



# STATE OF HUMAN RIGHTS IN ZAMBIA 2007



**Human Rights in the  
Fifth National Development Plan**

A Human Rights Commission  
project funded by



United Nations Development Programme  
(UNDP)

For information contact

Human Rights Commission  
Human Rights House  
Independence Avenue  
P.O. Box 33812  
Lusaka, ZAMBIA

Tel: 251327/57

Fax 251342

eMail: [hrc@zamnet.zm](mailto:hrc@zamnet.zm)

url: <http://www.hrc.org.zm>



**HUMAN RIGHTS COMMISSION**

**STATE OF HUMAN RIGHTS IN ZAMBIA 2007**

Human Rights in the  
Fifth National Development Plan  
with special reference to  
Education and Skills Development  
Health  
Water and Sanitation  
Public Safety and Order  
Governance  
Gender and Development  
and  
Youth and Child Development

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## Foreword

Human rights monitoring and reporting has long been one of the tools identified for the enhancement of the protection and promotion of human rights worldwide. We are delighted to share with you the first **State of Human Rights in Zambia 2007**. Its purpose is to advocate for policy and legislative reforms in Zambia; monitor and report human rights in Zambia; and, assess, monitor and evaluate the performance of government in the protection and promotion of human rights in Zambia.

The State of Human Rights Report in Zambia 2007 stands for the Human Rights Commission's commitment and continuous attempt of making human rights a part people's everyday life and culture. This first report considers the State of Human Rights in Zambia with specific reference to human rights in the Fifth National Development Plan (FNDP). The Report highlights and discusses the basic characteristics of human rights, looks at the relationship between human rights and development, the prevailing state in protecting and respecting human rights in Zambia.

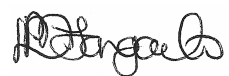
In particular it:

- (a) Examines and analyses Government's strides in terms of a rights-based development approach;
- (b) Provides information to the general population on what human rights are, their importance and the human rights situation pertaining in the country; and,
- (c) Acts as a tool to inform government action in the area of human rights and the Commission's programmes in the area of human rights education, other protective and preventive activities and in the areas of research and advocacy.

Human rights are interrelated, indivisible and interdependent. The rights selected in this issue therefore do not imply their being more important than other rights. They are merely the first to be considered.

The Human Rights Commission thanks the United Nations Development Programme (UNDP) for the programme support that resulted in the production of this first Report, and indeed all other stakeholders who took time to review the Report.

We do hope that this and future Reports will contribute to increasing the importance and visibility of human rights issues and ultimately impact on all the people in Zambia.



Pixie K. Yangailo  
Chairperson  
Human Rights Commission

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## Acronyms

|        |  |
|--------|--|
| ACC    | Anti Corruption Commission   |
| AU     | African Union  |
| CEDAW  | Convention on the Elimination of All Forms of<br>Discrimination Against Women        |
| CSO    | Central Statistics Office  |
| DPP    | Director of Public Prosecutions  |
| ECZ    | Electoral Commission of Zambia   |
| FNDP   | The Fifth National Development Plan  |
| GIDD   | Gender in Development Division   |
| ICCPR  | International Covenant on Civil and Political Rights                                 |
| ICERD  | International Convention on the Elimination of All Forms<br>of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural<br>Rights                    |
| LRF    | Legal Resources Foundation   |
| NGOs   | Non Governmental Organisations   |
| SADC   | Southern Africa Development Community  |
| UN     | United Nations   |

# PART I

## INTRODUCTION

### Key Points

- Importance of human rights reporting
- Definition of human rights
- Importance of human rights
- Laws for human rights protection
- Obligations of the government towards the population

### 1.1 The State of Human Rights Report

Monitoring and reporting of human rights in a country is important. This is because monitoring and reporting of human rights provides the population and government information on the country's performance with respect to good governance, respect for rule of law, and adequacy of socio-economic development programmes and policies that are being pursued by the government.

The State of Human Rights Report in Zambia 2007 aims to provide the people of Zambia and its government two viewpoints of human rights.

The first viewpoint aims to communicate basic information on what human rights are and why human rights are important. This viewpoint forms part of this introductory chapter. It is hoped that by the end of the section, the reader will have acquired basic knowledge of what human rights are and their importance. To which end, it is also hoped that the reader will have been equipped with an understanding that human rights do

require that the people hold their government accountable when attempts to meet certain socio-economic and political obligations are not satisfactory.

The second viewpoint aims to communicate information on the relationship between human rights and development. In this viewpoint, the country's Fifth National Development Plan (FNDP) is looked at so as to establish which human rights are secured and protected within the country's development planning context.

In addition, the human rights and development viewpoint also looks at how the identified human rights are planned to be enhanced, and their present status. As shall be noticed later, only selected development sectors in the Fifth National Development Plan (FNDP) have been used for this purpose.

Supporting legal and institutional frameworks and social context for human rights protection and promotion are also discussed within the human rights and development viewpoint.

Inherently, this part of the State of Human Rights Report seeks to provide indicative milestones of future monitoring of human rights in the development process in Zambia. It is also hoped that this can act as a tool the people can use in assessing government's commitment to a rights-based development process. A rights-based development process is a development process that respects the freedoms and dignity of the individual and or groups of individuals within its population.

Human rights observances in Zambia in 2007 are incorporated through provision of some actual recorded cases of human rights violations, redress and in some cases constraints faced in securing and protecting particular rights. Social mobilisation strategies and challenges to human rights protection and promotion are also discussed.

## 1.2 What Are Human Rights?

Human Rights are universal undertakings protecting individuals and groups of individuals against actions by their government or groups of individuals which interfere with fundamental freedoms and human dignity<sup>1</sup>. Our ideas of human rights

come from the Universal Declaration of Human Rights. The Universal Declaration of Human Rights defines human rights that countries should respect and protect.

Human rights are assurances that **without argument** ensures that individuals or groups of individuals can, by virtue of being human, freely enjoy fundamental freedoms and that they will be treated with dignity.

In short, human rights are the basic rights and freedoms to which all individual humans or groups are entitled. This means that every human is qualified to enjoy the rights simply because they are human. They are not earned and cannot be denied on the basis of race, religion, ethnicity or gender.

Human rights are in most cases protected and promoted by being written down in the laws of a country. These are called legal rights and are protected by the rule of law. In the laws of Zambia, basic human rights are written in the Constitution.

Examples of human rights, as shall be shown in this Report, are right to life, right to health, and freedom from torture or inhuman treatment.

### Human Rights Defined

Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity.

Human rights are **universal**

– they are the same for everyone, everywhere.

Human rights are **inalienable**

– they can neither be taken away, nor given up.

And human rights are **indivisible**

– there is no hierarchy among rights, and no right can be suppressed in order to promote another right.

Human rights seek, to for example, secure and ensure that an individual or group of individuals:

- are protected from crimes such as



murder, massacre, torture, and rape;

- are protected against failings of the legal system such as imprisonment without trial, secret trials, and excessive punishments;
- have freedom of belief, expression, association, assembly, and movement;
- be free to participate in politics through actions such as communicating, assembling, protesting, voting, and competing for public office;
- have right to equal citizenship, equality before the law, and non-discrimination; and,
- that education is provided to all children and there is protection against disease, severe poverty and starvation or any life threatening situation.

### 1.3 Why Are Human Rights Important?

Human rights are important to the people and its government simply because human rights represent entitlements of the individual or groups of individuals with respect to the government. That is, human rights define what the people should expect **the government to do for them**, and **what it should not do**.

The general understanding is that a government has the obligation to provide for its population. This is because a government's legitimacy comes from the population. Human rights also define the responsibilities of

the individual, groups of individuals and the government.

Human rights are protected by internationally agreed standards that ensure the fundamental freedoms and dignity of individuals and communities. Human rights and their protection, therefore, are crucial to political, economic, social and cultural stability. They are also important to the socio-political enhancement of individuals or groups of individuals, especially with respect to political participation.

The fulfilment of human rights provides individuals an environment where their full potential as humans can be achieved. The respect of human rights also provides individuals an environment where individuals can have influence on their own governance and development process.

To further, understand the importance of human rights, we also have to note that there are different categories of human rights. Mostly, human rights are named as either civil and political rights, economic, social and cultural rights or those that ensure right to peace, right to clean environment and right to development.

For practical purposes, human rights are generally categorised into two groups. These are *civil and political rights*, and *economic, social and cultural rights*.

*Civil and political rights* require the government **not to do something against its people**. That is, **for instance**

the government **should not, kill members of its population or individuals**; or the government **should not prevent individuals or groups of individuals from enjoying their right to free speech and assembly**.

*Economic, social and cultural rights*, on the other hand, require the government **to do something for its people**, like to provide clean water or acceptable standards of health. Some civil and political rights, however, do also require the government to do something for its people. For instance all people should have equal access to the administration of justice.

These groups of rights require a government to respect, protect and fulfil individual rights and freedoms, as explained below.

**(a) THE GOVERNMENT SHOULD RESPECT AN INDIVIDUAL'S OR GROUPS OF INDIVIDUALS' HUMAN RIGHTS AND FREEDOMS**

Respecting rights and freedoms means that a government should respect individual rights and freedoms by **NOT DOING SOMETHING** that interferes directly or indirectly with the enjoyment of the rights and freedoms.

**(b) THE GOVERNMENT SHOULD PROTECT AN INDIVIDUAL'S OR GROUPS OF INDIVIDUALS' HUMAN RIGHTS AND FREEDOMS**

Protect means that a government should prevent third parties such as government agents like Police from interfering in any way with the enjoyment of the rights and freedoms. Protection of human rights requires that the government, for instance, protects the right of "every citizen" to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, or to protect an individual or group of individuals from torture and other cruel, inhuman treatment.

**(c) THE GOVERNMENT SHOULD FULFIL AN INDIVIDUAL'S OR GROUPS OF INDIVIDUALS' HUMAN RIGHTS AND FREEDOMS**

Fulfil requires that a government puts in place the essential measures to achieve the full realisation of the rights. For instance, economic, social and cultural and cultural rights, require that the government **DOES SOMETHING** to provide education for all, improves health care or provide social

security and social insurance.

In summary, the importance of human rights is that:

- (a) Human rights specify the behaviour the government should have towards the population;
- (b) Promotion and protection of human rights ensures that the government provides individuals an environment that allows them to fulfil their potential and aspirations as humans. This is because the promotion and protection of human rights ensures that the government puts in place efforts to protect the population against anything that challenges people's life, health, economic well-being, social stability, political stability and participation; and,
- (c) Human rights are instruments by which a government protects its vulnerable population from poverty, hunger, illiteracy, disease and other vices that threaten the individual's enjoyment of their rights.

Therefore, human rights are not simply basic entitlements by virtue of being human. Human rights are a contract between the people and the State with respect to, for instance, provision of security of life, respect for human dignity, provision of sustainable livelihoods, and allowing for the exercise of the right to political choice, and freedom of expression. Human rights are a tool the people can use to hold their government accountable for its actions.

Lastly, it must also be noted that human rights are interconnected. That is a single right can not be wholly protected and fulfilled without enhancing another related right. For instance, the right to life can not be protected without protecting and fulfilling the right to health.

#### **1.4. The Law, International Conventions and Human Rights**

The laws for respecting, protecting and fulfilling human rights in Zambia exists in the Laws of Zambia and international conventions (that is agreements) that Zambia has agreed to through institutions like the United Nations (UN), African Union (AU) or the Southern Africa Development Community (SADC).

In Zambia, human rights in international conventions are not necessarily automatically protected by the law, even though the government has to ensure that they are protected. The responsibilities of the government under international human rights conventions can only be locally effective if they are incorporated in the Laws of Zambia.

However, this does not mean that the government is not supposed to ensure that human rights provisions in international conventions are respected, protected and fulfilled. Simply, by agreeing to the international conventions, the government of Zambia still has a responsibility to ensure that rights in international conventions are respected, protected and fulfilled.

The Constitution of Zambia is the supreme law of the land. The preamble of the Constitution of Zambia pledges to ensure the respect of the rights and dignity of the human family, uphold the laws of the State and conduct the affairs of the State in such a manner as to preserve, develop, and utilise its resources for this generation and for future generations.

Civil, political and cultural rights are defined in Part III of the Constitution. This part provides the fundamental rights and freedoms of an individual. These are:

- right to life;
- right to personal liberty;
- protection from slavery and forced labour;
- protection from inhuman treatment;
- protection from deprivation of property;
- protection for privacy of home and other property;
- provisions to secure protection of the law;
- freedom of conscience;
- freedom of expression;
- freedom of assembly and association;
- freedom of movement;
- protection from discrimination on the grounds of race, etc;
- protection of young persons from exploitation; and
- derogation from fundamental rights and detention.

Appendix I shows the fundamental rights and freedoms as written down in Part III of the Constitution of Zambia.

We noted in section 1.3 that human rights that ensure that the government does something for the population, like providing housing, education, and health services are called *economic, social and cultural rights*. However, we must note that the Constitution of Zambia does not directly require that the government respects, protects and fulfils economic, social and cultural rights. But, since human rights are interrelated and interdependent, the Constitution protects a number of rights that indirectly pertain to the various economic, social and cultural rights. The right to life, for instance can not be fulfilled without the right to health, which itself is not provided for in Part III of the Constitution.

In addition, Part IX of the constitution, the Directive Principles of State Policy, ensure that economic social and cultural rights are protected and fulfilled in the development and implementation of national policies and, the making and application of any laws.

It must be noted, however, that full use of these principles is dependent on availability of resources or the unavoidable demands of the general welfare of the public as may be determined by the government.

Other laws relating to socio-economic rights in Zambia are the Employment Act, and the Lands Act. Other laws relate more specifically to women and

children such as the Adoption Act, the Intestate Succession Act, the Wills and Administration of Testate Estates Act, the Marriage Act, the Affiliation and Maintenance of Children Act, the Persons with Disabilities Act, the Education Act and other laws generally relating to the regulation of institutions of higher learning such as the University of Zambia Act.

On international conventions, the main international convention that deals with civil and political rights is the United Nations International Covenant on Civil and Political Rights (ICCPR).

Zambia agreed to the United Nations International Covenant on Civil and Political Rights (ICCPR) in 1984. This means that Zambia has the responsibility to abide by its provisions. The provisions of the ICCPR include, the 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 found guilty, equality before the law, protection of aliens against arbitrary expulsion, procedural guarantees in civil and criminal matters, and the collective right to self-determination.

Other international conventions that call for respect, protection and fulfilment of civil and political rights and which Zambia has agreed to are:

- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT),

- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- the Convention on the Rights of the Child (CRC),
- the Convention on the Elimination of All Forms of Racial Discrimination (GERD).

At the regional level, Zambia has agreed to the African Charter on Human and Peoples' Rights (popularly known as the 'Banjul Charter'). The African Charter contains both civil and political and socio-economic rights.

International conventions on economic, social and cultural rights that Zambia has agreed to are the International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

Agreeing to, for instance, the International Covenant on Economic Social and Cultural Rights (ICESCR) means that the government should make an effort to ensure that more individuals enjoy the rights even when resources are not enough. That is, the government should make sure that the available resources are effectively and equitably utilised to at least protect and fulfil the rights.

Protecting social, economic and cultural rights means that:

- The government should not put in place laws, regulations that violate, infringe, or threaten



people's rights. For example a dam development that reduces an individual's access to water is an infringement on the individual's right to water. In such cases alternatives have to be provided to the individual so that he or she continues enjoying the right to water;

- The government should always put in place measures that ensure that more powerful groups or individuals in society (e.g., employers) do not violate an individual's rights; and,
- The government should take positive measures to ensure that individuals who do not currently enjoy access to these rights are granted essential levels of the rights. This would include direct provision of services or resources necessary to ensure a minimum core content of the rights. An example would be the provision of primary health care, basic education or housing.

Though, this section shows the responsibilities of the government with respect to the people, it must be understood that for a government to adequately respect, protect and fulfil human rights, it is also important that the people are aware of the rights. This is because it is important for the people to understand the provisions of how certain rights can be fulfilled in situations where a government does not have enough resources.

**In any case, even though the government under the laws of Zambia does not have direct legal responsibility to for example feed its people or provide employment, it has a legal responsibility, through for instance the right to life, to provide an environment that should make an individual or groups of individuals be able to lead sustainable livelihoods.**

In addition to provisions in the laws of Zambia and responsibilities arising from international human rights agreements the Government has agreed to, there are also institutions established to protect and promote human rights. These institutions protect and promote human rights either directly or indirectly.

The major institutions for the protection and promotion of human rights in Zambia are the Human Rights Commission, Police Public Complaints Authority, Judicial Complaints Authority, and Gender in Development Division. Appendix II provides notes on these institutions.

## PART II

# HUMAN RIGHTS AND DEVELOPMENT

### Key Points

- Relationship between human rights and development
- Human rights protection in the Fifth National Development Plan (FNDP)
- Status of human rights in the FNDP with emphasis on the sectors Education and Skills Development, Health, Water and Sanitation, Social Protection, Governance, Public Safety and Order, Gender and Development, and Youth and Child Development

### 2.1 Introduction

There is now international consensus that human rights and development are inter-related and self-reinforcing.

Development is simply a process that aims at promoting and protecting sustainable livelihoods for all individuals. Human rights, on the other hand, are socio-economic and political guarantees necessary to protect individuals from threats to human dignity.

Sustainable livelihoods can only be attained where human rights are protected and promoted. This is because respect for human rights demands that the government strives to do everything to ensure that its people are protected against threats to their life, health, economic well-being, social stability, and indeed political stability and participation.

This, therefore, means that a country's development process should secure and

enhance human rights, if its development strides are not only to be successful, but mostly if the development strides are to be meaningful to its people.

In short, the development process should be rights-based!

Human rights protection and promotion is integral to the country's governance and development efforts. This is because from a rights point of view a government is obligated to provide for its population. Inherently, therefore, a country's policy, legal, and institutional frameworks either directly or indirectly define human rights protection and promotion.

In 2006, Zambia's population was estimated at 11.7 million, with 65 percent of the population living in rural areas and 35 in urban areas<sup>2</sup>.

The livelihoods of the majority of the population are relatively unsustainable as 64 percent of the population is

relatively poor. Fifty-one (51) percent of these are extremely poor, to the extent that they can not afford the minimum basic food requirements. And whilst 14 percent of the poor persons can afford the minimum basic food requirements, they can not afford the basic non-food requirements<sup>3</sup>.

This high level of poverty can undermine enjoyment of human rights, as the poor are often marginalised from decision making, and can have limited access to public services like health and education. It is for this reason that the respect of human rights within the development process is critical, as human rights demand that it is the responsibility of a government to ensure that all individuals in the population are treated equal and have equal access to opportunities that can uplift their livelihoods.

The development vision of Zambia is defined in Vision 2030. Vision 2030 is a national long-term planning instrument, which defines the population's aspirations. Vision 2030 necessitates that the government reduces poverty, provides secure access to safe drinking water, ensures improved sanitation, and improves access to information in order to promote participation in socio-economic development.

The Fifth National Development Plan (FNDP) is a medium term planning instrument intended to focus government's policy and programming by developing mechanisms with adequate capacity to allocate resources to human development efficiently, in

the period 2006 to 2010. The process of developing the FNDP was participatory and there were consultative meetings even within districts.

The social objectives of the FNDP provide a framework for the respect, protection and fulfilling of human rights, in particular the right to life and socio and economic rights. This is because the social objectives reflect the governments endeavour to prioritise fiscal resources towards poverty and social welfare improvement, which are critical to attaining sustainable livelihoods.

The social sectors in the FNDP through which the Government of the Republic of Zambia endeavours to prioritise fiscal resources and henceforth protecting and fulfilling human rights for its population are principally education and skills development; health; arts and culture; water and sanitation; housing; disability and development; social protection; youth and development; and employment and labour. Human rights are also protected and fulfilled in the sectors of information services, public safety and order, governance, gender and development, and food nutrition.

Noteworthy on human rights and development processes in Zambia, is that the country also has human rights obligations under the Millenium Development Goals (MDGs). Millennium Development Goals are eight (8) goals that Zambia as a United Nations (UN) member state has agreed to strive to achieve by the year 2015. Appendix III outlines the goals.



The Millennium Development Goals (MDGs) provide the government with an opportunity to promote and protect the enjoyment of human rights in the country. Human rights promotion and protection is inherent in the MDGs mostly because they provide a framework for **doing something** about the situation of the poor, marginalised individuals or those socially excluded due to their vulnerabilities. In short MDGs contribute to the promotion and protection of economic and social rights.

## 2.2 Human Rights in Selected FNDP Sectors

Human rights and their status in the development process in Zambia are here considered by looking at some sectors in the Fifth National Development Plan (FNDP). This first issue of the State of Human Rights in Zambia Report only considers the FNDP sectors of Education and Skills Development, Health, Water and Sanitation, Public Safety and Order, Governance, Gender and Development, and Youth and Child Development.

### 2.2.1 Education and Skills Development

The primary human right this sector secures and enhances is the right to education. The sector however also enhances the interrelated rights of children, and gender equity.

#### WHAT IS THE MEANING OF THE RIGHT TO EDUCATION?

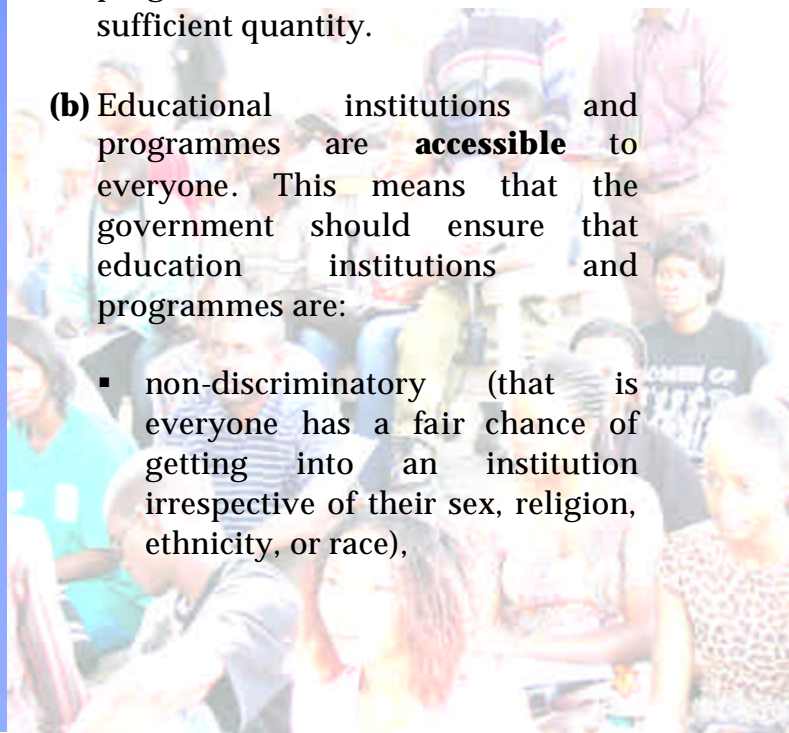
The right to education requires that individuals are provided opportunities to have an

education at all levels of the education systems. That is from early childhood education, primary/basic education to tertiary education. The right to education is important to an individual as it enables fulfilment or enjoyment of other rights like freedom of expression, and the right to participate in public affairs.

In practice, the right to education is an empowerment right. This is because having an education provides individuals the means to live sustainable livelihoods. Hence, education is internationally recognised to be the *primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.*

For the people to enjoy the right to education, the government requires to ensure that:

- (a) Functioning, well equipped and staffed, educational institutions and programmes are **available** in sufficient quantity.
- (b) Educational institutions and programmes are **accessible** to everyone. This means that the government should ensure that education institutions and programmes are:
  - non-discriminatory (that is everyone has a fair chance of getting into an institution irrespective of their sex, religion, ethnicity, or race),



- physically accessible (education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme), and
- economically accessible. That is education should be affordable to all.

(c) The form and substance of education, including curricula and teaching methods is **acceptable**. For example it should be relevant, culturally appropriate and of good quality to students and other interest parties.

(d) Education is flexible so it can **adapt** to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

#### HOW THE RIGHT TO EDUCATION IS BEING PROTECTED AND FULFILLED IN THE FNDP

In the FNDP, the government of Zambia secures the right to education by committing itself to:

- providing universal basic education to all children;
- making sure opportunities exist for all people to have equitable access to early childhood care, development and education, basic and high school, tertiary

education and/or technical and vocational training;

- providing appropriate and sufficient infrastructure facilities and services including rehabilitation and maintenance in order to improve equitable access to and quality of education.

#### STATUS OF THE RIGHT TO EDUCATION

The right to education still poses a challenge in Zambia. Equitable access to quality education is still a dream for most of the young population. There still are more males than females accessing higher education and training in Zambia.

The numbers of children attending school in the lower grades are still relatively moderate. According to the Central Statistics Office (CSO) 2006 Living Conditions Monitoring Survey, only 70 percent children of lower primary school going age (7 to 10 years) are attending school.

Basic school enrolments have grown steadily from 1,806,754 in 2000 to 2,519,141 in 2005 to 2,852,370 in 2006 with 48.8 percent being girls. In 2005, Ministry of Education (MoE) statistical data indicates that the Gross Enrolment Ratio (GER) at basic level was 105.55 percent with 102.74 percent being for girls. This signified a 17.5 percent change from the 89.8 percent recorded in 2005 (with 86.4 percent for girls).

Noteworthy is that enrolments at upper basic and high school are consistently low due to inadequate infrastructure in both urban and rural areas.

Completion rates at basic school level have increased from 11.6 in 2000 to 15.0 in 2006 for girls and 17.4 to 20.1 for boys. However, the gender gap in completion rates remains as high as 5.1.

At both universities, student enrolment increased from 11,005 in 2004 to 12,774 in 2006 representing a 16 percent increase. In terms of gender representation, there is still gender imbalance in favour of male students.

However, there has been an increase in the number of female students from 3,059 in 2004 to 4,179 in 2006 representing 18 percent compared to a 13 percent increase in male students.

Access to quality education is still poor. This is mostly due to poor infrastructure, inadequate teaching staff and teaching materials. In addition, pupil-teacher ratios are unsatisfactory and hence affect the quality of education. For instance, the combined pupil-teacher ratio was recorded at 48:1 in 2005<sup>4</sup>. While in 2006, the Ministry of Education showed that the national pupil-teacher ratio was 54.7:1 for grades 1 to 7, 32.3:1 for grades 8 to 9, and a national average of 51.3:1.

Lastly, physical accessibility to an acceptable education facility at secondary school level is relatively poor in rural communities. Only 22

percent of the children in rural Zambia can access a secondary school within less than 5 kilometre distance to their residence.

### 2.2.2 Health

The health sector of the FNDP strives to enhance and protect primarily the right to health, and right to life. Children's and women's rights are also enhanced in the health sector.

#### WHAT IS THE MEANING OF THE RIGHT TO HEALTH?

The right to health provides that *every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.*

Enjoyment of the right to health requires that the government makes an effort to ensure that health service provision in the country meets the following criteria:

- (a) That public health and health-care facilities, goods and services, as well as programmes, are **functional** and are **available** in sufficient quantity. That is, there should be, for instance, enough well motivated human resources;
- (b) That health care facilities, goods and services are **accessible** to everyone. This criterion necessitates that the government makes sure that:
  - Health service provision, facilities is non-discriminatory. That is, health facilities must be accessible to all, especially the

most vulnerable or marginalized sections of the population;

- Health care facilities are within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as, women, children, adolescents, elderly persons, and persons with disabilities and persons with HIV/AIDS;
  - Health care services and facilities are affordable for all. Poorer households should be protected from health expenses as this can undermine their ability to meet other livelihood expenses; and
  - Individuals have right to seek, receive and impart health information and ideas.
- (c) That health service provision is acceptable and respectful of medical ethics, and is culturally appropriate. That is, it is *respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned*; and
- (d) That health service provision and facilities is scientifically and medically appropriate, and of good quality. That is, there should be enough skilled health human resources, scientifically approved and unexpired drugs and hospital

equipment, safe and potable water, and adequate sanitation.

We also noted that the health sector of the FNDP also strives to enhance and protect primarily the right to life.

### WHAT IS THE MEANING OF THE RIGHT TO LIFE?

The right to life recognises that *every human has an essential right to live. That is, no human shall be arbitrarily deprived of his life.*

The meaning of the right to life is that the government should protect its population from arbitrary deprivation of life and threats to human life.

Thus, the government should endeavour to put in place measures aimed at reducing maternal mortality, infant mortality and increasing life expectancy, especially in adopting measures to eliminate malnutrition and epidemics. For example, the government should take strides to reduce death due to curable diseases like malaria.

### HOW THE RIGHTS TO HEALTH AND LIFE ARE BEING PROTECTED AND FULFILLED IN THE FNDP

In the FNDP, the rights to health and to life are intended to be protected and fulfilled through government's commitment to:

- provide efficient and cost-effective quality basic health care;
- reducing morbidity and mortality due to malaria in the general population;



- halting new infections and beginning to reverse the spread of HIV and STIs, tuberculosis through effective interventions;
- reducing maternal mortality;
- reducing mortality rate among children under the age of five years;
- contributing to the reduction in morbidity and mortality among the general population through improved provision of nutrition service;
- reducing the incidence of water borne and vector borne diseases; improving mental health services at all levels of care;
- providing equity of access to essential drugs and medical supplies; and,
- providing sustainable infrastructure, conducive for delivery of quality health services.

### **HIV AND AIDS**

The HIV and AIDS sector of the FNDP provides the government's commitment to enhance and protect primarily the interrelated rights to life and health, and children's rights.

Section 2.2.2 shows that protection of the right to life and health requires a government to protect its population from threats to human life like disease epidemics, and provide the highest attainable standard of health conducive to living a life in dignity.

The government's effort to protect these rights is further provided in HIV and AIDS sector of the FNDP. The government commits itself to ensuring

that the spread of HIV and AIDS is halted and strides are made to reverse its spread.

The government, therefore, in the FNDP undertakes to secure the right to life in the HIV and AIDS sector by endeavouring to *prevent the spread of HIV and provide appropriate care, support and treatment to HIV and AIDS infected persons and those affected by HIV and AIDS, TB, STIs and other opportunistic infections.*

The commitment to provision of care and support includes provision of universal access to anti-retroviral therapy; and, improved care and support services for orphans and vulnerable children and others affected and at risk.

### **STATUS OF THE RIGHT TO HEALTH AND RIGHT TO LIFE**

Maternal mortality still remains very high in Zambia. The country has a maternal mortality ratio of 729 per 100,000 in 2002<sup>5</sup>. Women's access to health care services is also low, as only less than 50 percent have access.

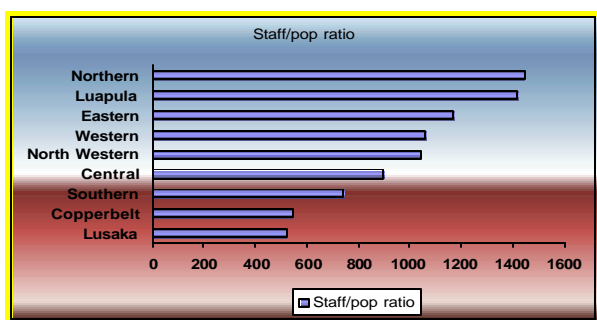
Further, there is relatively high child mortality rate especially in the rural areas where there are inadequate health personnel (nurses, doctors and midwives); poor access to health centres, due to long distances to health centres, no ambulance services and poor road network.

For instance the CSO 2006 Living Conditions Monitoring Survey notes that only about 54 percent of the rural population has access to a health

facility within less than 5 kilometre distance to their residence.

Human resources for health service provision are also scarce, thereby further undermining the right to health and the related right to life. For instance, currently in Zambia, there is one medical doctor for 17, 589 persons; one nurse for 1, 864 persons; and one mid wife for 4, 999<sup>6</sup>. The recommended ratios that can ensure enjoyment of the rights to health and right to life are one doctor for 4, 940, one nurse per 679, and one mid wife per 2, 029 persons.

The doctor per population ratios however vary from province to province as is shown in the graph below.



Source: Ministry of Health HRIS Database

It can be observed from the graph above that the provinces which have comparatively more urban centres have higher doctor per population than rural provinces like Northern and Luapula provinces.

Disease, as a threat to life, as a consequence of inadequate human resources (and in addition lack of adequate material and financial resources), has continued to increase. It is also acknowledged that the high

disease burden in Zambia is due to mostly the impact of the HIV and AIDS epidemic, and high poverty levels.

The 2006 Living Conditions Monitoring Survey shows that the major threats to the right to life in Zambia are still curable diseases like malaria/fever, diarrhoea and tuberculosis. For instance, the Survey observes that “*malaria/fever was reported as a cause of death in the household by 22 percent of households overall, 21 percent in rural and 24 percent in urban areas*”, and that “*the second most common cause of death was diarrhoea (12%)*”.

Further, despite high levels of HIV and AIDS infection, most Zambians living with HIV and AIDS do not still have access to life-prolonging antiretroviral therapy (ART). Only an estimated 24 percent of those in need of ARTs in 2006 received the treatment. In addition, only 25 percent of HIV positive mothers are currently receiving Anti-Retroviral (ARV) prevention. Children have particularly limited access to treatment facilities as such facilities are distant, especially in rural areas. It is also important to acknowledge that the main barriers to HIV and AIDS treatment are social stigma, lack of information and health costs especially in poor communities.

From the foregoing, it is clear that the status of the right to health in Zambia is far below that required for the people to fully enjoy the right and indeed the right to life.

### 2.3 Water and Sanitation

Water and good sanitation are critical to a population's well-being. Provision of safe water and good sanitation protects and fulfils mostly the right to life, the right to water, and the right to health.

#### WHAT IS THE MEANING OF THE RIGHT TO WATER?

The right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Safe water is important as it reduces the risk of water-related diseases.

Fulfilling the right to water means that the government should, at least:

- (a) Ensure that the population has access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- (b) Ensure that there is no discrimination in access to water and water facilities and services. Disadvantaged or marginalized groups access should be secured and enhanced;
- (c) Ensure that water, and water facilities and services, are affordable to all individuals in the population. There should be equity in water facilities and services. *Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households;*

- (d) Ensure that there is physical access to water facilities or services that provide sufficient, safe and regular water; that there are sufficient enough water outlets (like taps) to avoid long waiting times; and that the water outlets are at a reasonable distance from individual households;
- (e) Ensure that personal security is not threatened when having to physically access water;
- (f) Ensure equitable distribution of all available water facilities and services;
- (g) Adopt participatory and transparent processes in water strategy making and planning;
- (h) Take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation; and,
- (i) Adopt comprehensive and integrated strategies and programmes that ensure that there is sufficient and safe water for present and future generations.

In the FNDP Water and Sanitation sector, the government seeks to respect, protect and fulfil the rights to water, life and health by committing itself to promoting *sustainable water resources development and sanitation with a view to facilitating an equitable provision of adequate quantity and quality for all users at acceptable costs and ensuring security of supply under varying conditions.*

This is planned to be fulfilled through a variety of strategies that aim at, in part, providing adequate, safe, and cost-effective water supply and sanitation services, and also provision of universal access to safe, adequate and reliable water supply and sanitation services in rural areas.

### **STATUS OF THE RIGHT TO WATER**

The right to water is still not enjoyed by a significant population of Zambia. For instance, up to 2004 only 58 percent of the population had access to safe water supply. The right to water is mostly limited in rural areas as the majority lack access to safe water and adequate sanitation. Only about 43 percent of rural households have access to safe sources of water.

Further, provision of adequate and safe water supply has continually been undermined by the lack of adequate financial resources in the country's local authorities and occasional pollution from industries, especially on the Copperbelt.

#### **2.2.4 Public Safety and Order**

In the Public Safety and Order sector of the FNDP, the government undertakes to put in place measures that should result in protection and fulfilment of mostly the right to life, protection against arbitrary or unlawful deprivation of life, protection from torture and other cruel or inhuman treatment, right to liberty and security of person, freedom of movement, right to peaceful assembly, freedom to associate with others, right to a speedy trial, and equality before the law.

Appendix I provides more details of these rights.

In Public Safety and Order sector, the government endeavours to secure and enhance these rights through developing effective mechanisms for prevention of crime; increasing efficiency and effectiveness in investigation and prosecution in order to expedite the clearance of cases; and developing human resources for the efficient performance of public safety and order.

In considering the status of the rights related to this sector, this section, however, only considers human rights observances with respect to the right to life, protection against arbitrary or unlawful deprivation of life, protection from torture and other cruel or inhuman treatment, and protection from arbitrary arrest or detention.

It must be noted that the observances mentioned in this section are those brought to the attention of human rights organisations like the Human Rights Commission and NGOs like the Legal Resources Foundation.

### **STATUS OF THE RIGHT TO LIFE – THE DEATH PENALTY**

As noted in section 2.2., the right to life recognises that *every human has an essential right to live*. That is, *no human shall be arbitrarily deprived of his life*.

In the context of this FNDP sector of Public Safety and Order, the meaning of the right to life is that the government should protect its population from



arbitrary deprivation of life and threats to human life like torture.

In addition, the government should make efforts to prevent wars; acts of genocide and other acts of mass violence causing arbitrary loss of life; strengthen international peace and security; prevent arbitrary killing by State agents; and, limit the use of the death penalty.

Although, the right to life necessitates the government to protect its population from arbitrary deprivation of life and threats to human life, the death penalty is still applicable in Zambia especially when a person is found guilty of a most serious crime like murder.

Currently, there are 211 persons on death row in Zambia. However, the application of the death penalty has been suspended since the current government came in office in 2001. Hence, between 2006 and 2007, there have been 97 commutations of the death sentence.

#### **STATUS OF PROTECTION AGAINST ARBITRARY OR UNLAWFUL DEPRIVATION OF LIFE**

The protection against arbitrary or unlawful deprivation of life means that the government of Zambia has the responsibility to put in place measures that not only prevent and punish deprivation of life by criminal acts, but also prevent arbitrary killing by their own security forces or State agents like the police.

In addition, redress should be provided where a State agent arbitrarily or unlawfully deprives an individual of his or her life, and there should be strict control and limiting of circumstances in which a person may be deprived of his or her life by government authorities. However, in 2007 there were incidents of arbitrary killings by State agents, in particular the police.

#### **In March,**

two police officers from Riverside police station in Kitwe shot dead a 13-year-old girl in Kapoto compound, in their attempt to apprehend a group of boys that were allegedly selling drugs at the market. The incident resulted in residents rioting and destroying property worth millions of kwacha. The police officers involved have since been charged with murder.

[Source: LRF].

#### **In November,**

a police officer in Lusaka killed his 65 year-old father in law, and wounded his pregnant wife before attempting suicide by shooting himself. The officer was arrested after the incident. [Source: The Post Newspaper].

At Kabwata Police Station in Lusaka, Davies Sikapundwa was detained and died in the cells. [Source: Human Rights Commission].

**STATUS OF PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN TREATMENT - PRISON AND DETENTION CENTRE CONDITIONS**

Article 15 of the Constitution of Zambia (Protection from Inhuman Treatment) says that, "No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment."

In addition, Article 7 of the International Covenant on Civil and Political Rights states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Further, Article 5 of the African Charter on Human and People's Rights states, "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

Although, the government of Zambia has endeavoured to protect its people from torture and other cruel and inhuman treatment, violations of these

rights were observed in 2007 as provided in the cases cited below.

**In February,**

a police officer in Samfya subjected two suspects to manual work before releasing them on police bond. Judith Mwewa and her daughter Catherine Mwewa of Nashindano village in Samfya were detained for a day and released the next day on police bond after they were made to do manual work for the police club. [Source: LRF].

**In March,**

Edward Tembo whilst seriously ill and unconscious was left chained to a hospital bed in Chipata, without providing care and no police officer guarding him. [Source: LRF].

**In September,**

Festus Nsofu was detained at Kalikiliki Police Post in Lusaka where he was severely beaten on his feet, legs, arms and body using a plank. He bled profusely from the wounds but instead of being allowed to receive medical attention, he was put in a cell and ordered to mop his blood. Nsofu sustained severe injuries

resulting in his legs being broken. [Source: Human Rights Commission].

**In November,**

Musaiwale Tembo was detained at George Police Post in Lusaka together with his sister Mary Tembo and three others. Whilst in detention, Musaiwale was beaten and tortured until he died in custody. No arrests have been made to date. [Source: Human Rights Commission].

Albert Sisku was detained at Kamwala South Police Post in Lusaka for being suspected to be a dangerous criminal together with two others. He was handcuffed and badly beaten and sustained deep wounds on both his wrists. [Source: Human Rights Commission].

Lastly, it must be noted that, although the government has endeavoured to impose disciplinary action on police officers who have committed acts of torture or ill-treatment, there is no law at present that criminalises such acts. This makes it difficult for officers that torture or cruelly treat others, especially while in police or prison custody, to be prosecuted.

**STATUS OF PRISON AND DETENTION CENTRE CONDITIONS**

Overcrowding and poor conditions in prison and in places of detention like police cells is still a challenge in Zambia, with respect to protection from inhuman or degrading treatment. Excessive length of pre-trial detention also contributes to overcrowding in prisons.

For instance, in 2006, there was a total of 13, 313 persons in prisons in Zambia. The holding capacity of all the prison put together is only 6, 047. This means that the prisons are overcrowded by 120 percent.

**ADDITIONAL NOTES**

**The Zambia Prison Service**

The Zambia Prison Service is charged with the responsibility of looking after prisoners, both convicted and those on remand. There are 53 prisons including one maximum Security Prison, 10 Medium Security Prisons, and three Remand Prisons. About one third of the prison population is on remand. That is they are awaiting trial in the courts of law. The remandees are often kept in overcrowded prisons together with convicted criminals and held under extremely bad and inhumane conditions.

There are also inadequate nutrition and health facilities within the Prisons. Poor nutrition has often resulted in imprisoned persons have recurrent diarrhoea. Overcrowding and poor sanitation, on the other hand, has resulted in the prevalence of diseases like tuberculosis, respiratory tract infections, and, skin diseases (like scabies).

Currently, there are 1, 826 terminally ill prisoners countrywide, and 42

prisoners have died since January as a result of various illness, most of which were HIV and AIDS related.

#### **PROTECTION FROM ARBITRARY ARREST OR DETENTION - ROLE OF THE POLICE AND SECURITY AGENCIES**

The law provides that persons arrested must appear before a magistrate within 24 hours of their arrest. However, detainees are often held for longer periods because police officers seek to collect substantial evidence before presenting cases for prosecution or they are merely being malicious.

For instance, in May, Gideon Phiri of Lundazi was arrested and detained at the Lundazi Police Station for three days without being charged. [Source: LRF].

#### **2.2.5 Governance**

The Governance sector of the FNDP seeks to protect and fulfil rights constituting mostly civil and political rights, in particular the *right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service*, and women's rights. In particular, women's right relating mostly to elimination of discrimination in political and public life, and opportunity to represent government.

The right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service means that peoples have the right to freely determine their political status and to freely enjoy the right to choose the form of their constitution or government.

Fulfilment of this right means that the government has to also respect and protect freedom of opinion and expression, right to peaceful assembly and freedom of association with others. This is because freedom of opinion and expression, right to peaceful assembly and freedom of association with others are important conditions for the effective exercise of the right to vote and must be fully protected.

The government should also make sure that there are no obstructions to enjoyment of this right. Measures should be put in place to overcome difficulties like illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent individuals entitled to vote from exercising their rights effectively. There should also be measures aimed at reducing corruption and increasing transparency in electoral processes so that individual's exercise this right freely and without due influence.

The other rights to be protected and fulfilled under the Governance sector are rights relating to administration of justice. These are rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In Governance, the government seeks to protect and fulfil human rights by:

- improving access to justice for all;
- developing a new national constitution based on broad



participation and national consensus; concluding the constitutional reform and electoral review exercises;

- devolving power to local Government;
- strengthening national capacities to organise and manage free, fair and transparent elections;
- promoting broad based participation in national and local Government elections, especially women candidates and voters;
- fostering legal and policy environment to enhance public participation between electoral events and to exercise choice;
- enhancing civic awareness of the people;
- promoting human rights;
- create effective mechanisms for prevention of corruption, abuse of office and misappropriation in public and private bodies;
- increasing efficiency and effectiveness in the processing and disposal of complaints received by all governance institutions; and,
- ensuring that the Members of Parliament and their Parliamentary Committees are well linked to their Constituents and Civil society organisations.

#### **STATUS OF CIVIL AND POLITICAL RIGHTS**

The status of civil and political rights in the Governance sector of the FNDDP is here considered using the sub-sections of the sector. These are constitutionalism, human rights, transparency and accountability,

administration of justice and democratisation.

#### **CONSTITUTIONALISM**

The major instrument promoting and protecting civil and political rights in Zambia is the Constitution. The process of developing a new national constitution commenced in December 2007 after the enactment of the National Constitution Conference Act. This follows previous efforts by the Government to promote constitutionalism through the adoption of various constitutional provisions that sought to enhance an individual's or individuals' participation in their own governance and indeed enhance human rights. The current constitutional process that culminated in the National Constitution Conference Act is a result of the recommendations of the Mung'omba Constitutional Review Commission (CRC) appointed in 2003.

The National Constitution Conference seeks to come up with a Constitution based on broad participation and national consensus. This, however, may not be fully realised as major church organisations and some civil society organisations decided to boycott the conference citing inadequate consultation and representation as their major areas of concern.

#### **HUMAN RIGHTS**

The major challenges facing human rights institutions in Zambia is lack of sufficient funds to carry out its activities in an appropriate manner, inadequate staffing, transport, centralization and slow response from

concerned State authorities to the commission's requests for action.

Despite, these challenges human rights institutions, and in particular the Human Rights Commission are still able to receive and investigate cases of human rights violations. For instance, the Human Rights Commission received 165 complaints of alleged human rights violations in the period January to March 2007, and 367 in the period April to September 2007.

The most common human rights violations received by the Human Rights Commission are rights involving social security (non payment of terminal or retirement benefits); mal-administration of justice; and poor working conditions.

International human rights treaties ratified by Zambia have not been integrated into national laws and Zambians have limited knowledge of their rights and how to enforce them. Creating such awareness is the role of the Human Rights Commission in Zambia, but its institutional capacity to enforce international standards is weak. As a consequence, the rights of many Zambians are violated on a daily basis. And the scale of extreme poverty ensures that the most basic of human rights are not respected.

Further, the Police Public Complaints Authority [PPCA] has also recorded some minor success. For instance, the Legal Resources Foundation observed that the Authority recommended that a police officer from Pentagon Police Post in Lusaka's Chibolya compound

be removed from the service for torture.

### **Human Rights – Social Mobilisation**

Social mobilisation for human rights promotion and protection is undertaken by the Human Rights Commission through seminars and workshops, radio programmes and drama. The Human Rights Commission has, in this regard, whenever resources are available, organised and held a number of workshops for law enforcement agents, teachers and education authorities, NGOs, political parties and others.

### **TRANSPARENCY AND ACCOUNTABILITY**

Corruption, transparency and accountability are linked to human rights simply because corruption can limit an individual's access to free public goods and services, reduces freedom of political choice in elections, and thus constraints the enjoyment of human rights.

The Anti-Corruption Commission (ACC) as the main government agency responsible for combating corruption in Zambia, also seeks to enhance transparency and accountability in institutions in the country.

In 2007, the ACC established and operationalised integrity committees in 8 institutions, as a means of internalising corruption prevention and reporting in the public sector. The ACC also enhanced its internal and external communication systems. This resulted in an increase in reported cases of and information on corruption received in the last two to three years.

The number of convictions in corruption cases has also significantly improved. For instance, there were 20 convictions in 2007 as compared to 10 convictions in 2006.

The ACC also drafted the National Anti-Corruption Policy which was due to be tabled before Cabinet by the end of the year.

#### **ADMINISTRATION OF JUSTICE**

Rights under administration of justice are those rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and right to a speedy trial.

These rights pose a challenge for human rights in Zambia, especially that the superiority of statutory law over customary law is not always ensured in practice, mainly due to the low level of awareness by people of their rights, in particular their right to appeal against local courts' decisions.

There is insufficient training provided to those involved in the administration of justice at local court level.

In addition, the prevalence of customary law leads to substantial discrimination against girls and women, in particular widows, thereby preventing them from fully exercising their human rights. This is mostly because in rural Zambia traditions, customs and cultural practices are still very prevalent and these tend to negate women's rights.

Further, delays in appearing before the courts of law are a persistent problem that limits the enjoyment of rights under administration of justice. Citable cases in 2007 are:

#### **February**

In Lusaka the Legal Resources Foundation (LRF) secured the release of a prisoner who had been detained for five (5) years without trial. Daniel Mwale of Misisi compound in Lusaka never appeared in court since his arrest in March 2002 for allegedly killing his tenant. [Source: LRF].

#### **April**

Michael Banda of Lusaka has never appeared in court since he was arrested in June 2005 for assault. [Source: LRF].

#### **August**

The Kabwe High Court sentenced James Sinkutwa of Kafue to five (5) years imprisonment after waiting for five years for his judgment, and Sinkutwa was released as he had already spent five years in prison. [Source: LRF].

#### **September**

Two residents of Batoka in Southern province have been in remand at Choma Remand Prison

since July 2006, and only appeared in court once.  
[Source: LRF].

### **DEMOCRATISATION - Elections and Political Participation and Freedom of Choice**

The foundation of a democratic mode of governance is that people freely make political choices, embodied in constitutions and laws. The right to make political choices is provided through periodic elections, and rules and institutions of governments should always be such that they smoothly provide for elections that reflect the will of a people.

However, there have been cases of electoral malpractices and corruption which constrain an individuals' right to be represented by an individual of their own choice.

A parliamentary seat in Kapoche constituency in Eastern province was declared vacant after the High Court ruled that the incumbent member of parliament had won the seat mostly because of undue influence by the chief in the area who was found to be threatening voters in order to stop them from voting for a particular candidate.

#### **2.2.6 Gender and Development**

In the FNDP, equal rights for men and women, rights constituting elimination of discrimination against women in all forms, and right to life are the rights to be protected and fulfilled under the Gender and Development sector.

### **WHAT IS DISCRIMINATION AGAINST WOMEN?**

In the Convention on the Elimination of All Forms of Discrimination Against Women

(CEDAW), *discrimination against women* means any distinctive 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, of human rights and fundamental freedoms in the political, economic, social, cultural, or civic arena.

In Gender and Development sector, the government seeks to:

- mainstream gender in the National Development Process;
- contribute to providing enabling conditions for reproductive health of men and women; ensure safe motherhood;
- put in place a gender responsive legal framework;
- promote equal participation of female and male persons in education;
- ensure women's access to factors of production;
- redress gender imbalances in labour, employment and social security at all levels; and,
- reduce vulnerability of women and men through equitable implementation of social protection measures.

### **STATUS OF WOMEN'S RIGHTS**

Despite numerous and positive measures adopted to address inadequacies in the fulfilment of women's rights (like implementation of the gender policy), the status of



women in Zambia is still relatively poor. For instance, gender based violence, especially against women and children, continues to be an area of immediate concern.

Above all, the challenges facing fulfilment of women's rights in Zambia mostly constitute limitations in the laws. For instance, the current laws do not adequately address various forms of gender violence.

The country's fifth and sixth country report on implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of January 2007 further notes challenges to the fulfilment of women's rights as due to early child marriages that deter the girl child from pursuing their education since under customary law it is legal to marry a girl child who has attained puberty; low literacy and limited educational opportunities for women and girls often hinder their access to social services such as health and education thereby leading to inequalities between men and women; negative customary practices which continue to place women in subordinate positions often deter women from exercising their full potentials in their enjoyment of freedoms and rights; lack of a quota system to enhance women's representation in decision making positions; and, cultural biases and negative attitudes towards women and girls leading to their low level participation in socio-economic activities.

Inequities in employment are further exemplified in the CSO 2006 Living Conditions Monitoring Survey. The Survey shows that while 53 percent of all men surveyed were employed, only about 35 percent of the women were employed. More women (17 percent) than men (7 percent) were described as unpaid family workers. In addition, the Survey also reflected the gender biases in employment forms, as women mostly tended be employed in 'household activities', while men will mostly be involved in 'income generating activities' on the labour market.

#### **2.2.7 Youth and Child Development**

In the Youth and Child Development sector of the FNDP, the government seeks to fulfil children's rights such as right to life, social security, adequate standard of living, protection from abuse, right to rest and leisure, economic protection, measures for the upbringing and development of the child, and promotion of dignity and worthy.

The government seeks to fulfil children's rights by equipping children and youth with relevant skills; reducing intergenerational poverty by promoting life long learning and skills; supporting youth entrepreneurship; promoting the rights of children and youth; reducing the vulnerability of children and youth and protect them from all forms of abuse; promoting sport, recreation and physical education; promoting the right to play; reducing HIV and AIDS prevalence rate and scaling-up awareness, prevention and treatment programmes to mitigate the impact of

HIV and AIDS and other reproductive health concerns among children and youth; promoting gender equity and eliminating gender disparity in access to resources and participation in development programmes for children and youth; promoting inclusiveness of children and youth with disabilities in all programmes; strengthening the human resource capacity and institutions delivering services for children and youth; and building and rehabilitating child, youth and sport infrastructure to ensure their availability and accessibility.

### **WHAT DO RIGHTS OF THE CHILD MEAN?**

Rights of the child mean that the government should put in place special measures to protect children, without any discrimination. And that a child should receive from his or her family, society and the government the protection required by his or her status as a minor.

The government should make an effort to reduce infant mortality, eradicate malnutrition among children and to protect them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means.

### **STATUS OF CHILDREN'S RIGHTS**

Children's rights are still a major challenge in Zambia. Firstly, there still is no harmonisation in the definition of a child between the laws of Zambia and the customary definitions. Whereas the Constitution of Zambia defines a child

as any person below the age of 15 years, customary laws use the criterion of puberty to determine the end of childhood.

In addition, there is also no harmonisation in the definition of a 'child' even among the statutory laws of Zambia themselves, e.g., in Adoption Act, Labour Laws, Wills and Interstate Acts.

For children under five, their quality of life with respect to nutrition is still relatively poor. For instance, the CSO 2006 Living Conditions Monitoring Survey observes that in 2004 only 68 percent of the children have three or more meals a day. Luapula and Northern Province were observed to have the highest number of children that were fed only once or twice with 48 percent and 46 percent respectively.

The Survey further notes that "fifty (50 percent) of children aged 3-59 months were stunted (too short for their age), 20 percent were underweight (low weight for their age) and 6 percent were wasted (low weight for their height)".

Children's birth registration is also poor as few children are registered at birth. This most critical in rural areas.

It has also been observed that children in Zambia are still subjected to corporal punishment, especially in schools, families, and care and juvenile detention institutions.

According to a report by the International Labour Organisation (ILO) and the International Programme

for the Elimination of Child Labour (IPEC) internal child trafficking has also been observed to exist in Zambia, though not yet a widespread vice. Most children are trafficked by relatives for the provision of cheap labour, especially as domestic, agricultural, fishing or retail labourers. This is most persistent and widespread in the informal sector.

There have also been cases of children being detained in places that are not suitable to them. Such a case is cited below.

#### **In July**

In Mongu, two juveniles that were supposed to go to an approved school and a reformatory have been detained at Mongu Prison for more than two years after the sentence.

Lastly, in 2007 there were a total of 375 children in correctional and or detention centres. Of these 47 were circumstantial children, 201 in prisons and 127 in correctional centres in Insakhwe, Nakambala and Katombora.

### **2.3 Development and Human Rights – Looking Back**

The last sections have shown sectors in the FNDP that protect and fulfil particular human rights. It must be acknowledged that establishing a link between any development issues to a particular human right is often easy. For example, the government's planned efforts in, for instance health to protect and fulfil the right to health, do not necessarily mean the government

intended to secure the right to life within the FNDP's development process.

However, the linkages of development issues in the FNDP to particular human rights can be said to provide evidence that development and human rights are inseparable.

In addition, such establishment of linkages can help the people check a government's extent of respect of human rights within a development process. That is the people's expectation that the government **has to do something or is not supposed to do something** that violates an individual's enjoyment of his or her rights can be enhanced when the individual understands a government's development strides within a rights-based perspective.

# PART III

## CONCLUSIONS, OUTLOOK AND RECOMMENDATIONS

### 3.1 Conclusions

This edition, State of Human Rights in Zambia 2007, has provided an overview of the importance of human rights, human rights in the development processes and the status of specific human rights in Zambia.

It is clear from the overview that the Government of Zambia has indirectly through the Fifth National Development Plan (FNDP) endeavoured to respect, protect and fulfil the population's enjoyment of human rights. The reality of these efforts however is still to be fully appreciated.

Respect, protection and fulfilment of human rights requires that the people are equipped with a framework that they can use as a means of understanding the progression of fulfilment of human rights. The FNDP does provide such a framework, and it is the responsibility of human rights institutions to engage in social mobilisation for human rights based on arguing for a rights-based perspective in the implementation of the FNDP. Critical rights like rights to life, health and education, should be prioritised and secured so as to make acceptable

strides to ensuring enjoyment of human rights for all.

Regional developmental imbalances are evidently undermining the enjoyment of human rights by all, as is evident in health care human resources distribution.

The protection of human rights is also the responsibility of the individual, and this can only be attained where information is provided. Social mobilisation for human rights does not show sufficient enough evidence that the Zambia population is knowledgeable of their rights and the responsibilities the government has in fulfilling the rights, as is evidenced in the limitations to the fulfilment of women's rights where traditional customs still prevail to the detriment of women.

Further the State of Human Rights in Zambia 2007 has shown that unlawful deprivation of life, unlawful detentions, poor and life threatening prison conditions, police brutality, and torture continue to be an everyday experience within the country's police cells and prisons. Further, individuals are continually subjected to delayed justice as the judicial process can take a long time as a result of lack of resources and infrastructure.

### 3.2 Outlook and Recommendations

The outlook for the respect, protection and fulfilment of human rights in Zambia is relatively positive. This is mostly because the country's development framework, the FNDP does directly and indirectly provide the population a human rights checklist which they can use to hold government accountable. The FNDP does provide a framework for a human rights and governance contract between the people and the government. In addition, the FNDP is the government's own blueprint to being responsive to the population.

However, despite the FNDP acting as a human rights and governance contract between the people and the government, the State of Human Rights in Zambia 2007 shows that there is need for the government of Zambia to scale up measures that will:

- improve access to education;
- improve quality of and access to health, and safe water, thereby adequately protecting the right to life;
- adequately protect individuals or groups of individuals against arbitrary or unlawful deprivation of life, protection from torture and other cruel or inhuman treatment, and protection from arbitrary arrest or detention;
- broaden the bill of rights in the constitution, to include socio economic and cultural rights;
- enhance the status of women's rights; and
- adequately protect children.

As such the FNDP is a necessary but insufficient condition for the promotion and protection of Human Rights. Its implementation on the one hand and efforts to scale-up measures with particular importance to the protection of Human Rights are indispensable. And indeed the best guarantee that progress is being made in Zambia with regard to the protection and promotion of Human Rights.



## **Appendix I**

### **EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART III PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL**

#### **11. Fundamental rights and freedoms**

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

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

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### **12. Protection of right to life**

(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(2) No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

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

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
- (d) in order to prevent the commission by that person of a criminal offence.

### **13. Protection of right to personal liberty**

(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained –

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

#### **14. Protection from slavery and forced labour**

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purpose of this Article, the expression "forced labour" does not include-

- (a) any labour required in consequence of a sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such



labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligation.

#### **15. Protection from inhuman treatment**

No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment.

#### **16. Protection from deprivation of property**

(1) Except as provided in this Article, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
- (c) in execution of judgements or orders of courts;
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
- (e) as an incident of a contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
- (f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of –
  - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
  - (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject

thereto, for the benefit of other persons entitled to the beneficial interest in the property;

(iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or

(iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;

- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision of the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of the land, the carrying out thereon –
  - (i) of work for the purpose of the conservation of natural resources or any description; or
  - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
- (u) where the property consists of any licence or permit;

- (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
- (w) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases –
  - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
  - (ii) in terms of any law vesting any such property or rights in the President;
- (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or right enjoyed by Chiefs and persons claiming through and under them, shall apply with substantial uniformity throughout Zambia;
- (z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
  - (a) in terms of any law relating to –
    - (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;
    - (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies, or securities.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

## **17. Protection for privacy of home and other property**

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justified in a democratic society.

## **18. Provisions to secure protection of law**

- (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
- (2) Every person who is charged with a criminal offence –
  - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
  - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
  - (c) shall be given adequate time and facilities for the preparation of his defence;
  - (d) shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;
  - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of

witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

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

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.



(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority –

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;

(c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) clause (2) to the extent that it is shown that the law provides that –

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and

(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;

(e) clause (2) to the extent that it is shown that the law provides that a trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;

(f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (2) and clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in detention.

(14) In its application to a body corporate clause (2) shall have effect as if the words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article "criminal offence" means a criminal offence under the law in force in Zambia.

## **19. Protection of freedom of conscience**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent, or, if he is a minor, the consent of his guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by the community or denomination or from establishing and maintaining institutions to provide social services for such persons.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is reasonably required –

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion:

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justified in a democratic society.

## **20. Protection of freedom of expression**

(1) 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 interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

(2) Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or

(c) that imposes restrictions on public officers;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

## **21. Protection of freedom of assembly and association**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officers; or
- (d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

## **22. Protection of freedom of movement**

(1) Subject to the other provision of this Article and except in accordance with any other written law, no citizen shall be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means –

- (a) the right to move freely throughout Zambia;
- (b) the right to reside in any part of Zambia; and
- (c) the right to leave Zambia and to return to Zambia.

(2) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition or restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not be reasonably justifiable in a democratic society;

(b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;

(c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or

(d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

### **23. Protection from discrimination on the ground of race, etc.**

(1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

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

(a) for the appropriation of the general revenues of the Republic;

(b) with respect to persons who are not citizens of Zambia;

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of



any law with respect to that matter which is applicable in the case of other persons; or

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

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision or law as is referred to in clause (4) or (5).

(7) No thing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised by clause (2) of Article 17, clause (5) of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

## **24. Protection of young persons from exploitation**

(1) No young person shall be employed and shall and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) No young person shall be the subject of traffic in any form.

(4) In this Article "young person" means any person under the age of fifteen years.

**25. Derogation from fundamental rights and detention**

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

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## **Appendix II**

### **NOTES ON SOME PUBLIC INSTITUTIONS FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS IN ZAMBIA**

#### **The Human Rights Commission**

The Human Rights Commission is mandated mostly to investigate human rights violations; assess and inspect conditions of the persons held in prisons and places of detention; establish programme on research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; propose effective measures to prevent human rights violations; and, to advise and assist Government on issues concerning the promotion and protection of human rights.

In protecting human rights, the Human Rights Commission can recommend, for example, the punishment of any officer found by the Commission to have perpetrated an abuse of human rights; the release of a person from detention; the payment of compensation to a victim of human rights abuse, or to such victim's family; or that an aggrieved person seek redress in a court of law.

Lastly, the Human Rights Commission also has the mandate to undertake social mobilisation for the promotion and protection of human rights through education and information. Social mobilisation is done through public awareness programmes on radio and TV, drama, and the media.

#### **Police Public Complaints Authority**

The Police Public Complaints Authority is responsible for investigating all complaints referred to it by: an aggrieved person directly affected by police action; an association acting in the interests of its members; and, a person acting on behalf of an aggrieved person, body or organization. In so doing the Police Public Complaints Authority protects an individual's rights by ensuring that police officers do not indiscriminately violate an individual's or groups of individuals human rights.

#### **Judicial Complaints Authority**

The Judicial Complaints Authority is responsible for investigating allegations of misconduct against Judicial Officers. This institution mostly protects rights related to the administration of justice. These include rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

### **The Anti-Corruption Commission**

Corruption has negative effects on a country's efforts to enhance socio-economic and political development. This is because corruption can limit citizens' access to free public goods and services, reduces freedom of political choice in elections, and thus constraints the enjoyment of human rights.

The Anti-Corruption Commission (ACC) is the main government agency responsible for combating corruption in Zambia. The Anti-Corruption Commission has the responsibility to: prevent and take necessary and effective measures for the prevention of corruption in public and private bodies; receive and investigate complaints of alleged or suspected corrupt practices, and subject to the directions of the Director of Public Prosecutions, to prosecute those suspected of involvement in corruption; investigate any conduct of any public officer which in the opinion of the Commission may be connected with or conducive to corrupt practices; disseminate information on the socio-economic effects of corrupt practices, and enlist and foster public support against corrupt practices; and do such things as are incidental or conducive to the attainment of the functions.

### **Gender in Development Division (GIDD)**

The Gender in Development Division is responsible for coordinating the implementation of the National Gender policy; facilitate research and resource mobilization for implementation of gender and development programmes, and in so doing primary secure and enhance women's rights.

## Appendix III

### MILLENNIUM DEVELOPMENT GOALS (MDGs)

The Millennium Development Goals (MDGs) were developed out of the eight chapters of the United Nations Millennium Declaration, signed in September 2000. The MDGs were revised in October 2007 when the United Nations General Assembly adopted four additional targets.

The eight goals and 21 targets include:

| Goals |   | Targets   |
|-------|---|---|
| 1     | <b>Eradicate extreme poverty and hunger</b>             | <ol style="list-style-type: none"><li>1. Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day</li><li>2. Achieve full and productive employment and decent work for all, including women and young people</li><li>3. Halve, between 1990 and 2015, the proportion of people who suffer from hunger</li></ol> |
| 2     | <b>Achieve universal primary education</b>              | <ol style="list-style-type: none"><li>4. Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.</li></ol>  |
| 3     | <b>Promote gender equality and empower women</b>        | <ol style="list-style-type: none"><li>5. Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.</li></ol>   |
| 4     | <b>Reduce child mortality</b>                           | <ol style="list-style-type: none"><li>6. Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate.</li></ol>  |
| 5     | <b>Improve maternal health</b>                          | <ol style="list-style-type: none"><li>7. Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.</li><li>8. Achieve, by 2015, universal access to reproductive health.</li></ol>   |
| 6     | <b>Combat HIV and AIDS, malaria, and other diseases</b> | <ol style="list-style-type: none"><li>9. Have halted by 2015 and begun to reverse the spread of HIV and AIDS.</li><li>10. Achieve, by 2010, universal access to treatment for HIV and AIDS for all those who need it.</li><li>11. Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases.</li></ol>                   |
| 7     | <b>Ensure environmental sustainability</b>              | <ol style="list-style-type: none"><li>12. Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources.</li><li>13. Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss</li></ol>  |



|   |   |   |
|---|---|---|
|   |   | <p>14. Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation (for more information see the entry on water supply).</p> <p>15. By 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers</p>  |
| 8 | <b>Develop a global partnership for development</b> | <p>16. Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory. Includes a commitment to good governance, development and poverty reduction—nationally and internationally.</p> <p>17. Address the special needs of the least developed countries. This includes tariff and quota free access for their exports; enhanced programme of debt relief for heavily indebted poor countries; and cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction.</p> <p>18. Address the special needs of landlocked and small island developing States.</p> <p>19. Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.</p> <p>20. In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.</p> <p>21. In cooperation with the private sector, make available the benefits of new technologies, especially information and communications</p> |

## References

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<sup>1</sup> Adapted from "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 16th Session, Geneva, March 2000.

<sup>2</sup> Central Statistics Office (2006), Living Conditions Monitoring Survey, Lusaka, Zambia

<sup>3</sup> Ibid

<sup>4</sup> GRZ (2006), FNDP, Lusaka, Zambia page 326

<sup>5</sup> GRZ (2007), Zambia's Fifth and Sixth Country Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>6</sup> This section relies mostly on information in the *National Health Strategic Plan (NHSP) 2006 - 2010*