

AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

GLOSSARY/ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
AIEMS	Action for Improvement of English, Mathematics and Science
ARV	Anti retroviral
BESSIP	Basic Education Sub-Sector Education Programme
CCZ	Christian Council of Zambia
COR	Commissioner of Refugees
CRAIDS	Community Response to HIV/AIDS
CSOs	Civil Society Organisations
EFC	Evangelical Fellowship of Zambia
FODEP	Foundation for Democratic Process
GDP	Gross Domestic Product
HIV	Human Immuno Virus
HURID	Institute of Human Rights, Intellectual Property and Development Trust
ILO	International Labour Organisation
IMF	International Monterey Fund
IRI	Interactive Radio Instruction
MMD	Movement for Multiparty Democracy
NAPSA	National Pensions Scheme Authority
NGOCC	Non-Governmental Organisation Coordinating Council
NGOs	Non-Governmental Organisations
PAGE	Programme for the Advancement Girls' Education
PRGF	Poverty Reduction Growth Facility
PRSP	Poverty Reduction Strategy Paper
PTA	Parent Teacher Association
PWAS	Public Welfare Assistance Scheme
RAMCOZ	Roan Antelope Mining Corporation of Zambia
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
STI	Sexually Transmitted Infections
T.B.	Tuberculosis
TAHAN	Teachers Against HIV/AIDS Network
TEVETA	Technical Education, Vocational and Entrepreneurship Training Authority
TNDP	Transitional Nation Development Plan
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNIP	United Nations Independence Party
UTH	University of Zambia
WFC	Women for Change
WHO	World Health Organisation
WILSA	Women in Law in Southern Africa
YWCA	Young Women's Christian Association

ZANARA	Zambia National Response to HIV/AIDS
ZAPF	Zambia National Provident Fund
ZCCM	Zambia Consolidated Copper Mines
ZCEA	Zambia Civic Education Association
ZDHS	Zambia Demographic Health Surveys
ZEC	Zambia Episcopal Conference
ZECAB	Zambia Education Capacity Building Project

Foreword

It is with great pride and honour that I present Zambia's Initial State Report on the implementation of the African Charter on Human and People's Rights.

The Government of the Republic of Zambia places extreme importance on the protection and promotion of fundamental human rights and freedoms, which are essential in achieving meaningful development. It is the guarantee of civil and political rights, economic, social and cultural rights and people's rights that are a measure of good governance, which in turn adds to the well-being of the people.

The occasion of preparing the State Report on the Charter was opportune as it provided Government a moment to take stock of its legislative, judicial and administrative functions, in order to assess the impact of these functions on the political, economic and social welfare of the country. The Report highlights the several measures that Government has put in place to implement the Charter and the several factors and difficulties affecting the implementation.

Though Government is challenged by economic constraints, it is fully committed to implementing the rights in the Charter. Allow me to state that the Ministry of Justice will in the course of this year prepare a training manual on human rights law; and conduct training courses for all law enforcement agencies. In addition, the manual will be distributed to ordinary Zambians in order to enhance their knowledge of human rights.

The preparation of the Report involved the participation of relevant Government Ministries and Departments, the Judiciary, Human Rights Commission, Civil Society and Academia. The Report is characterized by openness, frankness and

honesty, resulting in a factually true and correct presentation of the implementation of the Charter.

I wish to take this opportunity to thank all those who participated in this exercise (See Annex 1); and the local Zambian resource personnel that educated the participants on the reporting guidelines of the Charter.

George Kunda, SC., MP.
MINISTER OF JUSTICE AND ATTORNEY-GENERAL

Executive Summary

The Government of the Republic of Zambia ratified the African Charter on Human and People's Rights in 1987. In accordance with the reporting guidelines under the Charter, this is Zambia's Initial Report to be presented to the Commission.

The Report outlines the legislative, judicial, administrative and other measures that the State party has put in place in order to adapt its national laws and policies with the provisions of the Charter. It also illustrates the various challenges that the State party experiences in implementing the Charter.

The responsibility of preparing State reports including the report on the African Charter on Human and Peoples Rights lies with the Ministry of Justice. In order to facilitate the process of preparing this State report, the Ministry of Justice constituted an Inter-Ministerial Human Rights Reporting Committee, which was tasked with the responsibility of coordinating the collection of data contained in this Report. The members of this Committee were drawn from relevant Government Ministries and Departments, the Judiciary, Human Rights Commission, Police, Prisons, Drug Enforcement Commission, Civil Society and Academia.

The process of preparing the State Report on the Charter commenced with an induction workshop which was held in Lusaka, the Capital city, by the Ministry of Justice for Members of the Inter-Ministerial Committee. Local Zambian resource personnel were employed in educating participants on the reporting guidelines of the Charter. Provincial workshops were subsequently held and data collected in line with the reporting guidelines of the Charter. With the data received from all the provinces, a draft Report was prepared. In order to confirm the content of

the Report, a two-day National Validation Symposium was held for all stakeholders in Lusaka.

The preparation of the Report afforded the Zambian Government the opportunity to assiduously review its legislative, judicial and administrative measures; in order to identify areas in which the protection and promotion of human rights can be enhanced.

CHAPTER 1

Chapter 1 contains the core document for human rights reports on Zambia. It provides the general overview of the Country, in terms of the land, the people, the economy, the political structure, and the general framework within which human rights are protected and promoted.

Chapter 1 also contains information of other institutions that the State party has created to enhance the protection and promotion of fundamental rights and freedoms for all. These institutions in the main include the Human Rights Commission responsible for investigating human rights abuses and the Commission for Investigations which is responsible for investigating mal-administration by public officers.

CHAPTER 2

Chapter 2 outlines the level of enjoyment of human rights in Zambia including the measures that have been taken or are being undertaking to eliminate any kind of discrimination. It also describes the competent authorities within the State party that deal with human rights violations and the remedies available to victims of violations.

CHAPTER 3

Chapter 3 outlines the measures that exist to ensure the principle of equal protection of the law. In this regard, the Chapter takes cognizance of the numerous non-discriminatory clauses discussed throughout the Report. It also outlines the system of legal aid which is available to the vulnerable groups of society.

CHAPTER 4

Chapter 4 contains a very broad description of the right to life; the measures taken to reduce child mortality and malnutrition and increase life expectancy; measures against arbitrary deprivation of life; and the death penalty.

CHAPTER 5

Chapter 5 sets out the legislative, judicial and administrative measures that the State party employs in prohibiting slavery or servitude in its territory. It also deals with issues of forced labour and conscientious objection.

CHAPTER 6

In Chapter 6, the State party describes the nature of the right to liberty and security of person. It also outlines the circumstances in which a person's liberty can be deprived.

CHAPTER 7

Chapter 7 gives an account of the measures that guarantee the equality of all persons living in Zambia before courts and tribunals. In particular Chapter 14 describes procedures that are available to suspects in criminal proceedings.

CHAPTER 8

Chapter 8 deals with the protection of the right to freedom of thought, conscience and religion.

CHAPTER 9

Chapter 9 illustrates the extent to which the right to hold opinions and the right to freedom of expression are protected. Special emphasis is laid on the distinction between the right to hold an opinion and the right to freedom of expression.

CHAPTER 10

Chapter 10 deals with the right to freedom of association and the right to form and join any trade union of one's choice. The Chapter also deals with industrial action and essential services.

CHAPTER 11

Chapter 11 describes the measures that the State party has put in place to protect the right to peaceful assembly. It also describes the challenges that exist in implementing the Public Order Act.

CHAPTER 12

Chapter 12 deals with the right to liberty of movement and freedom to choose one's residence. It is worth noting that the right is subject to certain restrictions.

CHAPTER 13

Chapter 13 deals with the right of every citizen to take part in the conduct of public affairs, directly or indirectly. It outlines the electoral regulations that have been put in place to ensure universal adult suffrage. It further gives a description of citizen's access to public service.

CHAPTER 14

Chapter 14 shows the legislative, judicial and administrative measures that the State party has put in place to realize Article 14 of the Charter. It also provides the circumstances in which land can be encroached upon in the interest of the public and under what circumstances land can be alienated to non-Zambians.

CHAPTER 15

Chapter 15 describes the legislative, judicial and administrative measures that the State party has put in place to promote the right to work, right to just and favourable conditions of work, the right to form trade unions and the right to social security.

CHAPTER 16

Chapter 16 gives an account of the implementation measures of the right to best attainable physical and mental health. It describes the measures that the State party has put in place to deal with the HIV/AIDS pandemic.

CHAPTER 17

Chapter 17 describes the measures that the State party has put in place to promote the right to education and the different tiers of education. It also describes the right of every individual to take part in the cultural life of the community.

CHAPTER 18

Chapter 18 gives an account of the measures that the State party has put in place to protect the family; and the social factors that affect a Zambian family. The Chapter also deals with the factors and difficulties caused by the simultaneous practice and application of English and Customary Law.

CHAPTER 19

In Chapter 19, the State party shows the extent to which the equality of men and women is guaranteed through legislative, judicial and administrative measures. In addition, the special protection afforded to women and girls in particular is discussed.

CHAPTERS 20, 21 and 22

The Chapters address the right to self determination and the ability of the Zambian people to freely dispose of their natural wealth. The Commission is referred to Chapter 1 containing the Human Rights Core Document.

CHAPTER 23

(To be advised)

CHAPTER 24

Chapter 24 deals with the administration of justice with specific reference to the independence of Courts. The Commission is referred to Chapter 1 containing the Human Rights Core Document.

CHAPTER 25

Chapter 25 deals with duties of an individual towards his family, society and the State. The Commission is referred to Chapter 18 on the protection of the family, in considering this Chapter.

CHAPTER 1

THE LAND

1. Zambia is a landlocked country covering an area of about 753,000 square kilometres. It shares borders with the Democratic Republic of Congo and Tanzania to the North, Malawi and Mozambique to the East, Zimbabwe and Botswana to the South, Namibia to the South-West and Angola to the West. Generally, Zambia lies on the great Central African plateau with an average altitude ranging between 1,000 to 1,300 meters. In the East (particularly the Muchinga Escarpment) the land rises to a height of about 2,000 meters above sea level. Broad depressions are to be found on the edges of the plateau, which form lakes Tanganyika, Mweru and Bangweulu in the North, the Luangwa River in the East, Kafue Basin and the alluvial plains of the Zambezi River in the South and West.
2. Lying between latitude 8° S and longitude 22° and 34° E, Zambia has a tropical climate and vegetation. There are three distinct seasons, the hot-dry season during September and October, the warm-wet season between November and April, and a dry winter, the mean temperature varying between 14°C and 30°C , from May to August.
3. Zambia's vegetation may be very broadly classified as woodland savannah, which is a mixture of various trees, tall grass, shrubs and other woodlands, which are mainly of the deciduous type usually found on the main plateau.

THE PEOPLE

4. The census of population and housing remains the main source of demographic data in Zambia, with the latest undertaken in 2000. Other important sources of data that provide useful indicators included in this State Report are demographic health surveys. The population¹ of Zambia recorded in the 2000 census was 9,885,591 with males accounting for 4,946,298 and 4,939,293 being females. The de facto² population however presented a higher female population: 4,743,135 as opposed to 4,594,290 males. This presented a sex ratio of 96.8 males per 100 females, slightly lower than that of 1990 (Table 1).

Table 1: Sex Ratio by Province, 1990 and 2000

Province	1990	2000
	Males per 100 Females	Males per 100 Females
Central	99.6	98.9
Copperbelt	102.9	105.6
Eastern	96.3	94.9
Luapula	97.2	95.1
Lusaka	101.3	100.4
Northern	92.1	95.3
North-Western	94.4	96.5
Southern	96.6	95.5
Western	90.1	90.3
TOTAL ZAMBIA	98.1	96.8

Source: CSO Census of Population and Housing Reports, 1990 and 2000

5. Administratively divided into nine provinces, the geographical distribution of the population in Zambia is largely in favour of rural areas, 65 percent in 2000. Census results over the decades indicate an urban-rural migration trend, more significant in the most urbanised provinces of the country (Copperbelt, Lusaka, Southern and Central). The urban population was 40 percent in 1980, reduced to 38 and 35 percent in 1990 and 2000,

¹ De jure population that defines the usual number of household members *present* and usual household members temporarily *absent* at the time of the census (including institutional populations).

² De facto population refers to the usual household members and visitors who spent the census night at the household and as such excludes certain population outside the country at the time of the Census.

respectively. The national population density was 13.1 persons per square kilometre in 2000 as compared to 9.8 persons per square kilometre in 1990. Zambia's provincial population distribution is such that the most urbanized and populated provinces (Lusaka and Copperbelt) hold the highest population densities of 50 and 64 persons per square kilometre, respectively (See Table 2).

Table 2: Population Density by Province, 1990 and 2000

Province	Population (' 000)		Area per square km (' 000)	Population density per square km	
	1990	2000		1990	2000
Central	772	1,012	95	8.2	10.7
Copperbelt	1,458	1,581	31	46.6	50.5
Eastern	1,005	1,306	69	14.5	18.9
Luapula	564	775	51	11.2	15.3
Lusaka	991	1,391	22	45.3	63.5
Northern	926	1,259	148	6.3	8.5
North-Western	438	583	126	3.5	4.6
Southern	966	1,212	85	11.3	14.2
Western	639	765	126	5.1	6.1
Total Zambia	7,759	9,886	753	10.3	13.1

Note: ' De jure' population figures used.

Source: CSO Census of Population and Housing Reports, 1990 and 2000

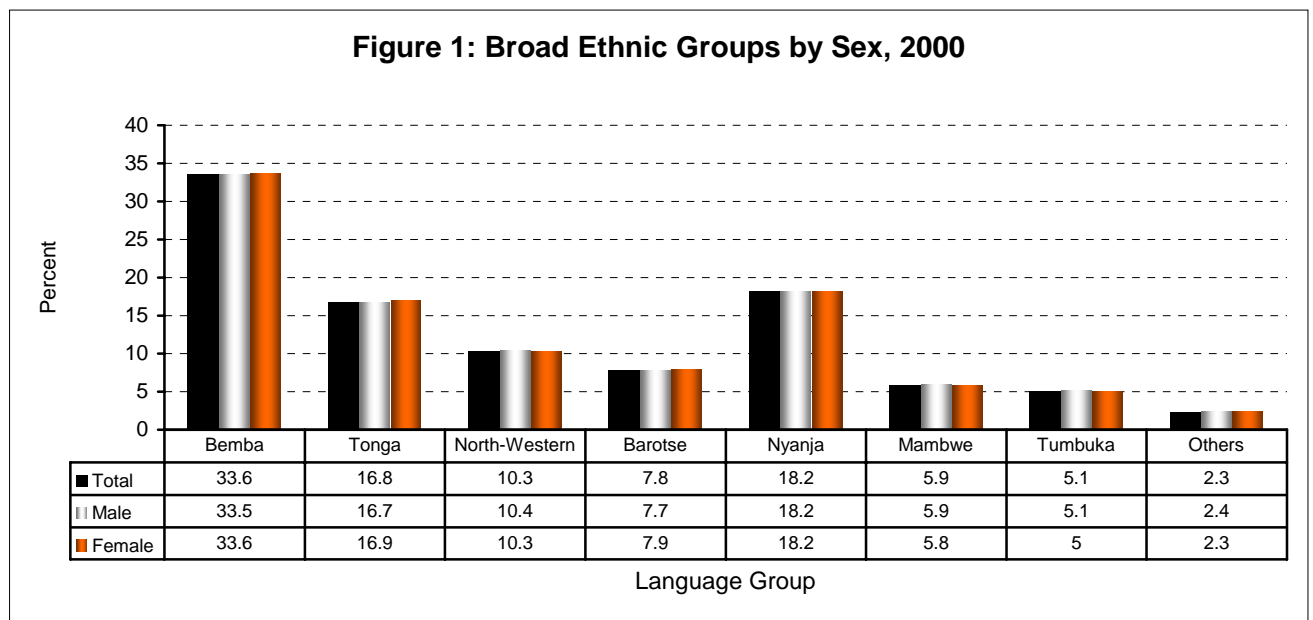
- Zambia is a multiracial and multicultural country whose population mostly comprises persons of African origin, 99.5 percent in 2000; an increase from 98.7 percent recorded in the 1990 census. The non-African groupings comprise Americans, Asians, Europeans and the rest are classified as 'Other', for statistical purposes only (see Table 3). In Zambian censuses, ethnicity for non-Zambians refers to their continent of origin while for Zambians it implies indigenous Zambian tribes. Officially, there are 72 tribes in Zambia with each of them speaking a distinct language. While language is not habitually synonymous with tribe, a fair assumption is made that the number of languages in the country is equal to the number of tribes.

Table 3: Ethnic Composition of Population by Sex, 2000

Sex	Ethnic Group					
	African	American	Asian	European	Other	Total
Male	4,572,026	691	6,272	3,462	11,839	4,594,290
Female	4,722,128	507	5,576	2,720	12,204	4,743,135
Both Sexes	9,24,154	1,198	11,848	6,182	24,043	9,337,425
Percent of Total Population	99.54	0.01	0.13	0.07	0.26	100.00

Source: CSO, Census of Population & Housing National Analytical Report, 2000

7. In Zambia, seven broad ethnic groups are identified, and all the tribes belong to one of these broad tribal groupings: Bemba, Tonga, North-Western, Barotse, Nyanja or Eastern, Mambwe and the Tumbuka groups (Figure 1 and Table 4). Tribes in the Bemba ethnic group account for more than two-thirds of all tribes in Zambia. Additionally, 30.5 percent and 39.1 percent of the people belonging to the Bemba tribal group reside in rural and urban areas, respectively. Those categorised as 'Others' include non-Zambian tribes/ethnic groups and accounted for 2.3 percent in the 2000 census.



Source: CSO, Census of Population and Housing National Analytical Report, 2000

Table 4: Broad Ethnic Groups by Sex and Residence, 2000

Ethnicity	Zambia			Rural			Urban		
	Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes	Male	Female
Bemba	33.6	33.5	33.6	30.5	30.5	30.5	39.1	38.8	39.3
Tonga	16.8	16.7	16.9	20.0	20.0	20.1	11.0	10.8	11.1
North-Western	10.3	10.4	10.3	11.3	11.4	11.3	8.6	8.7	8.4
Barotse Language	7.8	7.7	7.9	8.8	8.6	8.9	6.1	6.2	6.1
Eastern	18.2	18.2	18.2	16.9	16.9	16.9	20.5	20.4	20.5
Mambwe	5.9	5.9	5.8	5.3	5.4	5.3	7.0	7.0	6.9
Tumbuka	5.1	5.1	5.0	4.8	4.8	4.8	5.6	5.7	5.4
Others	2.3	2.4	2.3	2.4	2.4	2.3	2.3	2.4	2.2
Total Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Population	9,337,425	4,594,290	4,743,135	5,990,356	2,931,551	3,058,805	3,347,069	1,662,739	1,684,330

Source: CSO, Census of Population National Analytical Report, 2000

8. Zambia is generally a very peaceful country. Despite the many tribes and ethnic groupings, Zambia has not suffered from any ethnic conflicts that have been witnessed in some African countries and other parts of the world. The existing peace in Zambia and its continued assurance could partly be attributed to the use of English as a neutral language of communication. Additionally, there are seven languages that are used in Zambia besides English for official purposes such as dissemination of information, radio and television broadcasting and literacy campaigns. These languages: Bemba, Kaonde, Lozi, Lunda, Luvale, Nyanja and Tonga, correspond to language clusters around which are found several dialects (see Table 5 and 6 for predominant language groups). Although, the official language of instruction in schools is English, these languages are taught in lower schools in specific provinces. It is apparent that local settlement of indigenous Zambians is not necessarily limited by one's ethnicity (see Table 7).

Table 5: Predominant Language Groups, 1980 – 2000

Language group	Percentage of Total Population		
	1980	1990	2000
Bemba	39.7	39.7	38.5
Tonga	13.3	14.8	13.9
North-Western	7.7	8.8	7.7
Barotse	8.0	7.5	6.9
Nyanja	19.0	20.1	20.6
Mambwe	3.2	3.4	3.2
Tumbuka	3.2	3.7	3.2
English	4.6	1.1	1.7
Other	1.4	0.8	4.3
Total Percent	100.0	100.0	100.0
Total Population	5,226,895	7,001,936	8,702,932

Source: CSO Census of Population and Housing Report, 2000

Table 6: Predominant Language of Communication by Province, 2000

Predominant Language of Communication	Total	Central	Copper-belt	Eastern	Luapula	Lusaka	Northern	North-Western	Southern	Western
Bemba	30.1	25.4	69.4	1.1	56.6	14.5	55.3	2.0	2.8	0.4
Lala	2.0	17.1	0.8	0.0	0.1	0.2	0.4	0.0	0.0	0.0
Bisa	1.0	0.2	0.2	0.9	0.1	0.1	6.6	0.0	0.0	0.0
Lamba	1.9	2.5	8.9	0.0	0.0	0.2	0.0	2.0	0.0	0.0
Tonga	10.6	12.0	1.1	0.1	0.0	4.6	0.1	0.3	69.8	0.3
Lenje	1.4	11.7	0.2	0.0	0.0	0.8	0.0	0.0	0.2	0.0
Ila	0.8	2.9	0.0	0.0	0.0	0.2	0.0	0.0	3.8	0.0
Luvale	1.7	0.2	0.7	0.0	0.0	0.2	0.0	19.3	0.6	4.4
Lunda (N/Western)	2.2	0.1	0.9	0.0	0.0	0.2	0.0	33.9	0.1	0.4
Kaonde	2.0	1.0	1.3	0.0	0.0	0.4	0.0	27.1	0.1	0.4
Lozi	5.7	1.0	0.7	0.1	0.0	1.8	0.1	0.7	5.0	60.0
Chewa	4.9	0.6	0.4	33.8	0.0	2.4	0.0	0.1	0.4	0.1
Nsenga	3.4	0.9	0.6	20.6	0.0	3.1	0.0	0.1	0.4	0.0
Ngoni	1.2	0.5	0.3	6.6	0.0	1.0	0.0	0.0	0.5	0.0
Nyanja	10.7	8.6	1.1	9.6	0.1	52.8	0.2	0.3	5.5	0.4
Lungu	0.6	0.0	0.0	0.0	0.0	0.0	4.6	0.0	0.0	0.0
Mambwe	1.2	0.3	0.3	0.0	0.0	0.6	8.5	0.0	0.1	0.0
Namwanga	1.3	0.4	0.5	0.1	0.0	0.4	8.8	0.0	0.1	0.0
Tumbuka	2.5	0.3	0.7	14.8	0.0	0.9	2.4	0.0	0.2	0.0
Senga	0.6	0.1	0.1	4.6	0.0	0.1	0.0	0.0	0.0	0.0
English	1.7	0.9	2.5	0.2	0.1	6.6	0.2	0.3	0.8	0.2
Others	12.6	13.4	9.4	7.2	42.7	8.8	12.7	13.9	9.5	33.4
Total Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Population	8,702,932	890,370	1,439,298	1,134,948	674,049	1,259,258	1,088,565	500,939	1,051,663	663,842

Source: CSO, Census of Population and Housing National Analytical Report, 2000

Table 7: Household Heads by Ethnicity and Province, 2000

	Total	Central	Copperbelt	Eastern	Luapula	Lusaka	Northern	N/western	Southern	Western
Total	1,884,741	9.5	15.4	13.5	8.7	14.4	13.7	5.9	10.8	8
Bemba Speaking Group	758,762	12.6	31.9	0.9	21.5	6.7	24.5	0.7	1.1	0.1
Tonga Speaking Group	240,934	20.8	1.8	0.2	-	10.2	0.1	0.2	66.4	0.3
North-Western Group	157,171	2	8.5	0.1	0.1	2	0.1	64.4	2	20.9
Barotse Language Group	141,142	1.7	1.7	0.3	0.1	4.3	0.1	1	9.5	81.3
Nyanja Speaking Group	398,649	5.4	2.5	48.5	0.1	39	0.3	0.2	3.9	0.2
Mambwe Language Group	70,029	2.1	4.8	0.5	0.2	5	86.6	0.1	0.6	-
Tumbuka Language Group	66,284	1.3	4.8	78.1	0.1	5.3	9.4	0.1	0.8	-
English	42,817	6.6	23.2	2.2	0.8	55.4	1.7	1.7	7.1	1.2
Other Languages	7,290	7.1	7	1.9	3.6	13.9	44.2	18.9	2.3	1.1
Africans	1,409	27	15	0.8	1.3	36.5	5.3	3.7	9	1.6
Americans	44	15.9	38.6	-	-	11.4	13.6	9.1	6.8	4.5
Asians	130	9.2	20	6.9	2.3	28.5	12.3	1.5	17.7	1.5
Europeans	80	8.8	20	2.5	2.5	40	12.5	3.8	10	-

Source: CSO, Census of Population and Housing, 2000

9. The predominant religion in Zambia is Christianity, with the majority of people associating themselves with the two major groups- Catholics and Protestants. The rest of the population comprises Muslims, Hindus, Buddhists, Jews and Atheists (see Table 8). There is freedom of religious practice in the country with a general pattern of association exhibited in all nine provinces, except for varying proportions (Table 9).

Table 8: Population Percentage distribution of Religion by Sex, 2000

Religion	Total Population	Percentage	Male Population	Percentage	Female Population	Percentage
Zambia-Total	9,337,425	100.0	4,594,290	49.2	4,743,135	50.8
Catholic	2,089,866	100.0	1,022,900	48.9	1,066,966	51.1
Protestant	6,025,915	100.0	2,910,315	48.3	3,115,601	51.7
Muslim	41,932	100.0	22,444	53.5	19,488	46.5
Hindu	5,442	100.0	2,769	50.9	2,673	49.1
Other	674,319	100.0	330,483	49.0	343,836	51.0
None	499,950	100.0	305,379	61.1	194,571	38.9

Source: CSO, Census of Population and Housing, 2000

Table 9: Household Heads by Religion and Province, 2000

Province	Religion						
	Total Population	Catholic	Protestant	Muslim	Hindu	Other	None
Total	1,884,741	23.3	61.6	0.5	0.1	7.3	7.2
Central	178,820	16.8	69.3	0.4	-	8.3	5.2
Copperbelt	289,647	23.9	63.1	0.6	0.2	7.5	4.7
Eastern	254,603	25.8	52.1	1.1	-	12.5	8.5
Luapula	164,739	31.0	59.3	0.1	-	4.2	5.4
Lusaka	272,094	23.4	58.0	1.3	0.2	8.2	8.9
Northern	258,887	37.8	53.0	0.2	-	6.3	2.7
North-Western	111,133	13.2	68.5	0.1	-	7.6	10.6
Southern	204,398	14.8	73.6	0.2	0.1	3.2	8.2
Western	150,420	10.7	68.6	-	-	6.0	14.7

Note: Due to small numbers of some religious groups, they are sometimes combined and categorized as 'Other'

Source: CSO, 2000 Census of Population and Housing

10. The refugee population in Zambia is characterized mainly by persons or families that have fled neighbouring countries due to civil strife and wars. Past and recent data indicates that the majority of refugees are from Angola, Congo DR, Mozambique (during 1990s) and Zimbabwe, with Angola contributing the most in numbers. Most recent data shows that over half (57 percent) of the refugee population comprises Angolans, who have mostly settled in refugee camps. The repatriation exercise being implemented by Zambia, following restored peace in Angola and Congo DR, has contributed to the overall reduction in refugee population in the country (see Table 10, 11 and 12).

Table 10: Zambia Refugee Population as at May, 2004

Country of Origin								
Location	Angola	Burundi	Congo DR	Rwanda	Somalia	Uganda	Others	Grand Total
Meheba	22,428	1,065	3,272	4,100	35	19	56	30,975
Mayukwayukwa	20,017	13	149	58	-	1	39	20,277
Kala	-	-	25,374	-	-	-	-	25,374
Mwange	-	-	26,465	-	-	-	-	26,465
Ukwimi	2,379	99	-	72	-	-	-	2,550
Nangweshi	26,529	-	2	-	-	-	-	26,531
Total Camps	71,353	1,177	55,262	4,230	35	20	95	132,172
Total Urban	67	670	1,714	1,143	976	215	189	4,974
Self Settled	49,000	400	15,000	900	700	500	8,500	75,000
Grand Total	120,420	2,247	71,976	6,273	1,711	735	8,784	212,146

Source: Office of the Commissioner for Refugees, Ministry of Home Affairs, 2004

- Note:
- (a) 18,140 Angolan refugees have been repatriated from Meheba Refugee Settlement and Mayukwayukwa Refugee Camp since the repatriation started on 11/07/2003.
 - (b) 102 and 98 self settled Burundian and Rwandese refugees respectively have been repatriated.
 - (c) Grand Total of refugees who have since been repatriated is 18,684

Table 11: Zambia Refugee Population as at December, 2003

Country of Origin								
Location	Angola	Burundi	Congo DR	Rwanda	Somalia	Uganda	Others	Grand Total
Meheba	22,583	979	2,512	3,571	30	17	54	29,746
Mayukwayukwa	20,417	13	146	49	-	1	39	20,665
Kala	-	-	23,140	-	-	-	-	23,140
Mwange	-	-	25,897	-	-	-	-	25,897
Ukwimi	2,301	100	-	100	-	-	-	2,501
Nangweshi	26,688	-	-	-	-	-	-	26,688
Total Camps	71,989	1,092	51,695	3,720	30	18	93	128,637
Total Urban	67	663	1,659	1,119	976	214	160	4,858
Self Settled	121,000	316	4,000	940	-	-	71	126,327
Grand Total	193,056	2,071	57,354	5,779	1,006	232	324	259,822

Source: Office of the Commissioner for Refugees, Ministry of Home Affairs, 2004

Table 12: Zambia Refugee Population as at December, 2002

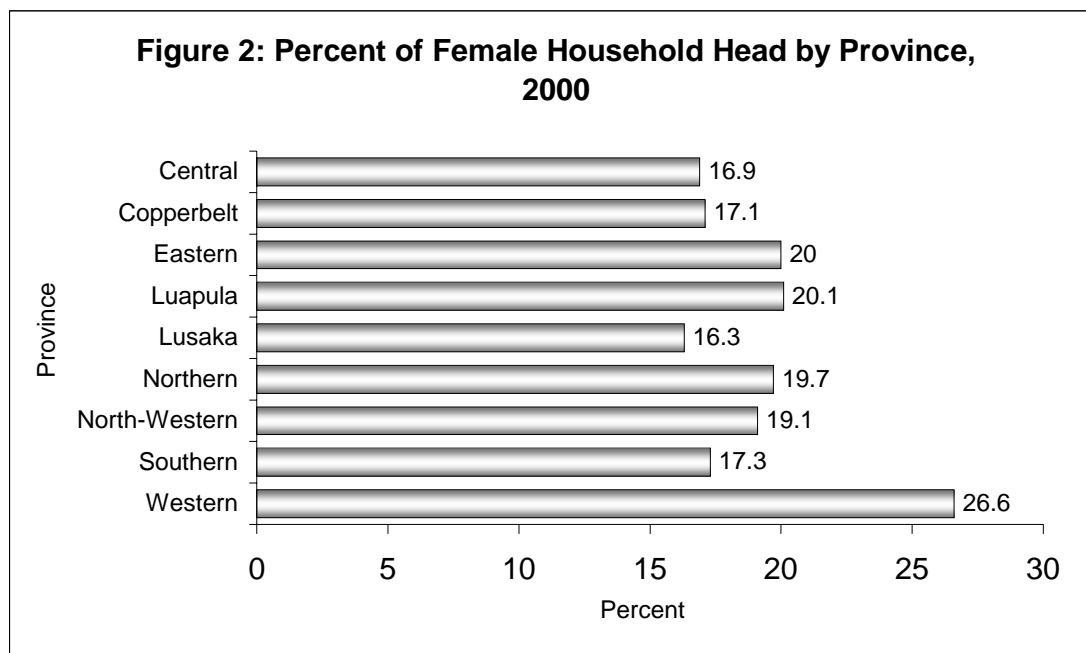
Country of Origin								
Location	Angola	Burundi	Congo DR	Rwanda	Somalia	Uganda	Others	Grand Total
Meheba	41,361	717	2,306	3,379	8	15	139	47,925
Mayukwayukwa	21,316	12	131	39	-	1	10	21,509
Kala	-	-	18,295	-	-	-	-	18,295
Mwange	-	-	22,976	-	-	-	-	22,976
Ukwimi	2,196	105	-	91	-	-	-	2,392
Nangweshi	23,114	-	-	-	-	-	-	23,114
Total Camps	87,987	834	43,708	3,509	8	16	149	136,211
Total Urban	63	594	1,363	997	929	211	181	4,338
Self Settled	121,000	400	4,000	1,000	-	-	71	126,471
Grand Total	29,050	1,828	49,071	5,506	937	227	401	267,020

Source: Office of the Commissioner for Refugees, Ministry of Home Affairs, 2004.

Table 13: Household Headship by Sex, Residence, 2000

Residence	Number of household Heads	Sex of Household Head	
		Male	Female
Total Zambia	<u>1,884,741</u>	<u>81.1</u>	<u>18.9</u>
<u>Rural</u>	1,241,534	80.5	19.5
<u>Urban</u>	643,207	82.4	17.6

Source: CSO Census of Population and Housing Report, 2000



Source: CSO, Census of Population & Housing National Analytical Report, 2000

12. In spite of the declining annual average population growth rates, Zambia is placed as having one of the world's highest growth rates. The 2000 census shows that the total population grew at an annual average growth rate of 2.4 percent during the period 1990-2000. In the previous intercensal periods, the population increased from 5,661,801 in 1980 by an annual average rate of 3.1 percent during 1969-1980 to 7,759,161 with an average growth rate of 2.7 percent from 1980 to 1990.

13. Zambia still has a young population given that it continues to bear a high proportion of persons below the age of 15 years; 45.3 percent in 2000 (see Table 14). This holds promise for continued increases in population as the young persons are expected to enter into reproductive ages (15–49 years) and contribute to the decreasing but high fertility levels of 7.2 in the 1980s to 5.9 in 2001/2002 (Box 1). At national level, there is still a difference of one child between the wanted fertility rate and the actual total fertility rate; with provincial variations indicating lower ideal and actual fertility rates for most urbanised provinces – Lusaka and Copperbelt (refer to figure 3).

Table 14: Age-Sex Population Distribution, Rural/Urban, 2000

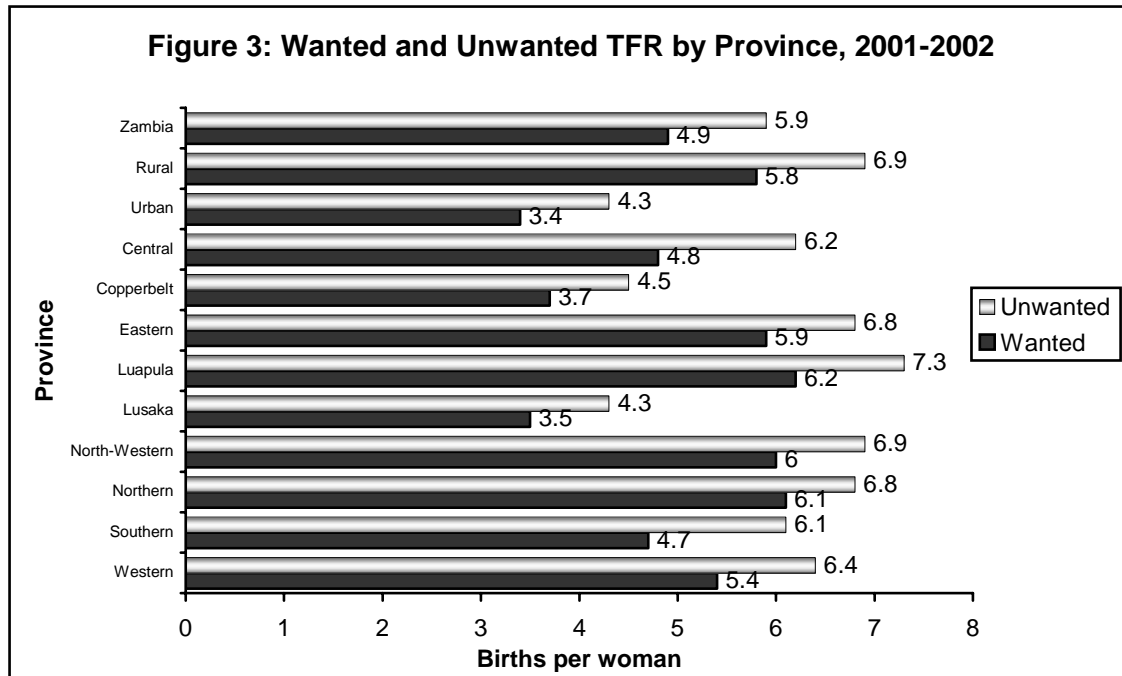
Age Group	Zambia			Rural			Urban		
	Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes	Male	Female
0-4	17.1	17.1	17.2	18.2	18.2	18.2	15.1	15.0	15.3
5-9	15.3	15.3	15.4	15.6	15.8	15.5	14.7	14.5	15.0
10-14	12.8	12.8	12.8	12.8	13.1	12.6	12.8	12.2	13.3
15-19	11.6	11.3	12.0	11.1	11.0	11.3	12.6	11.9	13.3
20-24	9.9	9.3	10.5	9.1	8.5	9.6	11.4	10.7	12.2
25-29	8.1	8.1	8.0	7.4	7.4	7.5	9.4	9.5	9.2
30-34	6.1	6.4	5.8	5.7	5.8	5.6	6.9	7.4	6.3
35-39	4.7	4.8	4.6	4.5	4.5	4.5	5.2	5.5	4.9
40-44	3.6	3.7	3.5	3.4	3.5	3.4	3.9	4.1	3.6
45-49	2.7	2.8	2.6	2.7	2.7	2.7	2.8	3.1	2.5
50-54	2.2	2.3	2.2	2.4	2.2	2.5	2.0	2.3	1.6
55-59	1.6	1.7	1.5	1.8	1.8	1.8	1.2	1.4	0.9
60-64	1.4	1.5	1.4	1.7	1.7	1.8	0.8	0.9	0.8
65-69	1.1	1.2	1.0	1.4	1.5	1.2	0.6	0.6	0.5
70-74	0.7	0.8	0.6	0.9	1.1	0.8	0.4	0.4	0.3
75-79	0.4	0.5	0.4	0.6	0.7	0.4	0.2	0.2	0.2
80-84	0.3	0.3	0.2	0.3	0.4	0.3	0.1	0.1	0.1
85+	0.2	0.2	0.2	0.3	0.3	0.3	0.1	0.1	0.1
Total									
Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Pop	9,885,591	4,946,298	4,939,293	6,452,283	3,217,284	3,234,999	3,433,308	1,729,074	1,704,234

Source: CSO, Census of Population and Housing, 2000

Box 1: Trends in Total Fertility Rates, various sources

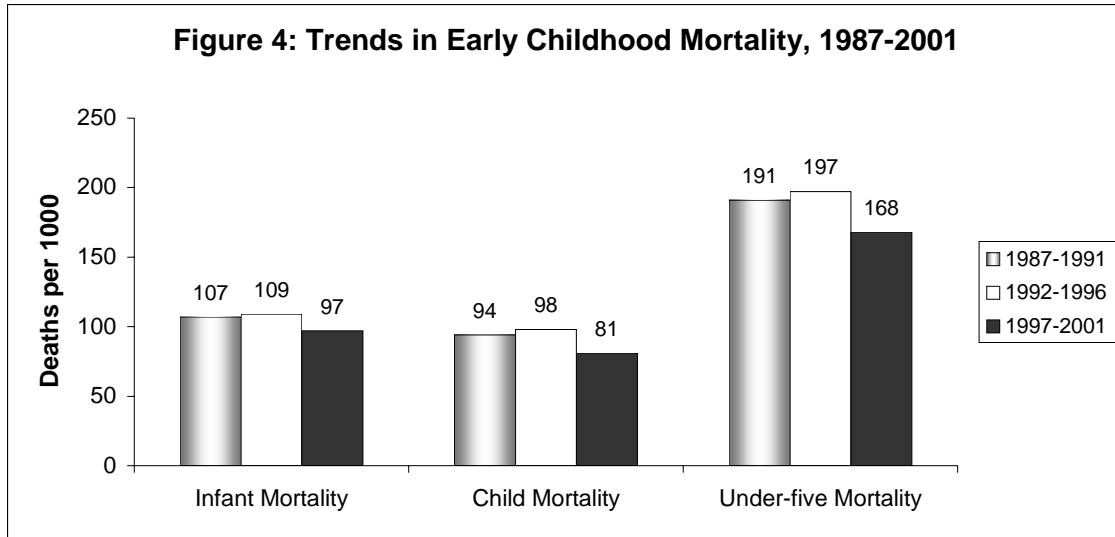
Census 1980	Census 1990	ZDHS 1992	ZDHS 1996	Census 2000	ZDHS 2001-2002
7.2	6.7	6.5	6.1	6.0	5.9

Source: CSO, Zambia Demographic Health Survey, 2001-2002



Source: CSO, Zambia Demographic Health Survey, 2001-2002

14. Infant and child mortality in Zambia remains high, a reflection of the poor health conditions in the country. Infant and child mortality rates increased in 1992-1996 but declined in the 0-4 year period preceding the recent demographic health survey, particularly so for the under-five mortality rates (see figure 4). The impressive coverage of vitamin A supplements for children in the recent past is a possible explanation for this notable decline in under-five mortality rates (U-5MR), amongst other contributing factors.



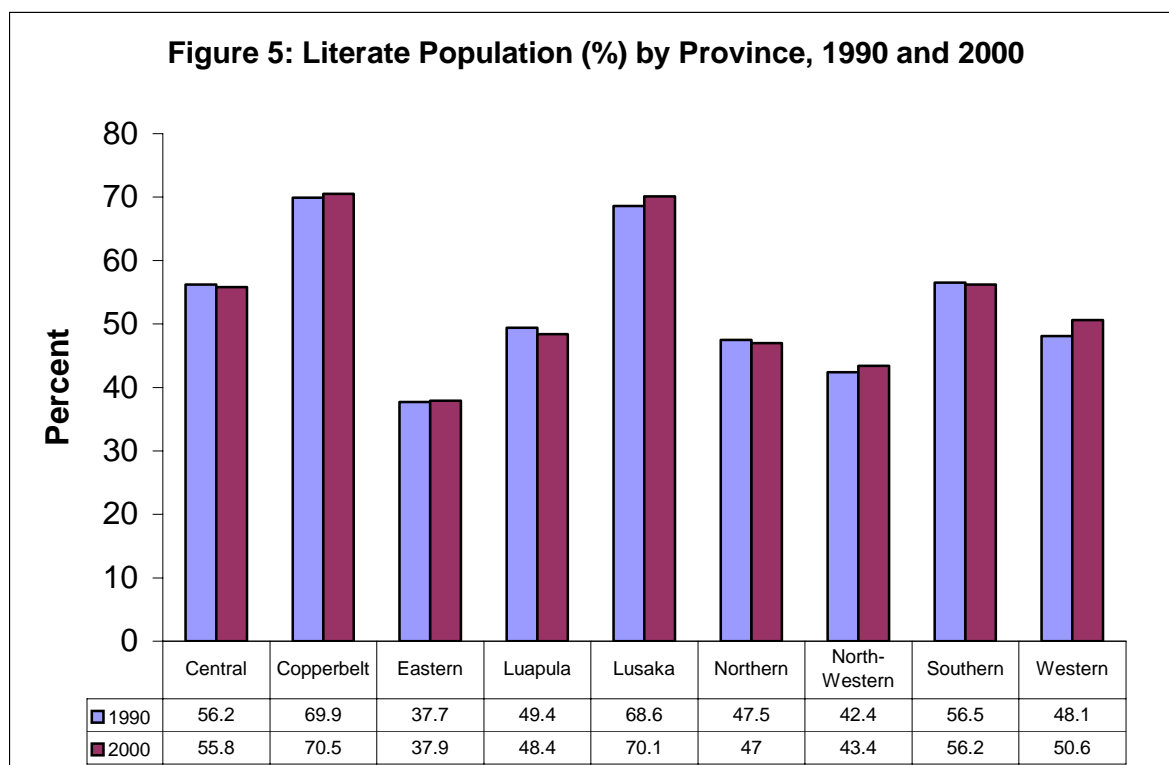
Source: CSO, Zambia Demographic Health Survey, 2001-2002

15. The ability to read and write is regarded an important personal asset allowing women and men increased opportunities in life. Although English is the national official language of communication, literacy in Zambia is established by an individual's ability to read and write in any of the local languages. The literacy rate in 2000 for the population over 5 years remained stagnant at the 1990 level of 55.3 percent. The problem of illiteracy has been more pronounced with females than males and also in rural as opposed to urban areas. Regional variations in literacy are apparent, with Eastern and North-Western Provinces showing the lowest even in 1990 (see Table 15 and Figure 5).

Table 15: Literacy by Age Group, Sex, Residence and Province, 1990 and 2000

Residence	1990				2000			
	5+	15 – 24	15+	Population	5+	15 – 24	15+	Population
Zambia- Total	55.3	74.9	66.0	6,181,285	55.3	70.1	67.2	7,680,705
Both Sexes	61.6	78.9	76.2	3,020,157	61.1	75.4	76.6	3,768,501
Male	49.2	71.2	56.3	3,161,128	49.8	65.5	58.3	3,912,204
Female								
Rural	44.7	64.7	54.4	3,735,912	45.0	59.5	56.7	4,889,359
Both Sexes	52.0	70.3	66.7	1,795,668	51.7	66.5	68.1	2,382,948
Male	38.0	59.6	43.7	1,940,244	38.5	53.3	46.4	2,506,411
Female								
Urban								
Both Sexes	71.5	88.7	83.6	2,445,373	73.5	86.3	84.8	2,791,346
Male	75.7	90.7	89.7	1,224,684	77.2	89.1	90.3	1,385,553
Female	67.3	86.9	77.5	1,220,689	69.8	83.9	79.3	1,405,793
Province	56.2	74.8	66.4	605,237	55.8	71.1	68.5	785,123
Central	69.9	88.2	82.1	1,206,682	70.5	84.6	82.4	1,287,161
Copperbelt	37.7	54.2	46.4	806,940	37.9	49.9	47.6	994,607
Eastern	49.4	69.5	61.6	439,397	48.4	62.3	61.5	590,464
Luapula	68.6	85.5	80.7	827,425	70.1	82.0	81.1	1,125,985
Lusaka	47.5	68.0	59.1	707,424	47.0	62.3	60.1	952,185
Northern	42.4	64.5	49.2	324,605	43.4	59.3	53.4	436,354
North-Western	56.5	77.1	68.6	748,779	56.2	73.4	70.2	921,109
Southern	48.1	70.4	54.9	514,796	50.6	66.8	59.6	587,717
Western								

Source: CSO, Census of Population & Housing National Analytical Report, 2000



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

THE ECONOMY

16. The Zambian economy is a third world economy heavily dependent on copper and cobalt mining. Copper and other metal exports account for about 75 percent of the country's foreign exchange earnings.
17. Zambia's economic policy regimes can be divided into four main broad periods. These are:
 - (a) Free Market Policies (1964-1972); during this period, the Government pursued liberal economic and political policies, with little or no state controls, while placing focus on provision of infrastructure and services. High and rising copper export earnings boosted the economy's capital stock.
 - (b) State Control (1973-1984); by the mid 1970s, Zambia was largely a public sector led economy with excessive controls, parastatal

monopolies, and a pro-urban, anti-agricultural bias. The Government actively supported industrialization by maintaining an overvalued exchange rate to promote imports of capital equipment and immediate goods, by protecting local producers with high tariffs on finished goods. Government subsidization policies during this period placed a negative effect on the fiscal balance. The Government increased its foreign borrowing to compensate for the steep decline in the international purchasing power of copper.

(c) Economic Transition (1985-1990); this period was characterised by the introduction of un-sustained stabilization and structural adjustment policies. Significant socio-economic changes were undertaken; and

(d) Stabilization and Structural Adjustment (1991 onwards); the Government actively pursued policies that facilitate private sector growth, including price, trade, exchange and interest rate policies; financial sector liberalization; and more responsible fiscal and monetary policies. Agricultural output and input markets were liberalized and significant privatization and other institutional reforms were undertaken.

18. The experiences of the past three decades show that sustained improvements in living standards require the country's economic policy to be set in a medium term context, with appropriate consideration for the relative strengths of the different economic policies. The medium-term fiscal objectives aim to enhance domestic resource mobilization for the social and poverty programs and for investment in infrastructure. These objectives are consistent with lowering inflation to the single digit level and to moving towards a sustainable external current account deficit.

19. The following indicators give an overview of the economic situation in 2003.

Table 16: Targets and outturn in Key Macroeconomic Variables, 2003

Variable	2002 Outturn	2003 Target A	2003 Outturn B	Difference C=B-A
Real GDP Growth Rate	3.3	4.0	4.3	0.3
Money Supply Growth (annual % change)	31.4	24.0*	13.8	(10.2)
Inflation Rate (end year)	26.7	17.1*	17.2	0.1
Domestic Fiscal Deficit (% GDP)	(4.1)	(1.55)	(5.1)	(3.5)
Total External Debt	\$7 billion			

Source: Ministry of Finance and National Planning

*Revised Targets

20. The State Party wishes to report that its economic performance in 2003 was favourable, and that this continued in the year 2004. By end 2004 the revised GDP estimate was 5.0 per cent as compared to real GDP estimate of 4.3 per cent in 2003 and 3.3 percent in 2002. This expansion in growth was mainly attributed to the recovery of agricultural output from the effects of the 2001 drought.
21. Annual inflation fell from 27.6 per cent at end-2002 to 17.2 per cent at end-2003, owing to a fall in food prices, following a favourable food harvest. By the end of 2004, however, inflation had risen to 17.5 per cent. This increase in inflation was mainly attributed to the rise in oil prices on the world market and prices of other non food items, as well as the sluggish reduction in food prices.
22. In the financial market, commercial banks' lending rates remained high in the first half of 2004. The average lending rate was recorded at 36.9 per cent in June 2004, from 45.6 per cent in December 2003. This was a significant drop from the 2002 figure of 53.1 per cent

23. The performance of the external sector in 2003 was quite satisfactory. Merchandise exports rose by 24.0 per cent to reach US\$1,137 million with receipts from both metal and non-metal exports rising. Metal export receipts grew by 30.0 per cent to US\$730 million as export volumes increased and international metal prices picked up. Non-metal exports continued to record double-digit growth. Receipts from this source are estimated to have risen by 27.2 per cent from US\$237.3 million in 2002 to US\$301.9 million due to, among others, an expansion in markets following improved access to a number of countries under the regional trade initiatives. Improvements in the business environment as well as increased investment outlays especially in the agri-business sector also provided an impetus to growth in non-metal exports. The value of merchandise imports went up by 14.0 per cent from US \$1,204 million in 2002 to US \$1,388 million in 2003. Consequently, the trade balance improved to a deficit of US \$235 million in 2003 from US\$288 million in 2002.
24. The State Party wishes to report that the performance of the external sector in the first half of 2004 was also satisfactory. Preliminary data indicates that the trade balance deficit narrowed slightly. At US\$ 209.3 million in June 2004, this was an improvement of 22.5 per cent over that recorded during the first half of 2003 (US\$ 270.2 million). The reduction of the trade balance deficit was due to an improvement in total exports. The value of exports in the first half of 2004 was US\$ 763.6 million, an increase of 55.9 per cent from US\$ 489.7 million during the same period in 2003. The rise in export earnings was due to the increase in the value of both metal and non-metal exports.

25. Metal exports receipts increased by about 76.8 per cent, to US\$ 535.1 million in the first half of 2004, from US\$ 302.7 million in the same period in 2003. This favourable increase was attributed to increased earnings in both copper and cobalt sales.
26. Non-metal export earnings increased by 22.2 per cent to US\$ 228.6 million in the first half of 2004, from US\$ 187.0 million during the same period in 2003.
27. The value of imports during the first half of 2004 increased by 28 per cent to US\$ 972.9 million, from US\$ 759.9 million during the same period in 2003. The major items responsible for the increase in value of imports were nuclear reactors and equipment, machinery, iron and steel, plastic and rubber, and paper product.
28. The domestic budget deficit widened to 5.1 per cent of GDP in 2003 from 4.1 per cent in 2002. This was due to higher than expected expenditures such as increased civil service personal emoluments as well as retrenchment packages paid to former Roan Antelope Mining Corporation of Zambia (RAMCOZ) employees. The widening budget deficit destabilised the macroeconomic environment as domestic borrowing rose sharply. This contributed to the continued prevailing high interest rates and the non-conclusion of a new economic programme with the International Monetary Fund (IMF) under the Poverty Reduction and Growth Facility (PRGF).
29. By the end of June 2004, the domestic budget deficit was estimated at K376.5 billion, 2.2 per cent of GDP.

Measures Taken To Address Economic Decline

30. The State party's economic reform programs recognise the need to diversify and expand the economic base, and increase agricultural production. Since 1992, the State party has initiated a series of ambitious market-orientated reforms aimed at reducing State participation in and control of economic activity. To date a large number (around 300) of State owned enterprises have been commercialized or privatised including the Zambia Consolidated Copper Mines (ZCCM). The privatisation of the ZCCM in March 2000, which proved to be a major political hurdle, improved the climate for private sector investments and helped boost Zambia's prospects for economic growth. The Zambian economy has begun to show some signs of recovery.

31. Zambia's economic policy objectives are anchored in the Poverty Reduction Strategy Paper (PRSP) and the Transitional National Development Plan (TNDP), whose overarching goal is poverty reduction through sustained economic growth and employment creation. In line with this goal, the State party in 2003 set out to pursue policies that were aimed at restoring and preserving macroeconomic stability, promoting efficiency as well as investing in human development. To this end, the State party set to attain the following broad macroeconomic objectives:
 - (a) achieve real GDP growth of at least 4 percent;
 - (b) reduce the average annual inflation rate to 17.9 percent and end-year inflation to 8 percent;
 - (c) build up gross international reserves equivalent to 1.9 months of imports;
 - (d) ensure food security;

- (e) raise priority poverty reducing expenditures to 2.2 percent of GDP;
- (f) reduce the domestic budget deficit to 1.55 percent of GDP;
and
- (g) reach the Completion Point under the Enhanced HIPC Initiative.

32. In addition, Zambia continues to pursue a Structural Adjustment Programme (SAP) aimed at increasing the productivity and competitiveness of local industry. This has been a key part of policy in the last decade. Major reforms have been taken in the financial, transport, health, education and communication sectors. Efforts are still being made to reorient the economy from a copper based one to a broader-based economy so as to enhance foreign exchange earnings.

GENERAL POLITICAL STRUCTURE

33. Zambia attained her independence from Britain in 1964. At independence, Zambia adopted a Constitution that provided for a multi-party democratic system. In 1973, Zambia adopted a new Constitution, which introduced a one-party system of Government. All political parties except the then-ruling United National Independence Party (UNIP) were proscribed. From the late 1980s Zambia experienced important political and constitutional developments. Those developments culminated in the amendment of the 1973 Constitution by the repealing of Article 4, which provided for UNIP as the sole political party. On 31 October 1991, multiparty presidential and general elections were held which ushered into power the newly formed Movement for Multiparty Democracy (MMD). In 1996, the Constitution was further amended making it mandatory that a Presidential candidate should be a second generation Zambian. The constitutional amendment also limited the Presidential term of office to two terms of five (5) years each. On 27 December 2001, Presidential and General elections were held which gave MMD a fresh mandate of five years.
34. The Zambian Constitution expressly provides for fundamental rights and freedoms in Part III. It also expressly provides safeguards against violation of fundamental rights and freedoms of the individual by the State. A significant development is the creation of the Human Rights Commission established in 1996. The Commission is mandated, *inter alia*, to investigate human rights violations; maladministration of justice; and, to propose effective measures to prevent human rights abuses. The creation of the Commission is clearly a milestone in Zambia's history and indicates the State party's willingness to promote the enjoyment of human rights by the Zambian people. Although the Commission has no

enforcement powers its presence is noticeable in that it highlights abuses of human rights whether perpetrated by the State party or any other body and therefore discourages further abuses.

35. In addition to Part III of the Constitution, 1996 constitutional amendments introduced Directive Principles of State Policy. These principles are of particular significance in relation to economic, social and cultural rights and are intended to guide the executive, legislature and judiciary in developing and implementing national policies; in making and enacting laws; and, in the application of the Constitution and any other law. Through these principles the State party endeavours to:

- a) Create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
- b) Create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- c) Provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and taking measures to constantly improve such facilities and amenities;
- d) Provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable, just and equitable to their needs;

- e) Take measures to promote the practice, enjoyment and development of a person's culture, tradition, custom and language insofar as these are not inconsistent with the Constitution;
- f) Promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generations; and
- g) Recognize the right of every person to fair labour practices and safe and healthy workers conditions.

36. The Commission may wish to note that the Directive Principles of State Policy may be observed when State resources are able to sustain their application or in instances where Cabinet determines that the general welfare of the public unavoidably demands their application. It should be noted that the Directive Principles of State Policy are not justiciable and cannot by themselves be legally enforced.

37. Part III of the Zambian Constitution contains the Bill of Rights, which makes provision for the fundamental rights and freedoms enjoyed by every person in Zambia. These rights and freedoms are entrenched in the Constitution and are as follows:

- Article 12 provides for protection of the right of life;
- Article 13 provides for protection of the right to personal liberty;
- Article 14 provides for protection from slavery and forced labour;

- Article 15 provides for protection from cruel, inhuman and degrading treatment;
- Article 16 provides for protection from deprivation of property;
- Article 17 provides for protection of privacy, home and property;
- Article 18 contains provisions to secure protection of the law;
- Article 19 provides for protection of freedom of conscience;
- Article 20 provides for protection of freedom of expression;
- Article 21 provides for protection of freedom of assembly and association;
- Article 22 provides for protection of freedom of movement;
- Article 23 provides for protection from discrimination on the ground of race, sex, tribe, etc; and,
- Article 24 provides for protection of young persons from exploitation.

38. The Constitution provides for a Republican State with three arms of Government, viz., Executive, Legislature and Judicature, each forming a separate and distinct organ of the State.

THE EXECUTIVE

39. The executive power is exercised by the President who is elected for a term of five years by universal suffrage. Under Article 34(3), the Constitution states:

A person shall be qualified to be a candidate for election as President if -

- (a) he is a citizen of Zambia;
- (b) both his parents are Zambians by birth or descent;
- (c) he has attained the age of thirty-five years;

- (d) he is a member of, or is sponsored by, a political party;
 - (e) he is qualified to be elected as a member of the National Assembly; and
 - (f) he has been domiciled in Zambia for a period of at least twenty years.
40. By constitutional limitation a President cannot retain office for more than two terms.
41. The Office of the President is established under Article 33 of the Constitution. The President is both Head of State and Government and presides over meetings of Cabinet. The powers of the President include:
- appointing the Vice President, Cabinet Ministers and Deputy Ministers;
 - dissolving the National Assembly.
42. The President is also Commander-in-Chief of the Defence Forces.
43. The President is deputised by a Vice President whose office is established by Article 45 of the Constitution. The Vice President is appointed by the President from among Members of the National Assembly. The Vice President performs such functions as are assigned to him by the President and is also the Leader of Government business in the National Assembly.
44. Cabinet is established under Article 49 of the Constitution and consists of the President, the Vice President and Cabinet Ministers. It formulates the policy of the Government; is responsible for advising the President on national policy; and other matters that the President refers to Cabinet. Cabinet is responsible collectively to the National Assembly.

45. The Office of Minister is created under Article 46 of the Constitution. Ministers are appointed from amongst members of the National Assembly and are responsible, under the direction of the President, for government business, including the administration of any Ministry or Government Department, which the President may assign to them.
46. The Office of Deputy Minister is created under Article 47 of the Constitution. Deputy Ministers are appointed by the President to assist Ministers in the performance of their functions and to exercise or perform such functions on behalf of Ministers as the President may authorize them to do.

THE LEGISLATURE

47. The Legislature is established under Article 62 of the Constitution. It consists of the President and the National Assembly (Parliament). Parliament is the supreme legislative authority in Zambia. The National Assembly consists of 150 elected members, 8 nominated members and the Speaker of the National Assembly. Election of Members of Parliament is done by direct, universal adult suffrage and by secret ballot. The life of the National Assembly is five years although it may be dissolved at any time before the expiry of its legal term. If the National Assembly is dissolved, general elections will be immediately held.
48. The advent of pluralism in Zambia led to the re-emergence of organised political parties each laying its own policies before the electorate, thereby leading to well-developed diverse political views in the National Assembly, which are essential to democratic governance. Individual candidates from political parties or individuals in their own right are at liberty to contest any National Assembly elections. The candidate who polls the most votes is elected to the National Assembly.

49. The Party which polls one third of the seats in the National Assembly is officially recognized as "the Official Opposition", with its leader recognized as opposition leader. However, the Speaker has the discretion to recognize a party as the official opposition even if it has polled less than one third of seats in the Parliamentary elections. For instance, in 1991 UNIP was recognized as official opposition in the National Assembly even though it had less than one third of the seats.

50. The ruling MMD has the majority share in controlling and arranging the business of the House. As initiator of policy, it indicates which action it wishes the National Assembly to take by explaining and defending its position in public debate.

51. The National Assembly has the power to establish select committees composed of members of the opposition and back-benchers whose functions are to scrutinize the work of public institutions. This affords the National Assembly the opportunity to scrutinize the performance of Government.

THE JUDICATURE

52. The Judiciary is established by Article 91 of the Constitution and consists of:
 - a) The Supreme Court of Zambia;
 - b) The High Court for Zambia;
 - c) The Industrial Relations Court;
 - d) The Subordinate Courts; and
 - e) The Local Courts.

53. The Judges of the Supreme Court and the High Court, members of the Industrial Relations Court, Magistrates and Local Court Justices are independent, impartial and subject only to the Constitution and the law and are obliged to conduct themselves in accordance with the Judicial Code of Conduct promulgated by Parliament in 1999. The Judicature is autonomous and administered by an Act of Parliament.
54. The Supreme Court of Zambia is established by Article 92 of the Constitution and the Supreme Court Act, Chapter 25 of the Laws of Zambia. The Supreme Court is the final Court of appeal in civil and criminal matters. It is the superior court of record and consists of the Chief Justice, the Deputy Chief Justice and Supreme Court Judges whose number is prescribed by the Supreme Court Act and are appointed by the President. There are currently seven (7) serving Supreme Court Judges out of an establishment of nine (9) Judges.
55. The Office of the Chief Justice, Deputy Chief Justice and Supreme Court Judge is established by Article 92 of the Constitution. The Chief Justice, Deputy Chief Justice and Supreme Court Judges are appointed by the President subject to ratification by the National Assembly in accordance with Article 93 of the Constitution. The Chief Justice is responsible for making rules with respect to practice, direction and procedure of the Supreme Court in relation to the jurisdiction and powers of that Court.
56. The High Court for Zambia is established by Article 94 of the Constitution and the High Court Act Chapter 27 of the Laws of Zambia. The High Court has an establishment of 30 puisne Judges in addition to the Chief Justice who is an ex-officio member. Currently there are 25 serving Judges.

57. The High Court has unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by the Constitution or any other law. This, however, excludes proceedings in which the Industrial Relations Court under the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, has exclusive jurisdiction.
58. The High Court determines appeals from the lower courts and aggrieved parties may appeal from this Court to the Supreme Court.
59. The Industrial Relations Court is provided for under Article 91 of the Constitution and is established by Section 84 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia. This Court consists of a Chairman, Deputy Chairpersons, all of whom are appointed by the President on the advice of the Judicial Service Commission. Four other members are appointed by the Ministry of Labour and Social Services to serve on the Industrial Relations Court.
60. The Chairman and Deputy Chairman should be persons who hold or have held high judicial office or have practiced as advocates for a minimum period of ten (10) years.
61. The Industrial Relations Court has exclusive jurisdiction in labour related matters. It has the jurisdiction to:
 - a) Examine and approve collective agreements;
 - b) Inquire into and make awards and decisions in collective disputes;

- c) Inquire into and make awards and decisions in any matters relating to industrial relations which may be referred to it;
- d) Interpret the terms of award and agreements;
- e) Commit and punish for contempt, any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him by the Court; and
- f) Generally to inquire into and adjudicate upon any matter affecting the rights, obligations and privileges of employees, employers and representative organizations.

62. The Industrial Relations Court is a quasi-judicial tribunal and does not follow strict rules of evidence. The procedure followed for the institution of legal proceedings before this Court is relatively simple as compared to that which is followed in the other Courts.

63. The Subordinate Courts are provided for under Article 91 of the Constitution and are established by the Subordinate Courts Act, Chapter 28 of the Laws of Zambia.

64. All magistrates are appointed by the Judicial Service Commission acting in the name of the President. The jurisdiction of a Subordinate Court depends on its class and the rank of the presiding magistrate. The jurisdiction in civil cases varies between classes in relation to the amounts at issue in matters brought before the courts and also as to the type of action triable. Criminal jurisdiction also varies according to the class of magistrate presiding and class of court. Subordinate courts are empowered to adjudicate on appeals from the local courts. An aggrieved

party has the right to appeal against the decision of a Subordinate court to the High Court.

65. The institution of Local Courts is provided for under Article 91 of the Constitution. Local Courts are established under the Local Courts Act, Chapter 29 of the Laws of Zambia. These courts are at the base of the hierarchical judicial system. There are about 454 local courts in Zambia. The Judicial Service Commission appoints the local court justices. Local courts are divided into grades A and B and their jurisdiction is limited according to the grade which the court warrant assigns to them. A Local Court may only hear matrimonial or inheritance cases based on customary law where that law applies. Local courts are primarily authorized to apply and enforce customary law. The Local Courts criminal jurisdiction is limited to cases such as simple thefts and common assaults. Whenever a Local Court is seized with the conduct of a civil or criminal matter in which a party wishes to be represented by a lawyer, that matter is immediately transferred to the Subordinate courts for trial because lawyers have no right of audience in the Local Courts.

66. The independence of the Judiciary and its autonomy from the legislative stated earlier, the President appoints Supreme Court judges. Puisne Judges are appointed by the President acting on the advice of the Judicial Service Commission and are subject to ratification by the National Assembly. This requirement for ratification strengthens the independence of the Judiciary in that it safeguards against the appointing authority exercising undue influence on the Judiciary and its work. Judges of the Supreme Court and High Court enjoy security of tenure, which enables them to perform their functions without fear or favour. A Judge can only be removed from office on grounds of inability to perform the functions of office whether arising from infirmity of body or mind, incompetence or

misbehaviour, after a tribunal appointed to investigate the allegations confirms such allegations and recommends that a Judge be removed. The Judiciary's independence is further protected as the salaries payable to the Judges and their terms of office may not be altered to their disadvantage after their appointment.

67. The laws, which are applied by the different Courts, which form the Judicature, fall into three broad categories:
- (a) Legislation
 - (i) In the form of Acts of Parliament and subordinate legislation made under those Acts.
 - (ii) English Laws (Extent of Application) Act, Chapter 10 of the Laws of Zambia provides that all English statutes in force in England in 1911 are applicable in Zambia as long as the law is not inconsistent with existing Zambian laws, and the Act is to be applied in the light of prevailing local circumstances. In matrimonial causes English laws are still applicable;
 - (b) Judicial precedents, which are rules, derived from decisions of the High Court and Supreme Court of Zambia; and
 - (c) Customary law, which is applicable in so far as it is not inconsistent with existing statutory laws or repugnant to the principles of natural justice, equity and good conscience.
68. The Office of the Attorney General is established under Article 54 of the Constitution. The Attorney General is appointed by the President subject

to ratification by the National Assembly and is the principal legal adviser to the State. The Attorney General is not subject to the direction or control of any other person or authority in the discharge of duties. The Attorney General is charged, *inter alia*, with representing the State in all civil proceedings to which the State is a party. The Attorney General is also an *ex officio* member of Cabinet.

69. The Office of the Solicitor-General is established by Article 55 of the Constitution. He is appointed by the President subject to ratification by the National Assembly. The Solicitor-General deputizes the Attorney-General and exercises any power or duty imposed on the Attorney-General by the Constitution or any other written law whenever the Attorney-General is unable to act owing to illness or absence or where the Attorney-General has authorized the Solicitor-General.

70. The Director of Public Prosecutions is appointed by the President subject to ratification by the National Assembly. The office of Director of Public Prosecutions is established by Article 56 of the Constitution. The Director of Public Prosecution has the power:
 - a) to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person;

 - b) to take over and continue any such criminal proceedings as have been instituted or undertaken by any other person or authority;and,

c) to discontinue at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

71. The Director of Public Prosecutions is not subject to the direction or control of any other person or authority in the exercise of his duties. Where in the judgement of the Director of Public Prosecutions a case involves general considerations of public policy, the Director of Public prosecutions may bring the case to the notice of the Attorney General and will in the exercise of his powers in relations to that case, act in accordance with any directions of the Attorney-General.
72. The initial decision to institute a criminal investigation normally lies with the police. The police have the power to investigate all criminal offences. However, in terms of prosecuting an offender the police have the authority to initiate proceedings in accordance with the law (except for certain offences which require the consent of the Director of Public Prosecutions).
73. Under Section 89 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia, an individual may conduct a private prosecution with the consent of the Director of Public Prosecutions.
74. The presumption of innocence is cemented in the Constitution and an accused person is presumed innocent until proved guilty. Therefore, the onus is on the prosecution to prove its case beyond reasonable doubt.
75. An accused person may retain a lawyer of his or her choice. If remanded in custody, an accused person may be visited by his or her lawyer to ensure a well-prepared defence. Criminal trials are normally in open court

and rules of evidence are vigorously applied (however, the court may sit in camera; in certain cases such as those involving juveniles). During the trial the accused has the right either personally or through his or her lawyer to cross-examine the prosecution witnesses. The accused also has the right to remain silent, testify on oath or make an unsworn statement in his or her own defence and may call witnesses in his or her defence.

76. In civil matters an aggrieved party is at liberty to institute proceedings before a court of competent jurisdiction. Normally civil proceedings are instituted by writ of summons, petition or notice of motion. In civil matters both the plaintiff and the defendant are at liberty to call witnesses.

77. The State party aims to provide access of legal services to the socially and economically disadvantaged persons in society. In this regard a person whose means are inadequate to enable him or her to engage a private legal practitioner may apply for and be granted legal aid in civil and criminal matters in terms of the Legal Aid Act, Chapter 34 of the Laws of Zambia. A person charged with a serious criminal offence is automatically granted legal aid unless that person is able to retain the services of a private legal practitioner. In 2000, the Legal Aid Act was amended to provide for a Legal Aid Board and a Legal Aid Fund. Private legal practitioners may in addition undertake the representation of legally aided persons for a small fee. The fee is met under a Legal Aid Fund established for the purpose. This was done in an attempt to improve legal aid, due to various constraints experienced by the Legal Aid Department, which was unable to cope with the huge number cases.

OTHER ENTITIES INVOLVED IN THE ADMINISTRATION OF JUSTICE

78. The Commission for Investigations is established under Article 90 of the Constitution and the Commission for Investigations Act Chapter 39 of the Laws of Zambia. The President, in consultation with the Judicial Service Commission, appoints the Chairman of the Commission for Investigations. The Commission for Investigations is empowered to investigate and report to the President on complaints made to it about mal-administrative actions taken by public authorities. The Commission has no power to question or review any judicial decisions. However, the Commission has formal powers to examine witnesses and to seek access to documents. It conducts investigations privately and usually works in an informal manner.
79. The role of the Investigator-General (the Ombudsman) is to determine whether there has been any mal-administration on the part of a relevant agency to justify a complaint, or whether the agency has acted improperly or wrongly. Where it finds that a complaint has merit, the Commission may recommend to the President that remedial action be taken. A special feature of the powers of the Investigator-General is that the Investigator-General is required to consider whether a provision of the Act or a practice upon which a decision is based is unreasonable, unjust, oppressive or discriminatory. Thus, the Investigator-General can suggest that a decision is objectionable even if such a decision is not in itself invalid.

GENERAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

80. Zambia has ratified and acceded to several human rights conventions, these include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial

Discrimination, the International Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child and the African Charter on Human and People's Rights. In addition the State party has ratified regional instruments for the protection and promotion of human rights and fundamental freedoms. However, international instruments are not self-executing and require legislative implementation to be effective in Zambia as law. Thus, an individual cannot complain in a domestic court about a breach of Zambia's international human rights obligation unless the right has been incorporated into domestic law. Nevertheless, courts in Zambia have in appropriate cases given judicial notice to international instruments which Zambia has ratified or acceded to even though these have not been reduced into domestic legislation.

81. The Judiciary plays a prominent role in the protection of fundamental freedoms and human rights because a victim of any human rights violation has a right to institute proceedings and where appropriate, remedies are granted. The establishment of the Human Rights Commission has further added to the promotion of the enjoyment of human rights. Where a person's rights have been violated, that person may complain to the Human Rights Commission. As earlier stated the Commission may investigate such violations and if proved, recommend to the relevant authorities to redress the violation. Although the Human Rights Commission has been criticised because it does not have any enforcement powers, the Commission's ability to expose human rights violations tends to deter further abuses.
82. The media in Zambia enjoys an increasingly high degree of freedom, which allows the press, radio and television to play a significant role in

exposing breaches of human rights and fundamental freedoms and exerting pressure for remedial action. The media is free to report on Parliamentary proceedings as well as court proceedings relating to human rights matters and Parliamentary questions are often prompted by media coverage of a particular matter. During the November 2001 National Assembly Session the State party for the first time in Zambia, introduced live coverage on National Assembly debates on radio.

INFORMATION AND PUBLICITY

83. In Zambia efforts are regularly made to acquaint the public and the authorities with rights provided for in the various international human rights instruments. Symposia and lectures on human rights have been organized and seminars on human rights have been held for educators, the police and other public officers. Furthermore training in human rights is given in primary, secondary and higher institutions of learning within the framework of social studies and civics. The media also plays an important role in publicizing and educating people about their rights.

84. Churches and NGO's play a prominent role in the promotion and protection of human rights standards among members of the public and are involved in various human rights activities in order to achieve this. NGO's involved in human rights include: Non-Governmental Organization Co-ordinating Council (NGOCC), Zambia Civic Education Association (ZCEA), Foundation for Democratic Process (FODEP), Institute of Human Rights, Intellectual Property and Development Trust (HURID), Young Women's Christian Association (YWCA), Women for Change (WFC) and Women in Law in Southern Africa (WILSA).

85. Mother bodies of faith-based organisations involved in human rights promotion include: Zambia Episcopal Conference, Christian Council of Zambia and the Evangelical Fellowship of Zambia.

86. The responsibility for compiling reports under the various international and regional human rights instruments falls under the Ministry of Justice in collaboration with the other line ministries and departments. It is worth noting that Zambian NGOs are invited to participate and do assist in compiling State reports. Reports prepared under the various instruments are public documents and can be made available on request.

CHAPTER 2

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

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

A. LEGISLATIVE MEASURES

The Constitution

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

Article 11 reads:

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

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

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

89. The rights contained in the Covenant accrue to every person in Zambia as declared and recognized in Article 11 of the Constitution.
90. Further, Article 23(1) prohibits the enactment of a law that makes any provision that is discriminatory either of itself or in its effect. Article 23 (2) prohibits any person acting by virtue of any written law or in performance of the functions of any public office or authority, from treating any person in a discriminatory manner.
91. Article 23 (3) of the Constitution defines the term “discriminatory” as meaning:
- “..... affording different treatment to different persons attributable, wholly or mainly to their respective description by race, tribe, sex, place of origin, marital status, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.
92. Article 23 (4) provides instances under which Article 23 (1) shall not apply. It states -
- “Clause (1) shall not apply to any law so far as that law makes provision -
- (a) for the appropriation of the general revenues of the Republic;
 - (b) with respect to persons who are not citizens of Zambia;
 - (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
 - (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
 - (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justified in a democratic society.”
93. According to Article 23 (5) of the Constitution no law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is

shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

Industrial and Labour Relations Act

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

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

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

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

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

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

Penal Code

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

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

Persons with Disabilities Act

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

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

99. A person with disability is defined as:

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

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

- (a) Section 19(1) for the purposes of this Part, “discrimination” means:
- “(i) treating a person with a disability less favourably from a person without a disability;
 - (ii) treating a person with a disability less favourably from another person with a disability;
 - (iii) requiring a person with a disability to comply with a requirement or condition which persons without a disability may have an advantage over; or
 - (iv) not providing different services or conditions required for that disability”

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

- “(a) advertising for employment;
- (b) recruiting persons for employment;
- (c) offering terms of conditions of employment;
- (d) considering promotion, transferring or training such persons;
- or
- (e) providing any other benefits related to employment.”

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

- “(a) refuses or fails to accept, to admit such person on the ground of his disability;
- (b) gives terms or conditions on which it is prepared to admit such a person because of his disability;
- (c) denies or limits any person with a disability access to any benefit provided by that learning institution;
- (d) expels that student or pupil on the grounds of his disability; or
- (e) discriminates against the person in any other way on grounds of that person’s disability.”

Public Order Act

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

Education Act

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

Zambia National Broadcasting Corporation Act

106. Section 31 of the Zambia National Broadcasting Corporation Act, Chapter 154 empowers the Minister to cancel at any time or refuse to issue a licence or to renew a licence issued to a broadcaster or operator of a diffusion service in terms of the Act, if he is satisfied, after inquiry, that the cancellation or the refusal to issue or renew the licence is justified in the public interest.
107. Section 27 of the same Act, read together with Section 60 (1) (f), (g) and (j) of the Penal Code, empowers the Minister to prohibit the broadcasting of seditious programmes.

Societies Act

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

prejudice by reason of the registration or exemption from registration of such society.

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

B. JUDICIAL MEASURES

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

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

- (a) hear and determine any such application;
- (b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2);

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

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

- (i) Damages
- (ii) Declaration

- (iii) Mandamus
- (iv) Habeas Corpus

C. ADMINISTRATIVE MEASURES

Human Rights Commission

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

- (a) to investigate human rights violations;
- (b) to investigate any mal-administration of justice;
- (c) to propose effective measures to prevent human rights abuses;
- (d) to visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- (e) to establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuses in order to enhance the respect for and protection of human rights; and
- (f) to do all such things as are incidental or conducive to the attainment of the functions of the Commission.

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

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

Commission for Investigations

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

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

corrective actions include suggesting appropriate amendments to rules, regulations or statutes under which a complaint was made.

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

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

117. The Investigator General, who is the Chairperson of the Commission for Investigations, is also known as the Ombudsman of Zambia. The Investigator General is a person who qualifies to hold office of High Court Judge but does not perform any judicial function. The Investigator-General has powers to receive complaints from the members of the public and investigate these complaints provided that they fall within his competence. In the process of investigating the Ombudsman has general access to any public documents relevant to the investigations. The Ombudsman may also commence investigations on his own initiative.

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

Constitutional Review Commission

119. The State party constituted a Constitutional Review Commission (CRCO) in August 2003 to interalia -

(a) collect views on what type of Constitution Zambia should enact, considering that the Constitution should exalt and effectively

entrench and promote the legal and institutional protection of fundamental human rights;

- (b) recommend appropriate ways and means of entrenching and protecting human rights, the rule of law and good governance in the Constitution;
- (c) examine and recommend the elimination of provisions which are perceived to be discriminatory in the Constitution;
- (d) recommend provisions to ensure the competence, impartiality and independence of the judiciary and access of the public to justice; and;
- (e) examine and recommend to what extent issues of gender equality should be addressed in the Zambian Constitution.

D. FACTORS AND DIFFICULTIES

- 120. Generally, most people living in Zambia are not aware of their rights, the provisions of the Covenant and other human rights instruments and thus find it difficult to seek redress when their rights are violated.
- 121. Zambia is currently going through economic difficulties; in this regard most institutions involved in the implementation of Article 2 of the Covenant are constrained by inadequate human, financial and material resources, which make it difficult for them to fully discharge their mandates.
- 122. A challenge still remains for the State party with regard to Article 23 of the Constitution that allows discrimination in adoption, marriage, divorce and devolution of property laws.

123. The State party has had challenges insofar as family attitudes towards children with disabilities are concerned. Family attitudes have not been favourable to children with disabilities. Some communities within the State party look upon a disabled child as a curse or a punishment from God. Others believe it is as a result of parents engaging in witchcraft. Therefore, from a false sense of shame or embarrassment, many parents do not divulge information on their disabled children; as a result, their children's problems remain unknown and untreated. This is compounded by the lack of a system of identifying disabled children. Reliable statistical information on disabilities is not readily available.

CHAPTER 3

Article 3

1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

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

A. LEGISLATIVE MEASURES

The Constitution

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

Legal Aid Act

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

B. JUDICIAL MEASURES

127. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

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

D. OTHER MEASURES

129. Government has created an enabling environment for members of the public to form any organizations that promote equality before the law and protect human rights. Through the Societies Act, a number of NGOs have been registered, which among other things sensitise and educate members of the public on issues of human rights and also offer legal assistance to the vulnerable. Some of these NGOs include the Women in Law in Southern Africa, Foundation for Democratic Process and the Young Women's Christian Association.

D. FACTORS AND DIFFICULTIES

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

- (a) Though the Legal Aid Department is set up for the benefit of the entire population, it is restricted in its operation by

serious financial constrains, which limit its ability to reach out to a wider section of the population;

- (b) Generally, most people in Zambia are not aware of their rights and the institutions and instruments set forth by Government to protect their rights. Usually, people do not come forth to complain in the event that their rights are violated;
- (a) There is limited collaboration between relevant Government institutions and CSOs involved in activities aimed at promoting equality before the law; and
- (b) Very few people are aware of the functions of the Commission for Investigations; the Legal Aid Department and the PPCA.

CHAPTER 4

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Right to Life

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

A. LEGISLATIVE MEASURES

The Constitution

132. The right to life is protected by Article 12 of the Constitution which provides –

“(1) A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

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

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

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war; or
- (d) in order to prevent the commission by that person of a criminal offence."

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

Penal Code

134. The Penal Code Chapter 87 protects the right to life through the following prohibitions:
- (a) Section 151: prohibits inducing miscarriages in women;
 - (b) Section 152: prohibits a woman from inducing her own miscarriage; and
 - (c) Section 203: prohibits the practice of infanticide.

National Food and Nutrition Commission Act

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

“Section (3) (2) Schedule –

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

Food and Drugs Act

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

B. JUDICIAL MEASURES

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

C. ADMINISTRATIVE MEASURES

National Health Policy

138. The National Health Policy aims at providing Zambians with equity of access to effective and quality health care as close to the family as possible. Primary health care is considered as the most basic strategy to achieve this. The policy encourages intersectional collaboration between the Ministry of Health and CSOs. The National Health Policy strives to encourage preventive, promotive, curative and rehabilitative services and encourages individuals to take responsibility of their health.
139. National Health Policy also aims at improving child health and reducing child mortality. The State Party, through the Ministry of Health and its partners has embarked on massive nation-wide health campaigns for children under five, on radio and national television. The campaign includes giving vaccinations and medicines to children below the age of five, free of charge at all Government health centres. Child health weeks are held every six months to boost the immunization of children and to provide free intervention for prevention of malaria.

HIV/AIDS

140. In Zambia, HIV/AIDS has become increasingly wide spread with an estimated adult HIV prevalence of 16 percent. HIV infection among females between 30 to 34 years stands at (22%) while that for males between 35 to 39 years is (29%). Young women aged 15 to 19 are 5 times more likely to be infected compared to males in the same age group. It is also estimated that 25 percent of pregnant women are HIV positive and that approximately 40 percent of babies born are HIV positive. (Source ZHDS, 2002). To address the HIV/AIDS pandemic the State party is in the process of developing a National HIV/AIDS/STI/TB policy.

National HIV/AIDS/STI/TB Council

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

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

HIV/AIDS activities;

HIV/AIDS Intervention

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

Anti-Retro-Viral Therapy (ART)

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

Scaling up of HIV/AIDS Activities

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

Mother to Child Transmission of HIV

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

Antenatal Care

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

Statistics on Child Health and Life Expectancy

147. Government continues to monitor and evaluate the impact of these policies and programmes through various surveys. The population censuses remain the major source of demographic information. The 1980, 1990 and 2000 population censuses provided information on child mortality rates, based on reports of the mothers, of the survival of their children by sex.
148. Table 1.0 below presents various mortality indicators in Zambia from 1980 to 2000. Overall, Infant Mortality Rate³ (IMR) declined in Zambia, by about 12 percent, though still higher than the 1980 figure. IMR increased

³ Infant Mortality Rate, refers to the number of deaths among infants aged below one year per thousand (1,000) live births per year.

by about 24 percent between 1980 and 1990, from 99 to 123 deaths per 1000 children, respectively. In 2000, IMR was recorded at 110 deaths per 1000 children. This implies that 11 children died more in 2000 than in 1980, for every 1000 children.

149. Statistics indicate that overall Child Mortality Rate⁴ (CMR) declined slightly between 1990 and 2000, by about 13 percent, from 95 to 82 deaths per 1000 live births, respectively. The 2000 levels, however, were still higher than the 1980 levels, by about 16 percent (82 compared with 71 deaths per 1000 live births).

⁴ Child Mortality Rate, refers to the number of deaths among children aged between exact age one and five years per thousand (1000) live births per year

Table 17: Childhood Mortality Indicators, by Sex of Child, Residence and Province, 1980 - 2000

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

Source: CSO Census of Population and Housing, 2000

150. Under-Five Mortality Rate⁵ continued to increase between 1980 and 2000. It increased by about 7 percent, from 151 to 162 deaths per 1000 children between 1990 and 2000, respectively.

151. Statistics show that life expectancy⁶, which is also a mortality indicator, recorded an increase between 1990 and 2000 (Table 1.1). In 1990 life expectancy was 47 years and by 2000 it increased to 50 years. This increase is still lower than the 1980 estimate of 52 years. As will be seen from Table 1.1 the female life expectancy is higher than that of males; that is 53, 48 and 52 years in 1980, 1990 and 2000 respectively, as

⁵ Under-five Mortality Rate, refers to the number of deaths among children aged below five years per thousand (1000) live births per year. It constitutes both infant and child mortality.

⁶ Life expectancy refers to the average number of years a newly born child is expected to live, if the current existing mortality conditions were to prevail for a long time.

compared to the male life expectancy, which was recorded at 52, 46 and 48 years in 1980, 1990 and 2000 respectively.

Table 18: Life Expectancy at Birth, by Sex, Residence and Province, 1980-2000

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

Source: CSO Census of Population and Housing, 2000

D. FACTORS AND DIFFICULTIES

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

Arbitrary Deprivation of Life

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

A. LEGISLATIVE MEASURES

The Constitution

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

Penal Code

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

B. JUDICIAL MEASURES

- 156. GRZ Vs. Zimba 2001
- 157. GRZ Vs. Zimba 2001
- 158. GRZ Vs. Zimba 2001

C. ADMINISTRATIVE MEASURES

Police Service

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

Prisons Service

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

Police Public Complaints Authority

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

- (a) to receive all complaints against police actions;
- (b) to investigate all complaints against police actions which result in serious injury or death of a person;
- (c) to submit its findings, recommendations and directions to:

- (i) the Director of Public Prosecutions for consideration of possible criminal prosecution;
- (ii) the Inspector-General of Police for disciplinary action or other administrative action; or
- (iii) the Anti-Corruption Commission or any other relevant body or authority.

162. The PPCA has the power to investigate all complaints referred to it by –

- (a) an aggrieved person directly or indirectly affected by police action;
- (b) an association acting in the interests of its members; and
- (c) a person acting on behalf of an aggrieved person, body or organization.

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

D. FACTORS AND DIFFICULTIES

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

Death Penalty

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

A. LEGISLATIVE MEASURES

The Constitution

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

Penal Code

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

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

169. The sentence of death with respect to aggravated robbery will only be imposed if there was a presence or use of a firearm.
170. Section 25 (2) of the Penal Code states that persons under the age of 18 cannot be sentenced to death. They may however, be detained in corrective institutions at Presidential pleasure. The release from such institutions is left to the discretion of the President in consultation with relevant authorities, as provided in Section 25(3) of the Penal Code.
171. Section 25 (4) of the Penal Code states that the death penalty cannot be imposed on a pregnant woman. Only a maximum sentence of life imprisonment can be imposed. In practice, Section 25 of the Penal Code has been fully adhered to.

B. JUDICIAL MEASURES

172. The High Court has original jurisdiction to hear and determine *inter alia* offences of treason, aggravated robbery and murder. All appeals from the High Court lie with the Supreme Court which has the power to confirm or quash the death penalty or reduce it to a lesser sentence.
173. The procedures observed in imposing the death penalty by the Courts are set out in Sections 303 – 306 of the Criminal Procedure Code, Chapter 88. There are:-
- (a) where a person is sentenced to death, the sentence is death by hanging;
 - (b) before a sentence of death is executed a certificate under the hand of the Registrar or the Clerk of Court naming and describing the

- person must be produced as sufficient authority for the death penalty;
- (c) once the sentence of death has been pronounced an automatic appeal lies from the High Court to the Supreme Court in favour of the accused within 14 days from the date of sentence. The Judge is under an obligation to inform the President of the death sentence in writing;
 - (d) the President on the advice of the Advisory Committee on the Prerogative of Mercy and after all appeals have been exhausted in Courts, pardon such an offender or issue a death warrant or commutation of sentence;
 - (e) where a death warrant, or order, for pardon is issued by the President, that warrant shall serve as sufficient authority for treatment of the accused; and
 - (f) where a woman alleges to be pregnant, it is left to the discretion of the Court to determine such pregnancy and if found pregnant, the Court shall not pass the death sentence.

C. ADMINISTRATIVE MEASURES.

Statistics on the Death Penalty

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

Table 19: Death sentences pronounced/Carried Out/Commuted by Sex

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

Source: Ministry of Home Affairs 2004

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

D. FACTORS AND DIFFICULTIES

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

CHAPTER 5

Article 5

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.

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

Slavery and Servitude

A. LEGISLATIVE MEASURES

The Constitution

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

Penal Code

180. The Penal Code provides that -

- (a) Section 261: a person who trades, accepts, receives or detains a person as a slave is guilty of a felony and is liable to imprisonment for 7 years;

- (b) Section 263: a person who unlawfully compels any person into forced labour is guilty of a misdemeanour;
- (c) Section 262: any person who habitually trades in slaves is guilty of a felony and is liable to imprisonment for 10 years;
- (d) Section 110: any person who procures or attempts to procure a woman below the age of 21 as a prostitute in a brothel in Zambia or elsewhere is guilty of a misdemeanour;
- (e) Section 141: any person who by threats or intimidation procures or attempts to procure any woman or girl for unlawful carnal connection and or administers any drug matter with intent to stupefy or overpower such girl or woman is guilty of a misdemeanour;
- (f) Section 142: any person who is the owner or occupier of premises who uses his premises for men to have unlawful carnal knowledge of girls under 12 years of age is liable to imprisonment for 5 years unless it can be shown that such person did believe that the girl was of or above 12 years; and
- (g) Section 144: any person who detains any woman or girl against her will to have unlawful carnal knowledge with a man on his premises or brothel is guilty of a misdemeanour.

Narcotic Drugs And Psychotropic Substances Act

181. The Act prohibits -

- (a) Section 14: any person from inducing another person from taking any

narcotic drug or psychotropic substance. Upon conviction such person is liable to imprisonment for a term not exceeding 10 years; and

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

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

Employment of Young Persons and Children Act

183. The Employment of Young Persons and Children Act, Chapter 274, prohibits children from being employed in any type of work which by its nature or the circumstances in which it is carried out constitutes a worst form of labour.

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

Forced or Compulsory Labour

Penal Code

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

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

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

Work or Other Service Under Article 8 (3) (C) of the Covenant

Persons Under Detention

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

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

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

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

189. According to Section 156 of the Prisons Act, no prisoner shall be required to do any labour on Sundays or public holidays except such labour as may

be necessary for keeping the prison premises clean and for cooking prisoners' rations. Prisoners of the Jewish faith are not compelled to work on Saturdays if they make a claim for such exemption. Prisoners of the Orthodox Muslim faith are allowed to observe the fast of Ramadan and during such fast such prisoners work in reduced tasks. In addition, the Commissioner of Prisons may issue other religious holidays for prisoners who are members of other religious communities as he thinks fit.

Persons on Conditional Release

190. Persons on conditional release may be subject to community service provided for in Section 4 of the Penal Code (Amendment) Act No. 12 of 2000 and Section 306A and B of the Criminal Procedure Code (Amendment) Act No. 13 of 2000.
191. A Court may make an order for community service where in the case of an adult; the offence is a misdemeanour and is punishable by imprisonment. Before making an order for community service, the Court shall consider the report submitted by a superior police officer or other person or institution as the Court may consider appropriate as regards the character, antecedents, home surroundings, health or medical condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed.
192. An order for community service shall specify –
 - (a) the number of hours to be worked;
 - (b) the days on which the work is to be performed;
 - (c) the period of community service;

- (d) the place where the offender is to perform community service;
- (e) that the offender shall, during the period of community service, be under the supervision of an authorized officer; and
- (f) any other special terms and conditions of the order.

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

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

Compulsory Military Service and Conscientious Objection to Military Service

194. The practice of compulsory military service does not exist in Zambia. The enlistment procedure found in Section 14 of the Defence Act, Chapter 106 is voluntary. A recruiting officer cannot enlist any person in the Regular Force unless he is satisfied that the person intending to be enlisted understands the general conditions of engagement and wishes to be enlisted. In addition a recruiting officer can not enlist a person under the apparent age of 18 unless consent to the enlistment has been given in writing by his parent or guardian or where the parents or guardian are

dead or unknown, by the Town Clerk or Council Secretary of the district in which such person resides.

B. JUDICIAL MEASURES

195. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

Prisons Service

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

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

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

D. FACTORS AND DIFFICULTIES

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

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

CHAPTER 6

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

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

Persons Deprived of Liberty

A. LEGISLATIVE MEASURES

The Constitution

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

- (a) in execution of a sentence or order of a court, in respect of a criminal offence of which he has been convicted;
- (b) in contempt of court;
- (c) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (d) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of 18 years;
- (e) for the purpose of preventing the spread of an infectious or contagious disease;
- (f) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- (g) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person.

Immigration Control and Deportation Act

202. A person's liberty can also be restricted under the Immigration Control and Deportation Act Chapter 123. Section 25 of the Act gives the Immigration Department the power to detain any person who upon reasonable suspicion and grounds is a prohibited immigrant for a period not exceeding 14 days.
203. Section 26 of the Act, further authorizes the Immigration department to detain and deport from Zambia, any person who is a holder of a valid temporary permit, who has committed a fundamental breach of peace.

Mental Disorders Act

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

Conditions that Apply to Persons Deprived of their Liberty

205. Article 18 (1) of the Constitution is instructive on the conditions that apply to persons deprived of their liberty. (See Chapter 14). The practice on the ground is that when an individual is arrested, his rights will be explained and the offence read out to him by the arresting officer. Further, Section 33 (1) of the Criminal Procedure Code obliges the arresting officer to present an accused person within 24 hours to Court. However, it is difficult to ensure the 24 hour time limit because of logistical problems

such as transport, Court infrastructure and human resource. As such most accused persons are not taken to Court in time.

206. When a person has been detained, such person is availed telephone services and other contacts to his lawyer, family or friends. This acts as a safeguard against the danger of disappearances.
207. The length of time in which a person can be detained while awaiting trial depends on the Courts and is not defined by law. The only requirement is that a detained person must appear in court fortnightly subsequent to his initial appearance. Pre-trial detention is not the rule in every case except for those cases which are notailable as established by law.
208. Persons detained under emergency regulations are entitled to apply for a writ of habeas corpus in the High Court as provided in Article 13(3) of the Constitution.

Bail

209. The conditions regarding bail are set out in Section 123 of the Criminal Procedure Code. Bail will not be given in the following circumstances, that is -
 - (i) murder, treason or any other offence carrying a possible or mandatory capital penalty;
 - (ii) misprision of treason or treason-felony;
 - (iii) aggravated robbery;
 - (iv) trafficking in narcotic and psychotropic substances;
 - (v) theft of motor vehicle; and
 - (vi) espionage.

210. Section 123 (1) of the Criminal Procedure Code requires a person who has made an application for bail to meet the following conditions –
- (a) providing a surety or sureties as a case may be;
 - (b) a person must be of fixed abode;
 - (c) a person must make an undertaking not to interfere with State witnesses; and
 - (d) a person may be requested to pay a sum of money or bail granted in own recognizance.

B. JUDICIAL MEASURES

Bail

211. Bail in Zambia is not a right and depends upon the discretion of the Court. In the case of *Chetankumar Shantkal Parekh Vs the People, SCZ Judgement No. 11 of 1995*, the appellant appeared before the Subordinate Court on a charge of unlawful possession of drugs. The Magistrate Court refused to grant bail citing Section 43 of the Narcotic Drugs and Psychotropic Substances Act, which forbids the granting of bail in any “cognizable offence” under the Act. The appellant further made a bail application to the High Court which was also refused. The appellant then appealed to the Supreme Court arguing that this blanket denial of bail under the Act, which applies to any and all drug offences, violates Article 13 of the Constitution.
212. The Supreme Court held that there was nothing unconstitutional in a provision that prohibited or restricted the grant of bail pending trial. It further held that as long as a trial did not become unreasonably delayed, it is constitutionally permissible to deprive one’s liberty without the allowance of bail.

Habeas Corpus

213. As earlier stated Habeas Corpus is granted in cases where an accused person has been over detained and has never appeared before court.

Judicial Review

214. Mandamus is a remedy that exists under Section 344 of the Criminal Procedure Code. It compels the performance of a public duty by an inferior Court given at the direction of a superior Court.
215. Certiorari is an order of a higher Court aimed at quashing the decision of an inferior Court or tribunal. In the matter of ***Ludwig Sondashi Vs the Speaker of the National Assembly 1998/HP/111*** the applicant who a Member of Parliament was suspended from the National Assembly on account of a statement that he made to the press that "in a democracy, coups can sometimes be positive and may be necessary and may also be helpful". This was in the aftermath of the abortive coup d e'tat of October 1997.
216. The applicant challenged this action by way of judicial review. He applied for an order of certiorari to quash the decision of the House to suspend him from his parliamentary duties and further in the alternative that the decision was null and void as it was made in bad faith and in contravention of Articles 20, 64, 65 and 71 of the Constitution of Zambia as read with Sections 19 and 28 of the National Assembly (Powers and Privileges) Act Chapter 12.

217. The two issues that had to be determined by the Court were:
- (i) whether the applicant's freedom of expression guaranteed under Article 20 of the Constitution was contravened; and
 - (ii) whether, if the answer to the first question was in the affirmative, the Court had the jurisdiction to grant the applicant the relief he was seeking.
218. The High Court held that it by Article 28 of the Constitution, it had jurisdiction to hear and determine applications made to enforce the Bill of Rights, Part III of the Constitution. The Court also held that the applicant's freedom of expression had been infringed upon and quashed the charges against him.
219. Compensation is available to a person who was unlawfully detained and seeks damages in tort for false imprisonment.

C. ADMINISTRATIVE MEASURES

220. As earlier reported the PPCA and the PLPSU deal with interlaid matters relating to abuse of authority by police officers.

D. FACTORS AND DIFFICULTIES

221. Although Zambian legislation provides for bail, its conditions are not easily met by some accused persons because of financial constraints.
222. The State party recognizes that criminal court proceedings may be prolonged by non availability of witnesses on the part of both the State and defence; non availability of the accused or the magistrate; and lack of adequate court rooms especially for magistrates.

CHAPTER 7

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

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

A. LEGISLATIVE MEASURES

The Constitution

224. Article 18 states -

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

- on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.
- (3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
 - (4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and a penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed".

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

"Any person who is arrested or detained –

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed or being about to commit, a criminal offence under the law in force in Zambia;

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

High Court Act

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

Criminal Procedure Code

227. Section 33 (1) of the Criminal Procedure Code states that a suspect must be taken before a competent court within 24 hours of his arrest. If the matter is not of a serious nature, such a person should be released on police bond. This measure ensures that a suspect is brought before a competent Court within reasonable time. The provision applies to all suspects without distinction.
228. In terms of Section 204, an accused person can elect to remain silent. In this event, a plea of “not guilty” will be entered by the Court.
229. Section 277 of the Criminal Procedure Code provides for special pleas in bar –
- “(1) Any accused person against whom an information is filed may plead -
 - (a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or
 - (b) that he has been granted a pardon for his offence.
 - (2) If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.
 - (3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.”

B. JUDICIAL MEASURES

230. In the case of *Dean Namulya Mun'gomba Vs Attorney-General 1997/HP/2617* the appellant then President of Zambia Democratic Congress (ZDC), an opposition party, was arrested and detained under emergency regulations following the abortive coup d e'tat of 28 October,

1997 for an indefinite period. He applied for a writ of habeas corpus subjiciendum and also argued that the President had abused his powers in to declaring a State of emergency as the facts on the ground did not justify the declaration.

231. In obiter, the Court observed that toppling a democratically elected Government by mutiny, force or other undemocratic means was a very grave situation which called for the proclamation of a State of emergency in the country.
232. The Court held that it had no jurisdiction to inquire into the reasons or discretion of the President in declaring a State of emergency. It also held that the detention or imprisonment of the appellant could not be legally justified, hence his application was granted.

C. ADMINISTRATIVE MEASURES

233. In order to avoid over detention of suspects and to ensure expediency in dealing with cases; Magistrates have developed a procedure obliging police officers to table a book known as the "Arrest and Prisoners' Property Book" (APPB) weekly. The APPB keeps a record of all suspects kept in police custody and informs the Magistrate of the status of the suspect. By this measure the Magistrate is able to check and compel police officers to bring suspects timely to court.
234. The HRC and PPCA as already stated continue to offer administrative relief to victims of violations of human rights.

D. FACTORS AND DIFFICULTIES

235. Suspects are not usually taken to Court in time for their initial appearance after they have been arrested. This is due to inadequate resources, transport, financial, infrastructure and human, available to the Police Service, Prisons Service and Judiciary.
236. The case flow management information system is not effective among the justice institutions.
237. In some cases, law enforcement officers are not knowledgeable in human rights.

CHAPTER 8

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

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

A. LEGISLATIVE MEASURES

The Constitution

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

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

241. Religious communities or denominations are free to provide religious instructions to anyone enlisted in the community. In addition a person

cannot be compelled to take any oath which is contrary to his religion or belief.

242. The Constitution in its Preamble declares Zambia a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience or religion. Although the dominant religion in Zambia is Christianity, the Preamble has no legal effect and by no means does it imply that Christianity is a State religion.
243. The State party tolerates the practice of other major religions such as Islam, Hinduism, Buddhism and the Bahai Faith. Members of these religions are free to exercise their freedom of worship. The Commission may wish to note that these religious institutions have established their own places of worship throughout the country and are also free to establish educational institutions such as schools, colleges and universities.
244. In Zambia people are free to attend educational institutions of their choice, including those not of their faith.
245. All religions in Zambia have various publications which are accessed through their places of worship, libraries and other distribution points. For example, Jehovahs Witnesses produce their publications at a place called Bethel city and use the same place to distribute the same. The Islamic Society has libraries where materials on Islam can be accessed. The Bahai Faith has a Secondary school where their faith is propagated. The Catholic Church produces publications on its faith and teachings, which are distributed at catholic bookshops around the country. All these religions exist side by side and in harmony with one another. Zambia has never experienced religious intolerance.

Penal Code

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

- (a) Section 128: A person who destroys, damages or defiles any place of worship with the intention of insulting the religion of any class of persons shall be guilty of a misdemeanour.
- (b) Section 129: A person who voluntarily causes disturbance to any religious assembly shall be guilty of a misdemeanour.
- (c) Section 130: Any person who intentionally wounds the feelings of any person by insulting their religion or commits any trespass in any place set for funeral rites shall be guilty of a misdemeanour.
- (d) Section 131: Any person who intentionally wounds the religious feelings of any person by uttering words, sounds or inappropriate gestures within the sight of that person shall be guilty of a misdemeanour and is liable to imprisonment for 1 year.

B. JUDICIAL MEASURES

247. The practice of conscientious objection in the meaning of Article 18 of the Covenant does not exist in Zambia.

C. ADMINISTRATIVE MEASURES

248. There are no measures to report on.

D. FACTORS AND DIFFICULTIES

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

CHAPTER 9

Article 9

1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

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

A. LEGISLATIVE MEASURES

The Constitution

251. Article 20 of the Constitution states –

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

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

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

Defamation Act

253. Section 3 of the Defamation Act Chapter 68, provides for civil defamation of character of an individual in an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him. Further, an action for slander can also lie in respect of a words imputing unchastity or adultery of a woman or girl.
254. Section 14 of the Act states that a defamatory statement published by or on behalf of a candidate in any election to any local authority or to the National Assembly shall not be deemed to be published as a privileged document immune from Court proceedings.

Penal Code

255. The Penal Code creates the following libel offences:

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

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

B. JUDICIAL MEASURES

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

contention that Section 69 of the Penal Code violated Articles 20 and 23 of the Constitution.

257. The Court held *interlaid* that:

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

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

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

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

C. ADMINISTRATIVE MEASURES

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

- (i) generally, journalists in Zambia are free to exercise their profession in any form of media and on any subject including politics as long as they confine themselves to the legislative provisions outlined above;
- (ii) the Media Institute of Southern Africa (MISA) Zambia Chapter (formerly known as Zambia Independent Media Association) is the mother body of Independent Media Organisations in Zambia. It regulates the journalism standards of private media whilst State media is regulated by the Press Association of Zambia (PAZA);
- (iii) all journalists in Zambia are guided by an Ethical Code of Conduct which regulates the journalism working system. Journalists are expected to follow these laid down procedures. Sanctions apply for non adherence to these procedures under the Defamation Act and Penal Code as stated above; and

- (iv) foreign journalists have access to information which is in the domain of the general public. Other sources of information include the Internet, presence of international correspondents such as Reuters, British Broadcasting Corporation (BBC), Cable News Network (CNN), Canal France International (CFI), Voice of America (VOA), Radio France and microwave links. A number of foreign newspapers and periodicals are equally circulated in the country through direct importation by the business community. These include among others, the Financial Mail, Weekly Standard, Washington Post, Focus on Africa, New African and Africa Confidential.

D. FACTORS AND DIFFICULTIES

262. Some of the journalists are inadequately trained and are not able to accurately report on events and issues.
263. Some media organizations do not have adequate equipment such as cameras, Dictaphones, transmitters, microphones, heavy duty equipment and transport in order to conduct effective coverage and transmission.

CHAPTER 10

Article 10

1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

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

A. LEGISLATIVE MEASURES

The Constitution

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

Industrial and Labour Relations Act

Trade Unions

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

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

- a) the right to take part in the formation of a trade union;
- b) the right to be a member of a trade union of that employee’s choice.

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

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

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

Application Procedure for Trade Unions

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

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

- (a) two duly certified copies of the constitution of the proposed trade union; and
- (b) such other information or document as may be determined by the Labour Commissioner, by notice in writing addressed and delivered to the executive officer of the trade union, within such period as may be determined by the Labour Commissioner and specified in such notice.

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

Strike action

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

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

- a) has not been authorized by a strike ballot taken in the manner provided by the constitution of a trade union under this Act; or
- b) is not in contemplation or furtherance of a collective dispute to which the employee or trade union is a party.”

272. Section 107 of the Act, provides that no employee, trade union or other person shall take part in a strike which is likely to hinder or interfere with the carrying out of any essential service. If a person engaged in an essential service goes on strike, he shall not be eligible for payment of his salary.
273. Section 2 of the Industrial and Labour Relations Act does not apply to the Zambia Defence Force; Zambia Police Service; Zambia Prisons Service; Zambia Security Intelligence Service; and Judges, Registrars of the Court, Magistrates and Local Court Justices.

Zambia Police Act

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

Prisons Act

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

B. JUDICIAL MEASURES

276. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

277. There are no administrative measures to report on.

D. FACTORS AND DIFFICULTIES

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

CHAPTER 11

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

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

A. LEGISLATIVE MEASURES

The Constitution

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

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

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

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

Societies Act

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

Penal Code

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

Public Order Act

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

- “(4) Any person intending to assemble or to convene a public meeting, procession or demonstration shall notify the police in writing of such intent fourteen days before the meeting.
- (5) The notice required under subsection (4) shall be in the prescribed form and shall contain an undertaking by the persons intending to assemble or convene a public meeting, procession or demonstration that order and peace shall be maintained through the observance of the following conditions:
 - (a) that they have been informed by the Police that the site for the meeting has not already been granted to another convener for the holding of a public meeting, procession or demonstration;
 - (b) that the route and the width of the route is suitable for the holding of processions in accordance with the width and route specifications for such purposes as specified by the Minister by statutory order;
 - (c) marshals of a number sufficient to monitor the public meeting, procession or demonstration are available and shall cooperate with the police to ensure peace and order;

- (d) that the commencement, duration and destination of the public meeting, procession or demonstration shall be notified to the police;
- (e) that the public meeting; procession or demonstration shall not create a risk to security or public safety, a breach of the peace or disaffection amongst the inhabitants of that neighbourhood; and
- (f) that the conveners of the public meeting, procession or demonstration have been assured by the police that at the time the proposed activity shall be held it will be possible for it to be adequately policed."

- (6) Where it is not possible for the Police to adequately police any particular public meeting, procession or demonstration, the regulating officer of the area shall, at least five days before the date of the public meeting, procession or demonstration, inform the conveners of the public meeting, procession or demonstration writing the reasons for the inability of the police to police the public meeting, procession or demonstration and shall propose an alternative date and time for the holding of such public meeting, procession or demonstration.
- (7) Where the police notify the conveners of a public meeting, procession or demonstration that it is not possible for the police to adequately police any proposed public meeting, procession or demonstration, such public meeting, procession or demonstration shall not be held."

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

B. JUDICIAL MEASURES

287. In *Christine Mulundika and 7 others vs. the People S.C.Z. Appeal No. 95/1995*, the applicant and seven others, including the former Republican President, Dr. Kenneth Kaunda, were charged in a Magistrate's Court with unlawful assembly contrary to Section 5 of the Public Order Act. The then Section 5 of the Act required that any person who wished to hold a public meeting, procession or demonstration must apply to the police for a permit. The Police were entitled to reject the application, or if

- they decided to allow the said event, they would impose conditions. Among these conditions persons needed to be vetted before addressing a public meeting and the matters to be discussed equally needed to be identified. Section 7 of the Public Order Act made it an offence to contravene Section 5, which was punishable by imprisonment of up to 6 months or a fine not exceeding one thousand five hundred penalty units, or to both.
288. The applicants argued that Sections 5 and 7 of the Public Order Act were unconstitutional as they infringed the guarantees of freedom of expression and assembly in the Constitution. The Magistrate's Court stayed the criminal proceedings until the constitutional issue was dealt with by the High Court. The High Court declined to declare the two sections unconstitutional.
289. The Supreme Court struck down Sections 5 and 7 of the then Public Order Act for being unconstitutional as they infringed on the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively. The Court held that Section 5 was not reasonably justiciable in a democratic society.
290. Following that decision, the Public Order Act was amended.
291. In the matter of *Resident Doctors Association of Zambia and 51 Others Vs The Attorney-General*, the petitioners commenced proceedings before the High Court pursuant to Article 28 of the Constitution. On 27th April 2000, the petitioners conducted a demonstration in order to raise public awareness on the situation in public hospitals and the doctors' conditions of service. Prior to the demonstration the petitioners on 20th April, 2000 had given written

- notification to the Police Commanding Officer, Lusaka, of their intention to demonstrate. The Commanding Officer rejected the petitioners' written notice alleging that the demonstration was likely to cause a breach of the peace. Following the refusal, the petitioners requested the Commanding officer to suggest an alternative date, a request that he denied.
292. The petitioners then informed the Commanding officer that they would go ahead with the demonstration and requested police presence.
293. During the demonstration, the police disrupted the petitioners and asked them to disperse on the ground that the demonstration was illegal. The petitioners refused to disperse and they were subsequently arrested and later charged with conduct likely to cause breach of peace.
294. The petitioners contended:
- (a) that their freedom of expression as guaranteed by Article 20 of the Constitution had been violated;
 - (b) that their freedom of assembly and association as guaranteed by Article 21 of the Constitution had been violated by police action and conduct; and
 - (c) that the police action was in its entirety in breach of the Public Order (Amendment) Act No. 36 of 1996.
295. The Court held *interlaid* that –
- (i) the march by the petitioners was proper and fell squarely within the ambit of Articles 20 and 21 of the Constitution. Therefore, the rejection of the notification was null and void

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

C. ADMINISTRATIVE MEASURES

296. Police officers are under an obligation to adhere to the Public Order Act when granting conveners of assembly's permits. In addition the Zambia Police Force Instructions provide rules on how to police assemblies considering the need to maintain peace and safety for both assemblers and the general public. Police officers are not allowed to use firearms, but to employ other restraining methods in case of violence, such as the use of teargas.
297. In practice, although instructions are given to police officers, it is difficult to determine the attitude of police officers towards assemblies.
298. Although assemblies have been generally peaceful in Zambia there have been circumstances where violence was used against demonstrators by overzealous police officers. These include:
- (a) The alleged shooting of former President Kaunda and Rodger Chongwe in 1995, which occurred during a public rally at Kabwe,

Central Province. The matter was brought to the attention of the Police high command and investigated. This resulted in the dismissal of the Provincial Police Commander.

- (b) University of Zambia students' demonstration over their welfare in 2000. The police applied excessive force against students in quelling a peaceful demonstration. The Senior Assistant Commissioner of Police who was in charge on that particular day was dismissed from the Service. In addition, two students who suffered from excessive force applied by police officers on that day have sued the Attorney-General. Their matters are before the High Court.
- (c) The demonstration over the constitutional review process that resulted in some persons being harassed by over-zealous police officers in December 2004. At the time of reporting the matter was still being investigated by the Police high command.

D. OTHER MEASURES

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

E. FACTORS AND DIFFICULTIES

- 300. Zambia recognizes that it still has difficulties in the application of the Public Order Act especially in the interpretation of the Act by some police officers. At times overzealous individual police officers might apply excessive force on peaceful assemblers.

CHAPTER 12

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

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

A. LEGISLATIVE MEASURES

The Constitution

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

Refugees (Control) Act

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

Passport Bill

304. Government is currently enacting a Passport Bill whose objective will be to legalise and control the issuance of passports. Previously, there was no legislation regulating the issuance of passports.
305. The State party does not in any way hinder the free movement of persons in Zambia and citizens to any part of the world, unless a person is facing criminal prosecutions in Courts of law. This is so because the person will be expected to attend Court regularly. The withdrawal of a passport is sufficient guarantee that the person will be available for court proceedings. Further, public officials can only travel on Government business abroad if they have been granted authority to travel by the Secretary to Cabinet. This must be distinguished from the travel of such public officials in their private capacity where Government authority to travel abroad is not necessary.

B. JUDICIAL MEASURES

306. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

Commission for Refugees

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

Passport and Citizenship Office

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

D. FACTORS AND DIFFICULTIES

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

CHAPTER 13

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

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

Exercise of Political Rights by Citizens

A. LEGISLATIVE MEASURES

The Constitution

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

312. Article 34 of the Constitution stipulates that the election to the office of the President is by direct universal adult suffrage and secret ballot. In order to qualify for presidency one must be a Zambian citizen; his parents must be Zambians by birth or descent; has attained the age of 35; is a member of or sponsored by a political party; qualified to be a member of

the National Assembly; and has been domiciled in Zambia for a period of at least 20 years.

313. Article 62 creates the Legislative arm of Government whose power vests in Parliament, which consists of the President and National Assembly.
314. Article 64 of the Constitution states that in order to stand as Member of the National Assembly, one must be a citizen of Zambia, has attained the age of 21 and is literate and conversant with the official language of Zambia. The election to National Assembly is by direct universal adult suffrage and secret ballot.

Local Government Act

315. Under the Local Government Act, Chapter 281, a person can be elected to the local government if he is an established resident of Zambia, has attained the age of 18, pays rate taxes, has resided in a particular area for a minimum period of 3 years and is a registered voter in that ward. The election to local government is by direct universal adult suffrage and secret ballot.

Access to Public Office

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

Electoral System

317. The Electoral Act, Chapter 13, makes provision relating to elections to the office of the President and National Assembly; empowering the Electoral Commission to make regulations providing for the registration of voters and for the manner of conducting elections.
318. In exercising the right to vote, Section 8 of the Electoral Act provides that elections to the office of President shall be held in every constituency in Zambia. Although not explicitly stated in the Act, elections to the National Assembly are also held in every constituency.
319. According to Section 17 (2) of the Electoral Act the Electoral Commission is empowered to do the following:
- “(a) the division of constituencies into polling districts;
 - (b) the establishment of polling stations in polling districts;
 - (c) the registration of voters;
 - (d) the preparation of, and the form of, registers to be used in the registration of voters;
 - (e) the manner of ascertaining whether persons applying for registration as voters are qualified for registration or for their inclusion in a register for a particular constituency;
 - (f) the making and determination of appeals, claims and objections with respect to the registration of voters;
 - (g) the correction, amendment and certification of registers of voters;
 - (h) the circumstances in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters or one polling district to that of another polling district and the restoration of names of registers of voters;
 - (i) the nomination of candidates for any election and the manner of establishing and recording that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;
 - (j) the making and determination of appeals against the rejection of nominations by a returning officer;
 - (k) the publication of the names of candidates whose nominations are accepted;
 - (l) the payment of election fees by candidates, and the circumstances in which such fees are to be returned;
 - (m) the use of symbols at an election;
 - (n) the appointment of, and the duties of, election agents and polling agents;
 - (o) the equipment and facilities to be provided at polling stations;

- (p) the persons who may be admitted to polling stations;
- (q) the manner and procedure of voting at an election;
- (r) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;
- (s) the manner in which persons who are blind, or otherwise incapacitated, may vote;
- (t) voting by persons employed on election duties on the day of an election;
- (u) the maintenance of secrecy at elections;
- (v) the postponement of, and the adjournment and extension of, time for a poll in case of riot or open violence at an election;
- (w) the administering of oaths or affirmations by election officers in respect of such matters as may be prescribed;
- (x) the procedure to be followed at the conclusion of a poll in an election;
- (y) the procedure for counting votes in an election, and the circumstances in which votes in an election may be rejected by a returning officer as invalid;
- (z) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly;
- (aa) the procedure to be followed where only one person is duly nominated for election to the office of President, or in a constituency for election to the National Assembly;
- (bb) the declaration, notification and publication of the results of an election;
- (cc) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;
- (dd) election expenses and the return of election expenses;
- (ee) the notification and publication of any casual vacancy in the elected membership of the National Assembly and the fixing of a date for an election to fill such vacancy;
- (ff) the fixing of a date for an election of a President or an election following a dissolution of the National Assembly;
- (gg) the forms and records to be used for any of the purposes of this Act;
- (hh) any matter to be prescribed by or under this Act.

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

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

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

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

B. JUDICIAL MEASURES

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

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

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

C. ADMINISTRATIVE MEASURES

326. As earlier reported, Government is undertaking a review of the Constitution and the entire electoral system. In 2003 Government appointed the CRCO and the ERTC respectively.
327. The ERTC has been tasked to analyse and make recommendations on the legal framework of the electoral process in the country; examine legislation that impacts on the electoral process such as the Public Order Act and media laws in relation to elections; and examine the electoral code of conduct in order to recommend necessary modifications that will establish suitable and efficacious electoral rules.
328. CRCO and ERTC are composed of independent and broad representation which includes members from Government, CSOs, including churches, media, local authorities, legal practitioners, law enforcement agencies and the Electoral Commission of Zambia.

Rules and Regulations Governing Equal Access to Public Service in the Country

329. Generally all persons in Zambia are eligible to apply for employment as long as they meet the qualification criteria for the stated job. Vacancies are usually advertised through electronic and print media.
330. The Service Commissions Act Chapter 259 provides for the functions and powers of the Judicial Service Commission, Public Service Commission, Teaching Service Commission and Police and Prisons Service Commission, which employ persons to public service.

D. FACTORS AND DIFFICULTIES

331. The Electoral Commission is limited in its operations by inadequate resources, resulting in management flows creating electoral disputes.
332. Most women are unable to take part in elections as representatives due to their limited access to resources.
333. The provision of civic education in the country is limited especially in local languages.

CHAPTER 14

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

A. LEGISLATIVE MEASURES

The Constitution

334. The State party reports that the right to property is guaranteed by Article 16 (1) of the Constitution which provides:

“Except as provided in this Article, property of any description shall not 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”.

Lands Act

335. The Lands Act, Chapter 184, provides for persons eligible to own land and for the administration of land by relevant authorities. It provides in Section 3 (1) that all land in Zambia vests in the President and is held by him in perpetuity for and on behalf of the people of Zambia.

336. The President in Section 3 (3) can alienate land to non Zambians under the following circumstances:

- “(a) where the non-Zambian is a permanent resident in the Republic of Zambia;
- (b) where the non-Zambian is an investor within the meaning of the Investment Act or any other law relating to the promotion of investment in Zambia;

- (c) where the non-Zambian has obtained the President's consent in writing under his hand;
- (d) where the non-Zambian is a company registered under the Companies Act, and less than twenty-five per centum of the issued shares are owned by non-Zambians;
- (e) where the non-Zambian is a statutory corporation created by an Act of Parliament;
- (f) where the non-Zambian is a co-operative society registered under the Co-operative Societies Act and less than twenty-five per centum of the members are non-Zambians;
- (g) where the non-Zambian is a body registered under the Land (Perpetual Succession) Act and is a non-profit making, charitable, religious, educational or philanthropic organisation or institution which is registered and is approved by the Minister for the purposes of this section;
- (h) where the interest or right in question arises out of a lease, sub-lease, or under-lease, for a period not exceeding five years, or a tenancy agreement;
- (i) where the interest or right in land is being inherited upon death or is being transferred under a right of survivorship or by operation of law;
- (j) where the non-Zambian is a Commercial Bank registered under the Companies Act and the Banking and Financial Services Act; or
- (k) where the non-Zambian is granted a concession or right under the National Parks and Wildlife Act."

337. Section 3 (4) provides that –

" Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure."

Lands and Deeds Registry Act

338. The Lands and Deeds Registry Act, Chapter 185, governs all property held on title in terms of registration.

Lands Acquisition Act

339. The Lands Acquisition Act, Chapter 189, makes provision for circumstances in which land may be compulsorily acquired by the State. Compensation procedures are provided in Sections 3 and 10 of the Act.

Interstate Succession Act

340. Section 5 of the Interstate Succession Act, Chapter 59, regulates the distribution of property to beneficiaries where a person dies intestate. It provides that -

- “ (a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;
- (b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;
- (c) twenty per cent of the estate shall devolve upon the parents of the deceased; and
- (d) ten per cent of the estate shall devolve upon the dependants, in equal shares.”

Wills and Administration of Testate Estate Act

341. The Wills and Administration of Testate Estate Act, Chapter 60 regulates the administration of wills and their enforcement.

B. JUDICIAL MEASURES

342. In the case of *Zambia National Holdings and United National Independence Party Vs Attorney-General SCZ No. 3 /1994*, the appellants petitioned the High Court challenging a decision by the respondent to acquire compulsorily the appellants land under the newly amended Lands Acquisition Act.

343. Shortly after the institution of the proceedings, the appellants applied for an interlocutory injunction to restrain the respondent, the servants or

agents of the State from taking possession or occupation of, or entering upon, the appellant's property.

344. The Supreme Court held that Government can compulsorily acquire land as prescribed by the Lands Acquisition Act to give faithful effect to the spirit and intent of Article 16 (1) of the Constitution.

C. ADMINISTRATIVE MEASURES

Land Tenure

345. Zambia's land tenure system is held under leasehold tenure and customary tenure. Those who hold land under leasehold tenure are perhaps more likely to enjoy their land rights.

346. On the other hand, customary tenure is devoid of security since one's continued stay in a particular place will depend on the good will of the Chief. Women are more disadvantaged under customary tenure because of the cultural perspective of women in a village setting. However, being cognisant of the various customary practices, the State party is in the process of codifying customary law in order to make it responsive to the dynamics of society.

Lands Tribunal

347. The State party has an independent Lands Tribunal that inquires into and makes awards and decisions in any land disputes. The Lands Tribunal is established pursuant to Section 20 of the Lands Act. It is composed of a Chairman, Deputy Chairman, an advocate from the Attorney-General's

Chambers, a registered town planner, registered surveyor, registered valuation surveyor and not more than 3 persons from the public and private sectors. The Chairman and Deputy Chairman must be persons who qualify to be appointed as High Court Judges. The appointments are made after consultation with the Judicial Service Commission.

348. The functions of the Lands Tribunal include:
- (a) inquiring into and making awards and decisions in any disputes relating to land;
 - (b) inquiring into and making awards and decisions relating to any dispute of compensation to be paid;
 - (c) inquiring generally and adjudicating upon matters affecting the land rights and obligations of any person or the Government; and
 - (d) performing such acts and carrying out such duties as may be prescribed under the Lands Act or any other written law.
349. Parties who are aggrieved by the awards or decisions of the Lands Tribunal can appeal directly to the Supreme Court.
350. Since its inception in 1995, the Lands Tribunal at the end of 2003 has disposed of more than five hundred (500) land disputes with very few appeals to the Supreme Court.

Land Programme

351. The State party through the Ministry of Lands has embarked on the following programmes:
- a) Land Advocacy which aims at the release of land to the State by chiefs in view of the fact that 90% of the land is held under customary tenure;

- b) Drafting of the new land policy document which includes issues of:
 - (i) equitable distribution of land;
 - (ii) security of tenure of title in both leasehold and customary land;
 - (iii) the need to record and register all rights in land and land properties and;
 - (iv) administration of public land in an effective and efficient manner. Consultations with major stakeholders have been taking place from 2002 to date on the Land policy.
- c) The Ministry of Lands has also embarked on sensitizing the public on their property rights through the mass media;
- d) The lands information system has been computerized and there is an ongoing process of linking the information system at headquarters to other regional offices in a bid to serve the public better; and
- e) Under the Housing (Statutory and Improvement Areas) Act, Chapter 194, old illegal settlements have been transformed into legitimate title such as Kalingalinga, John Laing and Chawama.

Office of the Administrator General

352. The office is established to take care of estates of deceased persons between the death of an intestate and appointment of an administrator. This acts to safeguard the interest of the beneficiaries and guards against any interference with the intestate's assets.

Regional Initiatives

353. Zambia under the International Conference on Peace, Security and Development in the Great Lakes Region, an African Union Initiative 2004, has acknowledged the responsibility of protecting its displaced persons. In this regard, an Interministerial Committees on the above have been constituted with membership from the Ministries of Justice, Finance and National Planning, Defence, and Community Development and Social Services.

D. OTHER MEASURES

354. CSOs such as African Internally Displaced Persons Voice have been supplementing Government's efforts in disseminating land advocacy matters on internally displaced persons through the media. The Zambia Land Alliance is also active in the advocacy of lands rights for women and youths.

E. FACTORS AND DIFFICULTIES

355. Individuals are not generally aware of their land rights despite mass media sensitization. In addition the simultaneous application of leasehold tenure and customary tenure creates disparities in the way that land is held and administered. The Office of the Commissioner of Lands is constrained by inadequate technical and financial resources. The office too is centralized thereby, making it difficult for people in remote places to access the same.

CHAPTER 15

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

356. The State Party has put in place measures aimed at promoting the right to work, just and favourable conditions of work; right to form and belong to free independent trade unions, and the right to social security.

Right to Work

357. The total labour force as at 2000 was 3,165,151. Of this labour force, 2,755,379 were employed, whilst 409,772 were unemployed. The 'total labour force' is defined by the 2000 Census of Population and Housing as: "all persons aged 12 years and above of either sex whose main economic activity status is to supply their labour for the production of economic goods and services. It is composed of the employed and unemployed persons, and includes all those who are seeking work, as well as those not seeking work but are available for work."

A. LEGISLATIVE MEASURES

The Constitution

358. Article 14 of the Constitution recognizes the right of every person to gain a living through work freely chosen by that person.

Industrial and Labour Relations Act

359. Section 108 (1) of the Industrial and Labour Relations Act, prohibits an employer from terminating the services of an employee on grounds of discrimination or imposing other penalties or disadvantages to such an employee.

360. Section 64 of the Act provides for recognition agreements as follows:

“Every employer employing twenty five or more eligible employees, or such lesser number as may be prescribed by the Minister, shall within three months after registering himself as an employer with the Labour Commissioner enter into a recognition agreement with the trade union, if any, to which the employees belong”.

361. Section 65 of the Act requires every recognition agreement to be in writing and signed by the representatives of the parties to it. It further requires -

(a) that the employer or association has recognized the trade union as the sole representative of, and exclusive bargaining agent for, eligible employees represented by the trade union so recognized and employed by the employer or the members of such association for the purpose of regulating the collective relationship of the employers or association and the trade union;

(b) for the methods, remedies and rules relating to procedures, and for the settling of disputes or the remedying of grievances by means of collective bargaining between the employer, association or trade union; and

(c) for the methods, procedures and rules under which the agreement may be reviewed, amended, replaced or terminated”.

362. Section 59 of the Industrial and Labour Relations (Amendment) Act, No. 30 of 1997 provides that, within three months from the date of registration of the recognition agreement, the employer and the trade

union shall enter into collective bargaining for the purpose of concluding and signing a collective agreement.

“Collective agreement is defined in the Act as an agreement negotiated by an appropriate bargaining unit in which the terms and conditions affecting the employment and remunerations of employees are laid down”.

Employment Act

363. Section 13 of the Employment (Amendment) Act No. 15 of 1997 places restrictions on an employer from casually terminating the services of an employee. The amendment introduces Section 26A and 26B which read as follows:

“An employer shall not terminate the service of an employee on grounds related to the conduct or performance of an employee without affording the employee an opportunity to be heard on the charges laid against him.

The contract of service of an employee shall be deemed to have been terminated by reason of redundancy if the termination is wholly or in part due to-

- a) The employer ceasing or intending to cease to carry on the business by virtue of which the employee was engaged; or
- b) The business ceasing or reducing the requirement for the employees to carry out work of a particular kind in the place where the employee was engaged and the business remains a viable going concern.”

364. Section 15B (1) of the Employment Act, Chapter 268 further provides protection against arbitrary termination of employment of female employees as follows:

“An employer shall not terminate the services of a female employee or impose any other penalty or disadvantage upon such employee for reasons connected with such employee’s pregnancy ... In the absence of proof to the contrary an employer shall be deemed to have acted in contravention of subsection (1) if he terminates the contract of service or imposes any other penalty or disadvantage upon a female employee within six months after delivery. Any employer who contravenes the provision shall be guilty of an offence.”

365. Section 25 of the Employment Act prescribes remedies for employees who have been summarily dismissed as follows:

“Whenever an employer shall dismiss an employee summarily and without due notice such employee shall be paid on dismissal the wages and other allowances due to him up to the date of such dismissal.”

366. Sections 20 and 21 of the Employment Act provide for termination of an oral contract of service by notice or without notice. Section 20 states -

“Either party to an oral contract may terminate the employment on the expiration of notice given to the other party of his intention to do so and where the notice expires during the currency of a contract period the contract shall be thereupon terminated.”

367. In addition Section 21 reads in part that:

(a) in the case of a contract which may be terminated without notice by payment to the other party of a sum equal to all wages and other benefits that would have been due to the employee if he had continued to work until the end of the contract period; and

(b) in any other case, by payment to the other party of a sum equal to all wages and other benefits that would have been due to the employee at the termination of the employment had notice to terminate the same been given on the date of payment.”

Technical Education, Vocational and Entrepreneurship Training Act

368. The Technical Education, Vocational and Entrepreneurship Training Act, No. 13 of 1998 makes provisions for technical, vocational guidance and training programmes. The Act also provides for establishment of Government institutions providing technical education, vocational and entrepreneurship training and for the registration and regulation of private institutions providing technical and vocational training. It creates the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA).

B. JUDICIAL MEASURES

369. There have been a number of judicial decisions handed out by courts relating to the right to work. For instance in the case of John *Musengele Vs Zambian Airways Comp No. 76/2003*, the complainant brought an action against his former employers for wrongful termination of employment by way of redundancy. The Court relied on Section 26 B (2) (a) and (b) of the Employment Amendment Act which provides for the procedure that an employer is obliged to follow when terminating a contract of employment for reasons of redundancy. The Court further made reference to Clause 28 of the Collective Agreement in force at the time that provided for the redundancy procedure. After considering the said provisions the Court held that the termination of the complainant's employment was unlawful because it was not done in accordance with the law.

C. ADMINISTRATIVE MEASURES

TEVET Policy

370. The State Party in March 1996 adopted the Technical Education, Vocational and Entrepreneurship Training (TEVET) Policy which sets out its objectives in technical education, and vocational training. The policy further recognizes the cardinal role played by entrepreneurship skills in the development process. The policy is designed in a manner that satisfies the labour market, social economic concerns and resource based opportunities in the economy.

371. The policy aims at:

- (a) balancing the supply of skilled labour at all levels with the demands of the economy;
- (b) acting as a vehicle for improved productivity and income generation; and
- (c) being an instrument for the minimization of inequalities among the people.

National Employment and Labour Market Policy

372. The aim of the National Employment and Labour Market Policy is to reduce the levels of unemployment and under age employment in the country with the view to improving living standards.

Zambianization Policy

373. Government has put in place a mechanism to ensure the employment of qualified Zambian human resource in all professions. Foreign labour may only engaged in those fields lacking qualified human resources. The policy is not adequately monitored.

HIV /AIDS Policy

374. The HIV/AIDS pandemic is of special and growing concern in Zambia as it affects the productivity of workers. Guidelines on HIV/AIDS in the work place have been developed on HIV/AIDS which are expected to culminate into policy.

375. The guidelines aim at reducing the HIV/AIDS pandemic in the labour market through the following measures:

- (a) promoting reproductive health campaign programmes;
- (b) promoting awareness campaigns in schools and workplaces of the dangers of HIV/AIDS;
- (c) application of WHO/ILO guidelines which prohibit discrimination against persons with HIV/AIDS in workplaces;
- (d) strengthening workers education and family welfare programmes; and
- (e) articulation of an HIV/AIDS code of conduct in the workplace.

376. Zambia is also a party to international instruments such as the SADC Code on HIV/AIDS in the work place and WHO/ILO guidelines on HIV/AIDS earlier stated.

Child Labour

377. The State party acknowledges the existence of child labour in the informal sector especially in agriculture. A Child Labour Programme in the Ministry of Labour and Social Security has been developed to address and monitor child labour trends. Government is also undertaking the drafting of a policy on child labour.

Jobs for Africa Programme

378. Government, in an effort to create more jobs and alleviate poverty, introduced the Jobs for Africa Programme under the auspices of the Ministry of Labour and Social Security in 1999. The Programme has three

pillars aiming at job creation and poverty reduction that is, building infrastructure to support innovations in the informal economy; promoting faster growth of both output and employment; and making the benefits of a pro-employment economy accessible to all. So far persons have been trained in beekeeping, handicrafts and have been assisted with farming implements such as hammer mills. This programme is being implemented in conjunction with ILO.

Employment Exchange Services

379. The Ministry of Labour and Social Security runs employment exchange services in its various labour field stations. The role of the exchange services is to conduct recruitment and placement of human resource in the labour market.

National Productivity Department

380. The State Party has identified the low and declining levels in productivity as one of the issues affecting the economy and therefore hindering the attainment of full productive employment. Government has established a National Productivity Department under the Ministry of Labour and Social Security to deal with productivity related issues in a holistic manner, which should lead to steady economic growth, realization of full productive employment and social development of the nation.

Review of National Legislation

381. Labour laws are being amended in order to bring them into conformity with new trends in the labour market. For example, the Employment Act is being amended to address issues of HIV/AIDS.

Collective Agreements

382. The Ministry of Labour and Social Security is mandated to approve Collective Agreements entered into between employers and trade unions of different companies. There is a requirement that the terms in these Collective Agreements should not be less favourable than those contained in the labour laws. To date an approximate of 280 Collective Agreements have been approved by the Ministry of Labour and Social Security.

D. FACTORS AND DIFFICULTIES

383. The State party has limited resources available to implement labour policies. The monitoring of these policies is inadequate due to human and technical constraints. The performance of the formal labour market is generally inadequate due to the poor performance of the economy coupled the HIV/AIDS pandemic.

Right to Just and Favourable Conditions of Work

A. LEGISLATIVE MEASURES

The Constitution

384. The right to just and favourable conditions of work is also recognized in Article 14 of the Constitution.

Employment Act

385. Section 15 of the Employment Act provides for holidays with pay as follows:

“Subject to any agreement between the parties providing for holidays with pay on conditions not less favourable to an employee than is provided for in this section, and subject to any statutory determination concerning holidays made in accordance with the Minimum Wages and Conditions of Employment Act, an employee shall after six months continuous service, be entitled to holiday with full pay at the rate of 2 days in respect of each period of one month’s service to be taken at such time as shall be agreed between the parties.....”

386. Section 15 A of the Employment Act further provides for maternity leave for female employees. It states:

“Subject to any agreement between the parties or any other written law, providing for maternity leave on conditions, not less favourable than are provided for in this section, every female employee who has completed at least two years of continuous service with her employer from the date of first engagement, or since the last maternity leave taken, as the case may be, shall on production of a medical certificate as to her pregnancy signed by a registered medical practitioner, be entitled to maternity leave of twelve weeks with full pay.”

387. Further, Section 19 of the Employment (Amendment) Act, No. 15 of 1997 provides that an employer may, as agreed under a collective agreement

or contract of employment or general conditions of service provide to an employee either housing, a loan or advance towards the purchase or construction of a house, guarantee facility for a mortgage or house loan on behalf of an employee or pay housing allowance.

388. In addition Section 21 of the Employment (Amendment) Act entitles an employee to be given medical services if that forms part of his conditions of service.

389. Section 42 of the same Act provides that every employer shall ensure that there is at the place of employment an adequate supply of water for the use of his employees. Any person who fails to comply with this provision is guilty of an offence.

390. According to Section 48 of the Employment Act wages shall be due and payable -

- a) in the case of a contract of service, from month to month on the last day of each month;
- b) in the case of a contract of service, from fortnight to fortnight on the last day of each fortnight;
- c) in the case of a contract of service, from week to week, on the last day of each week;
- d) in the case of an employee employed on a task or piece work, on the completion of such task or work;

provided that where an employee is employed on piece work, it shall be lawful for an employer, with the consent of such employee, to accumulate the wages due to the employee for such period not exceeding one month as may be agreed by the parties;

- e) in the case of an employee employed to perform a journey, on the completion of such journey; and
- f) in any other case, in accordance with the terms of the contract of service.

391. Wages of employees must be paid within 5 days after the date on which they are due.
392. Section 54 of the Employment Act, provides for the payment of wages if one is incapacitated as a consequence of sickness or accident not occasioned by his own fault. Such an employee is entitled to leave of absence for a maximum of 26 working days in any period of 12 months.

Minimum Wages and Conditions of Employment Act

393. Section 3 of the Minimum Wages and Conditions of Employment Act, Chapter 276 provides for the regulation of wages as follows:

"If the Minister is of the opinion that no adequate provision exists for the effective regulation of minimum wages or minimum conditions of employment for any group of workers, he may by statutory order prescribe:

- a) rates of wages to be paid to workers by the hour, day, week or month;
- b) normal hours of work in any day or week;
- c) normal working days in any week or month;
- d) rates for any work done in excess of or outside the normal hours of work or the normal working days;
- e) rates of paid holiday or any conditions attaching to the granting of such holidays;
- f) rates for any piecework;
- g) rates of allowance for any food or housing; and
- h) any other matter which in the opinion of the Minister is necessary or expedient to prescribe.

Provided that if the group of workers in respect of which a statutory order is to be made is represented by a trade union, no such order shall be made before consulting such trade union."

394. Pursuant to Section 3 of the Act two Statutory Instruments were passed, that is, Statutory Instrument No. 2 of 2002, which includes all types of employees and statutory instrument No. 3 of 2002, which relates to shop workers.
395. Section 4 of the Act provides that any employer who fails to comply with any statutory order made under this Act shall be guilty of an offence, and shall be liable, upon conviction to a fine not exceeding two thousand five hundred penalty units or to imprisonment for a term not exceeding 6 months, or to both. This is without prejudice to other rights that may exist at law for the employee.

Employment of Young Persons and Children Act

396. Section 17 A of the Act prohibits the employment of young persons in employment of work detrimental to health, safety and morals.

Factories Act

397. The Factories Act Chapter 441 makes provision for the regulation of conditions of employment in factories. It takes into consideration the safety, health and welfare of persons employed thereat. The Act emphasizes on the need for cleanliness, adequate ventilation, adequate lighting, sufficient and suitable sanitary conveniences, safety in the use of machines or dangerous substances, training and supervision of inexperienced workers, a safe design of the premises and fire fighting procedures.

Promotions

398. There is no specific legislation in Zambia that deals with equal opportunities for promotion between men and women. However, in practice promotions are exercised independently by institutions based on their internal policies. These usually take into consideration qualifications, relevant skills, experience and vacancies available.

B. JUDICIAL MEASURES

399. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

400. The Factories Inspectorate under the Ministry of Labour and Social Security conducts routine inspections of factories to ensure strict adherence to the Factories Act by end users.

D. FACTORS AND DIFFICULTIES

401. The State party does not have adequate human and financial resources for the Factories Inspectorate to ensure the full compliance of measures that have been put in place.

The Right to Form and Belong to Free and Independent Trade Unions

402. The Commission is referred to Chapter 10 of this Report, whereat the right to free association and the right to form and belong to a trade union of one's choice was comprehensively discussed.

The Right to Social Security

A. LEGISLATIVE MEASURES

The Constitution

403. Although not justiciable Article 112 of the Constitution, states that Government shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable.

National Pensions Scheme Act

404. Section 3 of the National Pension Scheme Act, No. 40 of 1996 establishes the National Pension Scheme Authority (NAPSA) which is mandated to implement the policy relating to pension schemes. The benefits are provided under Section 9 of the Act which states:

"The authority shall pay pension benefits to a member who:

- a) retires from employment on reaching the retirement age;
- b) retires five years before he reaches pensionable age and has contributed to the Scheme for a minimum period prescribed by the authority; or
- c) has made contributions for at least twelve months and is certified by the medical board that he is incapable of gainful employment due to a total or partial mental or physical incapacity which pension shall be determined by a formula by an actuarial study and prescribed by the Minister by Statutory Instrument."

405. Persons eligible for membership to the scheme are described under Section 11 of the Act as:

“Every person who, before the commencement of this Act, is under pensionable age and was a member of the Zambia National Provident Fund (Fund) shall be a member of the Scheme;

Every person who, on the commencement of this Act was a member of the Fund and is not less than sixteen years but who is under pensionable age and is employed by a contributing employer shall be registered as a member of the Scheme.”

406. A contributing employer according to Section 12 of the Act is:

- “a) a person, association, institution or firm registered as a tax payer with a contract of service with an employee; and
- b) the Government of the Republic of Zambia, local authority or parastatal or statutory body.”

407. The benefits available under the Act are invalidity pension, invalidity lump sum payment and survivors benefit.

Minimum Wages and Conditions of Employment Act

408. The Minimum Wages and Conditions of Employment (General) Order, 2002 makes provisions for medical benefits, paid sick leave and maternity benefits.

Workers Compensation Act

409. Section 41 of the Workers Compensation Act, Chapter 271 provides for worker’s right to compensation as follows -

“If an accident to a worker arising out of and in the course of his employment happens after the date of commencement and results in such workers

disablement or death, his dependants shall become entitled to compensation in accordance with the provisions of this Act".

410. Section 2 of the Act does not limit the compensation to one accident.

411. According to Section 55 of the Act, compensation shall be paid by either the employer individually liable; or the Commissioner for the Workers Compensation Fund Board.

B. JUDICIAL MEASURES

412. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

Medical Care

413. Free medical care is provided to children under the age of 5, pregnant women and adults aged 60 and above.

Public Welfare Assistance Scheme

414. The Ministry of Community Development and Social Services has put in place the Public Welfare Assistance Scheme (PWAS) to cater for the elderly.

National Social Safety Net

415. The National Social Safety Net is a social security programme that was launched in 1992 under the Ministry of Labour and Social Security. It is a

social mitigation programme designed to cater for people who lost their jobs due to Government's policy of privatisation of companies and retrenchment. The programme provides for vocational and entrepreneurship training.

Collective Agreements

416. Collective agreements promote social security through the following:

(a) Medical Retirement Benefits

An employee who is unable to continue in employment owing to sickness or accident and has a medical report from a medical practitioner is eligible to receive terminal benefits according to the length of service in employment.

(b) Maternity Leave

A female employee who has been in continuous employment for a period of at least 24 months is entitled to 3 months paid maternity leave irrespective of whether or not she is married, provided that an employee shall not be granted maternity leave twice within 24 months.

D. FACTORS AND DIFFICULTIES

417. Government is constrained in its administration of free medical services by inadequate drugs and personnel. Further, services provided through the PWAS are inadequate due to limited financial resources.

CHAPTER 16

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

418. The State party endeavours to provide quality physical and mental health through the following measures:

A. LEGISLATIVE MEASURES

The Constitution

419. Article 112 (d) and (h) of the Constitution outline guidelines that Government has to follow in providing physical and mental health. These guidelines require the State to provide clean and safe water, adequate medical and health facilities, decent shelter for all persons and a clean and healthy environment for all.

Public Health Act

420. The Public Health Act provides for the prevention and suppression of infectious diseases as follows:

"9. (1) The provisions of this Act, unless otherwise expressed, shall, so far as they concern notifiable infectious diseases, apply to anthrax, blackwater fever, epidemic cerebro-spinal meningitis or cerebro-spinal fever, asiatic cholera, diphtheria or membranous croup, dysentery, enteric or typhoid fever (including para-typhoid fever), erysipelas, glanders, leprosy, plague, acute anterior poliomyelitis, puerperal fever (including septicaemia, pyaemia, septic pelvic cellulitis or other serious septic condition occurring during the puerperal state), rabies, relapsing fever, scarlatina or scarlet fever, sleeping sickness or human

trypanosomiasis, smallpox or any disease resembling smallpox, typhus fever, all forms of tuberculosis which are clinically recognisable apart from reaction to the tuberculin test, undulant fever and yellow fever.

(2) The Minister may, by statutory notice-

- (a) declare that any infectious disease other than those specified in subsection (1) shall be notifiable diseases under this Act;
- (b) declare that only such provisions of this Act as are mentioned in such notice shall apply to any notifiable infectious disease;
- (c) restrict the provisions of this Act, as regards the notification of any disease, to the district of any Local Authority or to any area defined in such notice."

Environmental Protection and Pollution Control Act

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

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

B. JUDICIAL MEASURES

422. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

423. The Commission is referred to Chapter 4 of this Report. In addition the State party has put in place the following measures:

Environmental Health Policy

424. The State party has put in place an environmental health policy which prescribes the environmental health standards to be applied in Zambia. The policy is premised on Agenda 21 on Sustainable Development of the World Conference on Environment and Sustainable Development (Rio de Janeiro 1992). The policy is administered by the Ministry of Health, the Environmental Council of Zambia, the Ministry of Agriculture, Food and Fisheries, the Local Government Authority, and the National Food and Nutrition Commission.

Safe Motherhood

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

Family Planning Services

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

D. FACTORS AND DIFFICULTIES

427. The notable factors and difficulties in the enjoyment of the right to adequate standard of living and health are with regard to the full implementation and enforcement of this right.

428. The State party does not have adequate resources to fully implement the right to adequate standard of living and health. The HIV/AIDS pandemic has seriously eroded the Zambian society of a capable work force, parents and adequate resources to fight the pandemic.

CHAPTER 17

ARTICLE 17

1. Every individual shall have the right to education. 2. Every individual may freely, take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Education

A. LEGISLATIVE MEASURES

429. There is no legislation that guarantees the right to education. However, under the Constitution, Article 110 (e) takes into account considerations that will ensure the provision of equal and adequate educational opportunities in all fields at all levels. In addition, the Education Act, Chapter 134 provides for the promotion, development and control of schools, educational institutions and services.

B. JUDICIAL MEASURES

430. Corporal punishment is not allowed as a form of school discipline within the State party. In *John Banda Vs. the People HPA/6/1998 case*, the Appellant pleaded guilty to and was convicted of malicious damage to property. In addition to one month simple imprisonment suspended for twelve months, the Appellant was ordered to receive ten strokes of the cane in accordance with Sections 24 (c) and 27 of the Penal Code, which provided for corporal punishment. In holding Sections 24 (c) and 27 of the Penal Code as unconstitutional, Justice E. E. Chulu stated:

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

431. Judge Chulu further stated that due to the unconstitutionality of Sections 24 (c) and 27 of the Penal Code, the provisions should be severed from the Penal Code.
432. The State party has outlawed corporal punishment following the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, and the Education Act (Amendment) Act No. 11 of 2003.

C. ADMINISTRATIVE MEASURES

Basic Education

433. The State party is committed to providing universal education for all children, as indicated in the following policy goals of the Ministry of Education:
- a. Every child should have seven years of basic education by the year 2005;
 - b. Every child should have access to nine years of good quality basic education by the year 2015;

- c. School infrastructure should be improved so that children learn in a conducive environment;
 - d. The upgrading of all primary schools to full basic school status by the year 2015;
 - e. The provision of adequate financial resources for basic education;
 - f. Ensuring that pupils acquire essential literacy, numeracy, life and communication skills;
 - g. Enabling pupils to develop practical skills in one or more relevant areas;
 - h. Supplying adequate teaching and learning materials to schools;
 - i. Increasing the number of trained teachers and deploy them adequately to meet the rising demand for basic education;
 - j. Eliminating gender imbalances in school, college enrolment and retention; and
 - k. The active involvement of communities in the provision of education.
434. In order to achieve the National Education Policy, the Ministry of Education is implementing the Basic Education Sub-Sector Education Programme (BESSIP). The main objectives of BESSIP are to improve access, equality and equity of basic education mainly through enhanced provision of education materials, curriculum reforms, improved pedagogy, attention to health and nutrition as well as strengthening of pre- and in-service training of teachers.
435. Government administers most schools in Zambia although there are schools, which are managed by various church groups, NGOs and the private sector. Mission schools receive grant in aid. In 1996, there were 4,058 Government and grant-aided primary and basic schools.

Parents Teachers Association

436. Parents play an important role in the management of schools. Every school has a Parent Teacher Association (PTA) as provided for in the Education Act. Parents participate in decision-making to improve the provision of education. PTAs have statutory powers to establish levies on pupils for the improvement of school facilities.

Girl Child Education

437. The Ministry of Education endeavours to improve girls' participation and retention in schools through the Programme for the Advancement of Girls (PAGE). As earlier stated, PAGE aims at increasing girls' enrolment, progression and quality of education by creating "girl-friendly" schools; sensitizing communities and parents; creating single sex classes for girls; involving parents and guardians in the education of their daughters; improving teaching methodology; and encouraging pregnant girls to go back to school after delivery.

School facilities

438. Many schools have inadequate facilities such as classrooms, desks, books, staff houses, access to clean water and sanitation. In order to attain the goal of creating 1.2 million school places by 2015, the State party through the Ministry of Education and its cooperating partners has embarked on a programme of school rehabilitation. By 2000, 2,300 classrooms, 1,100 teachers' houses, 2,100 pit latrines, 100 waterborne (pour flush) toilets

and rehabilitation of more than 2,100 classrooms and 1,200 teachers' houses were built.

Books and Desks

439. Between 1991 and 1998, a total of 14.5 million textbooks, supplementary readers and teachers' guides for Grades 1 – 7 were procured and distributed. In spite of these efforts, very few schools have achieved a book to pupil ratio of 1:2.
440. The syllabi in core subjects were revised, reproduced and distributed, and teachers were oriented to their use. Over 407,000 library books were procured and distributed in 2004.

Measures for free and compulsory basic education

441. The State party has done away with user charges for basic education in Government schools. However, parents or guardians incur costs for uniforms, transportation, and PTA fees. Education is not compulsory but once a child is enrolled in a school, it is the duty of every parent or guardian to ensure the child's regular attendance, which is stated in the Compulsory Attendance Regulation, Statutory Instrument No. 118 of 1970. The regulations provide for the appointment of public officers as attendance officers, whose duty is to ensure compliance with the regulations. However, many children who drop out of school are not followed up.

Secondary Education (High School Education)

442. Secondary education is offered in the following types of institutions:
- a. Upper Basic School: Grades 8 – 9;
 - b. Junior Secondary School: Grades 8-9;
 - c. Secondary School: Grades 8 – 12; and
 - d. High School: Grades 10-12.
443. Admission to high schools is based on performance in terminal examinations in the Junior Secondary School Leaving Examinations at the end of Grade 9 conducted by the Examinations Council of Zambia. Progression rates from Grades 9 to 10 have fluctuated between 19 percent and 21 percent, over the years.

Community Schools

444. Community schools provide basic education for out-of-school youth. Targeted children are between the ages of 9 and 16 years, and have dropped out, been pushed out or have never been to school. These schools give preference to the most disadvantaged children. Community schools are coordinated by the Zambia Open Community Schools Committee.
445. The following describe the general characteristics of community schools:
- a. they are non-profit making institutions that are inexpensive enough to allow disadvantaged children to have access to education;
 - b. uniforms are not a school requirement;
 - c. teachers are mostly untrained volunteers from the community;

- d. they tend to be managed by community committees;
- e. they have small classes with a maximum of 35 pupils;
- f. funding is obtained from a variety of sources;
- g. the Ministry of Education prepares syllabi and materials tailored to the needs of the pupils; and
- h. the Ministry of Education provides learning materials, educational advisors and pays an agreed number of trained teachers.

Interactive Radio Instruction

446. Another form of non-formal education to meet the learning needs of the out-of-school youth is Interactive Radio Instruction (IRI). This is the use of interactive lessons in which an audio component is delivered by an "audio-teacher", through a radio or audiocassette, and classroom activities carried out by learners are carefully integrated.
447. The Education Broadcasting Services of the Ministry of Education developed a 100-lesson programme, which was piloted in selected areas of Lusaka and Chongwe. The broadcasts were launched on 24th July 2000 and offered Grade 1 integrated Mathematics and English. The pilot project was intended to run for a period of 20 weeks and the objective was to ascertain if children could achieve competency in literacy, numeracy and life skills. The project is community-based. The communities have responded favourably by mobilizing learners, identifying learning centres and mentors. The mentors will be facilitators whose role will be to guide the children and help them follow the radio broadcasts.

Bursary schemes

448. The Ministry of Education is administering two schemes for children from extremely poor families. In the year 2000, 20,000 bursaries were offered to children in basic education in 10 districts with a view to expanding the scheme to other districts.

449. The Zambia Education Capacity Building Project (ZECAB) under the Ministry of Education offers bursaries to disadvantaged children in districts not covered by BESSIP. The table below shows the number of bursaries disbursed in the year 2000.

Table 20: ZECAB bursaries by province, household and school 2000

PROVINCE	NO. OF BURSARIES	CHILDREN FROM FEMALE-HEADED HOUSEHOLDS	PUPILS IN GOVT. SCHOOLS	PUPILS IN COMMUNITY SCHOOLS
Western	2,121	1,703	2,121	-
Southern	1,607	682	809	798
North-Western	1,912	1,083	1,912	-
Northern	3,039	2,109	2293	746
Lusaka	2,283	1,636	686	1,597
Luapula	2,079	1,795	2,079	-
Eastern	3,032	2,058	1,537	1,495
Copperbelt	2,694	2,243	2,359	335
Central	476	390	476	-
Total	19,243	13,699	14,272	4,971

Source: Ministry of Education, 2000

Teacher Education and Support

450. The Ministry of Education is developing comprehensive training programmes for education managers, college lecturers, teachers, trainee teachers and head teachers. The programmes have produced materials on HIV/AIDS and other health-related facts and stress the role of education personnel in behaviour formation and behavioural change.
451. The Ministry of Education also supports and works closely with NGOs that promote HIV/AIDS prevention, such as Teachers Against HIV/AIDS Network (TAHAN). The Ministry of Education in conjunction with the Ministry of Health has designed a research agenda on HIV/AIDS issues to form part of its policy and planning.

Safety, Health and Nutrition in Schools

452. To improve the health and nutrition of pupils and sanitation in schools the Ministry of Education is implementing the School Health and Nutrition policy through BESSIP.

Curriculum Reforms

453. The Ministry of Education's foremost priority for lower and middle basic education is to ensure that pupils master essential literacy and numeracy skills; while for upper basic education it is the acquiring of high levels of competence in communication, mathematical skills, and problem-solving ability that is fostered through scientific and practical subjects. Accordingly, the curriculum emphasizes language, mathematics, science and practical subjects.

454. The policy also states that, English is the official language of instruction, but the language used for initial literacy learning in Grades 1-4 shall be one that is familiar to the child to promote meaningful learning.

Basic Education Curriculum

455. Currently, some of the subjects taught in lower and middle basic schools include: Mathematics, Zambian languages, social studies, environmental science, home economics, English, art and design, industrial arts, spiritual and moral education, music and physical education.
456. Curriculum reform is one of the BESSIP components. The reforms aim at developing a basic curriculum, which is relevant, effective, and in line with other current education reforms. Civics has been revised to include human rights and gender issues. The curriculum for science subjects has been revised to include issues of HIV/AIDS and the environment.
457. Present efforts to reform basic education are limited to lower and middle basic levels. This creates a gap in the provision of relevant education at upper basic level.

High School Curriculum

458. The curriculum for Grades 10 – 12 has been diversified in a comprehensive and holistic way by developing several distinct programmes. Certain schools have become specialist schools for technology, practical areas, business and commercial studies, and the creative arts.

459. The High school syllabus was also reviewed to integrate cross-cutting issues of HIV/AIDS, environment, democracy and human rights, gender, population and family life.
460. The Action for Improvement of English, Mathematics and Science Programmes (AIEMS) is a Ministry of Education initiative to improve the teaching of English, Mathematics and Science at all levels. AIEMS has led to improvement in these subject areas with regard to pupil's performance and an improvement in the teaching approach.

D. FACTORS AND DIFFICULTIES

461. In spite of a high number of pupils accessing basic education, the State party's institutional infrastructure is not able to accommodate all pupils. Similarly, Government does not have sufficient resources to engage necessary staff.
462. Most schools in rural areas are remotely placed, therefore making pupils walk very long distances to attend class. This negatively affects pupils' school performances. Furthermore school attendance rates in rural areas are affected by child labour.

Culture

463. Cultural development constitutes one of the essential instruments of improvement of the quality of life of people. The lack of regard for the social and cultural circumstances of men, women and children tends to cause conflicts among ethnic groups and among nations.
464. In order to attain this view of cultural life, the State party has in the last 7 years put measures to promote the right to culture.

A. LEGISLATIVE MEASURES

The Constitution

465. Article 112 (g) of the Constitution recognizes the right of a person to participate freely in one's cultural life. It provides that the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language in so far as these are not inconsistent with the Constitution.

National Arts Council Act

466. The National Arts Council Act No. 31 of 1994, creates the Council which has, *inter alia*, responsibility for development, promotion and regulation of performing, literary and visual arts; and organizing competitions to enhance performance and production standards at national level in the arts.

National Heritage Conservation Commission Act

467. The National Heritage Conservation Commission Act, Chapter 173 provides for the conservation of ancient, cultural and natural heritage, relics and other objects of aesthetic, historical, prehistorical, archaeological or scientific interest.

Copyright and Performance Rights Act

468. The Copyright and Performance Rights Act No. 44 of 1994 establishes the Zambia Music Copyright Society, which protects all works and products of cultural significance.

B. JUDICIAL MEASURES

469. There are no judicial measures to report on.

C. ADMINISTRATIVE MEASURES

470. Zambia has a National Cultural Policy whose salient features include the following:
- (a) Cultural Identity;
 - (b) Cultural Heritage;
 - (c) Artistic, Intellectual Creation and Art Education;
 - (d) Culture and Development; and
 - (e) International Cultural Cooperation.
471. The components of the National Cultural Policy are co-ordinated by the Ministry of Community Development and Social Services through the

Department of Culture and an Inter-Ministerial Committee comprising the following key stakeholder line Ministries and Institutions:

- (a) Ministry of Community Development and Social Services – Department of Culture is responsible for fostering the preservation, development and promotion of culture for sustainable development;
- (b) Ministry of Information and Broadcasting Services is responsible for the dissemination of arts and cultural views and information; and is responsible for copyright law under the Copyright Society of Zambia;
- (c) Ministry of Local Government and Housing is responsible for Chiefs Affairs;
- (d) Ministry of Tourism Environment and Natural Resources is responsible for ethno and cultural tourism under the following respective departments:
 - (i) National Museums Department which is responsible for the preservation of Zambia’s tangible cultural Heritage; and
 - (ii) National Heritage Commission which is responsible for cultural and tourism sites;
- (e) Ministry of Home Affairs is responsible for archiving Zambia’s Heritage;
- (f) Ministry of Science, Technology and Vocational Training is responsible for the training programme in artistic and arts education both in the formal and informal sector, such as the Evelyn Hone College, School of Art and Music;
- (g) Ministry of Justice is responsible for drafting legislation on culture; and

- (h) University of Zambia is inter alia, responsible for teaching cultural subjects such as literature, languages, humanities and communication.

Other Institutions

- (a) National Arts Council: responsible for the promotion and regulation of performing literary arts – visual arts, crafts, curios and culinary arts.
 - (b) Cultural Associations: responsible for organizing cultural events, rituals and cultural expressions amongst Zambians, different ethnic groups which are under the leadership of traditional rulers and structures, for example, Alangizi Cultural Association whose aim is to teach initiates responsibilities and duties of adult life.
 - (c) Traditional Health Practitioners of Zambia.
472. In the National Cultural Policy, the State party has developed objectives and strategies of ensuring that all persons participate in their cultural life as a matter of right without distinction based on race, colour, sex, national or ethnic origin.
473. In order to achieve Zambia's vision, objectives, strategies and policy measures, all relevant cultural legislation will be reviewed and established in order to provide for a comprehensive legal framework.
474. Understanding and tolerance among local ethnic groups through cultural exchange are promoted as follows:

- (a) Traditional ceremonies;
- (b) Local Publications;
- (c) Traditional medicines;
- (d) Handicrafts, masks, dances and songs; and
- (e) Establishment of associations based on tribal rivalry (cousinship) such as the Ngoni-Bemba Football Club in Northern Province.

D. FACTORS AND DIFFICULTIES

475. Government does not have adequate financial and human resources to invest in the promotion of cultural activities especially in the area of combating prejudices and promoting understanding and tolerance among remotely based ethnic groups.
476. There are inadequate research activities in local cultural fields.

CHAPTER 18

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

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

A. LEGISLATIVE MEASURES

The Constitution

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

Marriage Act

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

Juveniles Act

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

Adoption Act

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

Wills and Administration of Testate Estate Act

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

B JUDICIAL MEASURES

483. In the case of *Re Wills and Administration of Testate Estates Act between Isaac Tantameni Chali (Executor of the Will of the Late Mwalla Mwalla) v. Liseli Mwalla (SCZ Judgement No. 6 of 1997)*, the executor appealed against an order of the High Court varying the terms of the deceased's will. The testator had made no provision for the respondent and her brother. The trial judge relied on the provisions of Section 20 (1) of the Wills and Administration of Testate Estates Act, which states that if, upon application made by or on behalf of a dependant of the testator, the Court was of the opinion that the testator had not made reasonable provision, whether during his lifetime or by his will, for the maintenance of the dependant, and that hardship would thereby be caused, the Court may, notwithstanding the provisions of the will order that such reasonable provision as the Court thinks fit shall be made out of the testator's estate for the maintenance of that dependant.
484. The Supreme Court held that the respondent was in law not covered by the definitions of 'dependant' or 'child'. Section 3 of the Act defines dependant to mean a wife, husband, child or parent, and although the term 'child' is not defined in the Act, the age of a minor is given as a person who has not attained the age of 18.

C ADMINISTRATIVE MEASURES

Public Welfare Assistance Scheme

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

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

Table 21: Beneficiaries of the Public Welfare Assistance Scheme (PWAS)

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

Source: Ministry of Community Development and Social Services

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

Victim Support Unit

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

National Housing Policy

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

Family Planning Policy

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

Child Health

491. The Committee is referred to Chapter 4 of this Report.

D. OTHER MEASURES

Civil Society Organisations

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

The Extended Family System

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

E. FACTORS AND DIFFICULTIES

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

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

- (b) duality in laws with customary law allowing for one to enter into marriage upon the attainment of puberty provided there is parental consent violates the child's rights, mostly the girl child;
- (c) the disintegration of the extended family system as a result of high poverty levels; HIV and AIDS related deaths result in limited support being provided to members of vulnerable families. This trend at times has contributed to the emergence of child headed households; or children being forced to engage in illicit activities and the street syndrome;
- (d) the limited financial resources available to the Ministry of Community Development and Social Services to enable it fully implement the PWAS; and
- (f) most pieces of legislation do not recognize the extended family concept.

CHAPTER 19

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another

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

A. LEGISLATIVE MEASURES

The Constitution

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

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

B. JUDICIAL MEASURES

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

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

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

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

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

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

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

C. ADMINISTRATIVE MEASURES

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

Institutional Mechanisms for Gender Equity and Equality

504. The State party has set up institutional mechanisms to facilitate the mainstreaming of gender in national planning and programming. This consists of the Gender In Development Division at Cabinet Office (the national gender machinery); Parliamentary Select Committee on Legal Affairs, Governance, Human Rights and Gender Matters (charged with the responsibility of scrutinizing programmes of the Executive in order to ensure that gender issues are given priority and prominence); Gender Focal Points in Line Ministries, Provincial Administration and Government Departments (specifically dealing with mainstreaming gender into policies, programmes and projects in their respective Institutions/Ministries).
505. The setting up of this institutional mechanism is aimed at addressing the gender imbalances, which impede the attainment of civil and political rights, particularly among women and children.

National Gender Policy

506. A National Gender Policy was adopted in 2000 by Government whose aim is to achieve full participation of men and women in the decision-making process of the country at all levels; and ensure equal opportunities in the social, economic and political spheres between females and males in order to ensure equality and equity.
507. In addition, a Strategic Plan of Action (2004) for the National Gender Policy was developed in order to ensure the systematic implementation of gender and development programmes in the country.

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

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

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

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

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

Gender Equality in Education and Training

511. Government remains committed to attaining equity and equality in the education and training sectors. However, Government is mindful that gender imbalances continue to persist in the education sector. Statistics from Zambia's Millennium Development Goals Progress Report 2003

indicate that the Primary Net Enrolment Ratio dropped by 4 percentage points between 1990 and 2003. It also indicates that the proportion of Grade 1 pupils reaching Grade 7 increased from 64 percent in 2000 to 73 percent in 2003. The gender gap in enrolment remained unchanged at 2 percentage points between 2000 and 2003. Similarly, during the same period, the gender gap in completion rates remained high at 14 percentage points.

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

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

(i) Education Policy

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

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

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

1. Re-entry Policy

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

(iv) Public Service Training Policy

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

(v) Bursary Scheme

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

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

Review of Customary Law

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

Violence Against Women

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

i) The Victim Support Unit (VSU)

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

ii) The Sex Crimes Unit

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

Strengthening of Laws and Enforcement Mechanisms

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

Participation in Politics and the Public Sector

525. Government acknowledges the low levels of female participation in politics in comparison to its commitment to achieving 30 percent female representation in politics as contained in the SADC Declaration on Gender and Development (1997). Statistics indicate that women have been under represented at all levels of decision making in Government, Parliament, the Private Sector, Special Committees, Religious Groupings, Boards and other institutions in the community.
526. At Cabinet level, there are a total of 20 Cabinet Ministers comprising 15 males and 5 females representing 25 percent of women Cabinet Ministers. At Deputy Minister and Permanent Secretary level, female representation still remains low at 8.9 and 19 percent respectively. In the Judiciary a similar trend is observed with female Court judges comprising 22 percent of the Supreme Court and Puisne Judges.
527. A trend analysis of female representation in Parliament shows that there has been a steady increase from 4.8 percent (1988 – 1991) to 6.7 percent (1991 – 1996) to 12 percent (2004 – 2005).
528. As a way of redressing the gender inequalities in political participation and ensuring transparency in the electoral process, the State party has

initiated electoral reforms through the Electoral Reforms Technical Committee (ERTC).

D. OTHER MEASURES

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

E. FACTORS AND DIFFICULTIES

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

CHAPTER 20

ARTICLE 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

531. The Chapter address the right to self determination and the ability of the Zambian people to freely dispose of their natural wealth. The Commission is referred to Chapter 1 containing the Human Rights Core Document.

CHAPTER 21

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

532. The Chapter address the right to self determination and the ability of the Zambian people to freely dispose of their natural wealth. The Commission is referred to Chapter 1 containing the Human Rights Core Document.

CHAPTER 22

ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

533. The Chapter address the right to self determination and the ability of the Zambian people to freely dispose of their natural wealth and their culture. The Commission is referred to Chapter 1 containing the Human Rights Core Document and Chapter 17.

CHAPTER 23

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States. 2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

534.

535.

CHAPTER 24

ARTICLE 24

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

536. Chapter 24 deals with the administration of justice with specific reference to the independence of Courts. The Commission is referred to Chapter 1 containing the Human Rights Core Document.

CHAPTER 25

ARTICLE 25

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

537. Article 113 of the Constitution, sets out the duties of a citizen as follows –

- “(a) be patriotic and loyal to Zambia and to promote its well-being;
- (b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- (c) foster national unity and live in harmony with others;
- (d) promote democracy and the rule of law;
- (e) vote in national and local government elections;
- (f) provide defence and military service when called upon;
- (g) carry out with discipline and honesty legal public functions;
- (h) pay all taxes and duties legally due and owing to the State; and
- (i) assist in the enforcement of the law at all times”.

538. The Commission is referred to Chapters 1 and 18 of the Report for a fuller understanding.

CONCLUSION

539. Zambia's Initial Report on the African Charter on Human and People's Rights has been drafted in accordance with the guidelines of the Charter.

540. The State party has diligently recognized its obligations under the Charter. The State party also recognizes that there are several constraints which impact on the protection and promotion of human rights within its territory, which include:

- (a) Economic decline, mainly due to the diminishing output from the mining industry, thereby contributing to the unsatisfactory resource allocation to institutions that support the implementation of the Charter;
- (b) HIV/AIDS pandemic, whose negative effects permeate the human resources, impacts on the general socio-economic performance of the country; and
- (c) Low levels of human rights awareness on the part of the people, especially on the mechanisms available for redress.

541. The State party wishes the Commission to take note of positive developments in the last decade, including:

- (i) establishment of the Human Rights Commission, the Police Public Complaints Authority; the Police Legal and Professional Standards Unit; the Victim Support Unit and the Sex Crimes Unit.
- (ii) protection of workers rights, through various measures identified in the Report by the Ministry of Labour and Social Security;
- (iii) protection of vulnerable persons through the PWAS and other mechanisms;

- (iv) promotion of the right to education through BESSIP and PAGE and the coordinated promotion of the cultural policy; and
- (v) the promotion of civil and political rights through dialogue at fora such as the Constitutional Review Commission and the Electoral Reforms Technical Committee.