapula	32.4	16.7	21.7	39.3	16.7	38.1
Lusaka	32.4	88.3	27.8	37.6	36.4	31.6
Northern	41.8	25.0	35.0	30.4	25.0	13.3
North-Western	54.2	71.4	35.1	36.2	25.0	2.4
Southern	31.1	29.0	25.0	34.4	29.9	36.0
Western	50.0	24.7	33.3	47.7	36.4	24.2
Country Average	37.73	32.65	28.33	31.99	20.87	22.18

Source: HRC, Report on Application of Bond and Bail Legislation in Zambia, 2014

### 3.1.5. Protection of the Law, Independence of the Judiciary, and Administration of Justice

*‘Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him’*

**Article 10, UDHR**

*(1) ‘Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence’*

*(2) ‘No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal 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 the penal offence was committed’*

**Article 11, UDHR**

In a democratic society, the separation of powers amongst the three arms of government (i.e Judiciary, Executive and Legislature) is cardinal. The independence of the judiciary is particularly central to the effective administration of fair and equal justice. The independence of the judiciary is particularly cardinal if the public are to retain the trust and confidence of the courts to act as arbiters of the last resort. As for the rule of law to exist

and anarchy held at bay, the independence of the Judiciary is an essential ingredient. It is not enough that the courts should follow and apply the laws faithfully and equally to all but it must be seen additionally, that there are no powers assumed by other arms of government or any other body which should arbitrarily determine the tenure of judicial officers.

Independence is defined as not being subject to the control of any person, or entity. It is a state of being free from unjustified control by others (that is to say, protection or immunity from improper or unlawful influences, directly or indirectly). With regard to the Judiciary, it refers to the freedom with which judicial officers carry out their judicial functions. Independence of the Judiciary is also affected by issues such as appointment of judicial officers, their remuneration, general financing of the Judiciary and a number of other factors. This independence is compromised if judges are appointed, paid, promoted or dismissed by persons or bodies which are controlled directly or indirectly by the Executive, as is the case for the majority of countries in the region.

#### ***Declining Trust in the Judiciary***

***Zambians' trust in the judiciary is still high but begins to decline, legitimacy also suffers. The percentage of Zambian citizens who recognize the legitimacy of the courts of law has declined from 79% in 2012 to 68% in 2014. The most recent Afrobarometer survey found that the percentage of Zambians who do not trust the judiciary has also declined from 62% in 2012 to 59% in 2014. The data is being released against a backdrop of among the Zambian citizenry regarding the independence and virtue of the Zambian judiciary***

**- Afrobarometer Report, 2014**

Some of the relevant international human rights instruments that secure protection of the law, independence of the Judiciary, and administration of justice that have been ratified by the state include the ICCPR and the ACHPR. At the local level, the Constitution also has explicit provisions that guarantee this.

The Zambian Constitution states that all members of the judicature shall be subject only to the Constitution and the law. For the Supreme Court which serves as the final court of appeal, the Chief Justice and the other eight

judges are appointed by the President and their security of office is guaranteed once their appointment is ratified by the National Assembly. The power of the president to appoint the Chief Justice and other judges has been seen by some as a loophole that can be abused. A case in point is the wrangle that surrounded the 2013 appointment by the late President, Michael Sata, of retired judge Lombe Chibesakunda as Acting Chief Justice. Her appointment was met with stiff opposition based on the age clause to the extent that the Law Association of Zambia decided to seek legal redress over the issue. By 2014 the case had ended up in the Supreme Court after being dismissed earlier by the Kitwe High Court registrar. However before a verdict could be delivered on the matter, the new president appointed a new Chief Justice.

**Table 20: Key indicators on the protection of the law**

<b>Description of the Indicators</b>	<b>Aggregate</b>	<b>Average</b>
Number of bail applications that were accepted/received by the courts (n= 24 courts)	7,845	327

Number of cases subjected to review by a higher court or appellate body (n=24 courts)	573	24
Number of women who reported forms of violence (physical, sexual or psychological) against themselves or their children initiated legal action or were seeking help from police or counselling centres (n=18 courts)	339	19
Number of cases that were referred to alternative dispute resolution (n=22 courts)	50	2
Number of convictions that were obtained in absentia (in whole or part) from (n=22 courts)	2	-
Average number of convicted juveniles who were sentenced to imprisonment per court (n=26 courts)	138	5
Average number of juveniles who were arrested/detained per court (n=23 courts)	572	25
Number of criminal convictions that resulted in sentences being reduced or a criminal conviction vacated or returned for retrial or resentencing (n= 25 courts)	50	2
% of criminal convictions that resulted in sentences being reduced or a criminal conviction vacated or returned for retrial or resentencing (n=24 courts)	0.4%	-

Challenges that were noted by respondents during the survey included the fact that court cases often take very long and compensation for victims of human rights violations delay in being honoured.

#### (i) Access to Fair Trial

Article 18(1) of the Zambian Constitution, provides for the protection of the law and requires that any person charged with a criminal offence, if the charge is not withdrawn, should be afforded a fair hearing within a reasonable time by an independent and fair (impartial) court established by law. This is also called the right of an accused person to a speedy trial. During the year, the HRC investigated and concluded 5 cases regarding people's access to a fair trial. Of these, 4 cases were responded to by the relevant government body.

**Table 21: Number of complaints concerning the right to a fair trial**

Description	Number 2013	Number 2014
Investigated and concluded by HRC	10	5
Cases where recommendations were made	7	5
Cases responded to effectively by relevant government body	0	4

The table below further demonstrates that it is not uncommon for suspects to wait even up to a year for their case to be committed to the high court. For the majority of these individuals, they would be in jail during this time (see table 19). Tragically, even when their case has been successfully passed on to the high court and successfully tried, it can take another long period of time, for the majority of remandees, before their fate is known. These delays are clear human rights violations.

**Table 22: Delays in administration of justice**

Time	Respondents who were suspects		Respondents who were remandees	
	Frequency	Percent	Frequency	Percent
Less than 1 month	51	14.2	67	32.5
1-3 months	86	24.0	30	14.6
4-6 months	86	24.0	25	12.1
7-9months	51	14.2	12	5.8
10-12 months	27	7.5	11	5.3
Over one year	57	15.9	61	29.6
Total	358	100	206	100

Source: HRC, *Report on Application of Bond and Bail Legislation in Zambia, 2014*

## (ii) Access to and Administration of Justice

Access to justice is crucial for all regardless of one's status in life or the type of crime committed. It is more than improving an individual's right to appear before a competent court and defend himself/herself or guaranteeing legal representation for such persons. Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances *in compliance with human rights standards*.<sup>29</sup> How those institutions of justice are administered in dispensing justice then defines de facto administration of justice. Both access and administration of justice are central to promotion and protection of human rights in a democracy. This section therefore addresses in some detail the findings of the survey with regards to these two issues.

## Findings

One of the ways that access to justice can be guaranteed is through provision of legal aid to those that cannot afford the services of a private lawyer. The findings presented below show that the poor and vulnerable have difficulties in accessing or securing legal representation partly because of very expensive costs of hiring private lawyers and the shortage of free government legal aid lawyers. Other than that, some cases take too long to be disposed of while some detainees are either unaware or are constrained from accessing bond or bail as earlier mentioned. The reasons given by prisoners/detainees for not applying for bail (at the time they should have) were that; the offence was not bailable (36.4%), they did not have working sureties (31.1%), they were unaware of their right to bail (26.3%) and they had no fixed abode (6.2%). In some instances however, detainee rights violations - such as denial of bond - are raised by NGOs, the HRC or individual lawyers in the media.

<sup>29</sup> <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/end-notes/rule-law> "Access"



**Table 23: Percent of inmates who applied for bail on first appearance in court**

Province	Among Convict Respondents (%)	Among Remandee Respondents (%)
Central	27.4	Missing data
Copper belt	5.0	Missing data
Eastern	23.9	0.0
Luapula	27.8	16.7
Lusaka	22.4	36.4
Northern	34.6	25.0
North-western	37.1	25.0
Southern	34.3	29.9
Western	45.3	36.4

Under the law, remandees and prisoners are entitled to legal representation like everyone else. Some commendable efforts have been made by government in the past few years in decentralising the Legal Aid Board (LAB) to provincial centres. However, there is still a significant challenge of access to legal representation by all individuals requiring the services of a government lawyer. Besides, the legal representation is *generally* provided at the High and Supreme Court levels and not at subordinate courts with a bias towards criminal cases. During the HRC's survey of detention facilities, only 13.7% of remandee respondents recalled getting legal representation. As for convict respondents who got legal representation, the figure was even lower at 9.1%. A disturbing figure of close to 20% of individuals detained by police were simply released after their 'case was closed'. This is an indication that the police, at the time of apprehending those individuals did not have sufficient evidence but they detained them anyway. This trend is often referred to as 'detention or being held in order to help police with investigations'. This trend though common, is unconstitutional and a violation of human rights when people are held in custody beyond the legally stipulated period without being charged.

**Table 24: Access to legal representation**

Province	% of remandee respondents who had legal representation	% of convict respondents who had legal representation
Central	7.3	9.4
Copperbelt	29.0	25.7
Eastern	26.4	2.3
Luapula	10.8	4.3
Lusaka	18.7	5.8
Northern	3.6	1.9

North-Western	13.6	16.7
Southern	8.7	15.8
Western	5.7	0
<b>Zambia</b>	<b>13.7</b>	<b>9.1</b>

Source: HRC, *Report on Application of Bond and Bail Legislation in Zambia, 2014*

The impact of this scenario is obvious on prisoner rights and society as a whole. It perpetuates inequality since those with the means can access better (private) legal representation than the poor.

### 3.1.6. Protection of the Freedoms of Expression, Assembly and Association

The freedoms of expression, assembly and association are the hall mark of a truly democratic society. It deepens the principle that all power ultimately rests with the people and must be exercised with their consent. These fundamental freedoms provide for one's expression of thoughts and opinion without fear, to seek and receive information, to form associations and to assemble in a peaceful manner to discuss public affairs amongst others. Accommodation of the views of others shields a democracy from degenerating into despotism by the majority.

Apart from being enshrined in the UDHR, ICCPR, ACHPR and other human rights instruments, the protection of freedoms of expression, assembly and association are provided for in the Constitution albeit with some exceptions. The constitutional provision regarding the freedom of expression, assembly and association can be found under Articles 20, 21, 30 and 104. However, these rights are not absolute. There is always a balance between individual liberty and social control through various pieces of legislation in Zambia.<sup>30</sup> The Penal Code Act, The State Security Act, Security Preservation Regulations and Public Order Act prescribe the extent to which the freedoms covered in the above Articles are enjoyed.

In terms of application and coverage of domestic laws relevant to the implementation of the protection of freedoms of expression, assembly and association (including freedom of the media), respondents observed that the country has had challenges with implementation of these, particularly with regards to the implementation of the Public Order Act vis-a-vis denial of the freedom of assembly.

Often, the perpetrators of violations of the freedoms of expression, association and assembly are the government in power at the time, chiefs, political party cadres, the police and other law enforcement agencies. When these freedoms are under threat, those that suffer the most are opposition parties, civil society, media, women and children, as well the other vulnerable groups.

#### 1) Freedom of Expression (including the Media)

- *"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without*

<sup>30</sup> It does this by qualifying the rights especially in the interest of Defense, Public Safety, Public order, Public Morality and Public health.



*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.”*

- **Article 20 (1) Constitution of Zambia**

*‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’*

- **Article 19, UDHR**

Among these fundamental freedoms, freedom of expression is considered one of the most precious and, indeed, the very foundation of a democratic society. Freedom of expression consists of two elements: the first is the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers and the second is the right to choose the means to do so.<sup>31</sup> Article 20(1) of the Zambian Constitution guarantees freedom of expression. However, these constitutional provisions are still inadequate as a guarantee of freedom of expression, because of other claw-back clauses that take away with the other hand. Furthermore, there is no express guarantee, in the constitution or elsewhere, that ensures the freedom of the press.

## Findings

### ***Violations on the enjoyment of freedom of Expression***

The most obvious way through which the forceful prevention of enjoyment of freedom of expression exists in Zambia was said to be exemplified in the application of the POA/ and defamation laws, especially against the President. It was also said to exist through overt or subtle barring of certain individuals from featuring on certain public radio and television programs due to their political opinions on national issues. A classic case of this intervention in the freedom of expression involved the widely reported alleged harassment of Isoka Radio staff by some politicians in the company of the police who stormed Isoka Community Radio in Muchinga Province and disrupted its broadcast services in June, 2014. The team allegedly manhandled Radio Station Technician, Mathews Mwandila, Head of Programmes and Current Affairs, Peter Sichali and News Editor, Jarine Namukoko and took them to the Police Station on pretext that they were being taken to the area District Commissioner’s Office.<sup>32</sup>

Although the police only reported one case (of a journalist based in Kabwe) in which they prevented the individual from expressing his views to the public, there was one significant case that arose from the courts in the year (and subsequently set a new precedent regarding ‘publication of false news’). This was the case of *Macdonald Chipenzi, Richard Sakala and Simon Mwanza v The People*. The trio, who had pleaded not guilty before Lusaka magistrate Lameck Mwale had applied to the High Court for determination of the legality or constitutionality of Section 67 which criminalises publication of false news. In delivering judgement, Mr Justice Chali said Section 67 contravened Article 20 (3) of the Constitution which guarantees freedom of expression. Justice Chali noted that Section 67 did not pass the test of ‘being reasonably justifiable in a democratic society’. He proceeded to rule that Section 67 contravened Article 20 of the constitution and was as such null and void, and therefore invalid for unconstitutionality.<sup>33</sup>

<sup>31</sup> ICCPR, Article 19(2)

<sup>32</sup> <http://lusakavoice.com/2014/06/12/zacomef-condemns-continued-harassment-journalists/> (accessed on 13<sup>th</sup> May 2015)

<sup>33</sup> <http://www.zambialii.org/files/zm/judgment/2014/112/Chipenzi%20v%20The%20People.pdf> (accessed on 13 May, 2015)

There is no mention of media freedoms in the current Constitution but it should be understood that article 23 of the constitution provides that no person shall be discriminated against - implying that the media are also protected by the same article from discrimination and harassment as they execute their duties. According to the Media Institute of Southern Africa (MISA), harassment of media personnel appeared to be a common occurrence in Zambia in 2014. During the year under review, media personnel reported that they were harassed and denied access to cover national events. In a statement issued by the HRC in June 2014, the Commission was ‘... deeply concerned about the continuing trend of attacks on journalists by law enforcement officers, politicians and other members of the society which is a violation of freedom of expression....’<sup>34</sup> Unlawful detention of media personnel, however, were rare.

The following highlighted cases provide further evidence of such incidences of harassment by State Agents or Non- State Actors. All the cases were collected and collated by MISA and some of them were reported in the media. During the year under review, there was only one case, out of the 21 districts that provided information, of media personnel arrested and/or detained for communicating ideas and information to the public that was reported to the HRC.

### Cases 1

The private media was not allowed to cover the official opening in the Parliament Press Gallery on 19 September 2014. The official opening was graced by H.E President Michael Sata. We are concerned that the ‘accredited journalists’ from such media houses were asked to follow the proceedings on the state-owned ZNBC in the Media Resource Center at Parliament. This defeated the essence of the journalists going to Parliament to cover the event.

The only media that were allowed to cover the proceedings from the media gallery inside Parliament were state-owned media and The Post newspapers. Although Parliament Radio carried it live, there were also interruptions as the speech was being delivered as if a deliberate ploy to censor some information.

**Source: MISA Zambia**

### Case 2

On 23 November 2014, Minister of Youth and Sports, Chishimba Kambwili and Patriotic Front (PF) Deputy Secretary General Anthony Kasolo stormed Zambia National Broadcasting Corporation (ZNBC) Newsroom harassed and ordered Mr Kenneth Maduma, the Director of News and Current Affairs in front of his staff, to remove the stories on Honourable Inonge Wina and the United Party for National Development (UNDP) President Mr Hakainde Hichilema, from being aired on radio and television. In a statement issued to the press, ZNBC Board Chairperson Dr John Mulwila said that Mr Kambwili threatened to dismiss Mr Maduma and his staff from employment.

**Source: MISA Zambia**

<sup>34</sup> <http://www.lusakatimes.com/2014/06/10/human-rights-commission-condemns-continued-harassment-journalists-zambia-police/>

**Case 3****13 August 2014**

The Kaoma magistrate court has convicted three Barotseland activists and sentenced each to three years imprisonment with hard labour for publication of false news with intent to cause fear or alarm to the public contrary to the laws of Zambia.

According to reports monitored on the Lusaka Times and published on 1 August 2014, Magistrate Julius Malata convicted the trio on 1 August 2014.

**Source: MISA Zambia**

**Case 4****3 March 2014**

Newly elected Patriotic Front (PF) Copperbelt Provincial chairman, Sturdy Mwale on Tuesday evening threatened to fire Zambia National Broadcasting Corporation (ZNBC) reporters for not covering the election victory of the ruling party in Wusakile local government by-election.

The Daily Nation dated Friday, 28 February, 2014 reports that: Mwale said he was not happy that there was no ZNBC crew to cover the victory of PF's Davies Simunyola in the Wusakile local government by-election.

**Source: MISA Zambia**

## **2) Freedom of Assembly and Association**

*'Everyone has the right to freedom of peaceful assembly and association'*

**Article 20 (1), UDHR**

The relationship between freedom of assembly and freedom of association is one of interdependence, in that the exercise of the latter may be seriously affected by the extent to which the former freedom is guaranteed. Generally, the freedom of association, between the two rights is the most tolerated except when people cannot respect certain terms and conditions regarding the nature of their association. It is only then that their right to association is forcefully denied.

### **Findings in 2014**

#### ***Violations on the enjoyment of freedom of Assembly***

According to the respondents, the prevention of enjoyment of freedom of assembly in Zambia is largely determined by the application of the POA. Though no specific cases were reported to the HRC of individuals being denied their right to peaceful assembly, the media however provides a number of examples of such reported cases that occurred.

In the case of **Mulundika and Others Vs The People**<sup>3</sup>, the appellants challenged the constitutionality of Section 5 (4) of the POA, which required that any person wishing to hold a peaceful assembly had to obtain a permit and contravention of which was criminalized by Section 7 of the same Act. The challenge related to both the requirement of a permit, the prosecution based on the absence of such permit.

The Appellants' case was also premised on the enjoyment of the freedom of expression and peaceful assembly. A subsidiary challenge related to the exemption of certain offices from the need to obtain a permit. In this context, it was argued that the exemption was discriminatory because it violated Article 23 of the Constitution. The question that arose therefore, in the appeal was whether the provisions of the POA were consistent with the freedoms of assembly and speech enshrined in the Constitution. A major argument against Section 5 (4) of the Act was that although the freedoms under the Constitution are not absolute, they should only be regulated, but not abridged, diminished or denied. It was argued on behalf of the Appellants, that Section 5 (4) could not reasonably be justifiable in a democratic society when it reduced the fundamental freedoms to the level of a mere license to be granted or denied on the subjective satisfaction of a regulatory officer. Counsel for the state conceded that the law required amendments to offer adequate guidelines and to prevent abuse.

- **(Extracted from) Supreme Court of Zambia Judgement No. 25 of 1995**

A specific and prominent case was reported on 24<sup>th</sup> March, 2014. According to a report in the Daily Nation Newspaper, United Party for National Development (UPND) members in Mambwe District were blocked by over 200 armed police officers who stopped the party's leader, Mr Hakainde Hichilema, from addressing a public meeting of his members. The police also barred Mr Hichilema from meeting a traditional leader in the area.

### ***Violations on the enjoyment of freedom of Association***

During 2014, the Commission received and recorded 2 cases of freedom of association being curtailed. The Commission submitted one recommendation to the State and /or State Agents regarding violation of the freedom of association and asked for remedial action from the police who were the perpetrators. The police gave feedback on the matter. One of the cases involved the alleged denial by Livingstone Adventures of its employees Mr. Grivers Siawela & others whose complaint centred mainly on two issues namely; the continued refusal of the respondents to recognise the complainant's trade union of their choice. Further, the complainants alleged that Mr. Fred Aongola, Mr. Grievors Siawela, Ms. Dorothy Zulu and Mr. Christopher Mwanza among others, were dismissed from employment in the company without adherence to the procedures outlined pursuant to section 26 of the Employment Act, Chapter 268 of the Laws of Zambia.

The Commission on the 14<sup>th</sup> of February 2014, conducted interviews and obtained statements from the complainants representative (Grievors Siawela) as well as other affected employees. It was established by the Commission that the matter was a labour issue in nature and equally bordered on the denial of the complainants' rights to association as provided for under the Constitution, Chapter 1 of the Laws of Zambia as well as the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

The Commission could not continue handling the matter as it was already being handled by various institutions which included the Labour office and the respective legal firms retained by both parties.

### 3.1.7. Protection of Right to Participate in Public Affairs

*(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

*(2) Everyone has the right of equal access to public service in his country.*

*(3) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

#### Article 21, UDHR

The right to participate in public affairs concerns the ability of citizens to take part in the conduct of public affairs and to freely choose representatives to perform governmental functions on their behalf. This right also delineates specific aspects of the right to political participation such as the rights to vote and to be elected in free and fair elections, and a right of equal access to positions within the public service. Any conditions that restrict political rights must be established by law and be based on objective and reasonable criteria. An example of such a condition is the requirement of a reasonable minimum age for voters. Positive measures should be taken by governments to overcome barriers to free and fair voting, such as illiteracy, inadequate transport and communication networks in remote regions, language barriers or poverty. It is important that information and ideas about public and political issues are communicated freely<sup>35</sup>. Some of the relevant international human rights instruments relating to protection of the right to public participation are ICCPR, UDHR, ACHPR and the ICESCR.

As a party to most relevant international human rights instruments relating to the right to public participation, Zambia's constitution guarantees the rights of citizens to participate in public affairs. In addition, the constitution provides further guidance on citizen participation. For instance the Public Service Commission Act provides for appointments in the public service for all citizens. However, the Act itself does not elaborate much on this but deals mainly with the service commissions themselves. In addition, the Public Service Commission (PSC) regulations which were enacted pursuant to this Act are more elaborate as are the terms and conditions of public service, service commission policies & procedures, disciplinary code which together constitute the framework. Although these procedures do not expressly talk of discrimination, the constitution prohibits it.

### Findings

During the year under review, there was no single case reported to the HRC by people alleging denial from participating in public affairs. However, some vulnerable groups of people such as persons living with disabilities find it challenging to participate in public affairs due to lack of facilities to accommodate their disabilities. During the survey, respondents pointed out that from their perspective, the social economic profile of those who enjoy this right in Zambia are: the well to do financially; socially connected and the educated (mostly) adults.

In the enjoyment of the right to participate in public affairs in Zambia, vulnerable groups face some challenges. Some of the observed limitations that hinder enjoyment of the right to participate in public affairs in Zambia include:- distant polling stations in many rural areas; lack of continuous voter registration; the selection of candidates by the so-

<sup>35</sup> [http://www2.ohchr.org/english/issues/globalization/business/docs/Human\\_Rights\\_Translated\\_web.pdf](http://www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf)

called National Executive Committees of political parties and not through the electoral college; lack of adequate information or effective civic education throughout the country; violence by some party cadres or factions of supporters of political leaders during the election campaigning processes; discrimination based on gender and disability status of the aspiring political candidates; poor resourcing of female political candidates during election periods the non-provision of braille ballot papers.<sup>36</sup>

During the year under review, a major debate arose from Government's decision to overturn an earlier refusal by the Zambia Environmental Management Agency (ZEMA) to accept an Environmental Impact Assessment (EIA) study from Zambezi Resources Limited. The EIA was for a new mining operation in the iconic game park. Natural Resources and Environmental Protection Minister at the time, Harry Kalaba, disregarded the EIA and used his executive powers to give authority to the company. The significance of this case was with regard to the manner the views of citizens were apparently disregarded. The decision by ZEMA was arrived after wide consultations with major stakeholders such as Zambia World Life Authority who said the project would compromise the ecological value of the park. It had to take the High Court, after a huge public outcry and a suit, led by civil society organisations to stop the mining operation through a court injunction.

### 3.1.8. Protection of the Rights of Minority and Vulnerable Groups

#### (i) Children's Rights

*'Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection'*

#### **Article 25 (2)**

The Convention on the Rights of the Child (CRC) is the most comprehensive document on the rights of children. Based purely on the number of substantive rights it sets forth, as distinct from implementation measures, it is the longest U.N. human rights treaty in force and unusual in that it not only addresses the granting and implementation of rights in peacetime, but also the treatment of children in situations of armed conflict. The CRC is also significant because it enshrines, "for the first time in binding international law, the principles upon which adoption is based, viewed from the child's perspective." The CRC is primarily concerned with four aspects of children's rights ("the four 'P's"): participation by children in decisions affecting them; protection of children against discrimination and all forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs. For the purposes of the CRC, a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (article 1).

Children everywhere need protection from the risks and harm that threatens their rights and wellbeing. In Zambia, exposure to poverty and deprivation is widespread, whilst many children are also exposed to violence, abuse and exploitation.<sup>37</sup> The HIV pandemic and poverty has even driven some children to be in conflict with the law.

**Despite Zambia** being a signatory to a number of international human rights instruments

<sup>36</sup>The respondents during the survey observed that women and persons with disabilities are particularly likely to be disadvantaged in enjoyment of this right. However, there is also evidence that women and the disabled, from a legal point of view are allowed to vote freely as provided for by the Electoral Act. However, it was noted that not many are offering themselves to be voted for, as political parties rarely adopt them.

<sup>37</sup>United Nations Country Team (2013); Addressing the multiple dimensions of Poverty and Inequality in Zambia UN Zambia Signature Issues Series - # 1, June 2013, Lusaka



relevant to protection of children's rights - such as ACRC, CRC, UDHR and Trafficking Protocol, Children's rights violations continue being reported. Even though some strides have been made to bring the country in line with children's rights protections enshrined in these instruments, the adequacy of the legal, policy and administrative measures in arresting abuses against children is clearly questionable. In terms of institutions set up by the state to reform children that commit crimes, these facilities are few.

## Findings

During the year under review, the HRC conducted and concluded 20 complaints of exploitation of and violence against children. Out of these, the Commission made one recommendation for remedial action.<sup>38</sup> One of the victims was subsequently taken under state protection.

Further, the average number of children that were arrested or were in detention (for various crimes) during the whole year was 1,136 from 22 districts that provided data. The highest number of children in prisons was in Central province (431), Copperbelt province (152), followed by Lusaka province (147) and Western province (138). The least numbers of children in prisons was in Eastern and Luapula provinces (31 and 10 respectively). The very high number of children in detention in Kabwe is due to the fact that children awaiting conveyance to reformatory schools are often kept in Kabwe. During the year, the HRC also conducted prison inspections across all the provinces and established that at the time of the inspection, a total of 305 children (293 boys and 12 girls) were in prison. By law however, these children in prisons are supposed to be transferred to reformatory schools. However, this process is sometimes delayed for months because the prison authorities are in short supply of transport. Consequently, these children are kept in overcrowded prison cells and police cells along with adults.

There are also other negative consequences of this trend such as children missing out on attending school while awaiting conveyancing to the reformatory schools. Upon being conveyed, the time that they spend in jail with adults is not considered or deducted from their length of stay in reformatory school. Consequently, in some instances, those children that are charged along with adults find themselves spending a longer period of time (in adults' jail and reformatory) than the adults they are charged with. As a result of this, some young offenders have been compelled to lie to the court about their actual age in order to receive a lighter sentence.

### International Human Rights Law and Juvenile Imprisonment

International human rights law requires that magistrates order imprisonment only in the most extreme circumstances. The CRC requires that states imprison children "only as a measure of last resort and for the shortest appropriate period of time" [CRC, Art. 37(b)]

Source: Handbook on Juvenile Law in Zambia, 2014 (p17)

It was observed, during the monitoring visits conducted in the year, that children in Prison detention facilities awaiting trial, confirmation or conveyance were facing allegations or

<sup>38</sup> The low number of cases being taken up for action is partly due to the fact that the majority of cases reported involve domestic violence and not the state's human rights obligations to children

found in conflict with the law on mostly theft related offenses like house breaking and theft, burglary and theft, aggravated robbery, breaking into a building and committing a felony as well as mere theft. Others were facing allegations related to sexual offences such as defilement and rape. Overall, theft related offences were the most common offences committed by children followed by assault and sexual related offenses.

Another observation made was that more than eighty percent (80%) of children found in remand prison were facing charges that are bondable or bailable. Some children had been in detention for long periods, without being considered for release on bail. This was the case even in instances of minor offences like theft of a cell phone, theft of a bicycle or assault occasioning actual bodily harm. Such children continued to be in detention because they mostly failed to meet the conditions set for bail while others expressed ignorance about the existence or their entitlement to bail.<sup>39</sup>

**Table 25: Average number of juveniles held in detention during 2014**

Province	Number	Percentage
Central	431	37.9
Copperbelt	152	13.3
Southern	147	12.9
Western	138	12.1
Northern	81	7.1
Lusaka	73	6.4
North-Western	37	3.2
Muchinga	36	3.2
Eastern	31	2.7
Luapula	10	0.9
<b>Total</b>	<b>1,136</b>	<b>100</b>

With regards to the number of children in prison detention facilities *awaiting trial* and whose cases were inordinately delayed, a total of 213 cases were recorded. Lusaka and Northern Provinces accounted for 32 cases each while Copperbelt accounted for 28 children. In addition, Southern Province recorded 24 children as compared to Western Province which recorded 21 children. Further, Central and Muchinga Province had 19 children each with Eastern Province recording 15 children, Luapula 13 children and North Western Province recording 10 children.

The key issues regarding children that come into conflict with the law relate to delays in conveyance, delays in confirming orders, missing social welfare reports and delayed trials.

While it may be understandable and even tolerable for children who come into conflict

<sup>39</sup> HRC (2014); Report on Application of Bond and Bail Legislation in Zambia, 2014



with the law to be in prison, the cases of circumstantial children in Prison or detention facilities is hard to ignore. Special prison monitoring visits conducted by the HRC during the year found circumstantial children in prison detention facilities because their parents were incarcerated as opposed to being in conflict with the law themselves. Despite their existence in such facilities being recognised by the Prisons Act, Cap 97 of the laws of Zambia, the welfare of circumstantial children is not adequately provided for under the law. Section 56 of the Prisons Act provides that:

“Subject to such conditions as may be specified by the Commissioner, the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessities at the public expense:..”

Clearly, the provision of clothing and other necessities is not mandatory as the above provision uses the word ‘may’ which is discretionary.

**Photograph 6: A circumstantial child with its mother in a police cell**



Therefore, no special provisions in terms of food (with appropriate dietary and nutritional requirements), medical care and other social services are provided for such children while in prison. A total number of 26 circumstantial children were found in prison detention facilities at the time the monitoring visits were conducted. Central province recorded the highest number of circumstantial children reflecting six, followed by Western and Lusaka Provinces at five and four respectively. Luapula and Muchinga Province recorded three each while Eastern and North Western Province had two circumstantial children each. Southern Province had one circumstantial child while Northern and Copperbelt Province had none at the time of the visits. The figure below shows the presence of circumstantial children in the ten provinces monitored.

As regards separation of children from adults, only Mukobeko Female, Kabwe Medium Prison, Samfya District Prison (with an improvised cell for children which does not provide total separation from adults), Kawambwa District Prison, Mansa State Prison, Kamfinsa Female Prison, Kamfinsa Male Prison, Choma Central Prison, Solwezi Central Prison, Mazabuka State Prison and Kamwala Remand Prison were found holding children separately despite the infrastructure being inadequate and unfavourable for children in detention. This shows that from the thirty prisons monitored only eleven facilities, representing percent, had some form of separation though in most cases the means were just improvised.<sup>40</sup>

Children in conflict with the law is however only part of the issue. Several other child

<sup>40</sup>Ibid

rights related matters take center stage. These include for instance the challenge of early pregnancy and early marriage among children especially in rural areas. Section 4.1.1 of the reports sheds more light on these challenges in relation to education. The official education statistics bulletin for 2013<sup>41</sup> showed that 12,500 primary school pupils got pregnant while 2,428 secondary school pupils got pregnant. The sad part though is that despite having a re-admission policy in place, only 4,492 of the primary school girls and 1,337 of the secondary school girls return back to school after giving birth.<sup>42</sup> This may imply that these girls either get married (child marriages), stay completely out of school altogether or get enrolled in a different school.

Abuse of children (physical, verbal, sexual and emotional) by adults was equally a major problem that was reported widely during the year. Actual statistics of children that were abused are however hard to come by and this survey did not comprehensively investigate this matter. The Zambia Demographic and Health Survey for 2013-14 however provides some useful insights especially in relation to HIV and domestic violence for children in the 15 – 18 age group.

## (ii) Women's Rights

There is a general perception that women do not enjoy the same rights as men in Zambia due to various cultural practices, traditional beliefs and long engendered inequalities. However, women do enjoy same rights as men because the constitution provides equality before the law. The country has so far ratified the CEDAW, UDHR, ICCPR, SADC Protocol and Protocol to the African Charter on Rights of Women. The SADC protocol particularly provides comprehensive guidelines aimed at uplifting the status of women in the region.

Domestically, several pieces of legislation have been enacted to protect the rights of women such as the Penal Code Amendment Act No. 15 of 2005; Intestate Succession Act Cap 59; AntiHuman Trafficking Act 2008; AntiGender Based Violence Act No.1 of 2011, etc. A new gender policy was also launched in 2014 (to replace the one that was in effect since 2000).

One important provision of the SADC protocol is that member countries shall endeavour to enshrine gender equality and equity in their constitutions and ensure that these are not compromised by any other legal provisions and practices. The Constitution, though it stipulates in Article 23 (1) that ....' the law shall not make any provision that is discriminatory.....(including based on sex), it takes away this right in 23 (4). In this clause, the law makes exceptions with regard to matters of adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law. Consequently, this claw back clause has made it difficult for women married under customary law) to inherit property after the death of a common law husband for instance. Non statutory marriages also have

<sup>41</sup> Latest available national figures

<sup>42</sup> 2 014 Educational Statistics Bulletin



From a baseline of zero, five countries including Zambia have aligned their gender policies and action plans to the targets of the SGP, or are in the process of doing so.

The SADC Gender and Development Index (SGDI) for Zambia, a basket of 23 empirical measures, has inched up slowly each year, from 58% at the start to 61% in 2013. The Citizen Score Card (CSC) that measures perceptions has registered the most dramatic increase: from 43% in 2010 to 68% in 2013. This reflects a growing optimism among the people of Zambia.

*Source: Gender Equality by 2015, Yes We Must!, 2013*



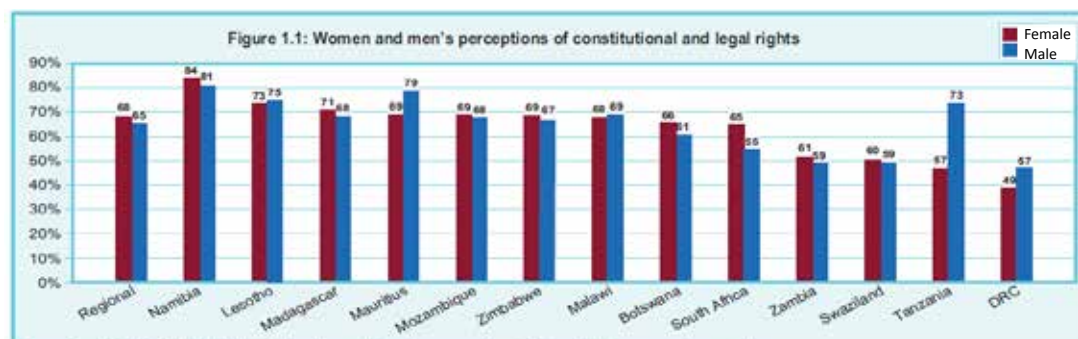
promoted elopements with minors, early marriages and child pregnancies. Despite having a new gender policy therefore, the weakness identified in Article 23(1) is not addressed.

The Interstate Succession Act (Chapter 59 of the Laws of Zambia) has however been criticised as one piece of legislation that disadvantages women in relation to men. This is because the current Intestate Succession Act does not adequately protect the interests of the widows and orphans, especially on matters relating to customary land. The Act is applied according to customs and traditional norms prevailing in a particular area, which vary in a country of 73 tribes and 286 chiefs. The Act also greatly disadvantages widows and orphans with regard to their rightful inheritance shares from the estates of their husbands and fathers.

Another measure of women's perceived value in society can be seen in the positions that women occupy. As at December 2014, the number of women in Parliament had increased from 17 to 20 and the percentage of women in Parliament gone up to 12.6% from 10.7% (of the 150 seats) after three parliamentary seats were won by women. This as can be seen is a small token. The appointing authorities (such as the president), did appoint some women to high level positions. Nevertheless, the core argument is that the rise of women to key decision making positions need not be reliant on the goodwill of the appointing authority but rather because the laws provide space and opportunities for women to ascend to key decision making positions in all spheres of society.

At regional level, the SADC Gender Protocol provides possibly the best comparator of Zambia's performance towards gender equality (see Figure 2 below).

**Figure 2: Women and men's perceptions of constitutional and legal rights**



Source: Gender Links 2014 with data derived from citizens' score cards administered in the respective countries.

According to a 2014 report by Gender Links (see below), Constitutional and legal rights of women and men in Zambia are only better than Swaziland, Tanzania (females only), South Africa (men) and the DRC. The country therefore still has a long way to go on this matter.

**Appendix 7** provides further evidence of the country's performance with regard to various gender related components. It is quite clear that during the period under review, some successes were scored but the country is still a long way from achieving the ideals set out in the SADC gender protocol.

### (iii) Gender Based Violence

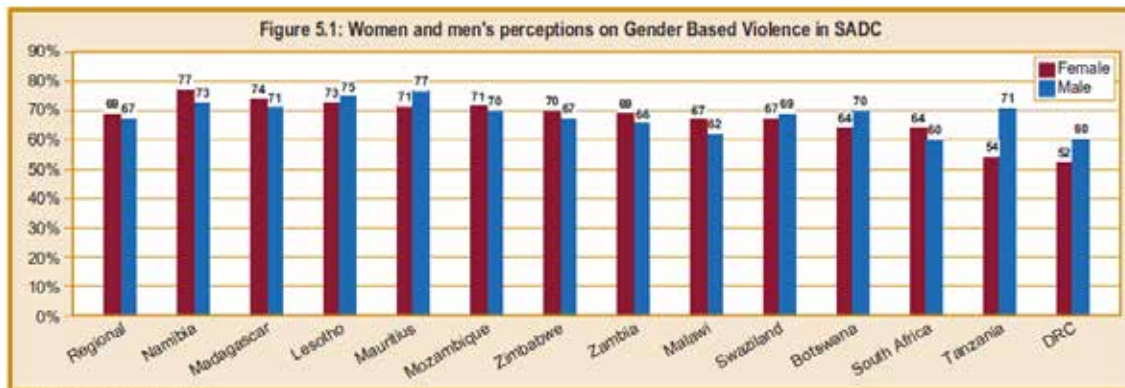
Gender Based Violence (GBV) is hostility that is directed against a person on the basis of their sex. It constitutes a breach of the fundamental rights to life, liberty, security and dignity, equality between women and men, non-discrimination and physical and mental integrity.

## Findings in 2014

During the year under review, a total of 6 cases of GBV (compare with 5 cases in 2013) were investigated and concluded by the HRC involving discrimination and /or GBV against women.<sup>43</sup> One case was referred for action to an appropriate government institution. At the time of writing the report, the institution reported to had not provided feedback on the case to the HRC. The survey also established that 524 cases of domestic violence (including homicide, rape, and assault) were reported to the police from 10 districts that supplied information.

From figure 3 below, people's perceptions on GBV in Zambia, in comparison to the regional average, shows that the country's performance is equal to the regional average of just under 70% perceived incidence of GBV. The implication of this is that GBV is still considered significantly high by people within the region and in Zambia as well.

**Figure 3: Women and men's perceptions on Gender Based Violence in SADC**



Source: Gender Links 2014.

<sup>43</sup> In 2013, the Zambia Police provided comprehensive national gender crime statistics which showed that there were 14,097 reported cases, of which 4,318 were taken to court (637 were subsequently withdrawn) and the majority, 9,775, were not taken to court. Unfortunately, the police did not avail the Commission comparable statistics for 2014

## CHAPTER 4: STATE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Chapter 4 addresses the extent to which government progressively addressed the state of ESCR during 2014. The chapter has four subsections addressing rights to education, shelter, food and health. Other than the general section that highlights the key issues on ESCR, subsequent sections all begin with a short overview of the legal status of each right followed by findings in the year and some specific recommendations on how such rights can be realised.

The most prominent international human rights instrument relevant to the progressive realisation of economic, social, and cultural rights (ESCR) is the ICESCR. Zambia has ratified this instrument. However, the **Zambian constitution does not guarantee ESCR** and consequently, they are not justiciable but they are instead merely placed in the directive principles of state policy. However, these rights are covered under subsidiary legislation within the law. More importantly, the principle of progressive realisation applies, implying that the state determines the pace of 'progressive realisation'.

### Provisions of the International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (1966), to which Zambia is a signatory, remains the foundational treaty on ESCR. It recognises, among others, the rights to;

- Self determination (Article 1)
- Equality of men and women (Article 3)
- Work and favourable conditions of work (Article 6 and 7)
- Social security (Article 9)
- An adequate standard of living, including adequate food, clothing and housing (Article 11)
- The highest attainable levels of health and health care (Article 12)
- Education (Article 13)

States that are parties to this Covenant had also voluntarily undertaken to implement and give effect to the norms and provisions it establishes. It is important to recognize that CPR and ESCR are not fundamentally different from one another, either in law or practice. All rights are indivisible and interdependent.

### Some Key Impediments to Realisation of ESCR

Some of the challenges that affect the realisation of ESCR include;

1. Low prioritization of ESCR by the state and other actors. There is no doubt that the importance of the indivisibility and interdependence of all human rights is recognized by the state. However, the state has so far displayed little interest in

integrating ESCR in local legislation. As a matter of fact, these rights are perceived to have the potential of being 'too expensive' if they were to be justiciable. Consequently, little efforts are made to inform citizens about them;

2. Limited financial resources for Human rights organizations like the HRC and civil society. The financial gaps have contributed to lackluster performance especially with regards to raising awareness about human rights among the most vulnerable groups;
3. Defining of standards (including indicators, benchmarks and targets) in the absence of laws that provide guidance is very difficult. Human rights institutions therefore are at a loss on how to effectively measure progress;
4. Externally, only few (and usually wealthy countries) have made ESCR justiciable. Besides, the international covenant on ESCR speaks of 'progressive realization of ESCR' thereby removing the pressure on countries to scale up their efforts;<sup>44</sup>
5. High levels of poverty and low economic opportunities among the citizens thus encouraging greater focus to be placed on daily survival as opposed to rights of citizens in relation to the obligations of the state. For instance, due to poverty, some young girls and women prefer to get married than to pursue an education. The poor are generally left out of national dialogues;
6. Traditional and cultural norms that promote disempowering practices. For example, early marriages and initiation ceremonies may disturb children's education and their economic opportunities; and,
7. High levels of ignorance among citizens of their rights. This cuts across all manner of rights and as such, makes it difficult for citizens to make claims from the state.

## Assessment of Financial Commitment for ESCR

One of the key measures of government's commitment to the realization of ESCR is the amount of funds that are allocated towards the social sectors through the national budget. The table below shows that over the 4 year period (2011 – 2014), the government increased, in nominal terms, its budgetary allocation to education, economic affairs and health. Allocations for social protection remained just about the same while housing and community amenities both decreased. In real terms however, the increases were insignificant while decreases were much deeper than portrayed in the table. The improvements that will be seen further in the report can partly be attributed to the role that donor agencies have played in supporting these sectors (especially health and education) during this period. This is only part of the picture however as allocations and actual disbursements often differ. Information on the actual expenditure on these sectors was however not accessible from the Ministry of Finance at the time of writing the report.

<sup>44</sup> Part 9 of the Zambian Constitution provides for the progressive realisation of ESCR



### Percentage (%) budgetary allocation to social sectors during the period, 2011-2014

Relevant ESCR Budgetary Components	2011	2012	2013	2014
Education	18.6	17.5	17.5	20.2
Economic Affairs (including funds for food production)	25.6	29.3	27.6	28.0
Housing & Community Amenities	3.2	1.3	3.1	1.5
Health	8.6	9.3	11.3	9.9
Social Protection	2.7	2.3	2.8	2.8

#### 4.1.1 Right to Education

*‘Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit’*

#### Article 26(1), UDHR

The Education Act No. 23 of 2011 gives the right to education to citizens but this is not justiciable and the principle of progressive realization of access to education in section 14 of the constitution applies. In addition, Section 15 gives the right to free basic education which is enjoyed by all citizens. Further, Article 13 of the ICESCR, which Zambia has ratified, stipulates that the parties to the covenant not only recognise education as a right but also commit themselves to pursuing the development of a system of schools at all levels and that an adequate fellowship system shall be established while the material conditions of teaching staff shall be continuously improved. In addition, the covenant provides that primary education shall be compulsory and available for free to all. The Abuja Declaration of May, 2009 further calls on African governments to adequately fund higher education institutions by committing at least 3% of Gross Domestic Product (GDP) to education.<sup>45</sup> At international level, some proposals, such as the Education for All guidelines, recommend that countries that have signed up should spend 20% of their national budgets on education.<sup>46</sup>

Generally, Zambia has made impressive strides in improving access to education since the early 1990s when the education system nearly collapsed. The challenge that still lingers is one of quality of education offered especially in public schools. Despite the country having a ‘free education policy’ from grades 1-7, most primary schools have found a way of charging some form of fee which reduces the extent to which basic education is enjoyed. There are still obvious gaps in terms of availability of teachers, university and college spaces, high cost of higher education, infrastructure and adequacy of teaching and learning materials.

<sup>45</sup> [http://www.ancefa.org/IMG/pdf/Abuja\\_Declaration\\_Rev\\_20Aug.pdf](http://www.ancefa.org/IMG/pdf/Abuja_Declaration_Rev_20Aug.pdf) (accessed 15 May, 2015)

<sup>46</sup> <http://unesdoc.unesco.org/images/0021/002199/219998E.pdf> (accessed 15 May, 2015)

## Findings

The Zambian government, to its credit has, in the past three years been allocating the proposed 20% of national budget minimum on education for the past two years. The amount allocated to education in 2014 was nearly twice what was allocated in 2012 indicating a massive shift in policy. In the same period also, a massive teacher recruitment programme was embarked upon implying that a large portion of the funds went towards teacher remuneration. Other than that, the significant increase in the demand for higher education and available government bursaries imply that only a small portion of students that qualify for a government bursary actually get a bursary. On 30<sup>th</sup> September, 2014 the situation came to a head when an extremely disappointed Munsaka Mukwamba, who had been admitted into the University of Zambia, committed suicide after being denied a government bursary.<sup>47</sup>

Regarding reports to the HRC on the denial of the right to education, there were no cases reported in 2014, Nonetheless, it should be recognised that there are also recorded incidences such as child desertion, early marriages, infection of diseases (that lead to terminal illnesses such as HIV/AIDS and other circumstances) that often result in the right to education being denied. The long distances to access some schools, education fees (for grades 8-12), teen pregnancies etc, equally result in violation of the right to education.

From the survey conducted, the ratio of pupils to teachers appears to be highest in government primary schools and community run schools. Compared to private schools, government schools appear to be very crowded and as such impacting on the quality of education that is provided to the pupils. It is commendable that government is building additional schools for pupils but the buildings will also require teachers and learning materials.

**Table 26: Pupil – Teacher ratios and new education facilities built in 2014**

<i>Ratio of pupils to teaching staff in primary, secondary, community and private education in 2014</i>	
Primary education (n=25 districts)	1,267: 51
Secondary education (n=25 districts)	745: 30
Community education (n=23 districts)	2,097: 91
Private education (n=19 districts)	358: 19
<b>Numbers of new educational facilities built in 2014</b>	
Number of new Government primary education facilities built : ( 0 in 10 districts; 64 in 15 districts) (n=25)	64
Number of new Government secondary education facilities built : (0 in 16 districts; 16 in 8 districts) (n=24)	16
Number of new Government higher ( colleges) education facilities built : (0 in 18 districts; 2 in 2 districts- 1 in each remaining district) (n=25)	2

*Additional information on the findings from the survey are in Appendix 4.*

<sup>47</sup> <https://www.facebook.com/UnzaNetwork/posts/825003980864179>



More helpful statistics however can be derived from the latest (2013) educational statistical bulletin from the MESVTEE. For instance, the pupil teacher ratios correlate strongly with the findings from the survey carried out by the HRC as can be seen in the table below. In 2013, the ratio for primary schools was 56:1 while for secondary schools it was 31:1.

**Table 27: Pupil-Teacher ratios**

	Grades Ranges					
	G 1-4	G 5-7	G 1-7	G 1-9	G 8-9	G 10-12
National	59.1	51.5	56.1	48	24.1	36.9
Provinces						
Central	55.2	52.1	54	45.6	22.7	33.2
Copperbelt	42.9	47.5	44.7	39.2	25.7	41.2
Eastern	78.1	56.8	69.3	62.6	35.1	42.8
Luapula	97.3	83.7	92.3	78.5	35.4	35.9
Lusaka	43.8	50.2	46.3	38.2	18.9	42.8
Muchinga	68.2	44.9	57.8	52.4	26	25.8
North western	65.3	46.5	57.5	48.1	23.4	37.8
Northern	77.5	50.2	65.8	55	16.3	26.3
Southern	55.3	51.8	53.9	45.9	23.3	32.6
Western	54.7	46	51.4	45.9	25.5	35.9

Source: MESTVEE, Educational Statistical Bulletin 2013

In terms of gender dimensions (as a measure of equity) in access to education, the trend has generally been positive. The 2013 statistics from the Ministry show an encouraging Gender Parity Index (GPI) for grades 1-9 of 0.98 while for grades 10-12, the score was 0.84).<sup>48</sup> A GPI of 1 is desirable because it means that there are an equal number of males and females in school.

Yet another measure of equity is the transition rate (also called promotion rate) which represents the proportion of students who have successfully completed a grade and proceed to the next grade the following year. In 2013, 61.9% of Zambia's students transitioned from grade 7 to grade 8, while only 43.2% transitioned from grade 9 to grade 10. This indicator conveys information on the degree of access or transition from one cycle or level of education to a higher one. The transition rate can help in assessing the relative selectivity of an education system, which can be due to pedagogical or financial requirements.<sup>49</sup>

<sup>48</sup> A lower than one means that there are more males than females in school, while a GPI greater than one means there are more females than males in school

High transition rates indicate a high level of access or transition from one level of education to the next. They also reflect the intake capacity of the next level of education. Inversely, low transition rates can signal problems in the bridging between two cycles or levels of education, due to either deficiencies in the examination system, or inadequate admission capacity in the higher cycle or level of education, or both

In terms of contact hours between teachers and pupils, the data from the 2013 bulletin show a significant disparity between pupils in government schools and pupils in private schools. Essentially, pupils in government primary schools have less classroom contact time than their colleagues in private schools as can be seen from the table below. The children in public schools (where the majority of poor children access education) are therefore disadvantaged in terms of their right to a quality education. Overall, private schools had the most contact hours followed by Grant Aided and Government Schools and the least were community schools

**Table 28: Average Number of Scheduled Contact Hours by Grade and Running Agency**

Type of School	G 1	G 2	G 3	G 4	G 5	G 6	G 7	G 8	G 9	G 10	G 11	G 12
Community/Unknown	3.5	3.5	3.5	3.6	4.7	4.8	4.9	5.4	5.5	6	6.1	6.1
Grant-aided	3.6	3.6	3.7	3.7	5.1	5.2	5.3	6.1	6.1	6.5	6.5	6.5
Government	3.5	3.5	3.5	3.6	5.1	5.1	5.1	5.7	5.5	7.4	6.9	8
Private	5.9	5.9	6	6	6.3	6.3	6.4	7.2	7.2	7.4	7.3	7.3

Source: MESTVEE, Educational Statistical Bulletin 2013

Equally important is the numbers of out-of-school children who ideally should be in school. The data shows that numbers of out of school children nearly doubled from 259,390 in 2009 to 515,176 in 2013 (see **Table 29**).

**Table 29: Number of Out of School Children Aged 7-13 by Gender and Year from 2006 to 2013**

Sex	Year							
	2006	2007	2008	2009	2010	2011	2012	2013
<b>Male</b>	NA	NA	NA	96 260	NA	133 628	170 941	229 718
<b>Female</b>	NA	NA	NA	163 130	NA	209 981	240 565	285 458
<b>Total</b>	NA	NA	NA	259 390	NA	343 609	411 506	515 176

#### 4.1.2 Right to Adequate Food

*'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'*

**Article 25(1), UDHR**

The right to food is as crucial as the right to life itself. Unfortunately however, the Constitution does not guarantee this right but merely places it in the directive principles of state policy. Economic hardships and the HIV pandemic which has led to broken families ultimately also means that some people have to go without food for considerable periods

of time. Inadequate social safety nets and constantly rising cost of basic family needs have compounded this problem.

From the national budget perspective, there was a nominal increase of 0.4% in the budget allocation (from ZMW8.9 billion in 2013 to ZMW11.94 billion in 2014) for the entire economic sector which includes agricultural activities. This represents 28 percent of the budget, and the bulk of the funds were allocated to agriculture, energy and transport. The specific food related budget items that can be singled out include; ZMW 3.08 billion or 7.2 percent of the budget which was to be spent towards mainly promoting agricultural diversification and catering for livestock, fisheries, crops and irrigation development. ZMW 500 million was allocated to the reformed Farmer Input Support Programme, to facilitate the provision of affordable crops and livestock for small scale farmers. ZMW1.0 billion was allocated to the Food Reserve Agency to focus on maintaining the national strategic food reserve. In addition, ZMW231.9 was allocated for the construction of dip tanks to combat animal diseases and silos, the target being to increase grain storage capacity to 1.3 million metric tonnes by the end of 2014. ZMW80.9 million was allocated to develop irrigated agriculture.

On the basis of this, it is quite clear that budget funds were being allocated in the right areas that would increase food availability but there are still concerns that the Farmer Input Support Programme may still not be adequately addressing the needs of the small scale farmer.

Further, in terms of improving nutrition at school level, the school feeding programme was being actively pursued during the year, in collaboration with the World Food Programme (WFP). However, the school feeding programme was only covering some 860,000 children in over 2,000 schools who were receiving school meals on a daily basis.<sup>50</sup> Considering that the population of basic school children (grades 1-9) across the country was 3,526,324 from 8,801 basic schools, the programme was reaching only 24% of the pupils and 23% of schools.

Based on the data from the field survey conducted and responses provided by MESVTEE provincial officials, there were 417,719 school children receiving supplementary feeding in schools. In addition, only four of the 10 provinces supplied data which showed that among the four, Eastern province and Western provinces had the highest numbers of children on the programme (see Table 30 below).

**Table 30: School children receiving supplementary feeding at school**

Province	Number of Children	Percentage of Total
Eastern	170,589	40.8
Western	140,314	33.6
Luapula	99,417	23.8
Central	7,399	1.8
Northwestern	-	-
Muchinga	No Response	-
<b>Total</b>	<b>417,719</b>	<b>100</b>

Another innovation the government was implementing was the Social Cash Transfer

<sup>50</sup> [www.wfp.org/node/3625/4173/640642](http://www.wfp.org/node/3625/4173/640642) (accessed on 18 May, 2015)

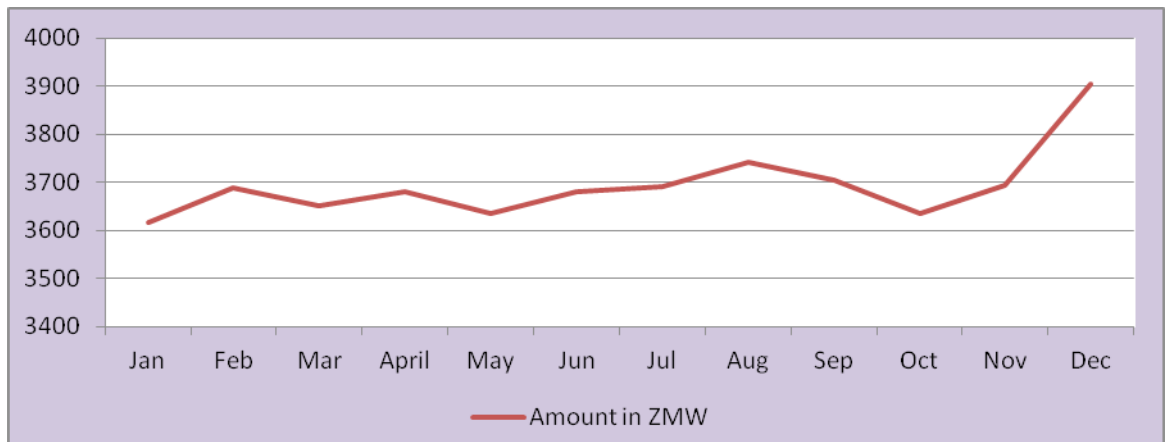
(SCT) scheme within the framework of the National Social Protection Policy issued in June 2014. As of 2014, the SCT scheme was being rapidly scaled up so that it reaches all districts and about 15% of the population nationwide by 2016. In 2014 alone, 31 new districts were implementing the programme, which in addition to the 19 that were previously implementing, brought the total number of implementing districts to 50.<sup>51</sup> The programme has a three point criteria; a) Residency - the household must have been living in the same catchment area for at least six months. b) Incapacity - the household does not have any fit-for-work members or has a high dependency ratio (equal or greater than three). This means that there are three or more dependents per fit-for-work member. A person is considered a dependent (or unfit-for-work) if he/she is: i) younger than 19; ii) older than 64; or 19-64 years of age and chronically ill or disabled. c) Welfare - the household's estimated welfare is below a certain pre-determined threshold based on the Household Living Conditions Index in the country. Welfare levels are estimated by the Social Cash Transfer Management Information System (MIS) using information collected from households.

## Findings

In 2014, the survey established that there were two complaints that were brought before the HRC regarding the right to food. These two cases were investigated by the HRC and concluded with no specific recommendations coming out because largely, such cases are about denial of food at the household level as opposed to the state not fulfilling its obligations to provide food.

The bigger picture however is the impact that escalating food prices have on the right to food. According to the Jesuit Centre for Theological Reflection (JCTR), the food costs, as measured by their Basic Needs Basket have been increasing consistently. Bearing in mind that salaries for most civil servants were frozen by the state during the year, these prices represent only a fraction of the costs of a household (for instance medical and education costs are not included) and that a good portion of the population is unemployed, getting very low salaries (because of low income jobs) or in informal employment, the picture may be quite dire. Other than that, salaries generally do not rise in direct proportion to the rise in inflation/food prices. The already existing high poverty levels do not make the situation any easier.

<sup>51</sup> MCDMCH (2014); *Social Cash Transfer (SCT) Programme, Fact Sheet*

**Figure 4: Change in prices of food for a family of six in Lusaka (2014)**

Source: JCTR, Lusaka

The Demographic and Health Survey for the period 2013/2014 provides interesting findings on the challenges resulting from inadequacies in the nutritional content of the food consumed by people. Consequently, this results in problems such as stunting, wasting, being underweight or overweight. The results appear to show that while the overall trend has been a decline in the percentage levels of stunting, the number of children that are stunted was quite high at 40%. The percentage of children that were found to be wasted though low, has equally not declined since 12 years ago while those that are underweight have actually increased in the same period. Those that are overweight have remained the same over the period.

**Table 31: Trends in nutritional status of children under age 5, Zambia 1992-2014 (%)**

Data Source (and year)	Stunting (height-for-age)	Wasting (weight-for-height)	Underweight (weight-for-age)	Overweight
ZDHS 1992	46	6	21	1
ZDHS1996	49	5	19	1
ZDHS2001-2002	53	6	23	1
ZDHS 2007	45	5	15	1
ZDHS 2013-14	40	6	15	1

**Note:** The data for all surveys are based on the WHO Child Growth standards adopted in 2006. Stunting reflects chronic malnutrition; wasting reflects chronic or acute malnutrition or a combination of both.

Source: ZDHS, 2013/2014

The table below shows trends in the nutritional status of women in Zambia since the 2001/02 ZDHS survey. The percentage of women who are undernourished decreased from 15 percent to 10 percent between the 2001/02 and 2007 surveys and has remained stable over the last six years. On the other hand, the prevalence rates of overweightness/obesity have increased steadily during the same period, from 12 percent in 2001-02 to 19 percent in 2007 and 23 percent in 2013-14.

**Table 32: Nutritional trends among women age 15-49 (%)**

Timeline /Source	Under nutrition (chronic energy deficiency)	Over nutrition (overweight/ obese)
ZDHS 2001-02	15	12
ZDHS 2007	10	19
<b>ZDHS 2013-14</b>	<b>10</b>	<b>23</b>

Source: ZDHS, 2013/2014

### 4.1.3 Right to Adequate Housing

Like many other ESCR, the Constitution does not guarantee this right but merely places it in the directive principles of state policy. In recent times, the heightened rural – urban migration which has led to mushrooming of unplanned settlements in many Zambian towns has inadvertently led to some families being deprived of the right to housing when corrective measures are instituted (such as bulldozing of illegal structures). Zambia has equally not been spared by effects of climate change which has resulted in many poorly constructed dwellings collapsing due to flooding. It is also widely acknowledged that as a country, Zambia has chronic housing shortages thus leaving many families to face adverse weather, disease and insecurity.

In terms of budgetary allocation to the housing sector, the funds are few relative to the needs. Government allocated ZMW661 million to Housing and Community Amenities in 2014. This represented 1.5% of the total budget. Within this allocation, ZMW 417.8 million was to be used to enhance access to safe water and good sanitation in both rural and urban areas.

The government planned to increase rural access to clean and safe drinking water from the 2013 level of 61 percent to 65 percent by end of 2014. This was to be achieved by drilling 2,000 new boreholes, constructing 250 hand dug wells and establishing 50 piped water schemes. In addition, 2000 boreholes and 100 hand dug wells would be rehabilitated. Further, rural access to sanitation infrastructure would be up-scaled from the current 43 percent (then in 2013) to 48 percent (by end of 2014), through community-based approaches and construction of 500 institutional latrines.

In the urban and peri-urban areas, the Government planned to increase access to clean and safe drinking water to 84 percent in 2014 from the current 82 percent (in 2013). This would be achieved through the rehabilitation of water supply infrastructure in various urban towns as well as the creation of a new water utility company in Muchinga Province.

**Photograph 7: An example of a typical housing unit found in rural Zambia**



## Findings

During the year under review, four cases related to the right to adequate housing were reported to the Commission. All four were attended to although no resolutions were arrived at (partly because such cases are usually of a domestic nature).

A UN-Habitat estimate suggests a backlog of 1.3 million units across the country (a figure that is collaborated by the government<sup>52</sup>), and recommends an annual delivery rate of 46 000 units until 2030 (or one every two minutes of the working day for 19 years). UN-Habitat has also determined that 70 percent of housing in Lusaka is informal.<sup>53</sup> Other than that, the quality of housing is generally bad for the poor who live in illegal settlements or shanty compounds (see photograph 7 below). According to an organisation called *Housing Finance Africa*, the problem is partly because very few Zambians have an outstanding loan to purchase a home: 1.1 percent of the top 60 percent of income earners and 1.4 percent of the bottom 40 percent of income earners.

Access to land for building houses equally is a major problem especially in the cities like Lusaka. Lusaka alone, which is the country's Capital City, has over 37 slum/informal settlements. Nearly all the houses designed and built in Lusaka's slums and informal settlements do not have the approval of the local authority/Lusaka City Council. The slum/informal settlements dwellers use any material and technology to build anything they would call their home or shelter.

### 4.1.4 Right to Health

*'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'*

**Article 25(1), UDHR**

<sup>52</sup> See speech by Minister of Local Government and Housing, Emmanuel Chenda on 13<sup>th</sup> May, 2014 delivered during the inaugural conference of the Zambia Property Owners Association (ZAPOA) in Lusaka

<sup>53</sup> [www.unhabitat.org](http://www.unhabitat.org)



The ICESCR, under Article 12, expressly provides for people's right to the highest attainable standard of physical and mental health. The article also places a duty on state parties to achieve the full realization of this right. Zambia, as a signatory of the ICESCR is fully obligated to ensure that its citizens enjoy a decent level of physical and mental health. Other than that, in the Zambian Constitution, the right to health, though not justiciable is nonetheless provided for under the Public Health Act, Chapter 295 and other relevant laws.

## Findings

The 2014 budget allocation to the health sector stood at ZMW4.23 billion or 9.9 percent of the budget. Like in the other social sectors health sector allocations have been on the increase but there has also been tremendous demand from an increasing population for health services. The ZDHS as the rest of the section will show, appears to demonstrate that some of the health indicators are improving. However, like the other ESCR, the majority of citizens do not even see health provision by the state as a right. Nonetheless, during the year, the commission investigated and concluded 4 complaints regarding the right to health. All the 4 cases were referred to the appropriate government agency for action. Two of them received favorable responses from the government agency.

One of the major focus areas for the Ministry of Health during 2014 was the construction of **650** Health Posts throughout the country at a cost of US\$55.9 million. The construction of the health posts was to ultimately increase the number of people having access to quality and equitable health services as close to the family as possible, as well as support and strengthen health delivery system, and increase the percentage of mothers having deliveries in health facilities or being assisted by competent health care providers. The health posts were also intended to cater for populations of **500** households (**3,500** people) in rural areas and **1, 000** households (**7, 000** people) in the urban areas. As at the end of the year, work on 155 of the 650 sites had commenced while materials for the prefabricated buildings had arrived for most of the sites.<sup>54</sup>

The 2013/2014 Zambia Demographic Health Survey also provides some very helpful insights into the status of the health sector in relation to some key indicators as at 2014. The rest of the discussion in the report therefore focuses on the findings presented in the ZDHS of 2013/2014.

Data from the 2013/14 ZDHS shows impressive declines in neonatal, post-neonatal, infant, child and under five mortality rates during the period 2003 - 2013. Neonatal mortality declined by 17 percent over the 15-year period preceding the survey, from 29 to 24 deaths per 1,000 live births. The corresponding declines in post neonatal, infant, and under-5 mortality over the 15-year period were 57 percent, 41 percent, and 41 percent, respectively. Examination of neonatal, infant, and under-5 mortality rates in Zambia over the past 15 years reveals that neonatal mortality has decreased at a slower pace than infant and child mortality. Specifically, neonatal deaths have reduced only by five deaths per 1,000 live births compared with other childhood mortality indicators.

<sup>54</sup> Statement by the Minister of Health at a press briefing held on Friday, 13<sup>th</sup> February 2015 in the MoH board room



**Table 33: Neonatal, post-neonatal, infant, child, and under-five mortality rates for five-year periods preceding the survey, Zambia 2013-14**

Years preceding survey	Approximate time period of rates	Neonatal mortality	Post neonatal mortality	Infant mortality	Child mortality	Under five mortality
0-4	2009 – 2013	24	20	45	31	75
5-9	2004 - 2008	26	26	52	37	88
10-14	1999 - 2003	29	47	76	57	128

Source: ZDHS, 2013/2014

In terms of immunization, 68% of children aged 12-23 months received all basic vaccinations. The changes over time in immunization is not spectacular but it shows improvements especially for Hepatitis B which increased by 9%, measles by 8%. The overall increase however is only 1% since 1992. Rather concerning however is the fact that in 1996, the overall immunization coverage had reached 78%.

**Table 34: Change in Vaccination Provision 1992 - 2014**

YEAR	VACCINATION TYPE					
	BCG	DPT/DPT-Hep B Hib 3	Polio 3	Measles	All basic vaccinations	None
ZDHS1992	95	77	76	77	67	4
ZDHS1996	97	86	84	87	78	2
ZDHS2001-02	94	80	80	84	70	3
ZDHS2007	92	80	77	85	68	6
ZDHS2013-14	95	86	78	85	68	2

Source: ZDHS, 2013/2014

Neonatal, infant and under-five mortality rates have all equally been on the decline. Neonatal mortality for instance reduced from 43 to 24, infant mortality from 107 to 45 while under-five mortality also reduced from 191 to 75 since 1992. These declines can be attributed to increased access and provision of health care to people as well as sustained awareness programmes such as the child health week campaigns.

**Table 35: Neonatal, infant and under-five mortality rates for the five-year period preceding the survey, Zambia (1992-2014)**

Survey	Approximate calendar period	Neonatal mortality	Infant mortality	Under-five Mortality
ZDHS 2013-2014	2010-2014	24	45	75
ZDHS2007	2003-2007	34	70	119
ZDHS2001-2002	1997-2001	37	95	168
ZDHS1996	1992-1996	35	109	197
ZDHS1992	1978-1991	43	107	191

Source: ZDHS, 2013/2014

The HIV and AIDS pandemic is not just a health concern but is also a human rights issue especially in relation to availability and access to needed drugs for treatment. The ZDHS reports that there have been marginal reductions in the percentage of HIV positive women since the last ZDHS in 2007. For urban women, the prevalence rates declined from 23.1% to 21% while for rural women, the decline was from 11% to 9.9%.

**Table 36: Percentage HIV positive among women and men aged 15-49 who were tested, by location**

Background Characteristics	ZDHS 2007 FINDINGS				ZDHS 2013-14 FINDINGS			
	% Positive women	% positive men	% positive for women & men	Total # of women and men	% of positive women	% of positive men	% positive for women & men	Total # of women and men
<b>Residence</b>								
<b>Urban</b>	23.1	15.9	19.7	4,464	21.0	15.0	18.2	12,932
<b>Rural</b>	11.0	9.4	10.3	5,980	9.9	8.1	9.1	14,927

Source: ZDHS, 2013/2014

The findings also show that the prevalence rates are firmly skewed in favour of women since men had lower prevalence rates within the same periods. Urban men recorded 15.9% prevalence in 2007 which marginally reduced to 15% while rural men were at 9.4% and 8.1% in 2007 and 2014 respectively. State interventions therefore need to take into account the urban-rural and male-female differences.

In terms of Malaria, the findings also point to overall declines. In 2007, 24% of urban children had taken anti-malarial treatment a week before the survey while the percentage of rural children was 19.3%. During the period under review, the figures had reduced to 14.2% for urban children but increased to 23.3% of rural children. Appropriate interventions therefore are needed to reverse this negative trend in rural areas.

Adult mortality probabilities equally have exhibited immense improvements from 421 to 294 for females and from 415 to 330 for males. Males are still clearly much more at risk of dying than females. This greater risk for men is partly explained by their higher risk lifestyles compared to women.

**Table 37: Adult mortality probabilities\* (the probability of dying between the ages of 15 and 50), Zambia 2013-14**

Survey	Female	Male
2013-14 ZDHS	294	330
2007 ZDHS	421	415
2001-02 ZDHS	446	471
1996 ZDHS	353	407

\*The probability of dying between exact ages 15 and 50 is expressed per 1,000 person-years of exposure

Source: ZDHS, 2013/2014

Maternal mortality is an important measure of human rights as it represents the risk existing in a woman dying as a result of birth. The table below shows that the Maternal Mortality Rate (MMR) is highest in the 30 – 39 age group. The 20-24 age group equally has a rather high percentage of deaths that are maternal in nature despite this age group being stronger and at its most productive stage.

**Table 38: Maternal Mortality: Direct estimates of maternal mortality rates for the seven years preceding the survey, by five-year age groups, Zambia 2013-14**

Age	Percentage of female deaths that are maternal	Maternal deaths	Maternal Mortality Rate
15-19	4.2	4	0.10
20-24	13.4	22	0.53
25-29	7.0	17	0.41
30-34	14.1	52	1.52
35-39	9.6	32	1.31
40-44	5.9	14	0.92
45-49	6.9	10	1.18
15-49	9.5	151	0.74

*Note: Maternal Mortality Rate is expressed per 1,000 woman-years of exposure*

Source: ZDHS, 2013/2014

The Maternal Mortality Ratio trends on the other hand, have been very good since 1992. From 2007 to 2014 alone, the decline in MMR has been 193 (from 591 to 398).

**Table 39: Trends of Maternal mortality ratio 1996-2014**

Survey	Maternal deaths	Confidence levels
2013-14 ZDHS	398	323 – 474
2007ZDHS	591	450-732
2001-02 ZDHS	729	586- 872
1996 ZDHS	649	519-780

*Note: Maternal Mortality Ratio is expressed per 100,000 live births; calculated as the age-adjusted maternal mortality rate times 100 divided by the age-adjusted general fertility rate*

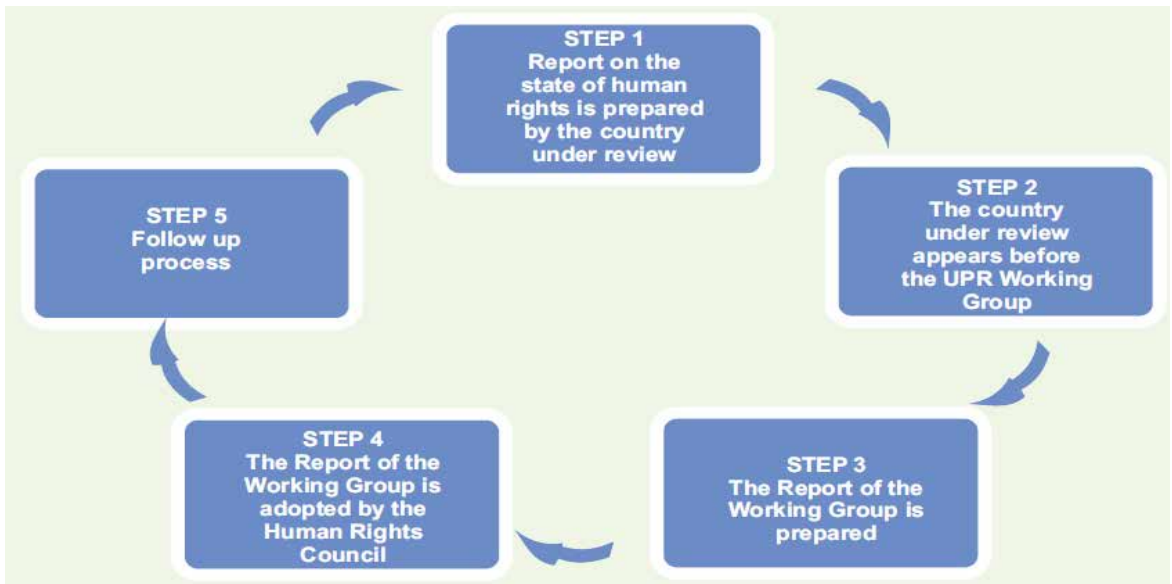
Source: ZDHS, 2013/2014

Maternal deaths however contribute a large component of all deaths among women. In the 2013-14 ZDHS, maternal deaths represented 9.5 percent of all deaths among women aged 15-49, as compared with 9.2 percent in 2007, 10.0 percent in 2001-02, and 13.0 percent in 1996. The percentage of female deaths that are maternity related is relatively higher in the 20-24 and 30-34 age groups than in the other age groups.

## CHAPTER 5: The Universal Periodic Review

The Universal Periodic Review (UPR) is a UN human rights monitoring mechanism which involves a periodic assessment of the human rights records of all 193 UN Member States. It is a creation of the UN Human Rights Council and is applicable to all countries on an equal basis. The core purpose of the UPR is to assess the performance of Member States on human rights. The figure below demonstrates the procedure that is followed during the UPR process.

**Figure 4: The Steps Followed in the UPR Process**



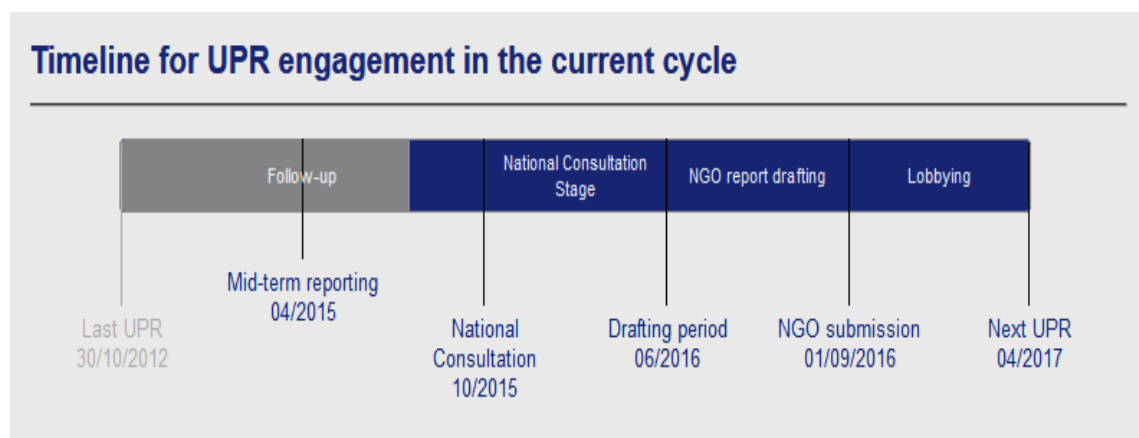
There are some special features that make this process more acceptable to most UN member Countries than the previous mechanism. These features are;

- (i) It is a Member States driven process which provides an opportunity for each State to declare steps, initiatives and actions taken to improve the human rights situation in its jurisdiction;
- (ii) The review is based on a catalogue of information generated from State (reports) being reviewed, the information compiled by the Office of the High Commissioner for Human Rights and stakeholders such as the National Human Rights Institution and CSOs;
- (iii) The UPR process assesses the extent to which Member States respect, protect and fulfil human rights as obligated under international human rights instruments ratified, the Charter of the United Nations, the Universal Declaration of Human Rights, and other standards that have attained the status of customary international law, and other individual State commitments enshrined in national laws, policies and administrative measures; and,
- (iv) The process is non-coercive but is based on cooperation of individual Member States.

## The UPR in Zambia

Zambia was last reviewed on October 30th 2012. There were a total of 125 recommendations made to Zambia by 63 States. A total of 70 recommendations were supported by the government whilst 34 were not supported and 21 were classified as pending. As a follow up to the UPR, the HRC subsequently organised and undertook a process of developing a monitoring framework of UPR recommendations with the three parties to the UPR process i.e. the state, CSOs and the HRC itself. The monitoring framework has since been developed and the HRC is in the process of collecting data to assess steps government has taken so far in ensuring that the UPR recommendations are implemented. The ASHRR for 2015 will contain the results of this study.

Zambia's UPR cycle timelines 2012-2017<sup>55</sup>



Source: UPR info

<sup>55</sup> [www.upr-info.org/en](http://www.upr-info.org/en)



## CHAPTER 6: RECOMMENDATIONS

The 2014 ASHR has identified several new and also recurring challenges that require remedial action by the relevant institutions responsible for promotion and protection of human rights. Some of the challenges are structural and behavioural in nature and require different approaches in addressing them. Other challenges have to do with limited investment in the socio-economic spheres which consequently impacts on service delivery. This section explores how far reaching actions to address some perennial human rights challenges relating to CPR and ESCR can be addressed.

### General Recommendations on improving CPR

1. Government needs to take steps to ratify the second optional ICCPR protocol that prohibits the death penalty. This will put the country in line with international practice especially that there is clear evidence that the death penalty is not a deterrent for serious crimes. Moreover, since 1997, there has been no President willing to commit himself to have any prisoner on death penalty executed.
2. The process of recruitment, training and retraining of police and prison officers should be prioritised as part of the wider prisons and police reforms in order to equip them with the capacities and skills that will help in rehabilitating detainees. Laws that protect citizens from arbitrary loss of life through brutality of law enforcement officers equally should be aggressively emphasized as a way of reminding officers to restrain themselves from abusing their positions of power. At the same time, the process of upgrading/rehabilitation and modernization of prisons needs prioritization in order to reduce congestion and aid the reformation process of inmates
3. Government has a duty to protect its citizens from abuses that are perpetrated by law enforcement officers in the conduct of their duties. Strict adherence to the 24 hour period within which a person has to be charged (or else released) should be the norm. Police officers who maliciously detain people need to be punished so that the trend can be stemmed. On the other hand, providing police with the necessary resources required for them to conduct thorough investigations before they effect an arrest will significantly reduce detentions carried out on the pretext of assisting police with investigations
4. There is need for all mandate holders and interested parties to intensify prison inspections and discussions with relevant authorities on how to address the existing challenges. This is more so in relation to the low levels of legal representation of inmates, delays in disposing of cases and society's perceived dwindling trust in the judiciary. It is hoped that the Legal and Justice Sector Reforms Commission would address some of the bottlenecks around access to justice especially regarding the vulnerable groups.
5. Detainees should have easy access to information about how they can access bail or bond. The conditions for granting of bond or bail should be clearly stipulated and the demand for 'working sureties' should be discouraged. Those whose rights have been violated should be educated to seek redress/compensation under Article 28 of the Constitution of Zambia This can be actualized in the short term

by setting up legal desks in prisons. At the same time, the Prison Service must develop gender responsive reforms aimed at improving planning and delivery of services in prisons in a manner that is responsive to the different needs of men, women and children. This includes educational and skills training facilities for all as a rehabilitation strategy that will assist them upon release

6. In relation to juveniles/children that come in conflict with the law, the provisions of the Handbook on Juvenile Justice if implemented alongside existing laws on management of juvenile offenders would greatly improve the situation. There is need for instance to build more reformatory schools in all provinces in order to speed up conveyancing of children to appropriate facilities and also to protect them from potential abuse in the regular prisons where they are mixed with adults. Each province should have such a child friendly facility (such as a school or reformatory) which would also reduce the costs of conveyancing of children. In addition, separate holding cells for children need to be made integral part of police stations thereby avoiding mixing with adults
7. The police have a duty to adhere to any court orders and where this is not done; there should be clear punitive measures to the erring officers. Regulating officers should be allowed to make decisions. It should be an exception rather than a norm that the Inspector General of Police delegates authority to relevant officers for effective regulation of assemblies. The regulating officers should observe the highest standards of professionalism, fairness and should not be partisan in the application of the POA. If the police are not able to police a meeting or procession, they should explain to the organisers of the meeting or procession beyond reasonable doubt, the grounds for their failure to police the event.
8. There is need not only to domesticate fully the international human rights instruments that have been ratified such as the CAT which requires state parties to criminalise torture; there is need to also ensure that the application of existing laws (such as the POA) are done in an objective and consistent manner. In addition, new laws such as Access to Information if enacted would enhance citizen's rights to demand for greater transparency and accountability for leaders. The Government should also consider ratifying the Optional Protocol to the CAT which provides for the establishment of a National Preventive Mechanism. This will ensure that there is a comprehensive and approach to preventing and dealing with cases of torture.
9. Government, through its various governance institutions (and the new draft constitution), needs to address the clash that sometimes arises between cultural norms and practices with human rights requirements in order to guarantee that rights (especially of women and children) are not violated in the guise of culture and tradition. While governance institutions like the HRC are trying their best to raise awareness on core human rights issues, the reality is that there are still significant levels of ignorance among citizens about their entitlements under the law (e.g access to bond or bail). The government has a duty to provide all necessary resources to increase knowledge levels and citizen demand; and,



## General Recommendations on improving ESCR

1. The government (and all other actors) needs to prioritise the progressive realization of ESCR as opposed to considering them purely from a cost perspective. This can be demonstrated through integrating rights in local legislation and raising awareness about the rights themselves at all levels.
2. Human rights organizations like the HRC and civil society need to be fully and consistently funded in order to significantly address existing gaps in the promotion of ESCR. At the same time, clearer benchmarks, targets and indicators need to be defined (especially with regards to UPR recommendations) in order to ensure that government is held accountable on the implementation of human rights standards in the country.
3. In the longer term, addressing the high poverty levels, especially among rural communities, will improve the socio-economic situation of citizens and increase access to various services for all.
4. In the education sector, there is need to increase access to higher education for more students who complete secondary school by offering bursaries and student loans, upgrading of community school structures, employing more teachers for government schools and providing improved conditions of service (including salaries).
5. Government needs to focus on ensuring that food prices are kept in check (eg by better storage of maize bumper harvests) in order to secure food security and better nutritional outcomes. Further, public education programmes (e.g through the Food and Nutrition Commission and other agencies), is cardinal for ensuring that people consume the right quantities and quality of nutrients in their food.
6. Measures that would make access to credit/mortgages for building houses affordable for all categories of people other than those with large quantities of money would be welcome in order to improve the quality and safety of housing. State companies like the National Housing Authority should not only focus on building housing units for high income groups but also for low income earners. At the same time, government should take up the responsibility through appropriate agencies, of making more land available for people to build houses at an affordable fee and also significantly improve on the sanitation situation especially in high density locations



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- Convention on the Right of the Child (CRC)
- Convention Relating to the Status of Refugees and its Protocol (CRSR)
- Convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment (CAT)
- Convention on the Rights of People with Disabilities (CRPD)
- Convention Governing the Specific Aspects of Refugee Problems in Africa (CGSARPA)
- Cornell University, (August, 2014); Handbook on Juvenile Law In Zambia; Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic; New York
- Employment and Labour Market Policy (2006)
- Gender Based Violence (GBV) Act no. 1 of 2011
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of Racial Discrimination (ICERD)
- Ministry of Finance (2014); Revised Sixth National Development Plan, Lusaka
- National Gender Policy (2000)
- National Child Policy
- National Action Plan on Gender-Based Violence - 2008-2014
- OSISA; Pre-Trial Detention in Zambia: *Understanding caseload management and conditions of incarceration*; Lusaka, 2011
- Paris Principles (85th plenary meeting), 20 December 1993
- Prisons and Police Detention Monitoring Report 2014 – 2014
- Public Order Act
- SACCORD UPR submission to HRC, 2012
- SADC Protocol on Gender and Development
- United Nations Country Team (2011) United Nations Development Assistance Framework for the Republic of Zambia (2011-2015): 2011 Lusaka: United Nations

## APPENDICES

### Appendix 1: Zambia's Position in Relation to the Various HR Conventions

#### ***International Covenant on Civil and Political Rights (ICCPR)***

The ICCPR obliges state parties to provide for the protection and promotion of rights to life, personal liberty and security, recognition of inherent dignity of the person, prohibition of torture and cruel, inhuman or degrading treatment, freedom of expression, association and assembly, the right to be presumed innocent until proven guilty, equality before the law, protection of aliens against arbitrary expulsion and procedural guarantees in civil and criminal matters. The ICCPR requires state parties to provide avenues for the upholding of these rights.

According to Article 2 (1 & 2)<sup>56</sup> of ICCPR, *“each state party to the present covenant undertakes to respect and ensure that an individual 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. Where not already provided for in existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps. In accordance with its constitution processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. The undertaking is that there is need to have effective remedies and competent judicial, administrative or legislative authorities to determine complaints, and to ensure that the competent authorities shall enforce such remedies when granted. The protection and promotion of rights in this covenant is reinforced by other international instruments that include: CAT, CRC, CEDAW and CERD.*

Zambia also subscribes to optional protocol to ICCPR which according to article 1 requires a state party to the protocol to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of violation by that state Party of any of the rights set forth in the Covenant. Furthermore, to this, it considers other human rights like: - protection of the unborn child, protection from slavery and forced labour; protection from torture, inhuman or degrading treatment; property; privacy; of home and other property; protection of the law including fair trial guarantees; freedoms of conscience, expression, assembly, and association; freedom of movement; protection from discrimination on the ground of race, tribe, sex, place of origin, marital status, political opinion, colour or creed; and protection of young persons from exploitation.

#### ***International Covenant on Economic, Social and Cultural Rights (ICESCR)***

It is international instruments that reinforce a primary role to guarantee human beings free self-determination in matters of ESC life. In article 1, the ICESCR states that, *“all people have a right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development”*<sup>57</sup> while in article 2 of ICESCR, *‘each state Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving*

<sup>56</sup> ICCPR, 1966

<sup>57</sup> ICESCR, 1966

*progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*<sup>58</sup>

The Covenant sets a standard of how state parties are to promote and protect ESCRs. The covenant provides for the right to work and favourable working conditions (minimum wage; safety and health, equal promotion opportunities) in Article 6 and 7; right to form trade unions and join a trade union of their choice and take collective labour action in Article 8; the right of everyone to social security and social insurance in Article 9; the right to protection of the family, including protection for mothers and children; in Article 10, the right to an adequate standard of living including the right to food and the right to housing in Article 11; the right to health in Article 12; the right to education in Article 13; as well as the right to participate in cultural life and the right to benefit of science and culture in Article 15.

### ***Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment (CAT)***

The instrument draws its strength from article 1 of the UDHR that recognises that all human beings are born and equal in dignity and rights ...<sup>59</sup> *and any infliction of form of torture in whatever circumstance is considered as a violation of Human dignity.* This instrument has strong influence to the enforcement of article 15 of the Zambian constitution in protecting human dignity. The instrument stresses that state parties are to domesticate the provision of CAT and so as to prohibit torture. Notable among the provision include outlawing torture in their national law (Article 4); It is an instrument that puts it clear that it can never be derogated as stressed in article 2(3) which states that *“No form of superior or exceptional circumstances may be invoked as justification of torture.”* The instrument further requires that a torturer be prosecuted wherever he/she is to be found in the territory of state party to CAT since persons alleged to have committed acts of torture may be tried in the state party where they committed their crimes (Article 5).

Regardless of the many provision in the instrument however, Zambia has not done much in domesticating the instrument. It is only article 15 of the Zambian Constitution that prohibits torture but no other pieces of legislation provides for the *criminalisation* of torture. Pockets of prosecutions of torture which are brought to court are usually physical torture and range from assault, unlawful wounding, and grievous bodily harm.

### ***Convention on Elimination of all form of Discrimination against Women (CEDAW)***

The strength of the debate on women’s rights resulted in the passing of the CEDAW convention in 1979. CEDAW prohibits discrimination against women and provides for a standard way of treating women on matters of national development. CEDAW article 1 states that *“Discrimination against women shall mean exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social cultural, civil or any other field.”*

The rights of women are integral, indivisible and inalienable part of the universal human rights thereby making women and men to be treated equally with rights to enjoy freedom from discrimination just as much as men do and the government has a responsibility, within its power, to promote and protect the rights of women. CEDAW in article 2 expects

<sup>58</sup> ibid

<sup>59</sup> UDHR article 1

*state parties to embody the principle of the equality of men and women in their national constitution or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of the principle. State parties are expected [in Article 2(b)] to adopt appropriate legislative and other measures including sanctions where appropriate, prohibiting all discrimination against women, and c, to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national and other public institutions, the effective protection of women against any act of discrimination.*

This means Zambia, like many other state party, is obligated to take appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discriminations. According to article 23 of the Zambian Republican Constitution, the issues of discrimination has to some extent been covered, though not all CEDAW provisions are yet to be fully domesticated so as to give a strong platform for the fight against violence targeted at women.

### ***Convention on the Right of Children (CRC)***

Children in the community are part of the group of people that are considered vulnerable and require protection. The United Nations found it necessary to have an international instrument that sets out standardized protection mechanisms and the promotion of the rights of children. The convention lays out that children also have basic human rights and must not be discriminated against in any way and this includes those (children) with disabilities. All children deserve equal treatment and opportunities. According to the UNCRC a child is every human being below the age of eighteen years unless, under the law applicable to the child, maturity is attained earlier. One challenge however with the current Zambian constitution is that it does not have a definition of who a child is.

Article 2 of CRC states that *“State Parties shall respect and ensure the rights set forth in the present Convention to each Child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”* To achieve this provision state parties including Zambia are expected to take all appropriate measures to ensure that a child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or belief of the child’s parents, legal guardians or family members. The state is required to also (under Article 4) *“to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention. With regard to ESCR, state Parties shall undertake such measures to the maximum extent of their available resources and where needed within the framework of international cooperation.”*<sup>60</sup> CRC is also reinforced by ACRWC which also emphasise on prohibiting discrimination against children by requiring that the best interest of the child be the determining factor in actions and decisions affecting children.

### ***Convention on the Rights of Persons with Disabilities***

Persons with disabilities are part of the society and are expected to be involved in all matters of national development. Zambia is a state party to the above convention. The purpose of the Convention is *“to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”*<sup>61</sup> Persons with disabilities include those who

<sup>60</sup> CRC

<sup>61</sup> <http://www.un.org/disabilities/convention/conventionfull.shtml>

have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The Convention provides standards to break all the barriers that impede people with disabilities from accessing the same rights and opportunities as others. It requires nations to consider and understand disability as a human rights issue. Furthermore, it seeks to implement measures that are aimed at improving the situation of persons with disabilities. Among the issues requiring improvement are physical access to buildings, roads and transportation, and access to information through written and electronic communications. The Convention also aims to reduce stigma and discrimination, which are often reasons why people with disabilities are excluded from education, employment and health and other services.

## **Regional Systems in Place for the Promotion and Protection of Human Rights**

There are many regional human rights provisions that have been set up. Zambia, as a member of the African Union (AU) is party to the African Charter on Human and Peoples' Rights (ACHPR). This charter, through the African Commission on Human and Peoples' Rights and the recently established African Court on Human and Peoples' Rights, seeks to promote and protect human rights in the member countries which include Zambia. Other instruments that have a bearing include the Convention Governing the Specific Aspects of Refugee Problems in Africa (CGSARPA) and the African Charter on the Rights and Welfare of the Child (ACRWC).

The ACHPR is complimentary to the international Bill of Rights but only relates the provision to the regional way of life but holding on to the principle that all human beings are equal and are to be treated as such without discrimination based on race, ethnicity, political status, religious belief, sex, etc. Other provisions relate to the fact that all human beings shall be entitled to respect for their life and individual integrity. No one may be arbitrarily deprived of this right. ACHPR article 5 states that every individual shall have the right to respect of the dignity inherent in a human being and to recognition of his legal status. It further provides that all forms of exploitation and degrading punishment and treatment shall be prohibited while Article 6 states that every person shall have the right to liberty and to the security of his person.<sup>62</sup>

Zambia is also a member of the Southern Africa Development Community (SADC) and this obliges member countries to meet certain thresholds in the promotion of human rights. Notable among the many include the SADC protocol on Gender in which 30% of decision making positions are to be held by women.

## **International and Regional Legal Framework and Avenues for Human Rights Protection and Promotion**

The international human rights crusade is dawn from the UN Charter and the international Bill of rights which include the UDHR, International Convention on Civil and Political Rights (ICCPR), and International Convention on Economic, Social and Cultural Rights (ESCR). Apart from the International Bill of Rights, there is a plethora of international instruments which address specific human rights concerns and issues. These include International Convention on the Elimination of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Right of the Child (CRC), Convention Relating to the Status of Refugees and its Protocol (CRSR), Convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment (CAT), and Convention on the Rights of People with Disabilities

<sup>62</sup> African Charter on Human Rights and peoples' Rights (ACHPR)

(CRPD).

## Domestic Legal frame work for Human rights

### *Constitution of the Republic of Zambia*

Zambia is governed by a constitution which prescribes rights and duties of the state and obligations of the citizen. The domestic human rights regime is centred on part III of the Constitution (Articles 11-26) entitled “Protection of the Fundamental Rights and Freedoms of the Individual”. This part is also known as the Bill of Rights. It has been a feature of the Republican Constitution since Zambia got independence in 1964. However, it provides for only civil and political rights. According to Article 11 of the constitution, every person in Zambia is entitled to all fundamental rights and freedoms provided in the constitution, without any distinction based on race, place of origin, political opinion, colour, creed, sex, and marital status. Article 11 summarises the rights and freedoms contained in part III for every person as:-

- 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 ; and
- d. Protection for the privacy of home and other property and from deprivation of property without compensation.

The enjoyment of the rights and freedoms guaranteed in the Constitution are subject to limitations necessary for the maintenance of public order, public security, public health or public morality, as well as ensuring the protection of rights and freedoms of others. In cases of violation of rights provided in the Constitution, Article 28 gives a person the right to seek legal redress in the High Court. The High Court has a wide jurisdiction to enforcing the Bill of Rights and has powers to award the remedies that include: - damages, declarations, *mandamus*; *habeas corpus*; and any other appropriate remedy.

The Constitution of Zambia though providing the Bill of Rights, does not make ESCR justiciable in case of any violation of human rights. The progressive realisation of ESCR through the constitution is only achieved through part IX under the directive principles of state policy. It is the prerogative of the president to sanction realisation of such human rights depending on the availability of funds.

Apart from the Constitution, the protection of human rights in Zambia is also enhanced by other pieces of legislation that have domesticated some of the provisions from most of the international instruments to which Zambia is a state party. Some provision from the UDHR, ICCPR, ICESCR, CEDAW, CRPD are included in various legislation. For instance, the Industrial and Labour Relations Act (CAP 269, section 108 (1)), prohibits an employer from terminating the services of an employee based on grounds of race, sex, marital status, religion or social status of the employee while section 108 (2) gives remedies available to people who have been discriminated against. In addition, Persons with Disabilities are protected under CAP 65 section 19(1) which prohibits discrimination of any kind against a person with disabilities. The Enactment of the Gender Based Violence (GBV) Act has further strengthened laws prohibiting discrimination based on sex. Further, the Penal Code (CAP 87) has some sections addressing GBV and gives room for the prosecution of those causing physical injury (which can be interpreted as torture). With regard to humane treatment of persons in police cells, the government in



1999 enacted (Act No 14) which amended the Zambia Police Act to introduce Custody Officers at all police stations to monitor the treatment of suspects.

However, there is no complete guarantee to the enjoyment of these rights as they are subject to restrictions in some situations such as the state of emergency, when a contagious epidemic breaks out, etc. These limitations are in most cases legally accepted due the pieces of legislation (subsidiary laws) that prohibit or restrict them. There are numerous statutes which severely curtail the enjoyment of CPRs. Among the various laws are: - Societies Act that circumscribe freedom of Association; Public Order Act that restricts freedom of Assembly; Criminal Procedure Code (CPC) and Narcotic Drug and Psychotropic Substances Act; Penal Code that restricts freedom of opinion/ expression by having clauses such as 'defamation of foreign princes', 'defamation of the president', 'possession of seditious material' and empowering the president to ban publications; the State Security Act that severely limits freedom of expression, etc. The penal Code CAP 87 section 57 and 69 protects the President's reputation and the dignity of the office while section 71 makes it an offence for any person to defame the president. Section 57 also gives wide discretionary powers to prosecute seditious intention. The penal code is left without any definition or defence on offences relation to the freedom of expression providing an avenue for abuse. This presents a serious threat to the freedom of expression for media, civil society and the citizens.

### ***Policy and administrative measures***

In the promotion and protection of human rights in Zambia, various bodies or institutions take up critical roles such as supervising and monitoring the compliance of the state and nationals with their human rights obligations. Their mandates include the power to receive, investigate, and adjudicate on alleged violations of human rights. These institutions provide effective institutional measures that ensure that citizens and other residents enjoy their rights and freedoms without undue interference from anyone. As such, the government in Zambia has made deliberate efforts to establish various institutions and further provided an environment for NGOs to exist in the country and get involved in the promotion and protection of human rights. Among the institutions are the Human Rights Commission, Commission for Investigations, Electoral Commission, Government Ministries, Courts, the Zambia Police, Police Public Complaints Authority (PPCA) and numerous NGOs.

The government has been reinforcing the crusade of human rights through the formulation of different policies that are normally targeted at improving the human rights situation in relation to the instrument. Notable among the policies are; - National Gender Policy (2000), National Child Policy, Employment and Labour Market Policy (2006), etc.





## Appendix 2: National Gender Crime Statistics, 2014

Indicator	Number
The number of defendants released from pre-and trial detentions in exchange for bond or due to non-filing of charges ( 20 districts with 5,355 cases from Lusaka district)	6,333
The number of people released from administrative detentions ( 20 districts with 543 cases from Lusaka district)	1,022
The number of people detained on the basis of a court order or due to action by executive authorities (20 districts)	69
The number of law enforcement officials formally investigated for physical and non-physical abuse or crime, including arbitrary arrest and detention(based on criminal or administrative grounds) (21 districts)	14
The number of people arrested, adjudicated, convicted or served sentence for violent crime( including homicide, rape, assault) ( 21 districts with 2434 cases from Lusaka district)	4,571

### Appendix 3: Overview of the Various ASHRR Produced and Themes

Title/Focus of ASHRR	Year of Production	Type
Human Rights in the Fifth National Development Plan	2007	Thematic
Constitutionalism and Human Rights	2008	Thematic
Right to Adequate Housing	2009	Thematic
Human Rights & the Environment	2010	Thematic
ASHRR not produced	2011 and 2012	
ASHRR Baseline Survey	2013	Multi-thematic
ASHRR Survey	2014	Multi-thematic (with analysis of implementation of UPR recommendations)



## Appendix 4: Summary of District Findings - Education

#	Indicator description	Aggregate (total)	Average ( per district)
1	Number of children who were covered under public nutrition supplement programmes ( 11 districts)	366,947	33,359
2	Number of teaching staff ( Primary & Secondary) employed by the government in the province ( 24 districts)	32,933	1,372
	Primary teachers ( G1-7)	25,013	1,042
	Secondary teachers(G8-12)	7,920	330
3	Number of teachers trained against the use of physical violence against children in 2014= 3,099 from 3 districts; 14 districts=0 trained; with no response from 8 districts; 1 district = don't know response	3,099	1,033
4	Net primary enrolment ratio, including children with disabilities ( 17 districts)	596,228	35,072
5	Net primary enrolment ratio, for boys including children with disabilities (22 districts )	567,000	25,773
6	Net primary enrolment ratio, for girls including children with disabilities( 22 districts )	748,778	34,035
7	Net primary enrolment ratio, among children with disabilities ( 17 districts)	3,965	233
8	Number of pupils (grade1-7) covered under publicly supported financial programmes or incentives for primary education ( 19 districts )	49,254	2,592
9	Number of pupils (grade1-7) in the district covered under publicly supported financial programmes or incentives for primary education (18 districts)	655,034	36,390
10	Number of primary education teachers ( 24 districts )	54,099	2,254
11	Total number of primary education teachers fully qualified and trained ( 25 districts )	29,380	1,175
12	Total number of secondary education teachers fully qualified and trained (24 districts)	9,201	383

13	Grade seven pass rates for boys 2013/2014 (18 districts)	830	46
14	Grade seven pass rates for girls 2013/2014 (18 districts)	959	53
15	Number of pupils (Boys) receiving direct public support or bursaries for secondary education (20 districts)	6,107	305
16	Number of pupils (Girls) receiving direct public support or bursaries for secondary education (20 districts)	6,920	346
17	Number of girls enrolled in secondary school (Grades 8-12) (25 districts)	115,477	4,619
18	Number of boys enrolled in secondary school (Grades 8-12) (25 districts)	130,633	5,225
19	Average salary of school teachers (23 districts)	88,529	3,849
20	<b>Ratio of pupils to teaching staff in primary, secondary, community and private education in 2014</b>		
	Primary education (25 districts)	1,267	51
	Secondary education (25 districts)	745	30
	Community education (23 districts)	2,097	91
	Private education (19 districts)	358	19
21	Number of new Government primary education facilities built : (0 in 10 districts; 64 in 15 districts)	64	4
22	Number of new Government secondary education facilities built : (0 in 16 districts; 16 in 8 districts)	16	2
23	Number of new Government higher (colleges) education facilities built : (0 in 18 districts; 2 in 2 districts- 1 in each district)	2	1
24	Number of students enrolled under distance education programmes (19 districts)	3,794	200



25	Number of students enrolled under continuing education programmes (13 districts )	2,653	204
26	Number of women teachers with professional qualification (21 districts)	14,010	667
27	Number of women teachers who had university qualification ( 24 districts )	1,225	51
28	Change in secondary enrolment ratios in 2014 from the ratios in 2013 ( 20 districts)	18,114	906
29	Change in tertiary enrolment ratios in 2014 from the ratios in 2013 (8 districts)	393	49

**Appendix 5: Key Health indicators (2014)**

#	Description of the indicator	Aggregates	Average
1	Number of births attended to by a skilled health worker ( 18 districts)	99,411	5,523
2	Number of one year olds immunized against preventable diseases (16 districts )	140,780	8,799
3	Infant mortality rates ( 12 districts )	520	43
4	Under five mortality rates ( 13 districts )	680	52
5	Prevalence rate for HIV and AIDS (15 districts)	6,990	466
6	Prevalence rate for malaria (15 districts)	5,824	388
7	Prevalence rate for tuberculosis ( 10 districts)	968	97
9	Death rates for malaria (14 districts )	253	18
10	Death rates for tuberculosis (12 districts )	281	23
11	Number of people from the targeted population covered under public nutrition supplement programs ( 5 districts)	280,597	56,119
12	Prevalence rates of underweight and stunting children under five years of age ( 18 districts)	6,858	381
13	Prevalence rates of stunting children under five years of age (9 districts)	197	22
14	Percentage of the District Population below minimum level of dietary energy consumption ( 4 districts)	15	3.75%
15	Percentage of undernourished population (9 districts)	34%	3.78%
16	Net Official Development assistance (donor aid ) provided for the promotion of health sector received or provided ( 4 districts- with no response from 15 district)	2,025,571	506,393
17	Antenatal care coverage level (17 districts)	85,558	5,033
18	Maternal Mortality Ratio ( 18 districts)	1,411	78

19	Number of infants exclusively breastfed in their first 6 months of life ( 9 districts )	27,894	3,099
20	Number of children covered under public nutrition supplement programs (7 district	214,592	30,656
21	Percentage of the district population with access to improved sanitation (13 districts)	729	56
22	Number of children (above 1 year) immunized against vaccine preventable diseases( 14 districts )	49,088	3,506
23	Death rate associated with communicable diseases (11 districts )	246	22
24	Death rate associated with non-communicable diseases ( 10 districts)	305	31
25	Amount of government expenditure on primary health care ( 5 districts: Kabwe (2214050);Mumbwa (1908000);Solwezi(60480) ; Luwingu (421267); Senanga (1146623) No response from 11 districts; plus don't know responses from 3 districts.	5,750,420	1,150,084
26	Amount of government expenditure on medicines in 2 districts in 2014:Don't know 3 districts; No response 14;Kabwe (78,931);Mumbwa (6,934,000)	7,012,931	3,506,466
27	Number of healthcare professionals trained in handling domestic violence issues ( 5 districts): No response from 11 districts; Don't know 3;	7	1



## Appendix 6: Work Plan for Actualising Recommendations

Recommendation	Specific Steps to be taken	Responsible	Time frame	Resources
Government should ratify the second optional ICCPR protocol that prohibits the death penalty	Prepare a position paper that should then be shared with the Ministry of Justice on the issue	HRC		
The process of professional recruitment, training and retaining of police and prison officers should be done (alongside the process of upgrading/ rehabilitation and modernization of prisons) as part of the wider prisons and police reforms in order to equip them with the capacities and skills that will help in rehabilitating detainees. Similarly, laws that protect citizens from arbitrary killings through brutality of law enforcement officers should be aggressively enforced	Revamp the entire recruitment process for officers by including external people. Use prison labour to improve prison infrastructure and income generating activities	Zambia Prisons Service and Zambia Police		

<p>Strict adherence to the 24 hour period within which a person has to be charged (or else released) should be the norm. At the same time, the police should be providing police with the necessary resources required for them to conduct thorough investigations before they effect an arrest</p>	<p>Conduct awareness workshops for the police</p> <p>Provide more financial resources and equipment for investigations</p>	<p>Ministries of Justice and Home Affairs</p>		
<p>All mandate holders should intensify prison inspections and discussions with relevant authorities on how to address the existing challenges</p>	<p>Prepare and submit to Ministry of Home Affairs reports of prison inspections. Also publicly launch the inspection reports</p>	<p>HRC</p>		
<p>Improve access to information for detainees about how they can access bail or bond. At the same time, the Prison Service must develop gender responsive reforms aimed at improving planning and delivery of services in prisons in a manner that is responsive to the different needs of men, women and children</p>	<p>Mount billboards and posters at police stations explaining guidelines for bail/bond</p> <p>HRC should have an input in the design of new prisons and police cells</p>	<p>HRC</p>		

The provisions of the Handbook on Juvenile Justice should be implemented. This includes building more reformatory schools to expedite transfers	Distribute copies of the Handbook on Juvenile Justice to all law enforcement agencies (including courts and prisons)	HRC		
The police should adhere to any court orders and where this is not done; there should be clear penalties to the erring officers. In the same vein, the regulating police officers should observe the highest standards of professionalism, fairness and non-partisan in the application of the POA.	<p>Distribute copies of the HRC and SACCORD study on the application of the POA</p> <p>Hold meetings with the police to explore how they can be supported</p>	HRC		
There is need not only to domesticate fully the international human rights instruments that have been ratified but also to ensure that the application of existing laws (such as the POA) are done in an objective and consistent manner. In addition, new laws such as Access to Information should quickly be enacted	<p>Support calls for access to information law</p> <p>Prepare a position paper that should then be shared with the Ministry of Justice on the issue</p>	HRC		

Government, through its various governance institutions needs to address the clash between cultural norms and practices with human rights requirements in order to guarantee that rights (especially of women and children) are not violated in the guise of culture and tradition	Target chiefs and other traditional establishments for awareness workshops on the clash between culture and human rights	HRC		
The government (and all other actors) needs to prioritise the progressive realization of ESCR	Use the ASHRR findings to highlight progress or lack thereof in ESCR	HRC and media		
Human rights organizations and civil society need to be fully and consistently funded in order to significantly address existing gaps in the promotion of ESCR.	Advocate for increased funding of human rights defenders by making submissions to 2016 budget cycle	HRC		
Addressing the high poverty levels, especially among rural communities	<ul style="list-style-type: none"> <li>• Improve food storage</li> <li>• Improve social cash transfer system</li> </ul>	FRA Ministry of Community Development		

Increase access to higher education by offering bursaries and student loans, upgrading of community school infrastructure, employing more teachers for government schools and providing improved conditions of service	Increased budgetary allocations and greater accountability	Ministry of Finance		
Minimise the increases in food prices in order to ensure food security and better nutritional outcomes	Better storage of maize bumper harvests	FRA		
Improve access to credit/mortgages for building houses affordable for all categories of people	Reformulate the role of NHA and Zambia Building Society to take up a pro poor approach	Ministry of Local Government and Housing and Ministry of Finance		



## Appendix 7: Total Number of Questionnaire Administered

### Quantitative Questionnaires

CATEGORY	DISTRICT	PROVINCIAL	NATIONAL	TOTAL
Judiciary	27	5	0	32
Media	18	2	1	21
MESVTEE	26	6	1	33
MOH	19	5	1	25
Police Service	23	7	1	31
Prison Service	22	9	1	32
Legal Aid Board	-	10	1	11
Human Rights Commission	-	3	1	4
<b>Total</b>	<b>135</b>	<b>47</b>	<b>7</b>	<b>189</b>

### Qualitative Questionnaires

CATEGORY	DISTRICT	PROVINCIAL	NATIONAL	TOTAL
Land Rights	28	0	-	28
Access to Justice	22	6	-	28
Vulnerable Groups	26	7	-	33
ESCR& CPR	15	7	-	22
<b>Total</b>	<b>91</b>	<b>20</b>	<b>-</b>	<b>111</b>

## Appendix 8: National Gender Machinery and Process

10.1: National gender machinery and processes		
Component	Yes/No	Comments
National Gender Policy	Yes	This is currently being reviewed to identify the gender gaps. This is important in order to re-align the policy to national and regional developments such as the 2008 SADC Protocol on Gender and Development.
National Gender Policy aligned to the SADC Protocol	No	The review of the National Gender Policy may lead to re-alignment.
Gender Machinery open to reviewing National Gender Policy and aligning to SADC Protocol	Yes	The National Gender Policy is currently undergoing review to incorporate elements from the Protocol.
Gender Ministry	Yes	A new Ministry of Gender and Child Development was set up in 2012 and has been given a full Cabinet portfolio. GIDD is now under the Ministry of Gender and Child Development. The technical committee for drafting the National Constitution has recommended that Zambia should have a National Gender Commission. There should be a concrete timeframe for the establishment of the Commission.
Gender focal points in all line departments	Yes	Sometimes these are referred to as Women's Desks. These require capacity building and adequate resources to engender the line ministries. Gender Sensitisation workshops of the key line ministries are being undertaken. The line ministries should have gender self-assessments undertaken. Training in gender responsive budgeting should target the Ministry of Finance as well as local government.
Gender structure in parliament	Yes	Zambia National Parliamentary Caucus but it is inactive. It is recommended that a Women In Politics (WIP) network/caucus should be revived.
Active collaboration with civil society	Yes	The Minister and Permanent Secretary have enhanced collaborative efforts between Ministry of Gender and Child Development and civil society organisations. Also collaborative efforts have increased between NGOCC and other stakeholders. There is evidence of collaboration on the implementation of the Anti-Gender Based Violence Act of (2010), advocacy on the process of engendering the 1st Republican Draft Constitution, and the process has led to the ratification of the Protocol as well as a draft costed gender action plan aligned to the Protocol.
Plan for domestication/ popularisation of the Protocol?	Yes	The Ministry of Gender and Child Development has completed the consultations with the line ministries who have all supported the ratification of the Protocol. CEDAW mapping has been completed by the Ministry of Gender and Child Development. Ministry of Justice, mandated to handle the ratification and domestication of the international treaties and conventions, is collaborating with the Ministry of Gender and Child Development. ZNWL launched the campaign in 2009; this requires intensification with increased collaboration with all stakeholders including government, donors, civil society, the media, private sector and FBOs.
National action plans with measurable time frames	Yes	The Sixth National Development Plan and the Ministry of Gender and Child Development Strategic Plans 2011-2015. Gender Based Violence National Guidelines will be the basis for multi-sector and multi-stakeholder participation and implementation programme. Various stakeholders' consultative workshops have been held with a view to developing concrete collaborative plans with for example the three church mother bodies (CCZ, EFZ, and ZEC) and Traditional Leaders. Advocacy, communication, mobilisation committees on engendering the Constitution formed and operational in first half of 2012. Each of the committees had a concrete activity plan and budget to the end of 2012. By first quarter of 2013, the MGCD had an elaborate plan which was effectively rolled out and led to active participation of women in the constitution making process and if various submitted provisions will be taken on board by the Technical Committee on Drafting of the National Constitution, Zambia shall have the most progressive national constitution in the region.
In-country Gender Responsive Budgeting processes	Yes	UN Women, ZARD and the Ministry of Gender are collaborating in doing assessments of ministries' rate of implementing gender responsive budgeting. Pilot rapid assessments have been done for the Ministries of Agriculture and Health. Working with SADC GU, Gender Links, local Alliance network, development partners and other stakeholders the Ministry of Gender developed a costed gender action plan which provides a roadmap for gender budgeting processes for line ministries. The Draft Plan should be launched and its implementation accelerated.
Upcoming processes/entry points	Yes	Developing a new constitution and costing the SADC Gender Protocol currently underway.

Source: Gender Links 2013.



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## About Human Rights Commission

The Human Rights Commission is established under Article 125 of the Constitution of Zambia as an autonomous institution.

The functions, composition and powers of the Commission are set out in the Human Rights Commission Act, Chapter 48 of the Laws of Zambia.

### What we do:

- Investigate any human rights abuses
- Investigate any maladministration of justice
- Propose effective measures to prevent human rights abuse
- Visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the person held in such places and make recommendations to redress existing problems.
- Establish a continuing programme of research, education, information and the rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights.
- Do all such things as are incidental or conducive to the attainment of the functions of the Commission.

For information about our current work please visit our website at [www.hrc.org.zm](http://www.hrc.org.zm)

This report was written by The Zambia Human Rights Commission

