



## **University of Oklahoma College of Law**

### **International Human Rights Clinic**

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Report on the Republic of Zambia at the 14<sup>th</sup> Session of the Universal Periodic Review, Human Rights Council, 22 October to 5 November 2012

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## **EXECUTIVE SUMMARY**

The International Human Rights Clinic of the University of Oklahoma College of Law, U.S.A., submits the following 5 pages report to the Fourteenth Session of the Universal Periodic Review Human Rights Council. The report surveys Zambia's compliance with certain human rights obligations. It focuses on five selected areas: (I) Poverty Issues, (II) The Right to Health, (III) Women's Rights, (IV) Children's Rights to Free, Compulsory Primary Education, and (V) Prisoners' Rights. Each section concludes with a series of recommendations for improving Zambia's domestic compliance with its international commitments and obligations. The report is followed by an annex that provides background information on Zambia, as well as a more detailed analysis of the aforementioned issues.

### **I. Poverty Issues**

#### **Human Rights on the Ground**

The high poverty rate in Zambia is a pervasive problem. Sixty-four percent of Zambians live in poverty. Both rural and urban areas are affected by poverty, but it is more persistent in rural areas. Poverty affects a person's ability to afford basic living needs, such as sanitation facilities, safe drinking water, and proper nutrition. It also impacts other fundamental human rights including access to education, healthcare, and meaningful political participation. Poverty exacerbates these conditions for vulnerable populations such as women and children. Zambia is implementing programs to combat poverty through economic development. It still struggles to lower the poverty rate and create a sustainable, healthy economy. The lack of adequate infrastructure impairs rural economic endeavors. Inadequate education hinders the creation and sustention of successful businesses and income producing activities. Social issues such as gender discrimination, lack of educational opportunities, and the impact of the HIV/AIDS epidemic have adversely impacted Zambia's ability to develop an educated and skilled workforce. Such a workforce is needed to support economic development and sustain a population above the poverty line.

#### **Recommendations**

- Incorporate the provisions of the ICESCR and the ICCPR into the Zambian Constitution in order to give Zambians a cause of action for violations of their economic, social and cultural rights.
- Continue with programs designed to maintain and develop infrastructure, especially in rural areas.
- Implement a large scale promotional campaign to encourage international travel to Zambia.
- Provide incentives and other benefits to those engaged in environmentally sustainable business practices.
- Provide incentives and other benefits to new business owners.
- Institute programs to achieve the SNDP goal of accessibility to reliable safe water, with a focus on rural populations that are more likely to suffer.
- Focus on reducing and limiting groundwater contamination due to poor sanitation facilities in urban areas.

- Develop and implement educational and nutritional programs such as food subsidies to combat malnutrition.
- Continue implementation of social programs and recognition of legal rights of vulnerable populations to enable them to join the workforce.

## **II. The Right to Health**

### **Human Rights on the Ground**

Zambia's Constitution does not provide a right to health. Zambia has focused on prevention and treatment of HIV/AIDS, malaria, and tuberculosis. It has made significant progress in the treatment and prevention of HIV/AIDS, but there is an increasing infection rate among young women. Gender norms, gender based physical and sexual violence and inequalities result in increased risk of women to HIV/AIDS. Mother-to-child transmission rates continue to be high. Foreign donors provide three-quarters of Zambia's HIV/AIDS funding. This dependency impacts Zambia's ability to provide consistent, sustainable funding for treatment and prevention of HIV/AIDS. Malaria is still the leading cause of child mortality. In rural areas, the lack of education and treatment contribute to malaria related deaths. Zambia is pursuing programs to distribute insecticide-treated nets to prevent malaria. Funding for healthcare personnel to diagnose and treat non-communicable diseases is overlooked. There are insufficient incentives to draw trained healthcare personnel to rural areas. High patient demand and inadequate resources adversely impacts morale, making it difficult to retain healthcare personnel.

### **Recommendations**

- Take concrete and practical normative and institutional measures to guarantee the access to anti-retroviral treatment for vulnerable groups, including women and pregnant women.
- Take further steps to increase the quality of post-natal services and family planning, especially in rural areas.
- Implement a program to provide formula for nursing mothers to prevent the spread of HIV/AIDS through breast-feeding.
- Consider amendment of the Zambia Constitution to include the right to health, health care services, and reproductive health.
- Develop and implement a national plan to create sustainable funding mechanisms to continue the national response to HIV/AIDS.
- Continue efforts to recruit and retain healthcare workers in rural areas by providing support and incentives for healthcare workers in the field of non-communicable diseases.

## **III. Women's Rights**

### **Human Rights on the Ground**

The recognition of women's rights to property, education, health and safety has not yet been fully realized in Zambia. Women still have more difficulty accessing and enforcing their rights, even when formally recognized under Zambian law. Property rights are impacted by customary law. The exercise of property rights for women is complicated by procedural and cultural impediments. If they are widowed, women may become victims of "property-grabbing" which deprives them of their interest in marital property. Women may not realize that they have ownership interests in property. Roadblocks are frequently encountered in exercising property rights due to the inaccessibility of courts and government offices.

Domestic abuse continues to be a significant problem. Women face serious health risks associated with high rates of child-birth and the absence of adequate family planning and prenatal care. Zambian females complete school at a lower rate than males, representing only a third of enrollment in higher education programs. Zambia has recognized the need for increased participation of women in all levels of government. The percentage of women in the judiciary has increased; other areas of government have not seen such notable improvement.

### **Recommendations**

- Amend the Zambian Penal Code to include marital rape.
- Take actions to increase the involvement of women in all areas of government.
- Consider the creation of nation-wide leadership development opportunities for girls to enhance their financial and educational literacy, such as mentorship, cultural enhancement, and work study programs.
- Continue efforts with NGOs to inform women of their legal rights and the mechanisms for enforcement of those rights.
- Build on the reported success of the Victim Support Unit and expand it to all provinces.
- Explore the development of academic and skill-based programs for adolescent mothers.

## **IV. Children's Right to Free Compulsory Primary Education**

### **Human Rights on the Ground**

Zambia is improving its primary education system consistent with the recommendations noted in the 2008 Report of the Working Group. Zambia has, with the passage of the 2011 Education Act, instituted a national strategy to provide free, mandatory primary education. There has been significant with respect to access to education. Primary and secondary government run schools do not charge school fees. The shortage of government run schools, particularly in the rural areas, has led to an increase in community based schools. Such schools are dependent upon NGO funding and fee collection and are vulnerable to financial constraints. The quality of educational and instructional programming is inconsistent.

### **Recommendations**

- Increase the level of enrollment and quality of educational programming in government funded schools.
- Develop a greater collaboration with community schools to develop financial security and resource assistance for those schools.
- Continue efforts to ensure free universal primary education by eliminating costs associated with uniforms, supplies and other expenses.

## **V. Rights of Prisoners**

### **Human Rights on the Ground**

Zambia's prison system continues to deny prisoners basic human rights despite the recommendations set forth in the Report of the 2008 Working Group. Zambia has failed to improve detainees' living conditions. The continued lack of adequate medical care exacerbates the spread of communicable and sexually transmitted diseases. The ban on condoms in prisons creates a heightened risk of HIV/AIDS transmission due to the sexual activity between male inmates. Both juvenile and adult offenders are denied access to adequate nutrition, a violation

which most affects incarcerated children and pregnant women. Torture remains a common occurrence in Zambian prisons. No programs exist to provide victims of torture with medical and psychological treatment. Acts of torture are inflicted by “cell captains” (prisoners unofficially appointed by prison officers to oversee and punish other inmates) and prison guards. Extensive overcrowding in Zambia’s prisons causes multiple problems. It increases the spread of communicable diseases. It contributes to severe understaffing. It leads to juvenile offenders being housed in the same facilities, sometimes even the same cells, as adult offenders. Since the 2008 Working Report, Zambia has implemented a juvenile court system. The system has not yet progressed to full protection of the rights of children. Juvenile offenders do not yet have full access to attorneys. Children as young as eight years old can be held criminally liable for most offenses.

### **Recommendations**

- Improve healthcare access for inmates, including regular screenings for communicable diseases.
- Reduce the transmission of HIV/AIDS by distributing condoms in prison.
- Implement measures to address the use of torture in prisons and the prompt investigation of torture-related incidents.
- Establish rehabilitation centers to provide medical and psychological treatment to torture victims.
- Prohibit the use of cell captains or any other system using prisoners to oversee other prisoners.
- Extend parole to juvenile offenders convicted of petty, non-violent crimes.
- Consider raising the minimum age of criminal responsibility to an age aligned with international standards.
- Continue efforts to develop the juvenile criminal justice system and the provision of attorneys to juveniles.
- Implement procedures to ensure the separation of juvenile prisoners from adult inmates.
- Working with NGO’s, explore the creation of an effective foster care system to temporarily house children whose mothers are imprisoned.
- Seek to reduce the case load of the judiciary.
- Amend the Zambia criminal code to decriminalize same sex activity between consenting adults.

## **VI. Normative and Institutional Frameworks**

### **International Provisions**

- African Charter on Human and People’s Rights
- African Union Abuja Declaration of HIV/AIDS
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”)
- Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)
- Convention on the Rights of the Child (“CRC”)
- International Covenant on Civil and Political Rights (“ICCPR”)

- International Covenant on Economic, Social and Cultural Rights (“ICESCR”)
- Standard Minimum Rules for Treatment of Prisoners (“Standard Minimum Rules”)

**Domestic Undertakings**

- Anti-Gender Based Violence Act of 2011
- Citizenship Empowerment Act of 2006
- Education Act of 2011
- Intestate Succession Act of 1989
- Prison Act of 1965
- The Sixth National Development Plan (“SNDP”) of 2011
- Zambia Constitution of 1991
- Zambian Agricultural Development Plan
- Zambian National Vision
- Zambian Penal Code