



University of Oklahoma College of Law
International Human Rights Clinic

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

ANNEX

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Introduction

1. In late December 2011 and early January 2012, members of the International Human Rights Clinic of the University of Oklahoma College of Law (“IHRC-OU”) travelled to Lusaka and Livingstone, Zambia to gather information about human rights matters. While in Zambia, clinic students conducted interviews with representatives of various embassies, non-governmental organizations (“NGOs”), and governmental agencies. They visited community schools and villages in the regions and spoke to every-day citizens about human rights issues they identified.

2. The Republic of Zambia is a landlocked country located in the southern part of Africa and is bordered by the Democratic Republic of the Congo, the United Republic of Tanzania, Mozambique, Zimbabwe, Botswana, Namibia and Angola.¹ Zambia has a geographic area totaling 752,612 square kilometers and a population of approximately thirteen million.² The country is divided into ten provinces, each administered by an appointed deputy minister. Its capital city is Lusaka, which has a population of approximately 1.4 million.

3. Zambia was originally populated with a number of migrating hunter-gatherer tribes and, beginning in the fifteenth century, was infiltrated by additional tribes migrating from the Democratic Republic of the Congo, as well as Angola and Zimbabwe. Zambia remained largely untouched by European influence until the mid-nineteenth century when European missionaries and explorers, most notably David Livingstone, entered the country. In 1888, Zambia, then

¹ Human Rights Council Working Group on the Universal Periodic Review, National Report submitted in accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1, at 2, A/HRC/WG.6/2/ZMB/1, April 9, 2008 [hereinafter *National Report*].

² *Id.*

called Northern Rhodesia, came under British control and remained a British colony along with Zimbabwe, known at the time as Southern Rhodesia.³ In 1923, Southern Rhodesia was granted self-government, while Northern Rhodesia became a protectorate in 1924.⁴ It was not until 1964 that Northern Rhodesia declared independence and became the Republic of Zambia.

4. Zambia currently operates under a constitution drafted in 1991 as a multi-party democracy.⁵ Its legal system is a mix of English common law and customary law derived from tribal practices of more than 70 tribes.⁶ The president, currently President Michael Chilufya Sata, fulfills the role of both chief of state and head of government. Zambia has a unicameral legislative branch, known as the National Assembly. The Constitution of 1991 enlarged the National Assembly from its previous size of 136 members to a maximum of 158 members.⁷ Its judicial branch is composed of a Supreme Court, a High Court, and various local magistrate courts. The Supreme Court acts as the final court of appeal in the country. The justices are appointed directly by the President.⁸ The High Court, which sits in five cities throughout the country, including Lusaka, has unlimited jurisdiction to hear civil and criminal cases.⁹

³ United States State Department, Bureau of African Affairs, Information on the Republic of Zambia, *available at* <http://www.state.gov/r/pa/ei/bgn/2359.htm#history>.

⁴ *Id.*

⁵ National Report, *supra* note 1, at 3.

⁶ *Id.* at 9.

⁷ Zambia Constitution, art. 63, adopted August 24, 1991, *available at* <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004847.pdf>.

⁸ Zambia Constitution, *supra* note 7, art. 93.

⁹ Zambia Constitution, *supra* note 7, art. 94.

Additionally, there are local and magistrate courts that primarily apply the customary law of the various regions of the country.¹⁰

5. The Zambian gross domestic product (“GDP”) grew significantly in the early 21st century due to its copper industry.¹¹ The government owned the copper mines until 1990 when it privatized the majority of those mines. This privatization caused a spur in the copper mining industry. Because the Zambian government no longer bore the costs of copper production, output increased which caused significant economic growth.¹² However, the 2007 global economic crisis led to a sudden drop in copper prices in 2008, creating high inflation, rising unemployment and greater poverty throughout the country.¹³

6. Zambia has experienced positive economic growth in recent years, due largely to foreign investment in Zambia's copper mining sector, as well as rebounding copper prices.¹⁴ Although the copper industry has returned to being more profitable, 64 percent of Zambia's population remains below the poverty line. For this reason, Zambia is currently seeking to diversify its

¹⁰ Personal Interview, January 3, 2012, record on file with the University of Oklahoma College of Law.

¹¹ Sixth National Development Plan 2011, at 140, *available at* http://siteresources.worldbank.org/INTZAMBIA/Resources/SNDP_Final_Draft__20_01_2011.pdf. [hereinafter *Sixth National Development Plan*]; Personal Interview, January 3, 2012, record of interview on file with the University of Oklahoma College of Law.

¹² Sixth National Development Plan, *supra* note 11, at 140.

¹³ Denine Walter's, Examining Zambia's Copper Industry, Consultancy Africa Intelligence *available at* <http://www.consultancyafrica.com>.

¹⁴ *Id.*

economy by promoting agriculture, tourism, gemstone mining, and hydropower, thereby decreasing its reliance on the copper industry.¹⁵

7. The human immunodeficiency virus and acquired immunodeficiency syndrome (“HIV/AIDS”) epidemic has impacted nearly every aspect of Zambian society, from the hardship it imposes upon individual family units to the broader communities and cities. Recent research places the rate of HIV/AIDS at thirteen and a half percent of the Zambian population.¹⁶ There are approximately 980,000 Zambians living with HIV/AIDS.¹⁷ There are an estimated 120,000 pediatric infections and 690,000 children (up to age seventeen) are orphaned due to AIDS epidemic.¹⁸ “In Zambia, high prevalence rates are fueled by early initiation of sex, unprotected sex with non-regular partners, concurrent sexual partnerships, low incidence of condom use among high risk groups and individuals, sexual violence against women, and poverty that forces women and girls to sell sex for food, good grades, small gifts, or money.”¹⁹ Currently, the bulk of HIV/AIDS funding in the country is provided by foreign donors, including the U.S. President’s Emergency Plan for AIDS Relief (“PEPFAR”) program funded by the United States.²⁰

¹⁵ *Id.*; Personal Interview, January 3, 2012, record of interview on file with the University of Oklahoma College of Law; Personal Interview, January 6, 2012, record of interview on file with the University of Oklahoma College of Law.

¹⁶ UNICEF Statistics: Zambia, available at http://www.unicef.org/infobycountry/zambia_statistics.html.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ USAID, HIV/AIDS Multisector Zambia Development Challenges, available at <http://www.usaid.gov/zm/hiv/hiv.htm>.

²⁰ UNICEF Statistics: Zambia., *supra* note 16.

8. Zambia's population consists of over 70 ethnically diverse tribes, with the primary tribes being the Lozi, Bemba, Ngoni, Tonga, Luvale and Kaonde.²¹ Zambia's contemporary culture is therefore a blend of customs and traditions of the multitude of tribes currently inhabiting the country. After independence in 1964, the government recognized the role culture played in the overall development of a new nation and began creating a sense of one national identity. Zambia's first president, Kenneth Kaunda, made a point of establishing policies and using tools that promoted the nation building, as reflected in the slogan "One Zambia, One Nation."²² Today, while many Zambians acknowledge their individual tribal heritages, the country has a unified national identity.

9. Notably, international instruments ratified by Zambia are not self-executing, but require action on the part of the National Assembly before the provisions of the instruments are implemented into Zambia's domestic law system. Hence, rights created by a treaty are not available to the Zambian people unless and until the National Assembly takes affirmative action to incorporate the provisions into domestic law.²³ However, in certain instances the Zambian judiciary has given notice of some rights under international treaty law though there has not been any action to implement that treaty law into the domestic legal system.²⁴

I. Poverty Issues

²¹ United States State Department, Bureau of African Affairs, Information on the Republic of Zambia.

²² One Zambia, One Nation, available at <http://www.tolerance.org/supplement/one-zambia-one-nation>.

²³ National Report, *supra* note 1, at 2.

²⁴ *Id.*

10. Zambia continues to be one of the poorest countries in sub-Saharan Africa.²⁵ Poverty is a human rights issue that encompasses and is affected by many other issues: women rights, children's issues, health concerns, and lack of education. Indeed poverty is a "multidimensional phenomenon, extending beyond a lack of income to a lack of the basic capabilities to live in dignity."²⁶ In this regard, poverty may be the most pervasive human rights issue in Zambia. In order to address it, the country must not only look at economics but an entire host of issues. By protecting and remedying issues affecting disadvantaged populations, Zambia will be better suited to combat poverty.

11. Poverty is a geographically widespread problem in Zambia. It exists in both urban and rural areas. Though the poverty rate has decreased in recent years, a large segment of the country's population continues to be affected. As of 2006, 64 percent of Zambians were still living below the poverty line.²⁷ Fifty-one percent of Zambians are classified as extremely poor, meaning they are unable to meet their basic food requirements, and over 80 percent of the rural population lives in poverty. In contrast, only about 34 percent of urban Zambians live in poverty, illustrating the discrepancy between urban and rural poverty.²⁸ Many Zambians are unable to afford basic living necessities including food, electricity, and water, while a significant portion of the population does not have the income to cover food costs alone.²⁹

²⁵ Zambia Poverty and Vulnerability Assessment, iii (August 20, 2007).

²⁶ Report of the independent expert on the question of human rights and extreme poverty, A/HRC/15/41 (August 6, 2010).

²⁷ Central Zambia Statistical Office, available at <http://www.zamstats.gov.zm/lcm.php>.

²⁸ National Report, *supra* note 1, at 11.

²⁹ Jesuit Centre for Theological Reflection, The JCTR Basic Needs Basket, 2011 Edition.

12. Zambia has recognized poverty as a pervasive problem and taken affirmative steps to reduce it both through international obligations and through the country's domestic law. It acceded to the International Covenant on Economic Social, and Cultural Rights ("ICESCR"). The provisions of the ICESCR, which include the right of people to freely pursue their economic, social and cultural developments, and the right to work, fair wages, and a decent living, have not been incorporated into Zambian domestic law. Zambia has also signed and ratified the International Covenant on Civil and Political Rights ("ICCPR"), but like the ICESCR, its provisions have not been incorporated into domestic law.

13. There is also domestic support for the eradication of poverty because of its presence throughout all regions of the country with goals outlined in the Sixth National Development Plan ("SNDP" or "the Plan") and Zambia Vision 2030. The government has begun developing policy to support agriculture and tourism as important sectors of the Zambian economy. Local NGO's have created programs to raise awareness of the plight of the impoverished, as well as provide assistance to those vulnerable communities.

A. Economic Diversification

14. Zambia is a country rich in natural resources. Additionally, it has significant value in its human work force. Unfortunately, both of these resources are currently underutilized. While Zambia was a leader in Africa's economic social development after independence in 1974, this growth slowed in the 1980s. During this time of economic stagnation, the Zambian government accumulated significant debt. In 1990, the economic growth stagnated, contributing to the high poverty rate in Zambia today.³⁰

³⁰ Zambia Poverty and Vulnerability Assessment, *supra* note 25.

15. Economic diversification has been identified as a way to alleviate poverty in Zambia. Through the development of industry, service and trade, and programs to help small farmers and business owners develop and sustain themselves economically; Zambia will be able to utilize its resources to combat poverty. Growth is essential to reducing the poverty level in Zambia. A “dynamic economy, growing strongly, is a powerful force for creating new and better employment opportunities for the poor, enabling empowerment, and reducing vulnerability.”³¹ The country must therefore tap into its many resources, natural and otherwise, to be able to achieve the necessary growth to address the high poverty level.

16. While economic growth is crucial to alleviating poverty, environmental degradation must be addressed when dealing with poverty. Economic growth will undoubtedly lead to environmental degradation and a focus on sustainability should be at the forefront of any economic plan to avoid a boom-and-bust type of growth.

Infrastructure

17. Zambia lacks sufficient infrastructure, placing a significant burden on economic development. Inadequate roads, bridges and railways result in an inability of many rural Zambians – who are more vulnerable to poverty than those in urban areas – to access markets and resources needed for economic stability. Goods produced in rural areas cannot be transported to marketplaces efficiently and affordably, placing those living in rural areas at a disadvantage compared to their urban counterparts. While there are sufficient highways between large urban areas, many of the roads in rural Zambia are unpaved, rough, and difficult to navigate. The lack of infrastructure also leads to a lack of development in rural areas because developing businesses in these parts of the country is less economically viable than development

³¹ *Id.* at 95.

in areas where infrastructure is more sufficient, typically close to major urban centers. In these urban centers, there is a good network of main roads, but “rural feeder roads” are not maintained. In urban areas, traffic is often congested with vehicles driving on sidewalks, medians, and grassy areas alongside the highway.

18. The SNDP focuses on development of infrastructure as a key to socio-economic development with the goal of “[enhancing] economic development of the prioritised economic sectors through provision of improved quality of transport infrastructure.”³² The Plan notes that transport infrastructure remains “the major constraint on growth, economic diversification and human development.” The objectives of the Plan are to coordinate and strengthen transport infrastructure development, to maintain and rehabilitate road transport infrastructure, and to maintain, rehabilitate, and upgrade rail transport infrastructure.³³ Without proper infrastructure, the rural poor will continue to struggle with high levels of poverty.

Agriculture

19. Development of agricultural programs is a key issue in addressing rural poverty and Zambia has identified it as one of the “priority sectors in achieving sustainable economic growth and reducing poverty.”³⁴ Four out of five rural households are involved in the agricultural sector, and it is the principal source of income for the head of household in these rural areas.³⁵ Small farmers suffer from lack of investment, resources, and infrastructure, keeping them stuck below the poverty line. Promoting agriculture as a viable industry in Zambia is important for

³² Sixth National Development Plan, Executive Summary, at 13, available at www.mcti.gov.zm/index.php/policy-and-planning/doc.../10-sndp [hereinafter *SNDP, Executive Summary*].

³³ *Id.*

³⁴ *Id.* at 23.

³⁵ Zambia Poverty and Vulnerability Assessment, *supra* note 25, at 69.

two reasons: first, the landscape and natural resources of Zambia make agricultural a sustainable livelihood, and second, increased production is needed to combat food deprivation and the associated health conditions resulting from malnutrition. If farmers are given the necessary tools and infrastructure to develop sustainable agricultural operations they will be able to not only alleviate hunger by producing food for their own families, but will be able to generate income through produce sold through the marketplace.

20. Zambia has developed an Agricultural Policy establishing agricultural development goals. They include: creating broad growth in the agricultural sector to reduce poverty; attaining 90 percent household food security by 2015; and achieving up to seven to ten percent growth in the agricultural sector yearly. One of the key factors supporting an agricultural economy in Zambia is the abundance of land and natural resources. Much of this land is not currently suitable for agricultural development due to the lack of infrastructure such as irrigation, schools, roads and markets.³⁶ During the SNDP period, the Zambian government will aim to “develop irrigation and farm blocks, enhance research and extension services and promote utilization of improved seed varieties” as well as enact programs to increase development in the livestock and fishery industries.

Tourism

21. Zambia has abundant natural resources and wildlife. These assets are more than sufficient to support a thriving tourism industry and have been identified as a priority sector for economic development. Zambia already has the assets to create a viable tourism industry including Victoria Falls, Kafue National Park, and a rich cultural heritage.

³⁶ Agricultural Policy Reforms in Zambia, available at <http://aec.msu.edu/fs2/zambia/presentations.htm>.

22. The SNDP has placed a focus on tourism with the goal of “[increasing] tourism direct earning from \$200 million USD in 2009 to \$449 million USD in 2015 and to provide an enabling environment for safeguarding and promoting Zambia’s cultural heritage and to ensure the development of economically viable creative industries.”³⁷ Some villages, notably the Mukini Village, have created marketplaces where they sell locally produced crafts to visitors, creating a sustainable industry for the community. The Plan has also identified areas that are hindering development of the tourism industry including Zambia’s lack of infrastructure and presence in the tourist source market. The Zambian Ministry of Tourism is focused on developing and implementing policy that would grow the tourism industry, with a focus on tourism promotion and diversification.

23. Additionally, the Ministry of Tourism has actively promoted the development of sustainable tourism to avoid a cycle of immediate growth followed by inevitable decline after the destruction of the natural environment. While industry development of any kind is desirable to address economic issues and reduce poverty, it must be accomplished in a manner where it can create revenue for the country, but with the appropriate environmental protections, even if initial growth is slowed.

B. Access to Education, Proper Nutrition and Safe Drinking Water and Sanitation Facilities

24. Poverty is not solely addressed by economic and agricultural development. It is a multi-faceted problem that must be approached through other avenues as well. Lack of education, sanitation, healthcare and proper nutrition contribute to a cycle of poverty. Without taking these needs into consideration, much of Zambia’s poor will continue to live in sub-standard conditions.

³⁷ SNDP, Executive Summary, *supra* note 32, at 27.

A healthy population is necessary to create a strong workforce and keep children in school. Without an educated and healthy population, the poverty cycle will continue to repeat itself.

Education

25. An educated population is essential to eradication of poverty. Educated people can contribute more competently and competitively in the workforce, thereby having a positive impact on the economy through “opportunities for growth, poverty reduction, employment, productivity, and human development.”³⁸ The Zambia Vision has identified education as a means of job creation and socio-economic development.³⁹

26. Currently fewer poor Zambians attend school than do their more economically stable counterparts. In urban areas, children in the lowest quintile are less likely to be in school than other children. This trend is also prevalent in rural Zambia, though some studies show girls between the age of fourteen and eighteen in the lowest quintile are the most likely to attend school in these areas.⁴⁰ Lack of education also tends to keep vulnerable populations disadvantaged. For example, boys are more likely to attend school than young girls, and women continue to be a population strongly affected by poverty.

27. The Zambia Vision aims to provide access to education to all Zambians by the year 2030. The SNDP has also identified education as a primary focus aiming to “improve the quality of education at all levels so that appropriate skills, knowledge, attitudes and values required for social and economic development are imparted to the learners.”⁴¹

³⁸ SNDP, Executive Summary, *supra* note 32, at 19.

³⁹ Zambia National Vision 2030, available at www.mcti.gov.zm/index.php/component/.../12-zambia-vision-2030.

⁴⁰ Zambia Poverty and Vulnerability Assessment, *supra* note 25, at 77, 91.

⁴¹ SNDP, Executive Summary, *supra* note 32, at 19.

Proper Nutrition and Safe Drinking Water

28. Insufficient nutrition and safe drinking water is a serious problem for Zambians living in poverty. Without these basic necessities, development in economic and cultural areas will continue to lag behind.

29. Only 59 percent of households in Zambia have access to safe drinking water. Access in urban areas was much higher, reaching about 89 percent. In rural areas only approximately 43 percent of households had access to safe drinking water.⁴² Lack of proper nutrition is also a prevalent problem in Zambia. Malnutrition, considered a by-product of poverty, is common because many Zambians have a very limited and monotonous diet. This leads to stunting and other health problems in children. In adults, the malnutrition is often ignored except in severe cases. Malnutrition exacerbates poverty by limiting “access to school, capacity to learn, physical development, and energy to work, as well as ensuring the productive years are lost in additional morbidity and mortality.”⁴³ In addition, HIV infected people who are malnourished are less likely to benefit from the antiretroviral treatment, thereby increasing the rate at which HIV progresses to AIDS. The detrimental effects of malnutrition severely limits Zambia’s “national human capital base” and slows economic development.⁴⁴

30. The SNDP has set a goal to achieve accessibility to safe drinking water for 75 percent of the Zambian population by 2015.⁴⁵ Some government agencies and NGOs have started programs to educate Zambians, both adults and children, about proper nutrition.

⁴² Central Statistical Office, Zambia, Living Conditions, available at <http://www.zamstats.gov.zm/lcm.php> [hereinafter *Zambia, Living Conditions*]

⁴³ Zambia Poverty and Vulnerability Assessment, *supra* note 25, at 209.

⁴⁴ *Id.*

⁴⁵ SNDP, Executive Summary, *supra* note 32, at 21.

Sanitation Facilities

31. Many Zambians still are living without access to proper sanitation facilities. As of 2008, only 49 percent of Zambians had access to adequate sanitation facilities.⁴⁶ In urban areas, the lack of attention to sanitation has caused groundwater contamination leading to outbreaks of cholera. The use of pit latrines throughout Zambia is still common among about 49 percent of Zambians.⁴⁷ These facilities are often in disrepair and unsanitary. In rural areas of Zambia, these problems are exacerbated by insufficient resources. The lack of proper sanitation facilities contributes to illness and disease keeping many Zambians out of the workforce and unable to contribute to socio-economic development. Furthermore, it keeps children from attending school, limiting their ability to develop skills for employment.

32. Zambia has begun to address the problems caused by the lack of adequate sanitation facilities and has set goals to increase sanitation services for a significant portion of the population within the next few years. The SNDP has identified a goal of 60 percent access to adequate sanitation by the year 2015. The Zambia Vision also has a goal of achieving full access to safe potable water and sanitation facilities by the year 2030.⁴⁸

C. Vulnerable Populations and Poverty

33. Certain populations are more likely to be affected by poverty, and it is essential that the Zambian government focus on protecting these individuals. Vulnerable groups are those “population groups that are least involved in the exercise of public powers, have the least access to public economic resources, exert the least influence on distribution of public wealth and are

⁴⁶ UNICEF Statistics Zambia, *supra* note 16.

⁴⁷ Zambia Living Conditions, *supra* note 42.

⁴⁸ Zambia National Vision, *supra* note 39.

the least capable of maintaining subsistence and seeking self-development in a dignified manner.”⁴⁹ In Zambia, these vulnerable groups are “children, disabled persons, displaced people, women and those affected/infected by HIV and AIDS.”⁵⁰ It is important for Zambia to address the human rights of these vulnerable populations to alleviate poverty because of the multidimensional aspect of poverty and its impact throughout all of Zambian society.

34. Social programs offering services and education to these disadvantaged populations are also important. The Zambian government and various NGOs have created programs to advise people in these groups of their rights and opportunities, but it is essential that these programs be fully implemented. The creation of a program is not enough if there is not a real effort to implement it.

D. 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.

⁴⁹ Human Rights Commission, 2010 State of Human Rights Report in Zambia: Human Rights and the Environment, at 59.

⁵⁰ *Id.*

- 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. Right to Health

35. For decades, Zambia has recognized the right to health and to accessible health care. Despite many efforts to allow every citizen a basic health care entitlement however, there continues to be no provision on the right to health in the Zambian Constitution. The ICESCR requires states parties to take steps to implement this right, which Zambia ratified in 1984. In addition, African regional law also supports the right to health and access to prevention and treatment for all people.⁵¹

36. Zambia has recognized the need for this constitutional provision but the National Constitutional Conference has recommended that right to health be included in subsidiary legislation, rather than the Bill of Rights of the Constitution. Despite Zambia's progress, this remains an impediment to health care rights in Zambia because the National Constitution Conference recommendations would be a more limited expression of rights than found in other

⁵¹ The African Charter on Human and People's Rights, art. 16.

constitutions in the African region.⁵² It will not be clear until the bill is debated and passed as to which approach will prevail.

⁵² 2011 Equity Watch; Assessing Progress Towards Equity in Health, at 7 available at http://www.ops-oms.org.pa/drupal/SCMDSS/4%20Documents%20from%20WHO/WHO%20Regional%20Office%20for%20Africa-%20AFRO/AFRO_Assessing%20progress%20toward%20equity%20Zambia_2011.pdf, [hereinafter *2011 Equity Watch*].

A. HIV/AIDS

37. Zambia has one of the world's most devastating HIV/AIDS epidemics. More than one in every seven adults in the country is living with HIV/AIDS with a life expectancy estimated to be 49 years.⁵³ Approximately 980,000 Zambians, or 13.5 percent of the population, are currently living with HIV/AIDS.⁵⁴ There are an additional 600,000 orphaned and vulnerable children directly affected by the epidemic.⁵⁵ The DHS highlighted six key factors that contribute to the HIV/AIDS epidemic in Zambia. These factors are: 1) high rates of multiple partners; 2) low and inconsistent condom use; 3) low rates of male circumcision; 4) population mobility; 5) vulnerable groups with high risk behaviors; and 6) mother-to-child transmission. In addition, other factors such as gender inequality, income disparity, and socio-cultural practices also contribute to high levels of risk and vulnerability.⁵⁶

38. Since the first outbreak in 1984, the Zambian Government has been proactive in its efforts to decrease the HIV/AIDS infection rates. In 2004, the government declared HIV/AIDS a national epidemic and began distributing free antiretroviral drugs ("ARVs") nationwide. In addition, the government put in place measures such as free Voluntary, Counseling, and Testing ("VCT"), and free Anti-Retroviral Therapy ("ART") at all public health centers. Proper nutrition is imperative when taking ART and other HIV/AIDS medications. Since more than two thirds of

⁵³ World Health Organization, 2009 Country Statistics.

⁵⁴ UNICEF Statistics: Zambia, *supra* note 16.

⁵⁵ U.S. President's PEPFAR Program available at <http://www.pepfar.gov/frameworks/zambia/158523.htm> [hereinafter *PEPFAR Program*]

⁵⁶ *Id.*

Zambia's population live below the poverty line, the lack of nutrition negatively impacts the administration of the drugs.⁵⁷

Women and HIV/AIDS

39. People living with HIV/AIDS continue to face stigma and discrimination.⁵⁸ Although the epidemic affects all parts of society, women, especially young women and girls, are vulnerable.⁵⁹ HIV/AIDS infection rates is highest in females aged 14-24 years and males 25-49 years, and higher in urban areas than in rural areas.⁶⁰ In addition, the infection rate has been increasing among women in the age group 30-39 years although on the overall, the infection rate has been decreasing.⁶¹

40. Gender inequality is a contributing factor to the high prevalence among women. Cultural misconceptions are still a major factor because of cultural traditions, and women are taught not to refuse their husband's sexual advances or insist that their partner use a condom.⁶² Women and men need to be educated on women's rights and HIV prevention. Changing cultural views on gender inequalities will have a positive impact on HIV prevention.

⁵⁷ United Nations Human Rights Council, Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/2/ZMB/3, May 2008, at 6-7 [hereinafter *Summary Prepared by the Office of the High Commissioner*].

⁵⁸ Joseph Amon, World AIDS Day: prevention, treatment for prisoners, Human Rights Watch, December 2010, available at <http://www.hrw.org/news/2010/12/01/world-aids-day-prevention-treatment-prisoners>.

⁵⁹ UNAIDS (2008); Report on the Global AIDS Epidemic, available at <http://www.unaids.org/en/Dataanalysis/Epidemiology/>.

⁶⁰ 2011 Equity Watch; *supra* note 52, at 21.

⁶¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), para. 26 adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Zambia on June 21, 1985, [hereinafter *CEDAW*].

⁶² ADVERTing HIV and AIDS in Zambia, <http://www.avert.org/aids-zambia.htm>

Mother-to-Child Transmission

41. Mother-to-child transmission also contributes to the spread of HIV/AIDS. Transmission can occur during pregnancy, labor and delivery, or during breastfeeding. Without treatment, around 15-30 percent of babies born to infected women will become infected during pregnancy and delivery. An additional 15-20 percent will become infected through breastfeeding.⁶³ Currently, one in five pregnant women is infected. About 40 percent of these mothers will transmit the virus to their babies if no intervention is available.

42. Further, over 20,000 infants are newly infected each year.⁶⁴ In Zambia, the lack of access to formula, in particular in rural areas, is a contributing factor to the mother-to-child transmission. Prevention of Mother-To-Child Transmission (“PMTCT”) has remained a major focus of the government. PMTCT services were implemented in all the districts, with the exception of Ikelenge.⁶⁵ Despite the intervention, surveys conducted between 2008 and 2009 show that the number of new infections remained high.⁶⁶ The Ministry of Health requires all pregnant women to be tested for HIV/AIDS.⁶⁷

43. Zambia has made major improvements in universal access to prevention and treatment of mother-to-child transmission. By 2010, 939 sites or health care facilities had been established throughout the country providing prevention of mother-to-child transmission of HIV/AIDS. The goal is to establish 1500 sites. Despite this increase in centers, adults and children in rural areas

⁶³ *Id.*

⁶⁴ USAID; HIV/AIDS Multisector <http://www.usaid.gov/zm/hiv/hiv.htm>

⁶⁵ Sixth National Development Plan, *supra* note 11 at 81.

⁶⁶ *Id.* at 82

⁶⁷ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law.

have not benefited as much as those in urban areas.⁶⁸ The availability of HIV/AIDS counseling and testing centers for pregnant mothers is therefore still a major concern in rural areas.

HIV/AIDS Funding

44. Donors have actively supported health initiatives in Zambia. Unfortunately, in 2009, it was revealed that donor aid to the Zambian Ministry of Health had been embezzled.⁶⁹ Officials at the Ministry of Health were accused of embezzling \$7 million USD.⁷⁰ Sweden and the Netherlands suspended \$30 million USD in aid for health programs and Global Fund for HIV/AIDS, Malaria and TB (“GFATM”) also suspended funding later that year.⁷¹ Although the Zambian government reimbursed the Swedish and Dutch governments, as of January 2012, these countries have not yet resumed their monetary health aid. HIV/AIDS programs are amongst the worst affected by the corruption scandal and resulting in disruptions in funding.

45. Almost three quarters of funding for HIV/AIDS in Zambia is provided by foreign donors.⁷² For HIV/AIDS alone, in 2009, prior to the corruption of the Ministry of Health, the United States, through PEPFAR, contributed over \$262 million USD. The GFATM has contributed over \$137 million USD to Zambia. Other major donors include the European Union, Sweden, Denmark, Norway, the Netherlands, and the United Kingdom.⁷³ PEPFAR has allocated Zambia with \$276 million USD for 2010 and Zambia has received \$1.4 billion USD since

⁶⁸ 2011 Equity Watch, *supra* note 52.

⁶⁹ *Id.* at 46.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Personal Interview, January 3, 2012, record of interview on file at the University of Oklahoma College of Law.

⁷³ *Id.* (Note for Dutch and Sweden, this was prior to the corruption scandal at the Ministry of Health. Funding has not been resumed). *Id.*

inception of PEPFAR in 2004 for prevention, treatment and care and support programs for HIV/AIDS.⁷⁴ PEPFAR contributes over 50 percent of Zambia's HIV/AIDS funding.⁷⁵

46. A major concern facing funding of HIV/AIDS is the possibility of foreign donors losing the ability to fund these programs.⁷⁶ Zambia relies heavily on foreign aid and with the uncertainties of continued foreign government support, it is critical that the Zambian Government identify and develop contingent sources to fund such programs.

B. Malaria

47. The annual incidence of malaria dropped from 412 cases per 1,000 people in 2006 to 252 cases per 1,000 people in 2008.⁷⁷ The improvements in prevention are attributed to insecticide-treated nets, indoor residual spraying, and improved healthcare to prevent malaria. Despite these gains, however, malaria remains the number one cause of child mortality.⁷⁸

48. The Churches Health Association of Zambia ("CHAZ") is a faith-based organization that provides 50 percent of rural healthcare services in Zambia. CHAZ distributes insecticide-treated nets, facilitates training to health care workers, and helps to raise awareness of malaria. Although mosquito nets are provided to the community for free, the efforts to distribute them have often failed because the recipients were not sufficiently educated about the use and maintenance of the nets.⁷⁹ Some recipients use them as fishing nets, rather than putting them

⁷⁴ PEPFAR Program, *supra* note 55.

⁷⁵ Personal Interview, January 3, 2012, record of interview on file at the University of Oklahoma College of Law.

⁷⁶ Personal Interview, January 10, 2012, record of interview on file at the University of Oklahoma College of Law.

⁷⁷ Sixth Annual Development Plan, *supra* note 11, at 82.

⁷⁸ *Id.*

⁷⁹ Personal Interview, January 10, 2012, record of interview on file at the University of Oklahoma College of Law.

around their sleeping areas. Education as to mosquito nets and their proper use is needed to effectively reduce malaria, particularly in rural areas.

49. In addition, parents in rural areas are poorly educated on the signs and symptoms of malaria, and believe treatment at clinics should be a last resort.⁸⁰ This has proven deadly for children. CHAZ, through the Traditional Healers Association, is training parents and healers to recognize malaria symptoms and take patients to clinics for treatment. Clinical diagnosis is the most common method to diagnose malaria and the accuracy is extremely poor. False positives result and patients are prescribed anti-malaria medication unnecessarily. Educating health care workers to utilize blood tests, rather than clinical diagnosis, will help curb false positives. The use of Choloquine and other anti-malaria medications to treat suspected malaria is no longer safe. This results in patients developing immunities to anti-malaria drugs.

C. Non-Communicable Diseases

50. The burden of preventable and treatable disease continues to contribute to high morbidity and mortality, thereby negatively effecting social-economic development. Non-communicable diseases (“NCDs”) such as cancers, blood pressure problems, diabetes, heart disease, sickle cell anemia, stroke, mental illness, epilepsy and asthma are on the rise. The contributing factors for NCDs include age, alcohol and substance abuse, tobacco-smoking and nutritional problems.⁸¹ Zambia has been focused on controlling diseases like HIV/AIDS, malaria and tuberculosis (“TB”), and neglecting NCDs.

⁸⁰ *Id.*

⁸¹ Sixth National Development Plan, *supra* note 11, at 83.

51. Cervical cancer is reported to be the leading cause of cancer deaths in Zambia.⁸² The Ministry of Health has encouraged women to get screened because early diagnosis has been proven to save lives. However, due to the lack of knowledge among health care workers and the general public, many people do not get screened until after the disease has reached an advanced stage. Educating the general public and health care workers on the signs and symptoms of cancer is imperative to early detection.

52. Besides early detection, low health care staffing and morale remains a significant problem. Many facilities in rural areas still lack clean water, reliable sources of electricity, vehicles, drugs, and working equipment that health care workers need to perform their day-to-day jobs. This lack of funding and resources make it extremely difficult to treat non-communicable diseases.⁸³

D. 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.

⁸² Ahmedin Jemal, Freddie Bray, Melissa M. Center, Jacques Ferlay, Elizabeth Ward, David Forman, Global Cancer Statistics, CA: A Cancer Journal for Clinicians, Vol. 61, Issue 2 (2011).

⁸³ 2011 Equity Watch, *supra* note 52, at 50.

- 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

A. Women in Zambia: The Facts

53. The following facts provide a backdrop to examine the varied issues specific to Zambian women. Under the terms of Article 11 of the Zambian Constitution, “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.” Further, under section (a), such rights include “life, liberty, security of the person and the protection of the law.” Importantly, under Article 23, “no law shall make any provision that is discriminatory either of itself or in its effect.” However, subsection 4 of Article 23 offers an exemption from this general rule “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.” This means that conflict between the two sets of laws is not uncommon, particularly in the context of women’s rights.

54. While statutory laws “may provide for formal equality for women, the day-to-day life of the majority of the Zambian population is governed by customs and traditions which inform customary laws and practices.”⁸⁴ Women often lack the education, or ready access to someone

⁸⁴ Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26/Add.4 at 11.

who can provide such knowledge, to fully access their legal rights. The Zambian Legal Aid Department and other NGOs are working to fill this void but they may often be limited to more urban centers.

55. Poverty, an issue that has far-reaching impacts throughout all of Zambia as discussed in the first section of this report, particularly affects women as “the incidence of extreme poverty stood at 51 percent with rates higher in the rural areas and was more prevalent among female-headed households.”⁸⁵

56. In terms of health, Zambian women face numerous issues. The current maternal mortality rate in the country is 591 deaths per 100,000 live births, down from 729 in the time period from 2002-2007.⁸⁶ The life expectancy for the average Zambian woman is 50 years.⁸⁷

57. About 50 percent of Zambian women are married by age eighteen while 25 percent of girls aged between fifteen and nineteen have already started bearing children.⁸⁸ These numbers also correlate to the heightened levels of poverty in rural areas. The number of young girls becoming mothers is higher in the rural areas than in the urban centers as “the poorest women, in general, have more than twice as many children as women who live in the wealthiest households

⁸⁵ *Id.* at 3.

⁸⁶Sixth National Development Plan, *supra* note 11, at 81. “Despite the reduction in Maternal and Child Mortality rates, these are still generally high. This is on account of incomprehensive antenatal coverage, inadequate functional emergency facilities, low institutional deliveries and untrained staff. Adolescent pregnancies continue to contribute significantly to the high Maternal Mortality Rate and neonatal deaths. For instance, out of 73 districts only 12 had functioning Basic Emergency Obstetric Neonatal Care facilities. Further, it is estimated that more than 50 percent of pregnant women deliver at home.” *Id.*

⁸⁷ World Statistics Pocketbook, United Nations Statistics Division, *available at* <http://data.un.org/CountryProfile.aspx?crName=ZAMBIA>.

⁸⁸ Manjoo, *supra* note 84, at 4 (citing Zambian Demographic and Health Survey 2007).

(8.4 versus 3.4 children per woman).” The current fertility rate of Zambian women stands at 5.98 children per woman, ranking Zambia eighth in comparison to other countries.⁸⁹

58. Currently 48 percent of births in the country occur in medical facilities; 52 percent of Zambian births take place at the home. The difference in rural and urban settings is evident: 67 percent of births take place at home in rural areas while sixteen percent of births are at the home in urban areas. Many women, because of infrastructure issues affecting the country as a whole, cannot easily access necessary medical care.

59. Approximately 75 percent of Zambian women are deemed literate (defined as over the age of fifteen and can read and write in English). For females, most can expect to spend seven years within the school system. Besides the costs associated with attending school, a Zambian family must consider lost earning capacity or the lost value in household assistance if a girl stays in school instead of working. Stemming from such statistics, there has been a noted “division of labour where men were encouraged to participate in production, and women to work in the traditional sector.”⁹⁰ Zambia’s stated goal of becoming a “prosperous middle income country” must involve women contributing to, and sharing in, the prosperity of the country.

⁸⁹ Zambia: 2007 Demographic and Health Survey Key Findings, available at <http://www.measuredhs.com/pubs/pdf/SR157/SR157.pdf> [hereinafter *2007 Health Survey*] Further, the average interval between children is 34 months in Zambia (a 36-month space reduces risk of infant mortality). *Id.*

⁹⁰ Draft Report, Rapporteur Rosalyn Hazelle, Consideration of Reports of States parties, Zambia, June 2002, available at <http://www.iwraw-ap.org/committee/zambia.htm>. “Although rural women were involved in subsistence agriculture, unpaid domestic work and casual or seasonal labour, they were classified as housewives, unemployed or economically inactive. The unreliable or non-existent road infrastructure in most rural areas made it more difficult for subsistence farmers, particularly women, to market their produce. That was compounded by women's lack of collateral, limited education, lack of access to credit and other means of production.” *Id.*

B. Reliable Access to Rights

Property

60. “Half of ever-widowed women were dispossessed of property.”⁹¹ A major issue regarding the rights of women as to property in Zambia is the instance of “property grabbing.” This term refers to the unlawful appropriation of marital property upon the death of a spouse by in-laws. Marital property is viewed as belonging the husband. Property grabbing occurs even though Zambia has an Intestate Succession Act that defines the inheritance of property. Under the terms of the Act, a widow (or widows in a polygamous context) is entitled to 20 percent of the estate (with other provisions for surviving children). It is illegal to evict the surviving spouse from the home.⁹² While this is the law, it does not necessarily correspond with facts on the ground. Oftentimes the deceased husband’s family demands the return of the land of the deceased to the exclusion of the widow. The impacts of such a deprivation on women are numerous from loss of prime farming land to social status. With the ongoing effects of HIV/AIDS and the statistics that Zambian women live longer than Zambian men, it is important for the government to continue to educate women as to their legal rights while also providing them with truly effective enforcement mechanisms when those rights are denied.

61. The overall lack of stability in land tenure impacts the ability of women to access collateral. Existing reports to the UN have determined that “gender discrimination remains pervasive and that this discrimination has limited women’s access to land, education, credit and other productive assets and has created a power imbalance preventing women and girls from

⁹¹ *Id.* at 17.

⁹² Human Rights Watch, Hidden in the Mealie Meal: Gender-Based Abuses and Women’s HIV Treatment in Zambia, at 16, available at <http://www.hrw.org/sites/default/files/reports/zambia1207web.pdf>.

having full control of their lives.”⁹³ This translates into a real impediment to women hoping to change their lives through financial endeavors. “Women’s access to credit remains limited, as commercial banks require collateral against loans which women are usually unable to provide as they do not own land or property.”⁹⁴ As the IHRC-OU students learned during the course of meetings in Zambia, women who are empowered by having land in their own right can make meaningful economic gains.⁹⁵

62. These problems women face in obtaining secure ownership of property exemplify the oft-cited tension between customary law and statutory law regarding the rights of women in actual practice. Because most of the judicial actions and administration take place at the customary level, and because under the Constitution the terms of customary law need not be displaced by statutory law, women’s rights often get lost in the gap between the two systems. Indeed,

“Zambia is a country where customary law and its institutions are still vibrant and where traditional leaders continue to influence and shape societal norms. This impacts women in different ways as structures and attitudes within the family and the community marginalize women and male preference practices continue to be perpetuated. These deeply-embedded patriarchal values have led to women remaining discriminated against and disadvantaged in a number of sectors and being at a higher risk of violence.”⁹⁶

That is not to say that the Government is not unaware or unresponsive to this situation.

The SNDP provides:

“Government will continue to advance the mainstreaming of gender in the development process and the empowerment of women. In this regard, major interventions shall be gender mainstreaming into policies and legislation; and

⁹³ Manjoo, *supra* note 84, at 3.

⁹⁴ *Id.* at 5.

⁹⁵ Personal Interview, January 4, 2012, record of interview on file at the University of Oklahoma College of Law.

⁹⁶ Manjoo, *supra* note 84, at 3.

support to the socio-economic empowerment of women. Further, government will undertake to comprehensively integrate, into national policies and programmes, important international and regional conventions and treaties on gender to which Zambia is party.”⁹⁷

63. There remains room for improvement in making sure women’s legal rights are not only known, but also enforced. The government is attempting to remedy this situation in the context of land rights with a policy designed to ensure that 30 percent of new land ownership is by women. This is an area that deserves further study and, if successful, could prove a valuable example model for future programs to bolster women’s rights in Zambia. The government has stated that “in order to address negative social and cultural practices that lead to stereotyping and reinforcing the idea of inferiority of women, Government and Civil Society Organisations have strengthened their partnerships with traditional leaders through the House of Chiefs.”⁹⁸ During the meetings with the IHRC-OU, it appeared that those organizations that had meaningful relationships with local leaders described successful endeavors. Communication and goal building among traditional leaders, government officials, and NGO should be examined further to offer guidance for future actions amongst the three bodies.

Education

64. While the levels of attendance of Zambian girls in school have increased, the number of girls who actually complete their education remains lower than their male counterparts. This can be ascribed to early age pregnancy and the inability, until recently, of young mothers to return to school. The Programme for the Advancement of Girls' Education (“PAGE”) project attempts to

⁹⁷ Sixth National Development Plan, *supra* note 11, at 30.

⁹⁸ Responses to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic report: Zambia, CEDAW, *supra* note 61, at 15.

remedy this situation.⁹⁹ However without strong family and day-to-day support, it is still challenging for young mothers to return to school. Infrastructure improvements within the schools – in house babysitting centers, for example – would help create jobs for others in the community while also ensuring young mothers reliable babysitting services. This idea, however, like so many others, is subject to tight budgetary concerns (especially considering students must currently provide for their own books, materials and uniforms). Schools could, with the right tools, infrastructure, and input from local communities, become places where young mothers could learn the practical skills they need to maintain their home, the information needed to start their own business, or specialized training to work outside the home.

65. There are still other factors that contribute to a lower number of girls finishing their education: risk of sexual violence on their way to school or at the school itself; far distances between their homes and the school without reliable transportation; and the school costs that children must pay (something that does impact all students because of the high poverty levels in Zambia). These are indicative of the structural problems within Zambia as a whole but continue to adversely impact women in particular.

66. This ceiling on education translates to a similar ceiling in the workforce. Many women work in informal sectors and without job security. “About six in ten women age 15-49 . . . are employed compared with almost all men (98 percent). Among those who are employed, men are slightly more likely to earn cash, while women are more likely than men to be unpaid. Women who earn cash generally earned less than their husbands.”¹⁰⁰

⁹⁹ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law.

¹⁰⁰ 2007 Health Survey, *supra* note 89. The IHRC-OU also learned that, for girls and women, such informal sector jobs can consist of stone-breaking, selling food, working with their mothers on tobacco farms, and can even mean prostitution. Personal Interview, January 4, 2012, record on file at the University of Oklahoma College of Law.

Safety/Reporting of Crimes

67. Domestic violence is a serious concern in Zambia today. “Almost half of women (47%) in Zambia have suffered from physical violence at some point since age 15.”¹⁰¹ Further, 70 percent of women who have been married or with a partner reported that those persons were the “perpetrator[s] of the violence.”¹⁰² While awareness and education continue to grow (particularly with the help of NGO involvement), more is needed in the effort to change the perspective and dialogue within the homes of Zambia. The outreach and education must continue through all forms: mass advertising, radio advertisements in multiple languages, and conversation within the home itself.

68. However, many interests continue to keep women from reporting the incidents or from the justice system effectively prosecuting offenders. The terms of *malobolo* or *lobola* (bride price), “lead[] the husband and in-law family to believe that they have purchased the bride and therefore are allowed to subject their ‘property’ to violence and other forms of ill-treatment.”¹⁰³ Further, some women prefer to “resolve” the issue with the perpetrator “mostly because of family and social pressures and because of economic dependence on the perpetrator. Access to the formal justice system is difficult ...Women do not trust the system as it has failed to hold perpetrators accountable.”¹⁰⁴ As the IHRC-OU heard repeatedly, the current state of judicial administration is one of backlogged courts and over-burdened public service lawyers. This fact

¹⁰¹ 2007 Health Survey, *supra* note 89, at 13.

¹⁰² *Id.*

¹⁰³ Manjoo, *supra* note 84, at 7.

¹⁰⁴ *Id.*

relates directly to the ability, and the existence of a reliable law enforcement system, to help reduce the instance of domestic violence.

69. Statistically, “six in ten women and half of men agree that a husband is justified in beating his wife for certain reasons.”¹⁰⁵ Besides strengthening the ability of Zambian law enforcement to deter domestic violence, there must be a similar commitment to change cultural attitudes towards the subject. Indeed as of now, “[f]ifty-seven percent of men agree that women are justified in refusing sexual intercourse with her husband for certain reasons compared with only 39 percent of women who agree with a wife’s right to refuse sex.”¹⁰⁶ Today marital rape in Zambia is not a legal offense.¹⁰⁷

70. Notably, the Zambian government has implemented a Victim’s Support Unit under the existing police department that is specifically aimed towards combating sexual abuse and helping to resolve domestic disputes. However, the lack of Victim Support Units in rural Zambia means less reporting.¹⁰⁸ Lack of infrastructure permeates nearly all of these issues. There is also a “one stop” center for sexual abuse victims that is administered by the Ministry of Health and staffs a police officer, medical doctors and access to counselors. This is a very limited service, as of March 2012, only one such center exists in Lusaka. Examining how to implement and expand such services in a sustainable and economic way should be a goal of the Zambian government.

¹⁰⁵ 2007 Health Survey, *supra* note 89, at 17.

¹⁰⁶ *Id.*

¹⁰⁷ Manjoo, *supra* note 84, at 13.

¹⁰⁸ Personal Interview, January 4, 2012, record of interview on file with the University of Oklahoma College of Law.

Medical Care & Access

71. Currently 16.1 percent of Zambian women aged 15-49 have HIV/AIDS (12.3 percent of men of the same age range have HIV/AIDS).¹⁰⁹ Other major health concerns include Malaria, TB, issues stemming from un-pure drinking water, and lack of adequate nutrition (particularly important for those on medicines treating HIV/AIDS).

72. “Women are far more likely to have been tested for HIV; 35% of women have ever been tested and received results compared with only 20% of men.”¹¹⁰ This was echoed by the IHRC-OU interview at the Africa Directions Clinic in Lusaka where the staff relayed that many men are likely to assume their HIV/AIDS status from the status of their wives or partner.¹¹¹ This, of course, does not take into consideration extramarital partners a husband¹¹² or wife might have. Continued education and awareness to have couples tested together, perhaps with informational campaigns targeted towards men specifically, would help ensure both partners are aware of their status.

73. Pregnant women also face certain risks. Although maternal mortality rates have been decreasing, they still remain high. “[This rate] is on account of incomprehensive antenatal coverage, inadequate functional emergency facilities, low institutional deliveries and untrained staff. Adolescent pregnancies continue to contribute significantly to the high Maternal Mortality Rate and neonatal deaths. For instance, out of 73 districts only twelve had functioning Basic

¹⁰⁹ 2007 Health Survey, *supra* note 89, at 18.

¹¹⁰ *Id.* at 15.

¹¹¹ Personal Interview, January 11, 2012, record on file with the University of Oklahoma College of Law.

¹¹² During the course of the interviews, the IHRC-OU learned that it is not uncommon for spouses, particularly husbands, to have other sexual partners.

Emergency Obstetric Neonatal Care facilities.”¹¹³ Again infrastructure shortfalls present problems to effective administration of health services and distribution of drugs. More research is required to understand what feasible and cost-sensitive programs could prove more effective in positively impacting the health, and lives, of women.

C. Involvement of Women in All Branches of Government

74. Simply put, Zambia has great room for improvement in the involvement of women at all levels of government. The special rapporteur on violence against women concluded that the persistence of gender discrimination in Zambia has “led to women being overrepresented among the extremely poor, the unemployed, the illiterate and those living with HIV/AIDS – while at the same time being underrepresented in political and decision-making bodies.”¹¹⁴

75. “The proportion of seats held by women in Parliament was 14 percent in 2004 and 12 percent in 2006, which is below the 30 percent and 50 percent recommended by the Southern Africa Development Community and the African Union respectively.” In terms of local government, 94 out of 1,422 counselors were women.¹¹⁵ These numbers relate to the issues discussed above – the higher incidence of poverty, lack of education and health risks that women bear – that can mean lack of qualification or further impediments to serving their communities in such a capacity.

76. Similarly low numbers are reflected in the number of women represented in the judicial branch.

- At the Supreme and High Court level, 13 of 43 judges are women (30.2 percent);

¹¹³ Sixth National Development Plan, *supra* note 11, at 81.

¹¹⁴ Manjoo, *supra* note 84, at 4.

¹¹⁵ *Id.* at 5 (citing Initial Report on the Implementation of the Solemn Declaration on Gender Equality in Africa).

- 27 of 119 magistrates are women (22.6 percent);
- At the local court level, 90 of 808 judges are female (or 11.1 percent).

Because of Zambia's dual legal system, women's rights are often compromised. Indeed the UN has suggested that all levels of the judiciary in the country be trained as to the provisions of CEDAW.¹¹⁶ Continuing to increase the presence of women at the local court level could positively impact the enforcement of the rights of women, particularly in domestic issues. It is vital for young women, not only to understand that they have a future in the role of all levels of Zambian government, but be able to utilize a framework of tools and resources for that to actually happen. One concept would be to create a government-sponsored nation-wide girls leadership program. An annual meeting at, for example, the University of Zambia could provide a central location for girls from around the country to gather, learn from women professors and other leaders, and help provide a comprehensive picture of opportunities and prospects for these young Zambian women

D. 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.

¹¹⁶“Train and sensitize administrators of customary and traditional courts about the Convention and statutory laws that promote and guarantee the rights of women and girls, including with regard to marriage and family relations.” Concluding observations of the Committee on the Elimination of Discrimination against Women: Zambia, CEDAW/C/ZMB/CO/5-6, at 13 (2011).

- 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 Rights to Free, Compulsory Primary Education

A. Access versus Effectiveness

77. The Convention on the Rights of the Child (“CRC”) mandates that each party “[m]ake primary education compulsory and available free to all...”¹¹⁷ The ICESCR similarly delineates the right to compulsory free education made available to all children.¹¹⁸ The Zambian Constitution further recognizes a right to education for all people.¹¹⁹ Zambia has made significant progress in the area of education. Since 1977, the government has provided for nine years of compulsory education for every child, a policy which has reiterated in the Basic Education Sub-Sector Investment Programme (“BESSIP”), which came into effect in 1999. The Zambian Ministry of Education steadily increased access to basic education through the implementation of development plans and the abolishment of school fees, which occurred in 2002.¹²⁰ According to 2005 United Nations Educational, Scientific and Cultural Organization (“UNESCO”) data, “some 93% of girls and 91% of boys are in primary school. At the same

¹¹⁷ Convention on the Rights of the Child (CRC), art. 28, para a (1), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No.49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, acceded to by Zambia on December 6, 1991 [hereinafter *CRC*].

¹¹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13, para. 2(a), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, acceded to by Zambia on April 10, 1984 [hereinafter *ICESCR*].

¹¹⁹ See Zambia Constitution, *supra* note 7, Preamble.

¹²⁰ Netherlands Embassy, Primary Education in Zambia, IOB Impact Evaluation, Policy and Operations Evaluation Department, no. 312, April 2008, at 13 [hereinafter *Netherlands Embassy Report*].

time, however, only 83% of children complete a full course of primary school.”¹²¹ This is still a significant achievement, however, as the total number of students who took the Grade Seven exam increased by 62 percent from 2000 to 2007.¹²²

78. Yet while the number of students with access to primary education is improving, the quality of the education provided is questionable. Schools remain overcrowded with high student-teacher ratios, and the infrastructure of many primary schools particularly in rural areas, remains poor. In 2008, 70 percent of students taking the Grade Five exam did not attain the minimum level of English, and only six percent actually reached the required level.¹²³ Lack of student achievement is attributed to “severe underfunding, a lack of qualified and motivated teachers and head teachers and a lack of effective management capacity at the school and district levels.”¹²⁴ Improving the quality of education will necessarily involve decreasing student-teacher ratios by building more classrooms and training teachers in a more broad-based and effective manner. Although, Zambia’s long-standing policy of compulsory attendance in primary school and its more recent elimination of school fees at the primary and secondary levels are important steps towards improving the educational system, until the quality of education is improved significantly, many children will continue to be deprived of meaningful education.

B. Alternatives to Government Funded Schools

79. Access to education is a significant problem in rural areas of Zambia. This is due both to the cost of education as well as the distance to the government schools. While the Zambian

¹²¹ Franciscans International, NGO Report, Universal Periodic Review, Republic of Zambia, para. 2, February 2008.

¹²² Netherlands Embassy Report, *supra* note 120, at 14; *see also* CEDAW, *supra* note 61, at 8.

¹²³ Netherlands Embassy Report, *supra* note 120, at 14.

¹²⁴ *Id.*

government has eliminated school fees in the primary education system, children are still responsible for purchasing uniforms, books, and other supplies. Typically, these materials cost about \$30 USD for a three-month term, a price poorer children, particularly in rural areas, cannot afford to pay.¹²⁵

80. In order to provide these children with primary education, community schools have been established in some areas. Although these schools contribute to the overall increase in student enrollment, they are not government funded, are severely understaffed, and are taught primarily by untrained and unqualified members of the community. Community schools constitute approximately 34 percent of primary schools in Zambia and are thus an important component of Zambia's primary educational scheme.¹²⁶ They are usually funded by NGOs which receive money from donors to provide school buildings, supplies, and teaching and education projects, including teacher training programs.¹²⁷

81. The IHRC-OU visited a community school in Livingstone operated by Dream Livingstone, a non-profit organization which seeks to improve the economic status of poorer communities in Livingstone by funding educational facilities and implementing programs to empower the communities to become self-reliant and sustainable.¹²⁸ The school was located behind a wall with a solid metal gate in the heart of a densely populated, impoverished section of the city. Approximately 250 students were taught at the school.¹²⁹ These children were, who

¹²⁵ Personal Interview, January 6, 2012, record of interview on file at the University of Oklahoma College of Law.

¹²⁶ Netherlands Embassy Report *supra* note 120, at 55.

¹²⁷ Personal Interview, January 6, 2012, record of interview on file at the University of Oklahoma College of Law.

¹²⁸ Dream Livingstone Zambia, available at http://www.dreamlivingstonezambia.com/about_us.asp

¹²⁹ Personal Interview, January 6, 2012, record of interview on file at the University of Oklahoma College of Law.

would otherwise not receive a primary school education, all received lessons from the same school building, which consisted of two large, open rooms each containing one blackboard at one end. Because of the large number of students, teachers hold classes in shifts because the school room is not large enough to accommodate all of the students at the same time.

82. The school also had a “kitchen” facility, an open wood burning fire on which school personnel cooked lunch. At the time of the visit, the school had been closed due to backed up sewage in the schools only latrine. That latrine was used by boys, girls, and teachers. Dream Livingston was able to raise the money to build separate girls, boys, and teacher bathroom facilities. Construction was ongoing at the time of the visit but when it was completed, the school would be reopened. To assist with teacher training, Dream Livingstone recruits tourists to spend part of their visit in community service, working directly with the students or in teacher training activities. In exchange for this service, Dream Livingston provides discounted rates at its lodge.

83. In addition to community schools, some NGOs have established and funded community centers. These centers provide educational and recreational programs outside of the traditional classroom setting. In Lusaka, the IHRC-OU visited a community center operated by Africa Directions, a youth-led, non-profit organization which uses an “education through entertainment” philosophy and takes a proactive approach in reaching out to young people in the community.¹³⁰ Recognizing that there were places serving alcohol on each street corner, and that children were vulnerable to such establishments, the organization provides a wide-range of activities at its three community centers, including sports, peer education, drama, health and counseling services, and a number of recreation activities aimed at building skills and confidence. The community center

¹³⁰ Africa Directions, available at <http://africadirections.com>.

visited by the IHRC-OU, for example, had a room with several pool tables, a room where children could watch educational television programs, and a library containing three bookcases of books that were available to community members.

C. Government Support of Community Schools

84. In addition to addressing student attendance in government funded schools, the Zambian Ministry of Education has also attempted to improve the quality of education in community schools by cooperating with NGOs such as Dream Livingstone. It has facilitated the process of setting up community schools and, when community schools are successful and funding has been provided, the government may step in and begin funding the community schools in part, if not in whole.¹³¹

85. Zambia has made significant improvement in providing access to free, primary education, and with continued sustained efforts access to primary education will be attained. The Ministry of Health's educational goals should include an increased focus on factors impacting quality and effectiveness of the primary school system. Zambia's community schools currently rely heavily on donor funding. This reliance is a significant problem because any decrease in donor funding to NGOs will directly impact the ability of community schools relying on such funding be able to continue their operations. Zambia can improve the quality of existing primary schools by increasing funding to community schools, providing teacher training programs, especially in rural areas, providing books, uniforms and other teaching and learning supplies, and finally, by providing funding to build on to existing community schools so that they can provide additional classrooms to the students.

¹³¹ Personal Interview, January 6, 2012, record of interview on file at the University of Oklahoma College of Law.

D. 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

A. Health Conditions in Prisons

HIV and TB

86. Approximately one in seven Zambian adults is infected with HIV/AIDS.¹³² With respect to prisoners, one in four adults is infected.¹³³ The prevalence of HIV/AIDS in Zambian prisons was measured at 27 percent, compared to the national general adult population at fifteen percent.¹³⁴ Prisoners have very limited access to HIV/AIDS prevention or treatment, and they struggle to have their rights respected and protected. A 2010 report conducted by the AIDS and Rights Alliance for Southern Africa (“ARASA”) and the Prisons Care and Counseling Association (“PRISCCA”) on the prison health care conditions in Zambia indicated that TB testing and treatment is, for the most part, unavailable in prisons, and HIV/AIDS services are

¹³² Amon, *supra* note 58.

¹³³ *Id.*

¹³⁴ Human Rights Watch, *Unjust and Unhealthy: A call to Action on Zambian Prison Health*, April 2010, at 5, available at <http://www.hrw.org/reports/2010/04/27/unjust-and-unhealthy-0> [hereinafter *Unjust and Unhealthy*].

available only at a few prisons.¹³⁵ As of October 2009, the Zambian Prisons Service employed only fourteen health staff, including one physician, to serve its 15,300 prisoners.¹³⁶ As a result, prisoner health conditions are grossly inadequate. These poor conditions of confinement and minimal medical care for prisoners expose them to HIV/AIDS and TB, threatening the lives and health of inmates and as well as the general public.

87. Both consensual and non-consensual sexual activity between male prison inmates is common despite Zambia's criminalization of consensual same-sex activity. Sections 155, 156 and 158 of Zambia's Penal Code, which criminalize homosexual conduct, are contrary to international human rights standards, as well as the Zambian Constitution, which guarantees every individual the right to privacy and prohibits discrimination.¹³⁷ Zambia's prohibition against homosexual activity therefore prohibits condom distribution in prisons. This, however, creates a serious risk of HIV/AIDS transmission and is a major obstacle in HIV/AIDS prevention.

88. While HIV/AIDS testing and treatment has improved in some of the larger prisons, TB screening and treatment is still considered inadequate.¹³⁸ It is estimated that approximately fifteen to twenty percent of prisoners are infected with TB, a percentage far higher than in the outside community.¹³⁹ Many prisoners have not been tested for TB, and TB isolation cells are fairly uncommon in Zambian prisons. Where such isolation cells do exist, they are often used to

¹³⁵ Amon, *supra* note 58.

¹³⁶ Unjust and Unhealthy, *supra* note 134 at 6.

¹³⁷ Human Rights Watch; Zambia: Intolerance Threatens Health, Rights, May 2010, *available at* <http://www.hrw.org/news/2010/05/21/zambia-intolerance-threatens-health-rights>

¹³⁸ Unjust and Unhealthy, *supra* note 134, at 14.

¹³⁹ *Id.* at 48.

house uninfected inmates, including pregnant women, as well as those who have been infected.¹⁴⁰ Housing infected inmates with healthy ones greatly increases the risk of TB transmission.

Nutrition and Hygiene

89. Due to significant overcrowding in the prison system, prisoners are subjected to poor prison conditions, including lack of hygiene, adequate food – both in terms of content and nutrition – as well as adequate access to medical care.¹⁴¹ With prisons being overcrowded by as much as 500%, the prison system is unable to provide inmates with a sufficient number of beds or adequate ventilation. This is extremely dangerous to the health of the prisoners because it facilitates the spreading of communicable diseases among inmates. Children are especially at risk when they are housed in the same facilities as adults, as they have lower immune systems and therefore might have a higher risk of becoming infected. For example, as indicated above, several juveniles at one Zambian prison were forced to sleep in the TB isolation cell due to severe overcrowding, and expressed concern that they would catch TB from the patients. Despite juveniles being increasingly exposed to diseases like TB, juveniles housed in many facilities are not tested at all.¹⁴²

90. Both children and adults also suffer from lack of proper nutrition in prison. According to the Standard Minimum Rules for Treatment of Prisoners, “[e]very prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and

¹⁴⁰ *Id.* at 56.

¹⁴¹ *See* Summary Prepared by the Office of the High Commissioner, *supra* note 57, at 5.

¹⁴² *See* Unjust and Unhealthy, *supra* note 134, at 51. According to the April 2010 Human Rights Watch Report, in the six prison facilities surveyed, only a total of four percent of juveniles had been tested for TB. Moreover, in four of the six prisons, none of the juveniles had ever been tested for TB. *Id.*

strength, of wholesome quality and well prepared and served.”¹⁴³ A Human Rights Watch report indicated that prisoners at facilities across Zambia are only served “approximately 400 to 450 grams of maize meal per day (400 grams of maize meal is equivalent to roughly 1,400 calories)—in addition to small quantities of beans and/or kapenta.”¹⁴⁴ Further, prisoners are given no vegetable with their meals, despite the fact that they are forced to work on prison farms during the day. The physical labor that they perform on a daily basis means that they burn more calories per day than they consume.¹⁴⁵ This is in direct violation of Rule 65 of the Prison Rules, which requires that “that the prison authorities are responsible for ensuring that every article of food supplied to the prisoners is sound and of good quality. Rations must also be issued in strict accordance with the prescribed scales of diet and that every prisoner receives the diet to which he is entitled.”¹⁴⁶

B. Prohibition against Torture

91. Despite both international and domestic prohibitions against torture, it remains the primary human rights violation reported to Zambia’s Human Rights Commission.¹⁴⁷ Article 15 of the Constitution prohibits torture and other inhuman or degrading treatment or punishment.¹⁴⁸

¹⁴³ United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, para. 20(1) [hereinafter *Standard Minimum Rules*].

¹⁴⁴ Unjust and Unhealthy, *supra* note 134, at 35.

¹⁴⁵ *See id.*

¹⁴⁶ Human Rights Commission, Lusaka Prison Report 2004, at 2, available at http://www.hrc.org.zm/media/lusaka_prisons_report.pdf [hereinafter *Lusaka Prison Report*].

¹⁴⁷ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law.

¹⁴⁸ *Id.*

Similarly, Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), ratified by Zambia in 1998, prohibits the use of torture under any circumstances, including against prisoners. The Convention Against Torture defines “torture” to include:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁴⁹

92. Inmates, including juvenile offenders, are subjected to various forms of punishment falling within the above referenced definition of torture, including: solitary confinement, physical abuse by prison officials, and deprivation of basic necessities such as food and water. In some cases, prisoners are forced to stand naked for days in a small cell filled with water to their calves or ankles. Because they are prohibited from leaving the cells for days, even for bathroom breaks, prisoners remain in the cells with water mixed with their own filth. Juveniles are also subjected to various forms of torture, including beatings, and, in some cases, being tied by a rope and left out in the sun for hours. These horrific punishments are inflicted as punishment for even the most minor of offenses, such as shouting at a prison official.¹⁵⁰

C. Prison Captains

¹⁴⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984), entered into force June 26, 1987), acceded to by Zambia on October 7, 1998 [hereinafter *Convention Against Torture*].

¹⁵⁰ Unjust and Unhealthy, *supra* note 134, at 95.

93. Zambia’s Prison Act forbids prisoners to be employed in a disciplinary capacity; however, “cell captains,” or prisoners to whom disciplinary authority is delegated, carry out the majority of prison punishments without any supervision by prison officials.¹⁵¹ Despite prison officials’ claims that cell captains do not punish, but instead only report punishable offenses to the officials, the lack of supervision and low staffing numbers leads to cell captains to be unsupervised, resulting in prisoner exploitation and abuse.¹⁵² The vast majority of inmates report that cell captains administer corporal punishment in the form of beating by using whips, belts, electric cables, pipes, shoes, and stones. Many such beatings are encouraged and instigated by prison cell officials.¹⁵³ It has also been reported that cell captains hold night-time “courts” in which they conduct trials in front of other inmates and administer “justice” in the form of beatings and tortures.¹⁵⁴

94. Cell captains are given an enormous amount of authority and discretion when it comes to determining when, how, and for which offenses inmates should be punished. They further act as gatekeepers between inmates and access to medical care, despite the fact that they have no medical training whatsoever. This therefore results in inmates being denied access to the already limited available medical care, causing severe illness and avoidable deaths among the inmate population.

D. Juvenile Offenders

¹⁵¹ Prison Rules, sec. 155, Prison Act, Sec. 5(2), “No prisoner shall be employed in any disciplinary capacity.”

¹⁵² Unjust and Unhealthy, *supra* note 134, at 97.

¹⁵³ *Id.* at 98-99.

¹⁵⁴ *Id.* at 97.

95. International law permits governments to incarcerate children for violations of the penal law, however Article 37 of the CRC mandates that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily” and that any arrest, detention or incarceration of a child should be “used only as a measure of last resort and for the shortest appropriate period of time.”¹⁵⁵ Despite this, children in Zambia are routinely incarcerated for arbitrary arrests and petty offenses.¹⁵⁶

96. In addition to being arrested for offenses such as loitering, these children are often not eligible for parole.¹⁵⁷ Juvenile offenders remain in prison for a significant length of time, without access to a lawyer and without ever having gone before a judge, let alone being convicted of a crime.¹⁵⁸ While Zambia has recently begun utilizing a parole system, it is only available to inmates “with longer sentences—those who have been found guilty of more serious crimes—are eligible for parole, whereas inmates with more minor sentences are ineligible.”¹⁵⁹ Juveniles who have been arrested can remain incarcerated for months before going before a judge, even if the offenses for which they have been arrested are minor and non-violent.

97. The CRC also provides that juveniles have the right to legal or other appropriate assistance in the defense of his or her case.¹⁶⁰ Zambian law likewise holds that, once a person is

¹⁵⁵ CRC, *supra* note 117, art. 37, para. 2.

¹⁵⁶ Summary Prepared by the Office of the High Commissioner, *supra* note 57, para. 21; *see also* Unjust and Unhealthy, *supra* note 134, at 7.

¹⁵⁷ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law.

¹⁵⁸ Unjust and Unhealthy, *supra* note 134, at 2. In fact, only 5 percent of juveniles under the age of 18 saw a judge within 24 hours of their arrest, and the average period of incarceration before seeing a judge is two months. *Id.*; *see also* National Report, *supra* note 1, para. 28.

¹⁵⁹ Unjust and Unhealthy *supra* note 134, at 120.

¹⁶⁰ CRC, *supra* note 117, art. 40, para. 2(b)(ii).

detained, he or she is allowed access to a lawyer.¹⁶¹ Free legal representation is also available under Zambian law to indigent defendants before the High Court, yet most prisoners, especially juveniles, are unaware that they have such a right. Indeed, 73 percent of juvenile offenders under the age of eighteen have never been given access to a lawyer.¹⁶² Children are also not guaranteed any special protection in the criminal justice system.

98. Although a juvenile justice system does exist in Zambia, very few judges specialize in juvenile cases and extremely limited juvenile rehabilitation and integration services are available.¹⁶³ While special juvenile courts have recently been created to handle the backlog in the justice system and ensure that children receive special protection, the system is still inadequate and additional attorneys need to be trained to handle juvenile cases.¹⁶⁴ The lack of an effective juvenile justice division violates CRC Article 37, which states that “[e]very child deprived of his or her liberty shall have the right...to challenge the legality of the deprivation of his or her liberty before a court or other *competent*, independent and impartial authority.”¹⁶⁵

99. In addition to being incarcerated only as a last resort, children also have the right to be placed in separate detention or rehabilitation facilities so that they are not surrounded by adult offenders.¹⁶⁶ However, juvenile offenders in Zambia are often kept in the same facilities as

¹⁶¹ See National Report, *supra* note 1, para. 28.

¹⁶² Unjust and Unhealthy, *supra* note 134, at 3.

¹⁶³ See Summary Prepared by the Office of the High Commissioner, *supra* note 57, para. 25.

¹⁶⁴ Personal Interview, January 1, 2012, record of interview on file at the University of Oklahoma College of Law.

¹⁶⁵ CRC, *supra* note 117, art. 37 (*emphasis added*).

¹⁶⁶ See *id.*

adults due to severe overcrowding in the prison systems.¹⁶⁷ Although three juvenile facilities, known as “reformatory schools,” exist throughout the country, children are not transferred to such facilities until they have been sentenced by a judge. Before that transfer, they are kept in the general prison populations amongst adults. In a September 2011 inspection of a Zambian prison, members of the Human Rights Commission noted that several of the juvenile offenders had been incarcerated with adults for as long as two years due to overloaded court dockets and various other delays in the justice system.¹⁶⁸ Thus, due to the delays in the criminal justice system, the unavailability of parole for juveniles, and an insufficient number of juvenile detention or rehabilitation facilities, juvenile offenders in Zambia will continue to be housed in the same cells as adults.

E. Children Incarcerated with their Mothers

100. Juvenile offenders are not the only children exposed to the difficult living conditions in Zambian prisons. In Zambia, infant children are permitted to stay with their mothers in prison up until the age of four if there is no one other than the mother who is able to care for them.¹⁶⁹ Although this occurs fairly infrequently, there has been a decrease in the number of family members financially capable of taking in additional children. Consequently, more imprisoned mothers are left with no choice but to keep their children with them in prison.¹⁷⁰

¹⁶⁷ See Unjust and Unhealthy, *supra* note 134, at 38. The prisons in Zambia were built prior to independence and had a total capacity of 5,500 prisoners. See *id.* at 20. However, “[i]n October 2009, they housed 15,300—nearly three times official capacity.” *Id.*; see also Human Rights Commission, Central Province Prisons Report 2005, at 15, available at http://www.hrc.org.zm/media/central_province_prisons_report.pdf [hereinafter *Central Province Prison Report*].

¹⁶⁸ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law

¹⁶⁹ Personal Interview, January 3, 2012, record of interview on file at the University of Oklahoma College of Law.

¹⁷⁰ Personal Interview, January 11, 2012, record of interview on file at the University of Oklahoma College of Law.

101. Although these infant children live in confinement with their mothers, they are not counted as separate people for the purpose of food allocation or sleeping arrangements. Mothers are forced to share an already inadequate amount of food with their children. Women who are pregnant or nursing are not given a special diet of more nutritional value, thereby detrimentally affecting the health of unborn children and infants.¹⁷¹ Because these children and their mothers are not kept separate from the general prison population, they are exposed to hardened prisoners at an extremely young age.

F. 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.

¹⁷¹ Unjust and Unhealthy, *supra* note 134, at 37.

- 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