



2002

ZAMBIA
HUMAN RIGHTS REPORT


Afronet

Zambia Human Rights Report

2002

“When we have the courage to speak out-to break
silence-we inspire the rest of the ‘moderates’ in our
communities to speak up and voice their views.”

SHARON SCHUSTER
(New York City Photographer)



Inter-African Network for Human Rights
and Development
(Afronet)

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ISBN 9982 - 32 - 003 - 3

Published by
The Inter-African Network for Human Rights and Development
(AFRONET)
P.O Box 31145
Tel: +260 1 25 18 14
Lusaka, Zambia

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CONTENTS

Acronyms

List of Boxes Providing Additional Information

Foreword

Introduction

PART ONE CIVIL AND POLITICAL RIGHTS

Chapter One	The Rule of Law, Justice and the Judiciary
Chapter Two	Freedom of Expression and the Media
Chapter Three	Freedom of Assembly and Association
Chapter Four	The Right to Political Choice
Chapter Five	The Police, Torture, and the Victims

PART TWO ECONOMIC SOCIAL AND CULTURAL RIGHTS

Chapter Six	Food, Poverty and the State
Chapter Seven	Getting Educated - (The Right to Education)
Chapter Eight	Health and the State

PART THREE WOMEN AND THE STATE

PART FOUR STATE INSTITUTIONS AND HUMAN RIGHTS PROTECTION

PART FIVE SUMMARY OF CONCLUSIONS

APPENDICES

Appendix I	List of International Instruments ratified or acceded to by the Zambian Government
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ACRONYMS

ACC	Anti Corruption Commission
APU	Academic Production Unit
BESSIP	Basic Education Sub-sector Investment Programme
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DMMU	Disaster Management and Mitigation Unit
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
ECZ	Electoral Commission of Zambia
FAO	Food and Agriculture Organisation
FDD	Forum for Democracy and Development
FODEP	Foundation for Democratic Process
FRA	Food Reserve Agency
GDP	Gross Domestic Product
GIDD	Gender in Development Division
GM	Genetically Modified
GMOs	Genetically Modified Organisms
GTZ	German Technical Cooperation in Zambia
HP	Heritage Party
ICCPR	International Covenant on Civil and Political Rights
JCTR	Jesuit Centre for Theological Reflection
LRF	Legal Resources Foundation
MAJAZ	Magistrates and Judges Association
MMCI	Maureen Mwanawasa Community Initiative
MMD	Movement for Multi Party Democracy
NCZ	Nitrogen Chemicals of Zambia

NGO	Non Governmental Organisation
NGOCC	Non Governmental Organisation Coordinating Committee
NOCE	National Organisation for Civic Education
OB	Occurrence Book
PAM	Programme Against Malnutrition
PAZA	Press Association of Zambia
PRSP	Poverty Reduction Strategy Paper
PUSH	Project Urban Self Help
SADC	Southern Africa Development Community
SEN	Special Educational Needs
TEVETA	Technical, Educational and Entrepreneurship Authority
UPND	United Part for National Development
UNZA	University of Zambia
USAID	United States Agency for International Development
UTH	University Teaching Hospital
WFP	World Food Programme
ZAMTROP	Zambia Trans-Regional Operations
ZAMWA	Zambia Media Women Association
ZIMA	Zambia Independent Media Association
ZIMT	Zambia Independent Monitoring Team
ZNBC	Zambia National Broadcasting Corporation
ZUJ	Zambia Union of Journalists

LIST OF BOXES PROVIDING ADDITIONAL INFORMATION

- Box 1.1 Understanding the Rule of Law
- Box 1.2 Composition of the Board of Legal Aid
- Box 1.3 The Judicial Code of Conduct) Act
- Box 1.4 Article 19 of the International Covenant on Civil and Political Rights
- Box 1.5 The Constitution of Zambia Article 20 [Freedom of Expression]
- Box 1.6 The Penal Code Act Chapter 87 of the Laws of Zambia Section 69 Defamation of the President
- Box 1.7 The Constitution of Zambia Article 81 [Restrictions with Regard to Certain Financial Measures]
- Box 1.8 Article 21 of the International Covenant on Civil and Political Rights
- Box 1.9 Constitution of Zambia Article 75 [The Franchise]
- Box 1.10 (a) Article 7. International Covenant on Civil and Political Rights
(b) Article 5. African Charter on Human and People's Rights
- Box 1.11 Article 26 (1) Universal Declaration of Human Rights
(b) Article 17 (1) African Charter on Human and People's Rights
- Box 1.12 Convention on the Elimination of All Forms of Discrimination against Women
PART I Article 2

Foreword

The year 2002 was a year obscured by the questioned integrity of presidential and parliamentary elections of the preceding year. Most events either directly related to the elections and events at that time or are an indirect offshoot of the electoral contentions still abounding.

In general, the year was characterised by continued negation of the due process of law; constraints to media freedom due to defamation of the president and criminal libel clauses in the country's laws; the continued misapplication of the Public Order Act; challenges to the integrity of the 2001 presidential and parliamentary elections; and, cases of extrajudicial killings, unlawful detentions, and torture.

It is clear that the socio-political contract between the citizenry and the State with respect to human rights protection like providing security of life, respect for human dignity, provision of sustainable livelihoods, allowing for the exercise of the right to political choice, freedom of expression - was below expectations.

The 2002 Zambia Human Rights Report is the cornerstone of Afronet's core business - human rights information and communication. The Report does not only take stock of human rights abuses, the strengths and weakness of State institutions tasked with human rights and governance protection, but it is also takes stock of human rights provisions that the general citizenry, law enforcement agents and others officers of the State should be always aware of in their daily endeavours and pursuit of their duties. The latter is informed by Afronet's desire to adequately meet its mandate of human rights information, reporting and communication. It is hoped that this report can serve as a tool for human rights awareness, training, and advocacy.

As with most work of this nature, the Inter-African Network for Human Rights and Development (Afronet) would like to extend its gratitude to the many people who worked tirelessly to make the 2002 Zambia Human Rights Report a reality.

Particular gratitude is extended to the external researchers Alfred Chanda (PhD); Austin Mbozi; Dr. Mary Ngoma; Eric Kamwi; Fanuel Sumaili (PhD); Priscilla Chileshe; the Legal Resources

Foundation and the National Legal Aid Clinic of the Law Association of Zambia for allowing use of their data and personnel; and Afronet staff members. Special thanks to Womba Mayondi for her appreciable efforts in collating the data and sources for the report.

Lastly, Afronet is greatly indebted to its co-operating partners and individuals who continue to be supportive of Afronet's pursuits. Afronet sincerely values their support and contributions.

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Lusaka, Zambia
April 2002

INTRODUCTION

Human rights as enshrined in a country's laws and international instruments should be understood to be a socio-political contract between the citizenry and the State. The underlying assumption of this contract is that the citizenry in a democratic dispensation allows the State to exercise authority over them, so that the citizenry can redeem certain guarantees, with such guarantees being the State undertaking to, for example, provide security of life and sustainable livelihoods, allow for the exercise of the right to political choice, freedom of expression and so on.

International human rights protection instruments are usually categorised into two main groups - civil and political rights, and economic, social and cultural rights. Civil and political rights obligate the State **not to** do something against its citizenry, like not to kill, not to impinge on free speech and assembly, or not to torture. Economic, social and cultural and cultural rights, on the other hand, obligate the State **to do** something for its citizenry, like to provide clean water or acceptable standards of health and or medical care. Some civil and political rights, however, do also obligate the State **to do** something for its citizenry. For example, the right to a fair trial or due process of the law.

Zambia's legal system is dualistic. This means that the obligations under international human rights protection instruments will only be locally effective if they are incorporated in domestic law. Despite this, the government of Zambia still has an obligation to ensure rights are protected. Unfortunately for the Zambian citizen, Zambia lacks a culture of enacting the requisite enabling statutes to transform them into domestic law, despite ratifying some of the most significant instruments (Appendix I).

The Afronet Zambia Human Rights Report provides the realities of human rights promotion, protection and enforcement, as monitored and verified in the year 2002. With specific reference to legal instruments that will enable the avid reader to make an informed follow up, where such information impinges on their own circumstances.

The report does not portend to cover all negations, but simply provides a synopsis of the events as monitored within the institutions means, as a means of interrogating the socio-political contract between the citizenry and the State.

Part one of the report covers civil and political rights constituting an expose on the rule of law, justice and the judiciary; freedom of expression and the media; freedom of assembly and association; the right to political choice; and, the police, torture and the victims.

Part two, deals with economic, social and cultural rights with particular attention to food, poverty and the State; the right to education; the State and health.

Part three, deals with women and the State, with emphasis on issues related to the security of women.

Part four, State institutions and human rights protection, provides an overview of the performance of the Anti Corruption Commission and the Drug Enforcement Commission.

The last part is the summary of conclusions.

PART ONE - CIVIL AND POLITICAL RIGHTS

The principal international instrument dealing with civil and political rights is the United Nations International Covenant on Civil and Political Rights (ICCPR) of 1966. Zambia acceded to the covenant in 1984 and therefore assumed the obligation to abide by its provisions. Its catalogue of civil and political rights include, the rights to life, personal liberty and security, recognition of inherent dignity of the person, prohibition of torture and cruel, inhuman or degrading treatment, freedom of expression, association and assembly, the right to be presumed innocent until found guilty, equality before the law, protection of aliens against arbitrary expulsion, procedural guarantees in civil and criminal matters, and the collective right to self-determination.

Article 2 of the covenant requires States to adopt legislative, and other measures necessary to give effect to the rights guaranteed in the covenant. This requires both the duty to respect human rights as pronounced in the various instruments including Zambia's constitution and the obligation to take positive steps that will ensure the enjoyment of the said rights.

Although, the ICCPR generally leaves it to the State parties concerned to choose the method of implementation in their territories of the provisions of the covenant, it does however require that states adopt legislative and other measures necessary to give effect to the rights guaranteed in the covenant especially whenever such provisions do not already exist in the domestic law.

Further, implementation of the covenant's provisions does not depend solely on constitutional or legislative enactments, which in themselves have often not been sufficient. Obligation under the ICCPR is not confined to the respect for human rights, but the states parties have also to undertake to ensure the enjoyment of these rights to all individuals under their jurisdiction. This calls for specific activities on the part of the states parties to enable individuals to enjoy their rights. It is therefore very important that not only must individuals know what their rights under the covenant are but also, all the administrative and judicial authorities should be aware of the obligations, which the State party has assumed under the covenant. The covenant must therefore be publicised and further steps should be taken to familiarise the authorities concerned with the contents of the covenant as part of their training. Failure by a government in this regard renders

the government's efforts (in relation particularly to the rights discussed herein) an infringement of the said rights.

Where a public emergency, which threatens the life of a nation, arises and the same has been officially proclaimed, Article 4 of the ICCPR derogations are allowed to the extent strictly required by the situation. The measures taken under this article are of an exceptional and temporal nature and may only last as long as the life of the nation concerned is threatened. It must be kept in mind that in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made.

It must, however, be noted that in practice, particularly in States that lack a strong and independent judiciary, the provisions that permit derogations and other restrictions are frequently invoked to justify non-compliance by governments violating their human rights obligations.

Other main international instruments with strong civil and political rights dimensions are the Universal Declaration of Human Rights (1948), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination. Zambia is a party to all these conventions.

At a regional level, the applicable instrument for Zambia in respect of civil and political rights is the African Charter on Human and Peoples' Rights. The African Charter contains both civil and political and socio-economic rights. The African Commission on Human and People's Rights is so far the only enforcement mechanism. But when the planned African Court on Human Rights is operational, obligations under the African Charter will become justiciable.

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

Further, the Bill of Rights in the Constitution of Zambia embodies civil, political and cultural rights and classifies them into five broad categories: human dignity, life and personal liberty, intellectual

and political rights, private enterprise and property. A glance at the Bill of rights reveals that save for the right not to be subjected to torture, or to inhuman or degrading punishment or other like treatment, all the other rights are subject to broad exceptions. In other words the rights enshrined in the constitution are not absolute but largely derogable thereby rendering the constitution's protection of human rights to be weak.

Other laws in Zambia relating to civil and political rights include: the criminal laws more specifically the Penal Code (specifically the sections dealing with defamation of the president, non-bailable offences), the Criminal Procedure Code, Emergency Regulations, Public Order Act, Societies Act, to mention a few.

This part of the report discusses civil, political and cultural rights, in particular the freedom of expression vis-à-vis the media, the rights of assembly and association. The independence of the judiciary, as the primary keepers of justice and law, and access to justice is examined.

Chapter One: The Rule of Law, Justice and the Judiciary

1.0 Introduction

An overview of the year 2002 in terms of the rule of law, access to justice and the operations of the judiciary shows a year of mixed fortunes. The new President of Zambia, Levy Mwanawasa, upon his inauguration on January 2, 2002 set the tone by promising that his government would be “a government of laws rather than men.” Implicit in that statement was the unequivocal commitment of the new government to the rule of law (**Box 1.1**).

Scrupulous adherence to the rule of law requires an independent, courageous and corrupt –free judiciary. In this regard, this chapter interrogates the year 2002 with respect to the extent to which the judiciary in Zambia was independent, courageous and corrupt-free; the extent to which it can be said that all the people received equal treatment before the law regardless of political opinion/affiliation or economic status; and, the human resource capacity of the judiciary to adequately discharge its responsibility as a sentinel of liberty.

! BOX 1.1

Understanding the Rule of Law

The rule of law avoids arbitrariness and places emphasis on the protection of individual liberty. It has several elements, namely - all conflicts should be resolved through law and that the courts should be the final arbiters thereof; Government must be conducted according to law; equality before the law; and law must have an ethical content.

This chapter, thence, puts particular emphasis on the provision of free legal services and performance of the institution tasked with provision of free legal services; the delivery of justice and accessibility; the independence of the judiciary and associated problems thereof; and political cases, and other notable cases.

2.0 Getting Free Legal Services

2.1 Legal Aid - An Overview

Article 18 of the Constitution of Zambia guarantees the right to a fair trial. While this includes the right to be defended by counsel of one’s choice, it does not, however, guarantee free legal aid to everyone.

The Legal Aid Act provides for circumstances when free legal aid may be offered to needy defendants. The Legal Aid (Amendment) Act No. 17 of 2000 substantially revised the law governing the procedures, administration and funding of legal aid as well as the criteria for receiving and rendering such aid. The revised Act provides for the establishment of a Directorate of Legal Aid, which is overseen by a Board of Legal Aid (**Box 1.2**). The functions of the Directorate include the management and administration of a Legal Aid Fund for receiving the costs of representation for those granted legal aid.

! BOX 1.2

Composition of the Board of Legal Aid

- A person qualified to be a High Court Judge, as Chairperson
- A representative of the Law Association of Zambia
- The Permanent Secretary of the Ministry of Legal Affairs
- A representative of the Ministry of Home Affairs
- The Director, as an *ex officio* member
- A representative of an NGO active in promoting human rights; and
- One other person.

With all such persons being appointed by the Minister of Legal Affairs.

The Board is empowered to accept grants or donations, and moneys by way of contributions from persons granted legal aid, and it is to make payments from the Fund for, *inter alia*, the remuneration of practitioners for services provided in accordance with the Act and expenses relating thereto.

Under Section 8 of the Legal Aid Act a person charged with an offence before a subordinate court may be granted a legal aid certificate upon application if the court considers that the person has insufficient means to engage a lawyer and, having regard to the circumstances, it is desirable in the interests of justice that the person be represented by a lawyer. The accused may appeal a refusal to grant him a legal aid certificate to the High Court.

However, it is mandatory for the court to issue a legal aid certificate regardless of whether or not an application is lodged, where – the accused is charged with a ‘specified offence’ (i.e. one specified by the Minister for such purposes) or an offence other than a specified offence if it is considered desirable in the interests of justice that the accused should have legal aid; the case is not to be the subject of a preliminary inquiry; and the court considers that the person has insufficient means to enable him to engage a lawyer.

In addition, a certificate may be granted if during a preliminary inquiry under the Criminal Procedure Code the court considers that it is desirable in the interests of justice that the accused should be represented by a lawyer at the inquiry. Courts that issue legal aid certificates are required to transmit a copy to the Director, who has to assign a lawyer to the accused. When a person is committed for a criminal trial before the High Court and the committing court considers that the accused has insufficient means to engage a lawyer, it must issue a legal aid certificate.

Furthermore, if an accused before the High Court is not represented by a lawyer, and it is considered that there is insufficient reason why he should not receive legal aid, the court may issue such a certificate.

In criminal cases, persons that may apply for legal aid in order to prosecute appeals to higher courts are: persons convicted of, or sentenced for, an offence by a subordinate court or the High Court who intend to appeal against conviction or sentence or any judgement or order affecting them; and, persons who have become respondents in appeals in criminal cases or matter before the High Court or Supreme Court.

Lawyers assigned to represent persons granted legal aid receive such remuneration as may be prescribed by statutory instrument, and the costs of representation are paid by the Board of the Legal Aid Fund.

The Directorate keeps a register of practicing lawyers willing to provide representation under the Act, and practitioners who desire to be registered must notify the Director. Only practicing lawyers so registered can be retained.

The legal framework for the provision of legal aid, under the Legal Aid (Amendment) Act No. 17 of 2000, is progressive. It recognises the need to supplement Legal Aid counsels with private practitioners. It also makes it possible for the Directorate to mobilise funds, as the government is not the only source. Moreover, it offers incentives to private lawyers to provide their services to the needy.

2.2 The Practice

Despite the laudable provisions described above, the provision of legal aid to the poor in the year under review was unsatisfactory.

First,

although the Act amending the Legal Aid Act was passed in 2000, it is only in 2002 that some of its provisions began to be implemented. For example, the Minister only appointed the Board of Legal Aid in mid-2002, and it is chaired by Justice Esau Chulu.

Second,

the Legal Aid Directorate lacks capacity to effectively offer legal aid to all who need it. It has both staff and logistical constraints. It has ten lawyers, including the Director and three Legal Assistants. There is only one Legal Aid Advocate stationed in Ndola and one in Livingstone. The rest are stationed in Lusaka.

There are supposed to be Legal Aid Advocates in Kitwe and Kabwe, but during the year under the review there were none. The lawyers available had to attend to between 30 and 40 cases per month, a situation likely leading to clients being not too well represented, as their counsels are often not adequately prepared.

Third,

the Legal Aid Directorate lacks adequate logistics to facilitate its work. During the period under review, there were only five vehicles operational at Headquarters, most of which experienced constant breakdowns, thereby reducing mobility of the staff. In addition, the library at the Directorate is stocked with outdated materials. The Directorate has only three computers, which are not even linked to the Internet.

Fourth,

in the year 2002, the Directorate was, as in previous years, poorly funded. Its estimated budget for 2002 was Kwacha 1, 790,503,026 but Parliament approved only Kwacha 951,

546,490. Of the approved amount, only Kwacha 12, 108,321 was approved for capital expenditure (moveable assets only). There was no allocation to the Legal Aid Fund.

The approved estimate for recurrent departmental charges was Kwacha 520, 654,897 against a request of Kwacha 696, 741,142. Only Kwacha 418, 783,272 was approved for personal emoluments against a request of Kwacha 1, 093,761,884.¹ As a consequence of such funding commitment, it is likely that the Directorate can not in any way improve its logistical base and offer attractive conditions of service to its staff; neither can it attract and retain competent lawyers.

The failure to fund the Legal Aid Fund was a stinging indictment of the Government's lack of commitment to the provision of effective legal aid to the poor and vulnerable. Instead, donors provided all the money in the Fund.² Although the Legal Aid applicants are asked to contribute Kwacha 50, 000 for criminal cases, and Kwacha 150, 000 for civil cases, most clients are unable to pay these amounts.

Fifth,

because of the scarcity of lawyers at the Directorate, it rarely takes up civil cases. Critical, for example, is the observation that the Directorate does not handle police brutality cases. Yet, police brutality is prevalent in Zambia as the police torture most suspects in order to force them to confess. Victims of police brutality are often referred to the Human Rights Commission, which lacks enforcement power.

Sixth,

the engagement of private lawyers has not made much of a difference as few of them have volunteered to participate in the Scheme. Although lawyers are paid K400, 000 per case from the Legal Aid Fund, this amount is not attractive enough. And in any event, it has been indicated that private lawyers who take up legal aid cases do not apply themselves

¹ Republic of Zambia, Estimates of Revenue and Expenditure for the Year January 1, 2002 to December 31, 2002 (Yellow Book), p.18.

² **Today**, July 3-9, 2002, "Legal Aid Fund Born again, says Kunda."

fully to such cases and often cause unnecessary adjournments, as they do not show-up for hearings.

Finally,

without lawyers to push their cases many poor defendants languished in remand prison for months without trial. In contrast, well-heeled defendants such as the former Intelligence Director-General Xavier Chungu, the former Presidential Assistant for Press, Richard Sakala, former Minister of Works and Supply Godden Mandandi, Patriotic Front Leader Michael Sata, former Ambassador to Washington, Allan Shansonga and Chief Executive of Access Financial Services, Faustin Kabwe, had their cases heard quickly although none had been concluded by year end.

3.0 Delivery of Justice and Equal Access to Justice

In the year 2002, it was clear that the cases of prominent public figures appeared to move quickly compared to those of other suspects. It was as a result of the recognition of the fact that the remand prisons were filled with suspects awaiting trial for a long time that the Magistrates and Judges Association (MAJAZ) resolved that magistrates would be sitting on Saturdays.

MAJAZ members also conducted regular visits to Remand Prisons to talk directly to the remandees about the progress of their cases. MAJAZ also began reprimanding its members who contributed to delays in disposing of cases.

4.0 Independence of the Judiciary, and the Challenges

4.1 The Legal Framework

The Constitution of Zambia and other laws, such as the Judicature Administration Act, the Judicial Code of Conduct Act, etc,³ guarantee the independence of the courts. Article 91(2) of the Constitution of Zambia, for instance, provides that the judges, magistrates and justices, as the case may be, of the courts “shall be independent, impartial and subject only to this Constitution

³ Other relevant Acts include the *Judges (Conditions of Service) Act*, No. 14 of 1996; the *Service Commissions Act*, Cap. 259.

and the Law and shall conduct themselves in accordance with a code of conduct promulgated by Parliament.”

Furthermore, article 91(3) guarantees the autonomy of the Judiciary, which has to be administered in accordance with the Judicature Administration Act (Cap 24, Laws of Zambia). There are several Constitutional provisions, which reinforce the independence of Superior Court Judges. These pertain to qualifications, method of appointment, security of tenure, protection from abolition of office and protection of emoluments, etc.

The Judicial (Code of Conduct) Act, No. 13 of 1999, section 3, requires every judicial officer to “uphold the integrity, independence and impartiality of the Judicature in accordance with the Constitution, this Act or any other Law.”

4.2 Institutional Developments

4.2.1 Appointments

In 2002, five new Judges were appointed to the High Court (that is Justices Charles Kajimanga, Anderson Zikonda, Phillip Musonda, Catherine Kafunda and Royda Kaoma), while Justice Ernest Sakala was appointed Chief Justice to replace the Chief Justice Matthew Ngulube. Although the Law Association of Zambia objected to the appointment of at least three of the High Court Judges on the ground of inexperience, the National Assembly ratified their appointments.

Three new Supreme Court judges were appointed by the President and ratified by the National Assembly. These were Justices Peter Chitengi, Ireen Mambilima and Sandson Silomba.

4.2.2 Judicial Training in Human Rights

There was little judicial training in human rights in the year 2002. For the High Court and Supreme Court Judges no training in human rights was conducted during the year. There was only a USAID funded seminar on Arbitration and Mediation at the beginning of the year.

Lower level staff were also trained in Arbitration and Mediation, and seminars were also held for Magistrates on issues such as Contempt of Court.

Some Local Court Justices were given some training in Children and Women's Rights under a GTZ funded programme focused on the improvement of Local Courts.

The major reason given for the absence of training in human rights was lack of funds. In fact, the total amount allocated to the Judiciary for Capacity Building Programme for Good Governance was Kwacha 200, 000,000. Training of Judicial officials in human rights is heavily dependent on donor aid.

4.3 The Challenges

In the year 2002, the challenges and problems arising with respect to the independence of the judiciary can be encapsulated as issues arising from financing, allegations of corruption, interference with prosecution and witnesses, and notable cases of a political nature.

For instance, the Judiciary experienced a major upheaval when the Chief Justice was forced to resign after revelations that he had since 1997 been receiving improper payments amounting to US Dollar 168,000 from former President Chiluba. This revelation undermined public confidence in the independence of the Judiciary.

This could not have come at a worse time for the Judiciary. Since the December 27, 2001 tripartite elections and the inauguration of President Mwanawasa a lot of politically sensitive cases have come before the courts among which have been: three petitions challenging Levy Mwanawasa's election as President; thirty-nine (39) petitions challenging the validity of Parliamentary elections; criminal allegations connected with the plunder of the economy by the former President, ministers and public officials; trials of journalists for defamation of the President; and, suits against the president and the MMD by some opposition leaders.

4.3.1 Financing

Inadequate funding of the Judiciary is one of the most serious ways in which the independence of the Judiciary is undermined. During the year under review the Judiciary's estimated budget was Kwacha 33, 192,095,287 but only Kwacha 18, 153,636,199 was approved.

Table 1.0, below illustrates the level of funding for the various sectors of the Judiciary.

Table 1.0 Estimates of Revenue and Expenditure 2002 (in Kwacha)

Section	Personal Emoluments		Recurrent Charges		Department	Capital Expenditure	
	Estimate	Approved	Estimate	Approved		Estimate	Approved
HQS	1,731,928,666	<u>681,229,088</u>	3,546,461,581	<u>971,815,522</u>		6,443,548,671	1,744,023,148
Supreme Court	876,503,908	<u>710,080,348</u>	1,792,383,984	<u>1,284,969,556</u>		-	-
High Court	1,971,886,496	<u>1,471,159,924</u>	994,256,938	<u>552,348,238</u>		2,966,143,434	2,065,156,086
Subordinate Courts	4,960,322,695	<u>2,600,493,505</u>	1,140,300,668	<u>636,770,358</u>		6,100,623,363	3,282,570,907
Local Courts	11,973,802,984	7,091,826,791	12,909,860,383	7,615,408,539		-	-
Small Claims Courts	84,287,760	<u>156,007,680</u>	248,501,592	<u>128,361,476</u>		-	-
Industrial Relations Court	833,778,722	<u>590,079,053</u>	495,530,980	<u>555,873,265</u>		1,529,309,702	1,285,455,748
Sheriff of Zambia	403,247,427	<u>248,644,838</u>	714,188,971	<u>343,038,213</u>		-	-

Source, Republic of Zambia, Estimates of Revenue and Expenditure for the Year January 1, 2002 to December 31, 2002 (Yellow Book), pp. 133-141.

It can be seen from Table 1.0 that the funding of the various levels of the Judiciary was uneven.

The Local Courts and the Subordinate Courts, given their size, were not adequately funded compared to the higher courts. The difference between the estimates and the approved allocations was proportionately higher for the lower courts than the higher courts.

Moreover, for all levels of the Judiciary the amounts allocated for personal emoluments and recurrent expenditure fell far short of their requirements. This meant in practice that conditions of service continued to be very poor and the staff were generally demoralized given the harsh economic environment.

Moreover, the Judiciary also faced operational problems owing to poor funding. Given the small budget for recurrent expenditure the Judiciary had problems obtaining essential requirements (stationery, fuel and other supplies).

It is also obvious that the amount approved for capital expenditure was grossly inadequate making it difficult for the Judiciary to acquire capital items such as vehicles, equipment such as recording machines, computers, photocopiers, etc.

Given these financial problems it was difficult for the Judiciary to perform at optimum levels. Delays in the dispensation of Justice derived in part from the financial problems. Moreover, many professional positions, especially at Subordinate Court level remained unfilled because of poor conditions of service. Even at High Court level there were at least four vacant positions by year-end. One lawyer in private practice declined to take up his appointment as a High Court Judge owing to poor conditions of service.

Another aspect of financing in which the independence of the judiciary is undermined is through the control of resources. Personal emoluments for judicial officials are determined ultimately by the Executive Branch. Conditions of Service for the lower levels of the Judiciary are proposed by the Judicial Service Commission but have to be approved by the Executive Branch. The President determines the conditions of service of High Court and Supreme Court Judges through a statutory instrument (Judges (Conditions of Service) Act No. 14 of 1996).

In July, President Mwanawasa raised the salaries of High Court and Supreme Court Judges by a significant percentage. This was at a time when his election as President was being challenged in the Supreme Court by some of the losing presidential candidates. Petitioners construed the President's action as an attempt to buy off the judiciary. The President defended the increments on the ground that judicial salaries are too low and have scared off private practitioners from joining the bench. He further argued that Judges, too, have to face the harsh economy and it would be unfair to deny them salary increments until the presidential petition case is disposed off, as the petition may last a long time.

Although the timing of the increment was questioned, there is no doubt that judicial salaries are not competitive. But it was noted that Local Court Justices and Magistrates who get low salaries and have few perks, if any, have not been awarded any salary increase.

4.3.2 Corruption in the Judiciary

Corruption undermines judicial independence and makes the rule of law illusory.

The Judicial (Code of Conduct) Act contains strict rules intended to ensure that there is integrity among judicial officers. For example, section 14 provides that a judicial officer shall not: "(a) solicit

or accept any financial or other consideration for services performed in the course of duties or incidental to the performance of duties other than an official emolument.” (See also **Box 1.3**)

In the year 2002, the most notable case in the Judiciary with respect to complaints of corruption in the judiciary was when the Press reported that the Chief Justice, Matthew Ngulube, had for years been receiving payments from the President through the ZAMTROP intelligence Account.

The payments, spanning a period of three years, were made to the Chief Justice, his wife and children.

Concerted civil society and the church pressure forced the Chief Justice to resign immediately, even though the President initially accepted his decision to retire honourably.

4.3.3 Interference with Prosecution and Witnesses

One of the hallmarks of the rule of law is that government must be conducted according to law and that no person shall be deprived of his liberty without due process of law. Article 56 of the Constitution of Zambia vests the power to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person. The Director of Public Prosecutions (DPP) can discontinue any such criminal proceedings at any stage before Judgment is delivered. In performing his functions, Article 56 (7) states that, "the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority". This is to ensure that the DPP is left free to make professional judgments depending on the merits of the case.

In the year 2002, on two occasions President Mwanawasa instructed the DPP to prosecute certain people.

First,

it was the millers who were accused of over-charging on mealie meal. The DPP announced that he would lodge an investigation and the culprits would be arrested and prosecuted. This is against the background that there is no Price Control Law in Zambia.

Second,

the President instructed the police to arrest and charge an Member of Parliament for Moomba (Monze), Vitalis Mooya on allegations of alarming the nation when he informed the

! BOX 1.3

The Judicial (Code of Conduct) Act

Section 15 stipulates that a "Judicial officer or member of the officer's family residing in the judicial officer's household, shall not accept a gift, bequest, favour or loan from any person for purposes of a bribe, corrupt practice so as to influence the officer in the execution of the officer's duties."

nation that three old women in his constituency had died from hunger. The police arrested the MP and charged him with an offence. After a lot of public protests it was announced that the DPP had decided to drop the charges.

In the year 2002, the President was not the only member of the executive branch of government interfering in the criminal process, and arrogating the judicial process.

In April,

the Minister of Works and Supply, Ludwig Sondashi, ordered the police to arrest and prosecute Michael Sata, leader of the opposition party - Patriotic Front for car theft, a non-bailable offence. It was alleged that Sata had not handed over three vehicles to the government upon resigning his ministerial position in 2001. Sata was duly arrested, detained and prosecuted for car theft. He spent 27 days in prison but the court acquitted him. The magistrate found no credible evidence to support the charge as evidence in fact indicated that the vehicles had been surrendered to the State.

4.3.4 Notable Cases of a Political Nature

The year under review witnessed an unprecedented number of political cases in the courts of law, these included cases involving removal of former President Frederick Chiluba's immunity, presidential and parliamentary election petitions, and cases involving former Senior Officials and Ministers in Chiluba's government.

4.3.4.1 Chiluba's Immunity Case and its Aftermath

One of the most significant cases that arose during the year involved the former President, Frederick Chiluba, who challenged the decision by the National Assembly to strip him of his immunity.

On July 16, the vice President Enoch Kavindele, presented a motion in parliament on the removal of immunity of the former President Frederick Chiluba, and one hundred and forty (140) Members of Parliament voted for the in favour.

Former President Frederick Chiluba sought due recourse to the Supreme Court to rule on whether parliament had misdirected itself. He successfully applied for a stay of the decision pending the determination of the case, on its merits, by the High Court. One of the grounds for his action was that parliament had not observed the rules of natural justice, as he was not afforded an opportunity to be heard and that no specific charges were made against him. He also contended that

parliamentary procedures were not adhered to as the Members of Parliament were not given at least 24 hours notice of the motion to lift his immunity.

Further, he argued that his case should have been referred to a Parliamentary Select Committee. Justice Nyangulu dismissed the case, holding that Article 43(4) of the Constitution of Zambia did not prescribe the procedure by which the National Assembly could lift presidential immunity. It was, therefore, up to the Assembly to use whatever procedure it deemed fit. Furthermore, since the lifting of the immunity was meant merely to facilitate investigations, there was no need for the Assembly to grant Chiluba an opportunity to defend himself.

Significantly, Justice Nyangulu reaffirmed the High Court's jurisdiction over the National Assembly. This has been a matter of controversy for a long time as Parliament has always argued that the courts have no jurisdiction over it, particularly as relates to the internal proceedings of the House. Moreover, Section 34 of the National Assembly (Powers and Privileges) Act, Cap. 12, categorically states that "neither the Assembly, the Speaker nor any Officer shall be subject to Jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker or such Officer by or under the Constitution of Zambia the standing orders and this Act."

The decision of the High Court was expected given the fact that the Constitution of Zambia vests absolute discretion in the Assembly on how to deal with a case of this nature. All that Article 43(3) requires is that the National Assembly should, by resolution, determine that the lifting of the immunity "would not be contrary to the interests of the State."

However, the events that occurred after a stay of this decision was granted by the High Court, following Chiluba's appeal to the Supreme Court, raised concerns about the government's commitment to the rule of law. Despite the stay being granted, the Task Force on Economic Plunder forced its way into Chiluba's residence, allegedly looking for "drugs." Yet, prior to this no allegations of drug trafficking had been made against Chiluba.

To compound matters, the Task Force also searched the home of Chiluba's Lawyer John Sangwa and confiscated a document, which had come into his possession on account of his, being Chiluba's Lawyer. An attempt was also made to search the Lawyer's offices. This action by the State elicited vehement protests from Civil Society, particularly the Law Association of Zambia and AFRONET. Not only was this action a breach of client - lawyer privilege of confidentiality, but also an attempt by the State to intimidate the lawyers so that they should stop representing Chiluba. John Sangwa was subsequently warned and cautioned by the police. President Mwanawasa

supported the action by the Law Enforcement Officers and warned lawyers against receiving illegally acquired property from their clients.

4.3.4.2 Interference with Witnesses in the Presidential Petition and Contempt of Court

March 15.

The Supreme court started hearing three petitions against Levy Mwanawasa's election as president by three losing Presidential Candidates: Anderson Mazoka of UPND, Lt. General Christon Tembo of FDD and Brigadier General Godfrey Miyanda of Heritage Party (HP). The petitions were later consolidated into one.

The President on a number of occasions threatened potential witnesses with prosecution for their role in the alleged electoral malpractices. When the petitioners complained to the Supreme Court about the President's threats, the Court ruled that the statements in question were tantamount to intimidating potential witnesses. The Court also warned the public to desist from commenting on matters that were in court, as trials could not be conducted through the press. The Court noted that to deter witnesses from giving evidence was serious and amounted to contempt of court. The Court warned President Mwanawasa to desist from using his powers to intimidate witnesses.

The President did not heed the Court's warning against public comments on the on-going court proceedings. On a number of occasions he told his supporters that he was confident of winning the case.⁴ He also told them that they should feel free to comment on the ongoing court proceedings, as people are more important than the courts.

4.3.4.3 Election Petitions

(a) Presidential petitions

The first major case decided at the start of the year was filed by the losing presidential candidates who requested the High Court to order the Returning Officer (the Chief Justice) to conduct a recount of the votes and verification of the presidential polls pursuant to Regulations 44 and 46 of the Electoral (General) Regulations. They sought an order to the effect that the Returning Officer should refrain from announcing the Presidential election results and declaring a winner until after verification and recount.

According to the Court, the critical issue in the case was "whether the Presidential election results can be announced and the winning candidate sworn in before the determination of

⁴ The Post, November 11, 2002, "Mwanawasa is abusing his immunity, charges BY."

this application and whether the orders sought by the applicants can be issued against the Returning Officer.”

The High Court ruled against the applicants on the ground that since the matters raised by the applicants concerned the validity of the election it had no jurisdiction to provide the remedies they sought. The Court (Justice Chitengi) held that the Returning Officer had no discretion with regard to the declaration of presidential election results. Once the result of the presidential poll is communicated to him the Returning Officer has, under the Constitution of Zambia Article 34(8) & (9), no choice but to declare the winner and swear him in as President. It was the view of the Court after reading the relevant provisions in the Electoral Act and the Constitution of Zambia that it was never the intention of Parliament and the framers of the Constitution of Zambia that presidential election process could be averted before the President is sworn in. He went on to say,

“In my view the repeal and replacement of Section 9(3) of the Electoral Act by the Electoral (Amendment) Act No. 23 of 1996 appears to have been aimed at forestalling litigation before the electoral process of a President is completed. It is clear to me that litigation in these matters can only start after the event. That is, after the President whose election is impugned has taken office. The applicants have spoken too soon and their action is premature. They can challenge the Presidential election within the fourteen days period, which is stipulated in the law. Under the Law as it stands I cannot certainly order arrest of the Presidential election process by way of Judicial Review.”

(b) Parliamentary Petitions

Out of the 39 Parliamentary petitions that were filed by losing candidates, seven of them were dismissed on a technicality as the petitioners failed to pay the Kwacha one (1) million security deposit. In contrast, the Supreme Court dismissed an application by President Mwanawasa's lawyers to have the opposition presidential petition thrown out because of failure to pay the Kwacha five (5) million security deposit in time. The Court gave them more time to pay the money.

By year-end at least nine parliamentary petitions had been determined by the courts and several others were pending.

June.

The High Court nullified the election of UPND's Batuke Imenda as Member of Parliament of Lukulu East Constituency following a petition by FDD's Alex Luhila. Justice Samuel Munthali declared the elections null and void on account of electoral malpractices, undue influence and giving of gifts to the electorate contrary to regulation 53 of the Electoral Act.

July.

The Supreme Court stayed a judgment by high court judge Samuel Munthali who in June declared the Lukulu East parliamentary seat vacant. The high court judgement was stayed pending an appeal or an inter-parte hearing in the same month.

August.

Webby Chipili, Deputy Minister for Information and Broadcasting election as Member of Parliament for Kamfinsa Constituency was nullified by the Kitwe High Court. Justice Christopher Mushabati of the Livingstone High Court declared the election null and void "because it was not conducted in a free and fair manner." Chipili was petitioned by losing ZRP candidate, David Nyirenda, who alleged that Chipili engaged in the following corrupt/illegal practices: distributing relief maize during the campaign; 6,000 voters were prevented from voting by the early closure of two polling stations; and the shifting of Chipangali and Kamfinsa polling stations from their original venues to a Community School on voting day without the knowledge of the Director of Elections. The Court accepted the evidence relating to these allegations. The Minister appealed to the Supreme Court and obtained a stay of execution of the judgement.

The Lusaka High Court nullified the election of Foreign Affairs Deputy Minister Catherine Namugala in Isoka East Constituency, following a petition by UNIP's losing candidate, Mike Kaira. Justice Mushabati held that the Electoral Commission breached Section 18, as voters registered under Isoka West Constituency were allowed to vote in Isoka East Constituency. Supporters were confused as the Returning Officer told them that although one ward was designated under Isoka West Constituency, the registered voters were supposed to vote for parliamentary and presidential candidates in Isoka East Constituency. They were, however, also told that they had to vote under Isoka West Constituency for the Councillors. Ms Namugala appealed to the Supreme Court and obtained a stay of execution. She retained her position as Minister.

On the same day, Justice T. K. Ndhlovu nullified the election of MMD's Harry Sinkala in Isoka West following a petition by UNIP's Daudi Mukwasa. The Judge accepted the petitioner's evidence that the returning officer misdirected his supporters and that voting did

not take place in seven polling stations. The returning officer told Mukwasa's agents not to campaign in seven wards on the ground that they belonged to Isoka East Constituency. Instead, he told them to campaign in an area that belongs to Isoka East, where they were unable to vote from since this was in the wrong constituency. Furthermore, no elections were held in seven wards because the truck designated to distribute election materials to those areas omitted the polling districts owing to a mechanical defect on the way. There were a number of irregularities in locating some polling districts because the returning officers did not have accurate maps.

The Ndola High Court nullified the election of the then Minister of Youth and Sport, Levison Mumba, as Member of Parliament for Msanzala Constituency in Eastern Province following a petition by losing candidate Peter Daka of the Heritage Party. Justice Japhet Banda found overwhelming evidence of corrupt and illegal practices by the MMD during the campaign. There was also evidence of violence, threats and intimidation from MMD cadres from Lusaka's Kulima Tower Bus Station during the campaigns. Justice Sakala held that the opening of Mwanita Clinic, provision of drugs, an ambulance and members of staff during the campaign, were clear evidence of corruption. The court also found that the collection of voters' cards by an MMD official prior to the elections, was irregular.

The Minister appealed to the Supreme Court and obtained a stay of the judgement.

The Lusaka High Court nullified the election of Minister of Local Government and Housing Michael Mabenga in Mulobezi Constituency following a petition by losing UPND candidate, Sikota Wina. Justice Munyinda Wanki found that Mabenga had committed corrupt or illegal practices. Using his agents, Mabenga had obtained drugs from Medical Stores in Lusaka for distribution to the people of Mulobezi Constituency in order to further his political campaign as an inducement to voters. Further, Mabenga used Constituency Development Funds to further his campaign. Justice Wanki urged the ruling party to refrain from distributing gifts and making donations during election campaigns. He stated that, "Courts will not take kindly to such conduct. I would further like to mention that the Electoral Commission and the Attorney General allowed what happened in Mulobezi Parliamentary Constituency."

By year-end Mabenga was still in office because of a stay of execution pending his appeal to the Supreme Court.

October.

The Lusaka High Court nullified the election of Mateyo Mwaba as MP for Mpika Central Constituency following a petition by losing Patriotic Front candidate Anthony Kasolo. Justice Esau Chulu found that Mwaba at a meeting on the night of December 26, 2001 misinformed the audience that PF Leader, Michael Sata had dissolved his party and re-joined the MMD where he had been appointed as Vice-President of the Party. He also told them that Kasolo had also joined the MMD and so they should vote for the MMD candidate. The Judge also found that the MMD used government vehicles to campaign for their candidate.

Other notable election petition cases in the year include, the Lusaka High Court dismissal of an election petition by losing Patriotic Front candidate Matildah Mutale against MMD Member of Parliament for Malole Constituency Sabio Mukuka. Justice Elizabeth Muyovwe held that there was nothing irregular in the actual election results except a few instances where a recount showed more votes than indicated by the Electoral Commission of Zambia. The evidence presented to the court did not have any bearing on the results in the whole of Malole Constituency to nullify the election of Mukuka. Mutale had alleged that Mukuka had given out roofing sheets to five Primary Schools and money, food and footballs to members of the community to influence the electorate. She further alleged that Mukuka gave Kwacha 800,000 to a Primary School and promised the School another Kwacha 3 million if the community voted for him. Furthermore, she alleged that Civil Servants in the Ministry of Education who were MMD supporters were used to distribute gifts that were aimed at buying votes. The Disaster Management Committee distributed fertilizer free of charge to various villages and Mukuka claimed credit for it during elections.

In addition, a petition involving Godfrey Nabulyato of UPND who challenged the election of Bates Namuyamba, the Minister of Commerce and Industry, as MP for Itezhi Tezhi Constituency, was dismissed. Godfrey Nabulyato sought the nullification of Namuyamba's election on the ground that he had perpetrated the following corrupt/illegal practices: he had partially lifted the fish ban in a predominantly fishing area; he had caused the sinking of boreholes in the area; and vote buying and the collection of voters cards by MMD cadres in exchange for money. Justice Marvin Mwanamwamba ruled against Nabulyato because he did not provide evidence to back up his allegations. The petitioner appeared in person, as his lawyers did not make any appearance in court despite filing the petition and submitting written submissions. The Judge criticized the lawyers, Central Chambers, for their conduct in the matter.

Lastly, Lukulu West UPND's Victor Kachaka, who sought the nullification of the election of MMD's Simasiku Namakando, also had his petition dismissed. The petitioner alleged that – election

materials were delivered late and that voting in six polling stations was adjourned on account of this; that there was double-voting; and that candles were used for lighting during counting of votes. Justice Munthali held that the non-compliance with the electoral regulations, which the petitioner established, was the fault of the Electoral Commission, which had failed to prepare adequately for the elections. Although the petitioner's complaint of non-compliance centered around six polling stations the petitioner got the highest votes in two of these polling stations. The court held that the petitioner had failed to produce witnesses to support his allegations of double voting. The Court said it was unacceptable for candles to be used for lighting during counting of votes when there were more reliable gadgets, which the ECZ could also have mobilized. The court also criticized the late delivery of election materials to polling stations. Justice Munthali proposed that the Constitution of Zambia should be amended to provide for definite dates for the holding of presidential and general elections. Once this was done, all stakeholders in the electoral process would be able to prepare adequately.

c. Other Notable Cases

Apart from electoral petitions the Courts also heard some other important cases with political overtones. The trial of Fred Mmembe, Dipak Patel, Edith Nawakwi and Biven Saluseki for defaming President Chiluba in the "Chiluba is a Thief" criminal case. The case led to the disclosure of the ZAMTROP intelligence account and its consequences saw the resignation of Chief Justice Ngulube, and investigations into the activities of Foreign Minister Katele Kalumba, Intelligence Chief Xavier Chungu, Auditor-General Fred Siame, and many others.

The magistrate ordered the Zambia National Commercial Bank to allow the defendants to have access to its records pertaining to the ZAMTROP account run by the Zambia Security Intelligence Service. The court eventually acquitted the defendants.

Another notable case at the beginning of the year 2002, involved opposition MPs, who sued Chiluba and the Attorney-General in respect of Chiluba's continued enjoyment of Presidential benefits due to an ex-president when he was still actively involved in politics. The court ordered Chiluba to return the vehicles and other benefits to the State, as he was not entitled to them.

Heritage Party President Brigadier General Godfrey Miyanda's bid to sue President Mwanawasa for defamation failed when the High Court ruled that the President enjoyed immunity under Article 43 of the Constitution of Zambia.

On June 26, former MMD national secretary Vernon Mwaanga was summoned to the Police force headquarters where he was supposed to report to office room 229B. Mwaanga said he

would not comply though he had no clue as to what he was being summoned for. A week earlier, Mwaanga was summoned to the police where he was questioned about mattresses that were bought and distributed during the much-talked-about MMD convention held in 2001. Vernon Mwaanga was relieved of his duties as Information and Broadcasting Minister on March 11, and subsequently resigned as MMD national secretary on June 25, citing undemocratic tendencies within the MMD as one of the reasons for his resignation. But on the same day President Mwanawasa stated at a press briefing that Mwaanga had been suspended for insubordination among other offences.

5.0 Retrospect

The year 2002 was a momentous one for the Zambian Judiciary and the rule of law. There was a commitment to the rule of law, however observations in the year show that the practical aspects of the commitment are yet to be strengthened. Access to Justice for the majority of the poor and vulnerable continued to prove elusive as State institution responsible for free legal aid does not have adequate capacity in terms of human resources, logistics and funds; there was evidential preferential disposal of cases; State interference with the prosecution and witnesses; threats to lawyers; and, the courts had to handle unprecedented levels of election petitions.

Chapter Two: Freedom of Expression and the Media

1.0 Introduction

The right to freedom of expression as enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) requires protection of the rights to hold opinions without interference (**Box 1.4**). This is a right to which the covenant permits no exception or restriction. It is, therefore, necessary that modern mass media is developed and further that effective measures to prevent control of the media are put in place to ensure a minimum or no amount of interference with this right. It is also important that the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as other conditions which in practice affect the exercise of this right conform to the above requirements. It is the interplay between the principle of freedom of expression and such limitations and restrictions, which determines the actual scope of the individual's right.

! BOX 1.4
Article 19 of the International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order, or of public health or morals.

! BOX 1.5
The Constitution of Zambia
Article 20 [Freedom of Expression]

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

Restrictions inherent in this Article are permitted only if they are imposed by law, and are necessary for the State party for respect and the rights and reputations of others; and for the protection of national security or of public order, or of public health or morals.

Freedom of expression in the Constitution of Zambia is enshrined in Article 20 (**Box 1.5**). Like most rights protected in the Zambian Constitution this right is not absolute. The Constitution

allows for laws making provision for derogation from freedom of the press as long as it is shown that the law in question makes provision that is reasonably required in the interests of defence, public safety, public order, public morality or public health.

Further, derogations can be allowed where it is shown that it is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, for preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or for the registration of, or regulating of the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television. Derogations that impose restrictions upon public officers are also acceptable. These derogations are further made subject to their being reasonably justifiable in a democratic society.

! BOX 1.6
The Penal Code Act
Chapter 87 of the Laws of Zambia
Section 69 Defamation of the President

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

Freedom of expression in Zambia has been severely constrained by the country's retention in its statutes of colonial and ambiguous laws, and this is especially with respect to the criminal laws like those relating to defamation. Most of the provisions especially those in the Penal Code were done as early as the 1930s including section 53 which expounds on the prohibition of certain publications and offences in respect of prohibited publications and section 67 which refers to publications of false news with intent to cause fear and alarm to the public section,

introduced in 1938.

The more commonly used and punished form of defamation in Zambia is that of defamation of the president as enshrined in Section 69 of the Penal Code (**Box 1.6**). This is a punitive colonial piece of legislation that has over the years been retained in the laws of Zambia, despite concerted lobbying and criticism that the provisions be reviewed.

Another provision that has been used to constrain freedom of expression and the Media is Section 67, which criminalizes publication of false news with intent to cause fear and alarm to the public.

Another example is Section 53 of the Penal Code, which confers powers on the President to declare a publication or a series of publications to be prohibited if in his opinion such publications or series of publications are contrary to public interest. Under this article the consequence of the prohibition is that importation, possession, publication, sale, distribution or reproduction of any such publication is illegal.

Noteworthy, when considering freedom of expression is the recognition that there is a very thin line between freedom of expression and freedom of the Media/Press. Hence, the reaffirmation that freedom of expression constitutes one of the important principles of a democratic society, as a vibrant and unobstructed Press is one of the prerequisites for good governance and democracy.

This chapter provides 2002 observations with respect to freedom of expression and the media. The chapter recognises and acknowledges strides made in the necessary reforms pertinent to freedom of expression and the media, and in addition provides incidents of derogations or impediments to freedom of expression that occurred in the year.

2.0 Media Policy Formulation

The process of redrafting the 1996 Information and Media Policy is still ongoing, its actualisation and implementation is still not known. The policy seeks to promote and facilitate the growth of a sustainable media industry, capable of enhancing free flow of information and freedom of expression for national development, through increased media outreach and access to all, particularly to the rural community; legal reforms that enhance the peoples' right to information, freedom of the press and expression; and, encouraging private investment in the media and media support industries.

3.0 Legal Reforms vis-à-vis Freedom of Information

! BOX 1.7

Objectives of the Freedom of Information Bill 2002

The objective of this Bill is to:

- (a) Establish the Public Information Commission and to define its functions;
- (b) Provide for the right of access to information;
- (c) Set out the scope of public information under the control of public authorities to be made available to the public in order to facilitate more effective participation in the good governance of Zambia;
- (d) Promote transparency and accountability of public officers; and
- (e) Provide for matters connected with or incidental to the foregoing.

In September, the Zambia Independent Media Association (ZIMA), Zambia Union of Journalists (ZUJ), Press Association of Zambia (PAZA), Society of Senior Journalists and Zambia Media Women Association (ZAMWA) hired a private lawyer to draft the Freedom of Information Bill (see **Box 1.7** for objectives of the bill), the Independent Broadcasting Authority Bill and the Zambia National Broadcasting Corporation Amendment Act.

On November 5, FDD Member of Parliament for Lusaka Central, Dipak Patel, was scheduled to present the bills under the private motion arrangement however, Speaker of the National Assembly, Amusa Mwanamwambwa, said he could not allow him to go ahead with them because procedure was not followed.

The Speaker noted that the MP did not follow the proper channel of presentation when a bill has financial implications, as provided for in article 81 of the Zambian constitution and section 76 of the standing orders requiring bills with financial implications to be consented to by the president through the vice-president or the minister of finance before they can be brought before parliament. Dipak Patel argued that he had already sought consent from the President through a letter he wrote to him on the same day. There was however no proof of consent from the President.

In November, Government, through the Minister of Information and Broadcasting Newstead Zimba, presented similar Bills, but with changes to some clauses. For instance, in the Zambia National Broadcasting Corporation (ZNBC) amendment bill, the government version retained the provision that the executive would continue to have direct control over the institution.

4.0 The Public Media and its Performance

4.1 Institutional Issues

September 10, the Minister of Information and Broadcasting appointed new boards to oversee the public media organisations, these being Times of Zambia, Zambia Daily Mail and Zambia National Broadcasting Co-operation.

4.2 Performance of the Public Media

In 2002, the public media continued with its bias towards more print and electronic media coverage of individuals in the government or the MMD as a party.

March 22.

United Party for National Development (UPND) Leader Anderson Mazoka challenged the refusal of Zambia National Broadcasting Corporation (ZNBC) to air his programme on television in the courts of law. The case was heard before Justice Nyangulu. This legal recourse was undertaken after Anderson Mazoka's Special Assistant Robby Makayi was denied airtime for a programme entitled 'Thank You Zambia'. ZNBC's denial was based on the argument that the corporation's policy does not allow any one except the President and his nominees to address the nation.

Anderson Mazoka submitted that the refusal by ZNBC to air the programme was a breach of the Zambia National Broadcasting and a violation of his guarantee against discrimination due to political opinions contrary to Article 23 of the Constitution of Zambia. Anderson Mazoka sought a declaration that the refusal by ZNBC to air the programme was discriminatory and the corporation had no power to do so except as provided by the law. Anderson Mazoka also sought damages to be awarded against the corporation for violation of his constitutional rights.

In an affidavit in opposition to the application, ZNBC Director General Eddy Mupeso insisted that the corporation did not infringe on Anderson Mazoka's freedom of expression. Mupeso submitted that there are regulations prescribed on the format of political material aired, which must comply with the relevant policy governing the operations of ZNBC and the programme did not comply with the regulations, despite being given guidelines on the format.

2.4 Freedom of the Media

The pursuits of the media to freely receive and communicate information and ideas, were in the year 2002 relatively constrained as journalists were continually charged with offences under the colonial defamation and criminal libel clauses in the laws of the country, citations for contempt of court, and in other instances the ruling MMD party's cadres acted to stop distribution of newspapers

they felt demeaned the presidency. This section of the report provides some of the cases recorded.

February 11. The Post Newspaper

Fred M'membe was arrested and charged with defamation of the President Mwanawasa. M'membe was detained at Woodlands Police station and was released on bond when his lawyers sought the intervention of the Director of Public Prosecutions. The police alleged that Fred M'membe and FDD Lusaka Central MP Dipak Patel had defamed the president by calling him a cabbage in an article in the Post Newspaper of January 25.

May 25. The Charles Lwiindi Case

Police investigations into the death of a free-lance journalist, Charles Lwiindi, resulted in UPND's treasurer-general Tiens Kahenya getting a warn and caution statement.

Charles Lwiindi died on April 27, the University Teaching Hospital (UTH). According to his medical report he died due to severe malaria, suspected fungo meningitis and diabetes. He was admitted for cerebral malaria, and severe headache. He was admitted to the hospital on April 20. The skull x-ray showed no evidence of a fractured skull but there was a clot of fresh blood at the back of his head.

Lwiindi was in February said to have been beaten by UPND cadres at Malende, Anderson Mazoka's residence.

May 27. The Monitor Newspaper

The Monitor newspaper was fined Kwacha 90 million in libel damages after it lost its case in which three Permanent Human Rights Commissioners had sued the paper for libellous statements made against them. The three commissioners, Francis Nsokolo, John Sakulanda and Foston Sakala were awarded Kwacha 30 million each as damages over a story the Monitor published in the year 2000 alleging that the trio corruptly solicited millions of Kwacha from a 17 year-old boy.

May 29. The People Newspaper

The People newspaper editor-in-chief Emmanuel Chilekwa was summoned to the police station. A warn and caution statement was recorded. Chilekwa's warn and caution was

with respect to publication of a story said to have derogatory remarks about the President Levy Mwanawasa. The statements in question suggested that President Mwanawasa was insane and was suffering from Parkinson's disease.

June 3. The People Newspaper

Former Home Affairs minister, Peter Machungwa, sued the People Newspaper for libel allegedly contained in articles published in two editions. The articles in question are said to have mentioned Machungwa as having been seen driving a government car bearing a GRZ registration number even after being implicated in the Kwacha 2 billion scandal and dropped from government.

June 6. Newspaper Vendors Attacked

Suspected MMD cadres went on rampage knifing and beating up several Post, Today and People newspaper vendors in an apparent retaliation to stories they claimed were insulting the President of the republic.

Robby Chibaye a newspaper vendor who operates at the Manda Hill was assaulted by the cadres. They ordered him to enter a minibus they had been travelling in and threw him out near Kalingalinga compound. Robby alleges that the cadres claimed that the newspaper vendors were championing the cause of the opposition by selling the privately owned newspapers.

Civil Society condemned the action with the Law Association of Zambia urging police to arrest the perpetrators. The Society of Senior Zambian Journalists asked police to explain why the attackers were still walking freely on the street. It is alleged that cadres from Kulima Tower bus station led by Norman Sakala popularly known as 'bobo', armed with machetes, chains, knives and knobkerries attacked the vendors

June 7. The People Newspaper

Editor-in-chief Emmanuel Chilekwa, Kingsley Lweendo, Shadreck Banda and Jane Chirwa appeared before a magistrate court for allegedly defaming the President. The quartet was

charged with defaming President Mwanawasa in a story that appeared in newspaper edition number 17.

June 10. Today Newspaper

Masautso Phiri, Today Newspaper managing editor, was arrested for contempt of court and later released on bail for having commented on a case that was in court. Magistrate John Njapau passed the ruling saying the court had found the article in the Today Newspaper of May 15 to 21 entitled ‘Zambeef Boss Bribed’ highly prejudicial with an aim of attracting the innocence of the State and calculated by the publisher to sway the decision of the court.

July 12. Post Journalists Acquitted

Principal Resident Magistrate Frank Tembo acquitted Post newspaper staffers Fred M'membe and Bivan Saluseki, and two FDD members (Edith Nawakwi and Dipak Patel) in a case where they were charged with defamation of former president Chiluba. The acquittal followed an application from the State to have the matter withdrawn.

July 30. The People Newspaper

Emmanuel Chilekwa, Kingsley Lweendo, Shadreck Banda and Jane Chirwa were released. Lusaka magistrate Frank Tembo dropped the charges after the journalists apologized to the State and to President Mwanawasa for the alleged false article.

In defence, Chilekwa's lawyer produced a letter of remorse from his client to principal resident magistrate that outlined how the plot to write the story was mooted. The letter stated that information that President Mwanawasa had brain damage was provided by former president Chiluba, his former press aide Richard Sakala and former information minister Vernon Mwaanga.

September 20. The Monitor Newspaper

Managing editor Arthur Simuchoba and acting chief reporter Chali Nondo, of the Monitor newspaper, appeared in the Supreme Court with President Mwanawasa as first respondent. President Mwanawasa through his lawyer Michael Mundashi applied to the Supreme Court to have the duo cited for contempt arising from a story authored by Chali Nondo in the Monitor edition of August 16 headlined “Levy back peddles on early polls.” The story alluded to the rationale of increasing judges' salaries ahead of the election petition. It was implied that the move was taken in order to soften the hearts of the judiciary so as to

ensure that the Mwanawasa team wins the presidential election petition. The Supreme Court disposed the matter by ruling that the matter was prematurely brought before the court.

3.0 Retrospect

Media freedom in 2002 continued being constrained, mainly, by defamation of the president and criminal libel clauses in the statutes of the country. In addition, the public media continued to be partial in terms of broadcast access.

Chapter Three: Freedom of Assembly and Association

1.0 Introduction

Under international law the right to peacefully and freely assemble and associate is enshrined in Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) (**Box 1.8**). Article 11 of the African (Banjul) Charter on Human and People's Rights also guarantees this right, and indicates that "the exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

! BOX 1.8

Article 21 of the International Covenant on Civil and Political Rights

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

In the Constitution of Zambia, this right is enshrined in **article 21**, which declares that "except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests." Inconsistencies to this right in other laws are provided for only where such laws are, in the context of this chapter, "required in the interests of defence, public safety, public order, public morality or public health, and the purpose of protecting the rights or freedoms of other persons."

The major instrument the State uses to constrain fulfilment of the associated rights is the Public Order Act, which requires that any person or organisation wishing to hold a public gathering **must give notice to the police of such an event**. In the event that the situation is not conducive for the holding of the public gathering, the Act obligates the State (the police) to notify the persons wishing to hold the said gathering of this, five (5) days before the scheduled event. The reasonable grounds warranting such notification includes were:

- The police do not have enough manpower to police the event;
- Another meeting is scheduled for the same venue at the same time;
- And, were there is a possible danger to the peace and security of the nation.

The third, were such gathering is assumed to pose a danger to the peace and security of the nation, has always been misapplied by the State and used as an excuse to prevent groups that are not pro-government from holding public meetings or processions

The Act simply requires that any persons wishing to hold a public rally give notification of the same to the police, and not that persons seeking to assemble need permission from the Police. The State still seems to always evoke the provisions of the former Act, which required any persons wishing to hold a public rally to obtain permission from the State. Refusal or granting of this permission was subjective and greatly abused by the State to deny persons and groups especially those in the opposition from holding public gatherings.

The succeeding sections in this chapter provide some observed incidents of derogations to freedom of assembly.

2.0 Observed Incidents

January 8. UPND Protest Against MMD Victory in Elections

Hundreds of half naked UPND Lusaka women protested against President Mwanawasa's victory in the election results. The women were only wearing chitenge materials and white bras. Police stopped the protest because the women did not give notice to assemble and hold a protest march.

January 19. Solidarity Protest March

Women who planned to stage a protest march in solidarity with victims of a January 14 callboys' violent disorder by had their protest march stopped.

On January 14, a group of callboys went on rampage in Lusaka, stripping women dressed in mini skirts and trousers alleging that President Levy Mwanawasa had issued a directive barring women from indecent dressing. The Police arrested and detained some of the youths at Lusaka Central Police. According to eyewitnesses the callboys claimed they were responding to President Mwanawasa's ban on indecent dressing.

The incident occurred when President Mwanawasa was in Blantyre attending a SADC Heads of State summit. On return, President Mwanawasa denied giving such a directive and alleged that the opponents of the MMD were perpetuating the information.

A total of about 9 women were stripped naked at the Baba bus stop, the City market, town centre, Kamwala trading area and Freedom way.

July 8. Protest Against Frederick Chiluba

Police confiscated banners and placards from activists who had gathered at the Chikwa magistrate courts in Lusaka, to protest against revelations of former President Frederick Chiluba's plunder of national resources. The protestors were requested not to hold a protest within court grounds.

3.0 Notable Incidents

September 16.

The presidential election petition hearing commenced in the Supreme Court. Party cadres from both the ruling MMD and UPND converged outside the court in support of their leaders, and fighting broke out. Three people were severely injured and were rushed to the University Teaching Hospital. Police moved in and fired teargas to disperse the crowds who resorted to throwing stones and other objects at passing motorists. No arrests were made, and Police directed that no party cadres would be allowed on court grounds at subsequent hearings.

6.0 Retrospect

The year saw the continued misapplication of the Public Order Act as the right to assemble was often denied. The provision that persons wishing to assemble should provide notice, and that the Police should within five (5) days provide the persons reasons as to why the gathering should not go ahead, was again observed to be interpreted that persons wishing to assemble should seek permission from the State. The State did not seem to allow the exercise of freedom of assembly.

Chapter Four: Right to Political Choice

"[T]he will of the people shall be the basis of the authority of a government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." (Article 21 of the Universal Declaration of Human Rights)

1.0 Introduction

The foundation of a democratic mode of governance is that people freely make political choices, embodied in constitutions and laws. These choices it is expected should dictate the rules of governance and empower chosen individuals to manage the common affairs through instruments and institutions of government. Individuals so chosen should not impede the continued exercise of the right to political choice.

Further, the right to make political choices is provided through periodic elections, and rules and institutions of governments should always be such that they smoothly provide for elections that reflect the will of a people.

This is simply because the key fundament of the right to political choice, is that individuals' have the right to be represented by an individual of their own choice, and that such choice should be implemented without interference (direct or perceived) from individuals tasked with the management of government, or from a collective of individuals either in government or of a particular political interest group. Likewise, any individual has the right to seek to represent others, where such an individual is allowed by law (that is he or she meets the requirements under the laws regulating political representation). The right to make influential political choices, through being represented or representing others is, thus, an inalienable right.

In international instruments, this right is enshrined in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Article 25 of the ICCPR recognises and protects the right of **“every citizen”** to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in

! BOX 1.9**Constitution of Zambia
Article 75 [The Franchise]**

(1) Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered in any constituency as a voter for the purpose of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.

force, States are required to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it recognises and protects.

In the same vein, Article 13 of the African Charter on Human and People's Rights, states "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."

In the Constitution of Zambia, the right to political choice is enshrined in Article 75 (**Box 1.9**).

The underlying democratic principle of the human rights legal provisions is that the authority of the State should always be given and managed by its citizenry, through individuals freely and duly chosen

to represent the citizenry, and this is actualised through holding periodic elections.

In 2001, elections as the means of realising the right to political choice was fraught with conflicts between political players, and this conflict continued in 2002, resulting in election petitions in both the presidential and parliamentary elections.

This chapter reviews the exercise of the right to political choice in the year 2002, with particular emphasis on the performance of the institution tasked with the administration of elections thereof, the aftermath of the 2001 elections, and by-elections that occurred in the year

2.0 Administering Elections in Zambia

2.1 Introduction

The administration and conduct of elections in Zambia is guided by the Constitution, the Electoral Act (1991), the Electoral Commission Act (No. 24 of 1996), the Local Government Elections Act Chapter 282 and various regulations promulgated by the Electoral Commission of Zambia.

The Electoral Commission of Zambia is an essential element in realising the right to political choice. This is because, the Commission is charged with the responsibility of administering and managing elections, and the efficient management of the election machinery is a major factor in enhancing right to political choice in a free and unimpeded environment.

Since inception, under Act 24 of the laws of Zambia, the Commission has conducted two General Elections, one in 1996 and another one in 2001. Following the 2001 general elections, groups who monitored and observed the elections raised several concerns. These concerns mostly involved inadequate logistical arrangements leading to delayed start of balloting and end of balloting; misplaced ballot papers; discrepancies in the collation of results and announced results; and, failure to publish election results from polling stations.

2.2 Administering Elections in 2002

During the year 2002, the Commission conducted parliamentary by-elections in four (4) constituencies following the resignations and deaths of incumbent Honourable Members of Parliament. The by-elections were in Lufwanyama, Bwacha, Kabwe Central, and Mwandia constituencies (see section 3.2 below).

Ninety-seven (97) Local Government by-elections were conducted on four occasions on dates between July 9 and December 10. This was due to resignations and deaths of incumbent Councillors in various Council Wards across the country.

2.3 The Challenges Facing the Elections in Zambia

All the 2002 by-elections were conducted under the same legal framework which existed in 2001. That is to say the electoral process in the concerned constituencies and wards was conducted

according to the letter and spirit of the Electoral Act CAP 13 and the Local Government elections Act CAP 282 of the laws of Zambia and relevant Statutory Instruments passed by the Commission. This is against the background that after the 1996 and 2001 general elections, most stakeholders recommended that the current electoral laws should be reformed. For instance, it was suggested that the Commission be legally empowered by the Electoral Act to enforce the code of conduct, that the Act should also establish an elections Tribunal and that the functions of the Commission be expanded to cover voter education and conflict management.

In addition, to elections continually being undertaken under laws that have demands for reform, another major challenge facing the administration of elections in Zambia is funding and human resource capacity constraints. Recommendations were tabled to the effect that the Commission should directly be funded by Parliament. At a small-scale, like the by-elections in the year under review, government made strides to timely and adequately fund the Commission. However, the funding was still not adequate, as the Commission could not publish polling centre results, due to cost constraints.

3.0 2001 Election Aftermath

The most notable events of the 2001 elections aftermath, was the release of Elections monitoring and observation reports by organisations that monitored the elections. A significant number of the elections monitoring and observation organisations reported lack of adherence to equity in political competition during the 2001 elections (e.g., the Ecumenical Observer Team, Coalition 2001, NGOCC, European Union Election Observation Mission, SADC Parliamentary Forum Election Observation Mission, Foundation for Democratic Process (FODEP), Carter Centre).

The general observations were that the 2001 elections occurred in a manner that undermined the legitimacy and probity of individuals so elected, and that the integrity of the electoral process and respect of the right of a people to freely make political choices was not upheld.

For instance,

on February 5, the European Union (EU) Observer Mission released their final statement, which was rejected by government. The final statement cited among other things that the elections were marred with numerous irregularities and anomalies.

Government reacted to the report. President Mwanawasa said the report was biased and partisan. Further, chief government spokesperson Vernon Mwaanga accused the EU team leader of gross incompetence. Mwaanga confirmed that the President was ready to step down if the Supreme Court ruled that he was not duly elected because he accepted the Supreme Court as the final arbitrator of the polls.

3.1 Challenging the 2001 Elections

In February,

the preliminary hearing of the presidential election petition took place in the Supreme Court.⁵ The petitioners are HP president Godfrey Miyanda, FDD president Christon Tembo and UPND president Anderson Mazoka. The Attorney General has since applied as 2nd respondent in the case in compliance with order 15/6/8 of the Supreme Court rules.

Petitioners were required to pay Kwacha five (5) million security fee by January 25. By February 21, most of the fees had not yet been paid, and President Mwanawasa's lawyers filed in an application to set aside the petition because the petitioners had not complied with the order to pay the security costs. However, the Supreme Court dismissed the application.

Thirty-nine (39) parliamentary seats were petitioned,⁶

thirty-two (32) such petitions were upheld. On February 18, the High Court held a pre-trial to allocate dates for the hearings, and the petitioners were required to pay Kwacha One (10 million as security fee before the hearings commenced.

July 4.

⁵ See also section 4.3.4.3 (a) in Chapter One

Two elections organisations that had earlier declared the 2001 elections as free and fair changed their observation after allegations of use of public resources. National Organisation for Civic Education (NOCE) and Zambia Independent Monitoring Team (ZIMT) cited electoral malpractices in the 2001 elections after revelations about the ZAMTROP intelligence account details were made public. They said it was incumbent upon Levy Mwanawasa to be honourable and immediately resign from his position as republican president as his election victory was derived from the abuse of the ZAMTROP intelligence account.

July 10.

Lusaka High Court judge Anthony Nyangulu ordered a second recount of votes for the Kabwata constituency parliamentary elections. This followed a first recount results in which the petitioner, major Richard Kachingwe, emerged winner.

July 17.

In the hearing in which Brigadier General Godfrey Miyanda wanted some parts of his amended presidential petition restored, was counteracted because the matter was improperly before the court. In his amendments, Miyanda contended that the duties of a returning officer were not the same as the duties of the Chief Justice or a judge and were distinct and separate.

July 19.

The Lusaka High Court heard that one of the polling stations in Kabwata did not have counterfoils, yet during the initial scrutiny and recount order all counterfoils were available. A recount was ordered to be done at Kamulanga A, by Justice Anthony Nyangulu.

July 23.

⁶ See also section 4.3.4.3 (b) in Chapter One

The Supreme Court agreed with the petitioners in the presidential elections that statements recently made by President Mwanawasa in the media were tantamount to intimidating potential witnesses. The petitioners in the presidential petition made an application to the Supreme Court that it issues an order restraining President Mwanawasa from issuing threatening statements against potential witnesses

Judge Ernest Sakala ruled that it was clear from newspaper reports that President Mwanawasa's sentiments threatened would-be witnesses, including former president Frederick Chiluba. Sakala noted that just as much as President Mwanawasa enjoyed immunity by virtue of him being president, law also protected witnesses.

The Supreme Court ruled that all witnesses in the presidential petition will receive the full protection of the law and banned any further comments on the matter by the members of the public.

July 29.

Justice Anthony Nyangulu, of Lusaka High court, ruled that Kabwata Member of Parliament Given Lubinda of UPND party was duly elected in the December 2001 tripartite elections. Losing FDD official Major Richard Kachingwe had petitioned the results.

Concerns.

Director of Public Prosecution (DPP) recommended that officers of the Electoral Commission of Zambia (ECZ) be granted powers under the electoral act to arrest people suspected to have committed electoral related offences.

3.2 By-Elections

July 9. Lufwanyama Constituency

Following the death of the incumbent ruling MMD Member of Parliament Honourable Goodson B. Mulilo on April 1, by-elections were held in Lufwanyama constituency. Two

candidates Eddie Kasukumya, of the MMD, and Elisha Matambo of the UPND, contested the seat. Eddie Kasukumya was declared duly elected Member of Parliament for Lufwanyama Constituency. The elections were characterised by low voter turnout of about only 31 per cent. The total number of registered voters is about 13 433.⁷

Prior to this election (in June), it was observed that government through Minister of Home Affairs, Lackson Mapushi, donated resources worth Kwacha 164 million to government institutions. The government donated medical drugs worth Kwacha 14 million to three Health Centres, and a Kwacha 150 million cheque to Kafushi High School for infrastructure rehabilitation.

August 28. Kabwe

By-elections were held in two constituencies in Kabwe following the resignation of Gladys Nyirongo (Bwacha) and Patrick Musonda (Kabwe Central) from the Heritage Party (HP) to the ruling MMD.

In Bwacha constituency, four candidates contested the seat. Gladys Nyirongo retained the seat against the closest contender, Patson Silwamba of UPND. Out of 18,929 registered voters, 7,843 cast their votes, with 144 rejected ballot papers, constituting about a 41 per cent voter turnout.

In Kabwe Central, the incumbent Patrick Musonda of the ruling MMD retained the seat. Four candidates contested the seat. The constituency has 29,987 registered voters out of which 11,490 cast their votes with 162 rejected ballot papers.

The opposition complained of bribery of the voters by the MMD, and abuse of the public media as practices that worked against them. The opposition further complained that the First lady, Maureen Mwanawasa through the MMCI took some donations to schools and health centres in Kabwe and that these gestures could have influenced the voters.

⁷ Electoral Commission of Zambia, 2001 Parliamentary Elections Provisional Results, January 2002.

September 3. Mwandi Constituency

Sipula Kabange (PhD) retained the Mwandi Parliamentary seat, following by-elections held after his expulsion from the UPND and his consequent joining of the ruling MMD. The constituency has 6,453 registered voters out of which 3,048 voted, with 482 rejected ballots

The MMD attributed the victory to renewed confidence in the MMD government by the masses. The opposition UPND however complained of limited resources as opposed to their counterparts in the ruling party.

There were reports that a government truck was spotted in the area delivering relief food around the period of the elections. The opposition argued that the MMD was taking advantage of the food shortages and they used the food to influence the voters.

4.0 Retrospect

The year 2002 with respect to the right to political choice was characterised by challenges to the integrity of the 2001 presidential and parliamentary elections, with revelations of anomalies in the petitions that commenced in the year. Enforcement of the Electoral (Conduct) Regulations of 1996 in the by-elections was absent. The position of the Commission being that law enforcement is the preserve of the Zambia Police Service, until such time that the law is reviewed.

Chapter Five: The Police, Torture, and the Victims

1.0 Introduction

The role of the police is the protection of life and property, preservation of law and order and the prevention and detection of crime. The police simply are individuals mandated and entrusted with the responsibility of maintaining public order and enforcement of the law, and hence are commonly referred to as law enforcement agents.

A critical recognition that should always be noted is that the police should at all times strive to respect and protect human dignity, and maintain and uphold the human rights of all persons. This is simply because the police, like the citizenry are also the defenders of fundamental human rights.

The civility of the police can be measured by the extent to which individual's exercise of their rights under different human rights instruments is fulfilled. Police behaviours of brutality, torture, detentions without trial, extra judicial killings and overcrowding in detention centres are a very common phenomena in Zambia, and most responsible for constraining an individual's realisation of his/her rights.

International human rights instruments and the constitution of Zambia provide for cessation of these behaviours. For instance, Article 15 of the Constitution of Zambia (Protection from Inhuman Treatment) states that, "**No person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment.**" In addition, article 7 of the International Covenant on Civil and Political Rights (ICCPR) (**Box**

! BOX 1.10

(a)

Article 7. International Covenant on Civil and Political Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

(b)

Article 5. African Charter on Human and People's Rights

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

1.10(a)), and article 5 of the African charter on human and people's rights (**Box 1.10(b)**), also demand that an individual's dignity is not undermined.

This chapter provides a review of police behaviours in 2002, and provides some of the cases observed in the year under review.

2.0 Police Behaviours

The year 2002 was characterised by reports of police using more force than was required in several instances, and extra-judicial killings in more places than one. The citations below are not exhaustive.

Case 1. Chalimbana Police Station

Joe Mpambeni, a Suntech employee, was shot dead by a police officer, named Miti, from Chalimbana police station after failing to settle a K3, 000 debt beer debt. This followed a complaint lodged to the police by the illicit beer brewer.

Efforts by the family to seek redress from the police failed, and the family sought recourse at the Legal Resources Foundation (LRF).

Case 2. February, Chibolya Police Post

During the month of February, Chibolya police denied persons freedom of movement when they restricted movement of residents from 20:00 hours onwards. Residents complained that the police officers usually moved in a minibus arresting any person they found outside even if one was merely going to the toilet, as they have outdoor toilets. The police officers beat those alleged to have broken the curfew and detained them overnight at Chibolya police post, and are alleged to have solicited for money in order to have someone released.

Case 3. February, Chawama Police

On February 2, 2002, Alison Phiri (25) of Chawama Compound died in Police custody, after falling sick while in detention at Chawama Police. Alison Phiri was detained on

January 27, 2002 as the first suspect in a house break-in and theft case of the neighbour's house.

His son, Philip, was on January 28, beaten by police when he took food to his father, whilst his brother Kennan Mumba was denied access to the detainee.

A pathologists' report noted that Alison Phiri had bruises on various parts of the trunk mostly on the back and the right shoulder, and that it appeared Phiri had hit against some hard article (ground or wall), which caused concussion of the brain leading to marked oedema (swelling of the brain), which in turn might have led to the failure of respiratory and cardiac centres.

Case 4. March, Matero Police

In March, a drunken Matero police officer, named Ngela, subjected Leonard Zimba to torture. Leonard Zimba was handcuffed, and put on the "kempelwa"⁸ and beaten using a sjambok. Leonard Zimba sustained a deep cut on the hand and on the head, and swollen arm and feet. He was not taken to the hospital, and was only release on bond after 16 days after contracting Malaria.

Leonard Zimba, an employee of G3 Security Company, was on March 13 together with a workmate taken to Matero police station, after their superior suspected them of having stolen two road construction machines from JJ Lowe.

Case 5. April, Solwezi Police

In April, a Solwezi police officer, Constable Chewe, beat to death a chief's retainer, Fackson Kafumukache, in the process of "disciplining" him. Events leading to Fackson Kafumukache's death are that a neighbourhood watch police officer Kayombo arrested a

⁸ Kampelwa is a common Zambia police torture technique where a person is suspended in the air on a metal rod, with the hands and legs tied together and the rod placed in-between. The body is then swung round the rod, and as the body swings, the police beat the person using different whips, in most cases they use rolled up electric cables and iron bars.

man with game meat and took him to the chief's palace where the man was fined Kwacha 15, 000 and had the meat confiscated. In the transactions that followed, Fackson Kafumukache complained about the unequal distribution of the monies from the fine, a complaint that displeased the chief. The chief as a consequence instructed Constable Chewe to discipline him.

Case 6. May, Chibolya Police Post

Richard Kachulu of New Chibolya Township was in May subjected to torture by four police officers. The police used the "kempelwa", and Richard Kachulu sustained injuries to the hands and most of his body.

On May 1, Richard Kachulu was approached by plainclothes policemen seeking to know where he was going. Before he could respond the policemen started beating him. In the struggle that ensued, Richard Kachulu managed to grab a gun from one of them, and decided to take the armed man to the police. On Los Angeles police post, they met a police officer who ordered Richard Kachulu to give his friend back his gun. Richard Kachulu was arrested and detained at Los Angeles police post.

The next day Richard Kachulu was taken to Chibolya police post where he was subjected to the "kempelwa". During his detention, Richard Kachulu was not allowed any visitors.

Case 7. May, Lusaka Central Police Station

Four anti-robbery Flying Squad police officers from Central police station beat, arrested and detained a family of nine (9) from Lusaka's Misisi Compound for three days. Amongst the detained were two children one aged 3 months and the other 3 years. This followed the family's inability to tell the police the whereabouts of a family member suspected of involvement in aggravated robbery.

Joseph Mkandawire, the head of the household, stated that on the night of May 3, the police squad went to his house looking for his son Justine Mkandawire in connection with a case of aggravated robbery. Justine was not at home, and the officers asked the family

as to Justine's whereabouts but the family did not know where Justine was. The police fired shots into Mkandawire house, beat family members, and took all of them to Lusaka central police where they were detained for 3 days. The family was later released without being charged.

Case 8. May, Shibuyunji Police Post - Mumbwa

A group of off-duty policemen in Mumbwa's Mafuwa area on May 7, beat Henry Simwiinga and stole Kwacha 1.5 million from his grocery. The policemen also burnt two houses belonging to Henry Simwiinga's relatives.

Henry Simwiinga narrates that:

On May 6, two policemen from Shibuyunji, named Kaputa and Mulenga, went to his shop where they demanded for beer, which he subsequently gave them. However, problems started when he asked Kaputa why he was moving around with a gun when he was not on duty. This angered Kaputa who left the premises and warned him that he would deal with him severely. The following day around 19:00hours, while his friends and him were chatting at his shop, a group of armed policemen, including Kaputa and Mulenga, appeared ordering everyone to lie down and started beating him until he was unconscious. He sustained deep cuts on his head and back, a swollen head and severe body injuries.

Others went to burn the houses while the rest went in the shop and stole Kwacha 1.5 million. He subsequently reported the matter to Westwood police station, as a case of aggravated robbery and assault involving five police officers.

Henry Simwiinga died on May 20. A preliminary post-mortem report showed that Henry Simwiinga died from head injuries and brain haemorrhage.

The police instituted investigations, and the policemen, Kaputa and Mulenga, are still carrying out their duties. No warn and caution statement has been recorded from them.

Case 9. June, Bennie Mwiinga Police Post - Mtendere

Policemen at Bennie Mwiinga police post in Mtendere on June 6, beat and detained Michael Moyo, and charged him with theft and house breaking, after he failed to give details of the whereabouts of a neighbour's wife. This followed a complaint from Michael Moyo's neighbour that whilst away his wife had left home, carrying with her the blankets, and that the neighbour Michael Moyo would be able to assist.

On the night of June 6, when the police, accompanied by the neighbour, Evans Mumba, arrived at Michael Moyo's house, they questioned his sister-in-law Inonge Simenda on the whereabouts of Mumba's wife. Inonge Simenda explained to them that Mumba's wife had said she was going to Chainama hospital, a response that the policemen found wanting, and started harassing her. Michael Moyo intervened to stop the harassment of his sister-in-law, and the policemen apprehended him and later detained him at the police post.

A detective Siwale released Michael Moyo the next day without being charged, but the Occurrence Book (OB) showed that he had been charged with theft and house breaking. The police noted that they had the authority to detain anybody and release him or her if there is insufficient evidence.

Case 10. June, Chawama Police

Chrispin Makoloni, a taxi driver, of Chawama was on June 26 beaten by two policemen from Chawama police after he picked a quarrel with a fellow taxi driver over customers. One of the policemen happened to be a friend of the fellow taxi driver, named Derrick.

The policemen accused Chrispin Makoloni of stealing his friend's customer. Chrispin Makoloni sustained external head injuries.

Case 11. August, Matero Police

Mbita Simwinga (22) of George Compound was on August 11, shot by policemen from Matero police station. Mbita Simwinga died the following day at UTH of gunshot wounds.

Events leading to Mbita Simwinga's death are that Mbita Simwinga and a friend, John Siame, driving his father's car registration number AAH 2903, took a customer to Kawama. When the customer disembarked and as they were driving off a gunshot went off. When Mbita Simwiinga stopped to see what was happening, he noticed policemen approaching car.

Mbita Simwinga and a friend, John Siame were ordered out of the car. John Siame got out first, and the policemen fired a shot that missed him. When Mbita Simwinga got out next, the policemen shot him in the hips and the chest. John Siame pleaded with the policemen, telling them that they were not thieves but taxi drivers.

The policemen took Mbita Simwinga to Matero police, declining John Siame's request that they should take his friend to hospital. Later a policeman on patrol helped John Siame take Mbita Simwinga to UTH, where he died the next day.

Case 12. August, Airport Police Post - Mongu

Mukata, a mentally deranged person, died on September 4 of internal injuries after being beaten by a policeman at Mongu's Airport police post on August 17. Mukata was accused of picking and consuming two packets of vanilla biscuit worth Kwacha 3, 000.00 from a makeshift store.

The owner of the store took Mukata to the Airport police post, where a Constable Kapokoso ordered him to pay for the biscuits. Mukata failed to pay, and was beaten and detained, until the next day. He had sustained injuries to the legs, hands and head, and had chest pains.

Mukata died on September 4, at Lewanika General Hospital. A post-mortem report showed that Mukata died of some impact on his head and left side of the hand. His lungs and part of his chest were also filled with blood. The police denied the family access to the report.

Case 13. September - October, Sangalala/Balmora Police - Chilanga

Costa Shimanika (40) was allegedly tortured over a period of 20 days between September and October by policemen in Chilanga on suspicion that he had stolen an electric cable and a horse pipe from Makeni in Lusaka.

Costa Shimanika narrated that:

On September 21, he was picked up by a policewoman and forcibly taken to Sangalala Police station where he was interrogated by a constable Nkole. The constable accused him of having stolen an electric cable and a horse pipe from Makeni.

He was tortured at Sangalala police, where he spent two days. He was later transferred to Balmora police station, where two policemen, Sergeant Mugala and Constable Nkole, from Sangalala police put him on the "kempelwa".

Costa Shimanika was released on October 22, following the intervention of Chawama LRF paralegal Felix Kaoma.

3.0 Retrospect

The role of the police in the protection of life and property, preservation of law and order and the prevention and detection of crime was in 2002 undermined by cases of unlawful detentions, extrajudicial killings and torture, which in some cases involved using the "kempelwa".

PART TWO - ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights seek the affirmation of the State's obligation to do something for the citizenry, like providing housing, education, and health services. The rights, in a way, seek to obligate the State to enshrine in its policies and programmes steps that affirm that the State shall provide for basic socio-economic and cultural needs.

The major international instrument on economic, social and cultural rights to which Zambia is a State party is the International Covenant on Economic Social and Cultural Rights (ICESCR). The covenant provides that the realisation of the various economic social and cultural rights cited should be progressive rather than immediate and is subject to the availability of resources. This means that while the ultimate goal is adequate provision of these rights to all, if the State has resource constraints like in most developing world countries, the covenant allows a State latitude to realise these rights over a period of time and on a progressive basis.

But,

Before a State party can claim that it is unable to guarantee economic, social and cultural rights, such a State should demonstrate that the limited available resources have been utilised to the maximum towards meeting the requirements of the stated rights.

That is, even where available resources are demonstrably inadequate, the State should still strive to ensure the widest possible enjoyment of the rights under the prevailing resource constraints. In realising these rights it is important that the available resources are effectively and equitably utilised⁹. In other words, governments are required to prioritise the needs of the general citizenry as opposed to other perceived needs of the State.

⁹ The Committee on Economic Social and Cultural Rights (CESCR) is tasked with the supervision of compliance with the ICESCR by states parties. One of the supervisory mechanisms put in place by the covenant is the receipt of regular reports from State parties on the realisation of the rights enshrined in this convention by the respective states. Zambia is yet to submit a report in this regard.

Other international instruments with strong socio-economic rights dimensions are the Universal Declaration (1948), the Convention on the Elimination of All Forms of Discrimination Against Women - CEDAW (1979), and the Convention on the Rights of the Child (CRC). Zambia is a party to the latter two conventions.

The applicable regional instrument for Zambia in the case of economic, social and cultural rights, as is the case with civil political rights is the African Charter on Human and Peoples' Rights.

The obligation on the State to respect social, economic and cultural rights requires that the State refrain from undertaking any legislative or other measures that violate, infringe, or threaten people's rights. This means the State should always take measures so as to ensure that other more powerful groups or individuals in society (e.g., employers) do not violate an individual's rights.

The obligation on the State to promote and fulfil these rights requires that the State takes positive measures so as to ensure that the people who do not currently enjoy access to these rights are granted essential levels of the rights. This would include direct provision of services or resources necessary to ensure a minimum core content of the rights. An example would be the provision of primary health care, basic education or housing.

The Zambian constitution does not directly provide for the protection of economic, social and cultural rights. However, owing to the indivisible nature of human rights the Constitution of Zambia does protect a number of rights that indirectly pertain to the various economic, social and cultural rights. However, in Part IX of the constitution, which enshrines the Directive Principles of State Policy, the State is obligated to provide for economic social and cultural rights, although they are non-justiciable rights.

For instance, section 112 of the Directive Principles of State Policy states:

"The State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities."

The said principles are set out as a guide for the government in the development and implementation of national policies; in the making and enactment of laws; and in the application of the Constitution and any other law. Application of these principles is subject to the availability of resources or to the unavoidable demands of the general welfare of the public as may be determined by Cabinet.

Other laws relating to socio-economic rights in Zambia are the Employment Act, the Lands Act, laws relating more specifically to women and children such as the Adoption Act, the Interstate Succession Act, the Wills and Administration of Testate Estates Act, the Marriage Act, also, the Affiliation and Maintenance of Children Act, the Persons with Disabilities Act, the Education Act and other laws generally relating to the regulation of institutions of higher learning such as the University of Zambia Act.

In retrospect, the chapters in this part of the report seek to provide a review of the realisation of economic, social and culture rights in the year 2002. Specific socio-economic rights reviewed include issues of food and poverty, the right to education, and health.

Chapter Six: Food, Poverty, Workers and the State

1.0 Introduction

The State of Zambia has no obligation to neither feed its citizenry nor provide employment, **but** the State has the obligation to provide an environment that should make the citizenry be able to have sustainable livelihoods.

Section 112 (b) and (c) of Part IX, of the Directive Principles of State Policy, of the constitution of Zambia provides that:

"[b] the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment."

"[c] the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment."

This chapter provides a review of the extent to which in the year 2002, the State created an environment in which the citizenry obtained sustainable livelihoods.

2.0 The State and Food in the year 2002

2.1 The Maize Situation

Food security in Zambia is to a considerable degree measured mainly in terms of availability of the dietary staple food - maize. Hence, this section mostly addresses itself to maize. Zambia requires 1, 231, 000 metric tonnes annually. By May, the country had a deficit of about 624, 000 metric tonnes, as there was nearly 25 per cent reduction in maize production when compared with the season 2000/2001.

Only 20, 000 metric tonnes were with the “major” millers, and an expected harvest of 602, 000 metric tonnes.

In this regard the FAO/WFP Crop and Food Supply Assessment Mission predicted that some 2.33 million Zambians faced starvation unless food relief is delivered to them. Thus, out of the 624, 000 metric tonnes requiring importation, 174,000 metric tonnes should be distributed for free as relief maize until March 2003 (if no starvation occurs again in 2003).

In the first quarter of the year, Government had planned to cover the maize deficit by having agreements with millers so that they import 300,000 metric tonnes of duty-free maize, about 175,000 metric tonnes was to be solicited through food aid, and the rest about 150,000 metric tonnes was to be imported by government.

In mid-August private millers revised and reduced their import plans to 150,000 metric tonnes. According to the September FAO Food crops and Shortages (Global information and early warning system on food and agriculture) by early September millers had imported only 43,000 metric tonnes into the country,

By December 2002, the Food Reserve Agency (FRA) report on the maize situation noted that millers had only imported 50,000 metric tonnes. The report further noted that that government needed to revise and reduce the import requirement by millers (to at least 162,000 metric tonnes) because there has been more maize on the Zambian market than estimated at the beginning of the year, especially in Northern and Eastern provinces where maize from Mozambique and Tanzania had entered Zambia through cross border trade.

Food aid input was equally limited. This was mostly after government rejected US\$ 50 million worth of GM maize from the USA (see section 3.0). As at December 9, only 59,300 metric tonnes had either been distributed or confirmed pledged. This constituted confirmed pledges of non-GM maize of 2, 000 metric tonnes from the Tanzanian government, 1, 300 metric tonnes from the Italian government, and 10, 000 metric tonnes from NGOs like World Vision. The World Food Programme (WFP) donated 12, 000 metric tonnes.

Furthermore, government allocated a total of Kwacha 24 million to FRA (part grant and for direct purchase) to cover over 20,000 metric tonnes. And by December, government had purchased 14,000 metric tonnes from FRA and another 20, 000 metric tonnes from Sable Transport. The

Disaster Management and Mitigation Unit (DMMU) of the Vice President's office distributed this maize as food relief.

By end year there was still a deficit of 115,700 metric tonnes required for distribution as food relief from January to May 2003.

The constraints to food security in Zambia in 2002, when defined in terms of the maize situation (in addition to issues raised in the succeeding section) constituted:

- **Slow pace of distribution.** The pace at which maize arrived in the country from donors or supplied to the people by government agencies was slower than the expected consumption. In this regard, Member of Parliament for Moomba constituency in Monze, Vitalis Mooya, in September complained that three people had died in his constituency not because food supplies were not in the country, but because the government agencies were slow in delivering supplies.
- **Corruption in relief maize distribution.** There had been reports in previous years that officials entrusted to distribute relief maize either tend to keep some of it for personal consumption or resort to dubiously selling the maize. For instance, on December 24, John Cheelo of Bbwemunyama Ward in Siavonga District alleged that members of the “Satellite Committee” responsible for distributing maize were selling some of the relief maize. This prompted Siavonga Member of Parliament, Douglas Siakalima to request Malengo Stole Police to supervise relief maize distribution.
- **Conflicts among relief recipients.** The relief maize distribution tended to produce conflicts among eligible recipients, as often people that collect relief maize do not distribute it according to need. In Namayani, 60 km west of Lusaka, complaints were raised about a village elder that came to collect maize from the Vice Presidents office (DMMU) on behalf of his village and friends.

2.2 Food and Politics

In mid 2002, the government rejected, relief from the USA government, when it was discovered that over 20, 000 metric tonnes of maize already in the country was Genetically Modified. The USA government donated the GM maize without informing the Zambian government that it was donating GM maize, and argued that there was nothing wrong with the maize.

A debate on human health and ecological risks of GMOs ensued, whilst people went hungry in most rural parts of the country.

An August report from agro-scientists dealing in aspects of biotechnology in Zambia sponsored by the Kasisi Agricultural Training Centre and the Jesuit Centre For Theological Reflection (JCTR), recommended, in part, that the maize should not be accepted as the risks of cross-geneticization will have serious effects on local crops; and, that there were still unresolved questions on the human health effect of GMOs.

Several academics entered the argument, with neither proponents nor antagonists in the debate helping resolve the hunger situation in the rural communities.

There were also protests from civil society and opposition parties.

At a government-organised debate at Mulungushi International Conference Centre on August 12 several concerns were raised.

Cosmas Musonda, national secretary of the National Health and Sanitation Awareness Campaign Committee, noted:

“As much as we appreciate donor aid aimed at alleviating the hunger situation in Zambia, we feel the donors have ample clout and resources to source naturally grown grain foods from other parts of the world.”

Godfrey Miyanda of the Heritage Party requested the US government not to force the country into accepting the GM maize.

The domestic rejection of the GM maize in a situation of hunger also drew international reactions. For instance on December 9, US Ambassador to the FAO of the UN, Tony Hall was quoted by Reuters News Service as saying:

“People (apparently referring to President Mwanawasa) that deny food (GM aid) to their people, that are in fact starving people to death should be held responsible ... for the highest crimes against humanity in the highest courts in the world.”

As the debate raged on, and the government still insistent on not distributing the GM maize, some hungry people around the country began to demand that they wanted the maize, risks or no risks. Thus, there were various media reports of people looting GM maize sheds and eating the very GM maize that the government rejected.

Cognisant of the debate around human consumption of GMOs, on September 3, President Mwanawasa announced that the government had accepted an offer by USAID to sponsor Zambian scientists to go and study the effects of GMOs in the United States and the European Union. The team subsequently recommended the rejection of GM commodities.

2.3 The State and Food Security Initiatives

Premised on the theme “Food Security through Production and Job Creation”, government nearly trebled its allocation on agriculture related expenditure by about 300 % from Kwacha 88 billion in 2001 to Kwacha 231 billion in 2002. Kwacha 100 billion was allocated for the purchase of 80,000 metric tonnes of fertilizer for the 2002/2003 season, and there was a Kwacha 50 billion on fertilizer subsidies, though farmers had to pay cash for the 50% subsidized fertilizer.

Kwacha ten (10) billion was targeted at “vulnerable but-productive small-scale farmers (poorer farmers) who could not afford to purchase implements with cash. This allocation was

administered by the Ministry of Community Development and Social Welfare, for the operations of the Programme Against Malnutrition (PAM).

Early in the year, government sourced Kwacha 10 billion and repaid its debt to Chiawa Estates, a company owned by Lendor Holdings. An action that drew reaction from opposition leaders who questioned the criteria used in repaying the debt, when government had many creditors whom it has not repaid.

The money, it was later learnt, was supposed to assist Chiawa Estates with winter maize cropping. Government gave guarantee to Chiawa Estates that it would buy the maize grown from winter cropping.

In June 2002, the State banned the export of maize, so as to safeguard the country's internal reserve of the major food crop.

In October, the Famine Early Warning Systems Network noted that farmers through out the country had 1,500 hectares of winter maize, and were expected to produce 15,000 metric tonnes. However the parliamentary panel into irrigated crops indicated that winter maize would be too expensive for mealie meal production.

The last notable initiative of the year was government's allocation of Kwacha 20 billion to revive the Nitrogen Chemicals of Zambia (NCZ), a fertiliser production plant in Kafue. Government appointed Chuulu Kalima to head the company that had closed during the Chiluba era. Chuulu Kalima noted that NCZ requires Kwacha 67 billion to operate to full capacity. The company resumed production on July 22. By August 16, NCZ had produced 2,000 metric tonnes of Compound and 100 metric tonnes of ammonium nitrate fertilizer. In November, Chuulu Kalima was suspended for alleged misappropriation of US\$ one (1) million.

3.0 Poverty, Food and the State

In Zambia, poverty, in terms of the accessibility to food has not been improving relative to individuals' salaries. In January 2002, the food basket was Kwacha 324, 650 for a family of six¹⁰, and by end year it was Kwacha 380, 150. In short for a family of six to subsist (just eat, no rent, electricity, or education costs), they needed Kwacha 380, 150.

When the food cost was compared to individuals' salaries, by December the “take home” salaries of categories of primary and secondary school teachers, nurses and secretaries in civil service was between Kwacha 250, 000 and Kwacha 497, 000. Police officers got between Kwacha 120, 000 and Kwacha 300, 000, while security guards got between Kwacha 40, 000 and Kwacha 180, 000 salary.

When costs of essentials other than food costs (for instance, charcoal, soap, washing soap, jelly, water bills and rentals) are added, an average family in Zambia in the year under review needed an extra Kwacha 507, 400.

The preceding overview provides for formally employed persons. Estimating the food and poverty situation in rural areas is problematic. The discerning picture of hunger discussed earlier, provides an overview of the situation in rural Zambia.

In urban populations, food-for-work programmes were also employed as a means of alleviating hunger. In 2002, poor urban populations in the high-density areas were not given any extra relief food but had to keep relying on the already existing food-for work programme, through the Ministry of Community Development and Project Urban Self Help (PUSH). Three thousand, six hundred and eight-five (3,685) beneficiaries were earmarked for assistance under this programme in the period March to August, in urban high density communities in Kabwe, Kapiri, Ndola, Kitwe, Luanshya, Chingola, Lusaka, Kafue and Monze.

4.0 Street Children and the State

¹⁰ Based on The Economic and Social Development Research Project of the Jesuit Centre for Theological Reflection (JCTR) estimates of the cost of basic food items for a family of six in Lusaka.

An indicator of the extent to which the State was creating an enabling environment in which a people can sustain their livelihoods is the country's emerging problem of street children and orphans. Estimates of street children and orphans range from over half a million to a million.

Programs for street children and orphans are run by NGOs and community groups, which are supposed to draw on the funds realised to the respective ministries. In 2002, government allocated Kwacha 20, 818,224 for “street children” to the Ministry of Community and Social Services and another Kwacha 12, 489,373 to the “Street Kids Programme” under the Ministry of Sport, Youth and Child development.

This however is inadequate. For instance, the Fountain Of Hope drop-in-centre where about 400 to 500 street kids went to eat, learn, play and even sleep, requires US \$400,000 per year, but in the year under review government allocated it only Kwacha 15 million (US \$3,000).

5.0 The State and Security of Workers

Social and economic security of workers continued being undermined in the year 2002, to the extent that realising sustainable livelihoods still remained far-fetched. The year witnessed protest by workers in the mining sector, in particular Luanshya town where the ills of the mining industry is taking its toll. Lusaka City Council workers also aired their grievances in the year under review.

September 30. Luanshya Mineworkers Protest

More than 2,000 mine workers at the Luanshya's Roan Antelope Mine protested against delayed salary arrears and terminal benefits. The workers, who's mine had since gone into receivership, staged a protest outside Joseph Chilambwe, the District Administrator's office. The workers were dissatisfied with the response from Joseph Chilambwe and turned riotous, smashing windows at the Luanshya Civic Center and Pep Stores. Joseph Chilambwe and the policeman who tried to shield him both sustained injuries. The miners clashed with the Police and vowed to continue with their protest until their grievances were addressed.

In reaction to this event, President Mwanawasa advised the miners not to lose hope because government was still working on their problem. He further stated that violence would not solve their problems and they should be patient.

October 17. Council Workers Protest

Lusaka City Council workers assembled at the Civic Centre and pledged never to return to work until local government and housing minister Michael Mabenga addressed them in person over Kwacha three billion salary arrears due to them.

6.0 Retrospect

The State's attempt to promote sustainable livelihoods in terms of food and alleviation of poverty was beset with contradictory forecasts and ill-planning that did little to alleviate the hunger situation in the country. In addition, there was denial of a worsening hunger situation, and stalling with respect to "questionable" food aid. Resolution of the plight of children and workers does not show concerted effort on the part of the State.

Chapter Seven: Getting Educated - (The Right to Education)

1.0 Introduction

The Right to Education is essential for the exercise of civil and political rights such as the right to freedom of expression, freedom of scientific research, and variety of other political rights and freedoms. Even more important is the role education plays in the ability of an individual's access to his/her other social economic and cultural rights so as to attain sustainable livelihood.

The right to education is a universal right provided for in the Universal Declaration of Human Rights, the International Covenant On Economic Social and Cultural Rights, and the African Charter on Human and People's Rights (**Box 1.11**). In its general comments on the right to education the Committee on Economic, Social and Cultural Rights identifies four essential features of the right to education. These are that education in all forms and levels must be available, accessible, acceptable and adaptable.

! BOX 1.11

(a) Article 26 (1) Universal Declaration of Human Rights

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

(b) Article 17 (1) African Charter on Human and People's Rights

"Every individual shall have the right to education."

Article 13 (2) of the International Covenant On Economic Social and Cultural Rights makes provisions, which are necessary for achieving the right to education by the State Parties to the covenant.

The article states:

The State Parties to the present covenant recognise that with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; and
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

All these provisions notwithstanding, the right to education under these international human rights instruments is not justiciable, that is, one cannot bring a suit against the government or local authority or even a parent or guardian for failing to place a child in school. Further the constitution of Zambia does not provide for the right to education.

But,

Section 112 (e) of Part IX, of the Directive Principles of State Policy, of the constitution of Zambia provides that:

"[e] the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all."

It is thence, incumbent on the government of Zambia to institute implement-able policies and practices that show commitment to provision of education for all, and where it fails show incontrovertible evidence that resources are a constraint.

However,

the Government of the Republic of Zambia states that it reserves the right to postpone the application of article 13 (2) (a) of the Covenant, in so far as it relates to primary education; since, while the Government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their

entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.

The succeeding section in this chapter provides an overview of the extent of the availability and accessibility of education in Zambia.

2.0 Getting Educated - Availability and Accessibility

2.1 Basic Education

Availability and accessibility to basic education in Zambia is guided by the Basic Education Sub-sector Investment Programme (BESSIP), which specifically addresses the needs of grades 1 to 7. BESSIP is a Ministry of Education programme with the active assistance of the international development agencies and covers the years 1999 to 2002. The two main goals of BESSIP are to increase enrolment levels and improve the quality of education. BESSIP has an estimated budget of \$340 million of which half is funded by the Zambian government, while the other half is funded by 15 international development agencies.

In the preceding year, the number of Basic schools was 5,677 of which 4,322 are government, 63 grant-aided, 133 private and 1,149 community schools.

In 2002, a total of 410,521 children applied to be enrolled in grade 1. Of these 211,130 were boys and 199,391 were girls. Only 302,242 actually found places and enrolled. In terms of gender, there were 151,582 boys who were enrolled in grade one and 150,660 girls, leaving out a total of 108,279 applicants.

Roughly, 1.77 million children are enrolled in grades 1 to 7. It is estimated that 30% of children in the school going age are not enrolled, which translates into nearly 620,000 children, and over 55% children of school-going age (7) are not in school. It is estimated that in 2001 about 620,000 school-going age children were not in school. In 2001 only 152,132 were enrolled out of a total population of 342,355 aged 7, which meant that 55.6% were not enrolled.

According to the Ministry of Education, the number of pupils enrolled for grades 1 to 7 in government, grant – aided and private schools remained relatively constant at about 1.55 million from 1996 to 2000, but rose slightly to 1.62 million in 2001. Of these, 48.2% were girls while the percentage of urban children enrolled accounted for 28.9% of the total. The national net enrolment has been falling each year from 70.4% in 1996 to 65.1% in 2001. During the same period the gross enrolment rate fell from 85.0% to 76.9%.

Community schools have grown in number considerably from 38 in 1996 to 1,149 in 2001 and enrolment has increased from 6,600 in 1996 to 140,000 in 2001. Enrolment figures have also increased to 140,000 in 2001 with girls representing roughly 50% of the total. In addition, the Interactive Radio Initiative (IRI) is beginning to enrol more pupils. Currently there are 21 interactive radio instruction centres functioning. Seven thousand seven hundred and eight-two (7,782) pupils were enrolled in 2001 in the Interactive Radio Instruction (IRI). The total enrolment, including the community schools and IRI centres, reached 1,774,909 in 2001. Girls represented 48.3% of the total. The inclusion of the pupils from community schools and IRI centres gave a net enrolment rate of 68.5% and a gross enrolment rate of 84.0% in 2001.

The number of pupils enrolled in grades 8 to 9 reached 189,805 in 2001. This figure includes the pupils from the full Basic Schools and those enrolled in secondary schools, including the Academic Production Units (APU). Girls made up 45.4% of the total.

Due to a decline in the number of teachers, the pupil-teacher ratio has declined from a ratio of 38 pupils per teacher in 1996 to 49 pupils per teacher in 2001. Rural schools have been affected more than those in urban areas – for instance, the pupil-teacher ratio in the largely rural Northern Province was 70 to 1 in 2001 compared with 37 to 1 in the heavily urban Copperbelt Province.

The number of classrooms for Basic Schools totalled 23,877 in 2000, of these 74.4% were considered to be in good or fair condition. There are still a significant number of temporary classrooms in the country, representing 18.4% of the total. Roughly half of these temporary classrooms are located in the Western and Northern Provinces.

The progression rates for pupils in 2001 ranged from 92% in grade 1 to 90% in grade 6. The progression rate from grade 7 to 8 in 2001 based on the number of pupils who were selected compared with those who sat the examination was 48.6% with girls having a significantly higher rate of 54.8%. The low progression rates are due to the limited school places available at grade 8 level, and only reflect the number of places available in government schools and do not take into account the pupils that must have found school places in APUs.

The overall dropout rate was 3.8% (63,000 pupils) in 2001. The dropout rate in grade 1 is almost 4%. After that it increases slightly with each successive grade and by the time we get to grade 7 it doubles (reaching 8.7% in grade 7 in 2001).

Further, a facet of getting basic education worth mention is early childhood education or pre-school. Early childhood and education are not the responsibility of the Ministry of Education, but rather curiously pertain to the Ministry of Local Government. However, the Ministry of Education facilitates some response to early childhood needs by training teachers for pre-schools in two of its teacher training colleges. Although the government recognises the importance of early childhood development, it currently provides no pre-school facilities for all children. Virtually, all schools that now exist in the country are run privately and hence are a preserve of those with relatively high incomes.

Lastly, relative to international provision that State Parties shall ensure that primary education shall be compulsory and available free for all, it is note worthy that in March, the government decided to make primary education free, although there is no legal sanction against parents/guardians who may fail to send their children to school.

2.2 High School Education

There are three types of high schools in Zambia: government, grant-aided and private. The total number of schools in 2001 was 256, of which 208 were government, 33 were grant aided and 15 were private.

The number of pupils enrolled for grades 10 to 12 in government, grant aided and private schools has progressively grown from 72,306 pupils in 1996 to 95,839 in 2001, up from 38% in 1996, this is in addition to a total of 4,526 pupils studying through open learning (as of 1999), with 2,415 boys and 2,111 girls respectively.

The total number of teachers in secondary schools was 7,588 in 2001. The pupil-teacher ratio for grade 10 to 12 was 27:1. Female teachers represent 28.5% of the total, and 18.5% of the schools are headed by females.

The percentage of pupils successfully completing high school has remained fairly constant over several years with 62 to 65% of the pupils being awarded a school certificate. Girls have consistently had a lower rate than boys with only 59.8% receiving the school certificate compared to 69.4% of the boys in 2001

It is estimated that about 20% of those completing grade 12 have access to tertiary education and training while the rest seek employment if and when they can find it. Although there are 11 schools in the country piloting on an 'A' Level course the majority of government schools prepare pupils for the grade 12 school certificate, while the private schools largely prepare their pupils for GCE Certificate. Findings on the piloting of the 'A' Levels suggest that the exercise is locally irrelevant because the University of Zambia and the Copperbelt University select candidates based on 'O' Level qualifications.

2.3 Tertiary Education

Tertiary education is composed of two separate groups. The first being that constituting institutions that fall directly under the Ministry of Education, while the second is that of institutions registered under the Technical, Educational and Entrepreneurship Authority (TEVETA). Tertiary institutions under the Ministry of Education include the University of Zambia and the Copperbelt University, and 14 Teacher Training Colleges, of which 12 cater for the training of teachers for grades 1 to 7 and the remaining two for upper basic and high schools. The Natural Resources Development College also provides teachers for agricultural sciences.

TEVET institutions are owned by different training providers, with private ownership constituting 38.1 per cent; public 17.7%; church 16.3%; community 14.3%; trust 7.5%; and, NGO 0.7%. In 2002, there were 240 institutions under TEVETA.

In total, it is estimated that about 20,000 trainees annually are absorbed by these institutions, and of this, 20 to 30 per cent enter public institutions, while 30 to 80 per cent enter those outside the public sector.

The public institutions are still facing academic staffing problems vis-à-vis enrolment figures and funding, with the universities always having the greatest public attention.

For instance,

at the University of Zambia as of July, the average staffing level was 57 per cent, with the school of education having a 30 per cent staffing level; medicine, 45%; law, 48%; agriculture, 60%; veterinary medicine 64%; engineering 65%; natural sciences, 66%; mines 68%; and, humanities and social studies, 70%. Examples of critically staffed departments are education administration and policy in the school of education with only a 13% staffing level and, anatomy (33%) and pathology and microbiology (40%) in the school of medicine. Only the Departments of Disease Control in the School of veterinary medicine and the Department of Crop Science in the School of Agriculture are 100 per cent staffed.

Further, the staffing level scenario is worsened, by the continued brain drain at the university of Zambia. For instance, from January 1 and October 31, the University of Zambia lost 58 academic staff.

In addition, the attrition rate of teachers over the last three years has been estimated at approximately 5%, which translates into roughly 1,600 teachers lost to the system per year, whilst the number of teachers graduating from teacher training colleges was about 1,800 per year from 1996 to 1999. Between 1999 and 2000 the output per year increased to 2,500.

Student number populations at the two universities are still moderate. The University of Zambia in the year 2001/2002 had 3, 640 students, while the Copperbelt University had 1, 729.

2.4 Special Education

A group of learners that has been neglected is that of children with special educational needs (SEN). The neglect of SEN children can be seen through lack of early intervention services,

inadequate special needs education resources, inappropriate resource-rooms and units which are compounded by the fact that many parents feel ashamed to send these children to school.

There are about 250,000 SEN children in Zambia, yet in 1999 only 15,772 were enrolled. In the year 2000, the number enrolled in grades 1 to 9 had reached 19,329, while in 2002 this had gone up marginally to 19,761.

3.0 Financing Education

The government prioritises education as a key social sector and has targeted an allocation of 19% of the total amount annual disposable budget. However, the budget allocation in Zambia is the lowest in the sub-region compared to 25 to 30% in Malawi, Uganda and Kenya.

The Public Expenditure Review of Zambia recommends that 4 to 5% of the Gross Domestic Product (GDP) should be spent on education, while the international recommendation is 6%. In 2000, Zambia spent 2.1% of its GDP on education. The Ministry of Finance projections for 2002 to 2004 envisage that discretionary expenditure will increase from 12 to 15% of the GDP. The increase is based on expected HIPC resources and is part of the Poverty Reduction Strategy Paper (PRSP). Of the planned PRSP domestic resources, 12.3% is earmarked for education. With this increase, share of GDP spent by government is projected to increase to 2.6%.

In 2001, the budget for the first time included the extra funds allocated under the HIPC initiative. The education sector received 21% of the HIPC resources, which accounted for 10% of the education budget. In 2002, 20.1% of the disposable budget (excluding foreign financing, debt servicing, other statutory requirements and contingencies) was allocated to education. The allocation for education of the total budget has increased to 14% in 2002.

The estimated cost to the government of a pupil in grades 1 to 7 increased to USD 40.6 with a large disparity between rural and urban schools. The contributions of parents/guardians amounted to USD 8.1, which represented 17% of the total. With the government's decision that primary education shall be free, it remains to be seen whether the government will increase its unit costs

per student/pupil to cover and even improve upon the contributions that came from parents and guardians.

Lastly, financing acceptable conditions of service for the teaching staff is still problematic. The status of teachers in general has progressively deteriorated. For instance, the monthly cost of living survey shows the basic needs basket cost for a family of six was Kwacha 814, 350 in May 2002, but the average net salary for a basic teacher is between Kwacha 280,000 and Kwacha 309,000.

4.0 Retrospect

The preceding sections show that the challenge the State faces with respect to the citizenry of Zambia being able to get educated is the need to increase access and availability of education institutions; adequacy of staffing; and, financing. Adequacy of staffing is, for instance, evidenced in the high pupil-teacher ratios and the low staffing levels at the University of Zambia. This situation is likely to result in an unacceptable quality of education.

Financing problems are further constrained as, currently, over 80% of the budget to education is going for personal emoluments and recurrent department charges.

Overall, the milestone in terms of the right to education in the last years is the March 2002 government decision to make primary education free.

Chapter Eight: Health and the State

1.0 Introduction

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to the highest attainable standard of health, and its general comment number 14 (1) of 2000 states "health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity."

The right to health is also provided for in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women, and in article 24 of the Convention on the Rights of the Child of 1989. Regionally, article 16 of the African Charter on Human and Peoples' Rights also provides for the right to health.

ICESCR further recognises that "the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health."

The Constitution of Zambia like with many other socio-economic rights does not categorically provide for the right to health. However, there are a number of rights in the constitution that pertain directly or indirectly to health rights, e.g., the right to life, and freedom from torture, cruel and inhuman treatment.

In addition,

Section 112 (d) of Part IX, of the Directive Principles of State Policy, of the constitution of Zambia provides that:

"The State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities."

This serves as a commitment that all actions of government shall be such that attaining acceptable standards of health for the citizenry will be part of the policy priorities.

There are many determinants of health, the major ones being socio-economic, literacy levels, the pattern and behaviour of disease, clean water and good food. HIV/AIDS, tuberculosis, malaria, diarrhoeal diseases, and cholera still remain a significant problem in Zambia.

The succeeding section provides an overview of the State and health in Zambia in the year under review.

2.0 An Overview of 2002

In 2002, the Ministry of Health, produced a policy document, the National HIV/AIDS/STI/TB Policy, aimed at addressing as priorities such as people living with HIV/AIDS, orphans, youth, commercial sex workers, prisoners, public/ private sector workers, men and women. Notable, however, is the absence of the mention of children as a whole in the priority groups mentioned.

HIV/AIDS still poses to be the greatest challenge relative to health in Zambia. HIV/AIDS infection rates are at 28% in urban areas and 13.6% in rural areas. Lusaka and Copperbelt had the highest prevalence rates of one in four adults.

The Zambian Demographic Health Survey 20001-20002, Preliminary Report, of the Central Statistical Office, show that the prevalence rates have gone down to 16% with women having a higher prevalence rate of 18% compared to men. The report further shows that general awareness of AIDS is universal among women and men of reproductive ages in Zambia, 85% of women and 93% of men believe that there is a way to avoid the virus causing AIDS. However younger women, women who have never been to school, rural women and women living in the Southern,

Central and Western provinces are less likely than other women to think that AIDS can be avoided.

On reproductive health, the report shows that current contraceptive use is about 34 per cent among Women aged 15 to 49 years. Sixty-six per cent do not use any method, so there is a low rate of usage. A higher percentage of urban women use contraceptives compared to their rural counterparts. Lusaka and the Copperbelt have the highest percentage of women using contraceptives 47% and 45% respectively, and the Western province has the lowest at 21%.

In addition, the report shows that access to antenatal care is high with coverage in urban at 98% and 91% for rural areas. In terms of care during delivery of babies, urban mothers are three times as likely as rural mothers to have a medically assisted delivery (79% and 28% respectively). The likelihood of a medically assisted delivery also increases with the mother's educational level from 17% among mothers with no education to 78% among mothers with a secondary education.

3.0 Retrospect

For the year under review, HIV/AIDS and reproductive health matters still posse a great challenge to the State in terms of ensuring that the Zambian citizenry enjoys the highest attainable standards of health conducive to living a life in dignity, as HIV/AIDS and Reproductive health information acceptance still seems low.

PART THREE - WOMEN AND THE STATE

1.0 Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), often referred to as the International Bill of Rights for Women to which Zambia is a party, is the major international instrument governing the rights of women. CEDAW provides the basis for realising equality between men and women through the elimination of all forms of discrimination against women (**Box 1.12**).

Further, article 23 of the Constitution of Zambia prohibits discrimination among others, on account of one's sex. Save for this provision there is no other provision that specifically provides for the protection of the rights of women. However, article 23 allows for discrimination of women in wide areas of administration and social practice by making the provision in section 4 non-applicable with regard to the application of custom and tradition as well as in all other matters or personal law.

Article 23 (4) is contradictory to the provisions of CEDAW, and hence in June, a UN committee monitoring the implementation of CEDAW urged the Zambian Government to repeal the article.

Other Zambian laws categorically affecting the rights of women are the Local Courts Act, the Interstate Succession Act, the Wills and Administration of Testate Estates, and the Marriage Act.

! BOX 1.12

Convention on the Elimination of All Forms of Discrimination against Women PART I Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

The Local Courts Act governs the activities and work of the Local Courts through which customary laws are administered. Local Courts are the most commonly used courts in the country. The application of African Customary Law by the Local Courts under this Act has continued the perpetuation of discrimination against women particularly in areas that include inheritance, divorce, marriage, and custody of children.

The Interstate Succession Act applies where one dies without leaving a will, while the Wills and Administration of Testate Estates Act where one dies having left a valid will. These Acts do little to protect women from neither discrimination nor harassment by the relatives of a deceased husband. The Interstate Succession Act actually provides not only for devolution of property in a monogamous union but also in a polygamous one.

The Marriage Act that governs issues of marriage under statutory laws also recognises polygamy and further subordinates women to men by providing that a mother's consent for the marriage of a minor can be obtained only when the father is dead or of unsound mind.

The guiding policy instrument for women's rights in Zambia is the National Gender Policy. Sections in this part of the report provide an overview of institutional arrangements, women, violence and security in 2002.

2.0 Institutional Frameworks

The Government adopted the National Gender Policy on March 6, 2000. Consequently, a Gender in Development Division (GIDD) was established with the role of implementation of the policy. GIDD embarked on a consultative process in formulating the implementation plan, and this culminated in a national consultation, which was held in August 2002. Concerns with respect to the process have been the speed with which the process is occurring, and human resources available at GIDD.

Time needs to be invested to review the way the division is supposed to operate especially since gender, as a subject tends to meet with hostility at individual level in the public sector, a factor that GIDD acknowledges. This hostility can frustrate the efforts at gender mainstreaming.

Government commitment will need to be shown through gender awareness training for the senior government officials.

3.0 Women, Violence and Security

The security of women is cardinal to the protection of women's rights. This section provides an overview of gender based violence, with such violence constituting acts that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

The security of women is often undermined when customary practices are used as an excuse. And further, when State agents like the Police fail to take necessary action to protect the rights of the victims.

Mutinta's case at an YWCA/WLSA Tribunal on Gender Violence (November 25 - December 10) in Mazabuka, attests to this.

Mutinta is a woman based in the rural area of Mazabuka who was widowed and had all her property grabbed by her deceased husband's relatives. They took the maize from the field, evicted her from her marital home and put the house on rent. The deceased husband's family appointed an administrator without her knowledge. The administrator collected the terminal benefits from her husband's employers without her knowledge. They also took the grocery store and the bankbook, thus living Mutinta with no means of livelihood. Mutinta reported the matter to the Police, where she was told that as a widow she was still in mourning and that they would attend to her after' the Mweesho ceremony. A cultural ceremony that marks the end of mourning of a dead person among the Tonga people and usually takes place after a year following the death of a person.

Further, an overview of data for the year 2002 provided by the National Legal Aid Clinic for Women of the Law Association of Zambia based on cases opened, shows that inheritance and succession issues are the major constraints to the security of women with respect to promotion

and protection of women's rights (Table 2.0). Criminal cases, which include cases of gender violence, constituted 2% of reported cases.

Table 2.0 Cases Open at the National Legal Aid Clinic for Women

Inheritance / Succession	561
Legal Advise	506
Divorce	458
Property settlement	257
Custody of child	89
Maintenance	242
Counselling	232
Conveyancing	153
Affiliation	49
Adoption	27
Probate	94
Land Dispute	101
Will Writing	60
Industrial Relations	205
Compensation	22
Eviction / Tenancy Dispute	75
Sexual Harassment	37
Criminal Cases	69

4.0 Retrospect

The year shows that one of the main challenges to women's rights still lie in domestication of international instruments and implementation of the national gender policy, retardation in this

process shows continued negation of women's rights, especially as the security of women is still threatened by customs and traditions.

PART FOUR - STATE INSTITUTIONS AND HUMAN RIGHTS PROTECTION

1.0 Introduction

This section of the report provides an overview of State institutions tasked with the promotion and protection of human rights and good governance.

Noteworthy with respect to State human rights and governance institutions is the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender observation that institutions that are mandated to promote accountability and transparency in the management of public affairs are not as effective as they should be as they depend on the Executive for funding for their operations and therefore lack independence. The committee therefore recommended that to strengthen these institutions to effectively perform their role as watchdogs of the Executive, government should ensure that they are autonomous and financially independent.

State institutions considered in this part of the report are the Anti Corruption Commission and the Drug Enforcement Commission. Information is also provided on the Police Public Complaints Authority and the Permanent Human Rights Commission, two institutions to which the citizenry can lodge human rights complaints.

2.0 The Anti Corruption Commission (ACC)

The ACC operates under the Anti-Corruption Act No.42 of 1996, which created an autonomous Anti Corruption Commission, which "shall not be subject to the direction or control of any person or authority", but provides for the establishment of a commission consisting of five commissioners who are appointed by the president, subject to ratification by parliament.

Noteworthy, is that the latest corruption perception index for 2002 compiled by Transparency International, ranks Zambia the 11th most corrupt country out of 102 countries surveyed.

The year 2002 can be referred to as the year of revelations. The print media played a watchdog role by exposing how the Chiluba administration plundered the country's scarce resources within 10 years. The major scandals revealed are:

- The bribe of about US\$ 168,000 to former Chief Justice, Mathews Ngulube by former president, Fredrick Chiluba.
- Loss of US\$ 100 million of tax- payers' money from Zambia National Oil Company, now under liquidation.
- About US\$ 10 million misused by the Chiluba administration through the Zambia Trans-Regional Operations intelligence (ZAMTROP) account in London.
- About US\$ 140 million unaccounted for from the sale of copper and cobalt in Belgium
- The alleged awarding of a contract to Lendor Burton Construction by government to grow winter maize in Chiawa, Southern province, without following tender procedures.
- The alleged illegal funding of the Maureen Mwanawasa Initiative using public funds e.g. the K700 million for Southern and Central provinces trips and donations, reported in the Post of Thursday July 11.
- The alleged influence of the opposition members of parliament during the elections of the Speaker of the national assembly and the issue of maintaining district administrators
- The intended decision by government to award land to an international conman, Naidoo.

2.1 Performance of the Anti-Corruption Commission

Human resource development was undertaken in the year under review, with 34 Investigations Officers recruited and trained. The Commission has managed to retain them except one who won a scholarship to go and study abroad. In addition, a number of in-house training programmes were conducted in order to update the serving officers with latest techniques and skills in combating corruption

Further, the Commission was in the process of opening offices in Mansa, Mongu and Solwezi in order to cover the entire country.

Through the Civic Education and Corruption Prevention Fund (CECP) DFID - British government, civil society organisations, professional and trade associations had the opportunity

to take targeted action and advocacy where they have identified corruption as an issue undermining development and perpetuating poverty, injustice and inequality.

2.2 Financing

A commitment to adequate funding of the Commission was made when Levy Mwanawasa took office as republican president. The Commission was allocated Kwacha 9.5 billion, compared to the preceding years allocation of Kwacha 3.6 billion.

3.0 The Drug Enforcement Commission (DEC)

Drug abuse and trafficking may not directly affect human rights, but the issue has serious human rights consequences.

First, drug abuse and trafficking acts undermines rights like the right to security of the person, right to life, as the acts can have adverse effects on health (increased susceptibility to HIV/AIDS and hepatitis), lead to an increase in crime, violence and corruption, and can also be a drain on fiscal resources that might otherwise be used for social and economic development. Drug-related problems include increased rates of crime and violence.

Second, State acts aimed at drug abuse and trafficking control can directly result in negation of fundamental human rights like the right to freedom of religion, equal protection under the law, and the right to privacy. This is because State acts in the control of drug abuse and trafficking can often be stereotypically discriminatory, especially where a particular group of persons is assumed to be the most involved in drug abuse and or trafficking. Such behaviours by the State have not been observed in Zambia, hence this section considers the control of drug abuse and trafficking in a positive sense.

The State institution tasked with the control of drug abuse and trafficking is the Drug Enforcement Commission (DEC). The Commission was established under the dangerous Drugs

(Forfeiture of Property, Special organization, Drug Enforcement Commission) Regulations, 1989 and is gets authority also from the Narcotic Drugs and Psychotropic Substances Act of 1996¹¹.

The Commission is a department in the Ministry of Home Affairs as provided for by section 4(2) of the Narcotic Drugs and Psychotropic substances Act as such it is funded monthly by the Ministry Finance and planning through the Ministry of Home Affairs.

3.1 Interception, Arrests and Prosecutions

Drug control (use and trafficking) in Zambia mostly covers various forms of cannabis (seed, resin), heroin, mirra, phenobarbital, diazepam, lidocaine, methaqualone (mandrax), lorazepam, benzocaie, hashish cake, diphenhydramine and oxepam.

In the year under review, the DEC conducted 2 412 operations in which 3 288 people were arrested. Between January and October, the Commission reported an increase in the demand and supply of Cannabis on the market both local and foreign. For instance, in October the Commission intercepted 493 kilograms of Cannabis. Country wide a total of 13 tons of Cannabis with a street value of over Kwacha 10 billion was seized.

As at October, 2 765 persons were prosecuted and only 1, 325 had been convicted by the courts of law. Two hundred and forty-four (244) persons were discharged, 31 acquitted, and 1 469 cases pending in the courts of law.

Different nationalities constituted the arrests in the year under review. Table 3.0, below, shows some numbers of persons arrested and their nationalities.

Table 3.0 Number of DEC Arrests by Nationality

¹¹ The Narcotic Drugs and Psychotropic Substances Act was meant to revise and consolidate the law relating to narcotic Drugs and Psychotropic substances; incorporate into the Zambian law certain International Conventions governing issues like illicit drugs and psychotropic substances; control importation, and provide for the seizure and the forfeiture of the property relating to, or connected with, the unlawful activities involving narcotic drugs and psychotropic substances. The Act also repeals the dangerous Drugs (forfeiture of the Property) of 1989 and it also provides for matters connected with or related to the foregoing.

No. of Persons	Nationality
3 119	Zambian
38	Congolese
24	Angolan
18	Tanzanian
13	South African
13	Chinese
10	Zimbabwean
10	Somalian
8	British
4	Indian
4	Irish

Other nationalities are Swiss, Mexican, Kenyan, Pakistani, Belgian, Korean, Canadian, Dutch, German, Rwandese, Jamaican, Malawian, Italian, French, Senegalese, American, Ugandan, Greek, Asian-Zambian, Yugoslav, Egyptian and Cypriot. These constitute numbers persons arrested by nationality of less than three (3).

4.0 Additional Information - the Police Public Complaints Authority and the Permanent Human Rights Commission

4.1 The Police Public Complaints Authority

Part XA of the Zambia Police Act (as amended in 1999) of the laws of Zambia provides for the Police Public Complaints Authority. This is a State institution, to which all complaints against police actions and those, which result in serious injury, or death of a person can be lodged.

The powers of the Authority as provided in Section 57H of part XA are to investigate all complaints referred to it by:

- An aggrieved person directly affected by police action;

- An association acting in the interests of its members; and,
- A person acting on behalf of an aggrieved person, body or organisation.

Further section 57I provides that:

"A person who has a complaint against a police officer may within two (2) years of occurrence of the incident that gave rise to the complaint, lodge it with either the secretary of the Complaints Authority, the principle officer of the local authority in the area where the incident or circumstances giving rise to the complaint occurred; or the inspector-general or the officer in charge of a police station or post."

And that,

Submission of complaints may be oral or in writing, and should include "the name, physical and postal address of the person making the complaint; complainants age; and detailed statement of the facts of the incident or circumstances giving rise to the complaint", and "where the complaint is made orally, the recipient of the complaint shall reduce it to writing. The complaint shall bear the signature or thumb print of person making it"

The address of the Police Public Complaints Authority is:

Police Public Complaints Authority

P.O Box 33753

Kabulonga Road, Kabulonga

LUSAKA

Telephones: (01) 263734 and 264468

4.2 The Permanent Human Rights Commission

The Permanent Human Rights Commission was established by an Act of parliament in 1996.

The functions of the Commission include:

- Investigating human rights violation;
- Investigate mal-administration of justice;
- Propose effective measures to prevent human rights abuse; and,
- Visiting prisons and places of detention or related facilities with a view to assessing and inspecting conditions of persons held in such places and make recommendations to redress existing problems

A person may make a complaint to the Commission, orally or in writing, addressed to the Director of the Commission. The complaint, should bear the name and address of the person lodging the complaint and the nature of the complaint, and should be brought to the attention of the Commission (i.e. submitted) within two (2) years of the date on which the facts of the complaint became known to the person lodging the complaint.

The address of the Permanent Human Rights Commission is:

Permanent Human Rights Commission
P.O Box 33812
Human Rights House (opposite Mulungushi House)
Independence Avenue, Ridgeway
LUSAKA
Telephones: 251327 and 251357
Lusaka.

5.0 Retrospect

The preceding overview of the ACC and DEC shows appreciable levels of performance. Financing levels to the ACC showed a commitment of the State with respect to control of corruption.

PART FIVE - SUMMARY OF CONCLUSIONS

The Afronet 2002 Human Rights Report is an interrogation of the socio-political contract between the citizenry and the State, where the State undertakes both not to impinge on the citizenry's civil and political rights to something for the citizenry like endeavour to provide sustainable livelihoods through provision of for instance education, health and food security.

Part one - civil and political rights,

Chapter one (The Rule of Law, Justice and the Judiciary), showed that access to Justice for the majority continued to be constrained, there was State interference with the prosecution and witnesses, and that the questioned 2001 presidential and parliamentary elections proved to be a monumental task for the judiciary.

Chapter two (Freedom of Expression and the Media), showed that the continued use of colonial defamation and criminal libel clauses in the laws of Zambia undermined the pursuits of the media to freely receive and communicate information and ideas.

Chapter three (Freedom of Assembly and Association), showed that the misapplication of the Public Order Act is the biggest constraint to the exercise of freedom of assembly. The provision in the Act that persons wishing to assemble provide notice, and that the Police should within five (5) days provide reasons as to why the gathering should not go ahead, was misinterpreted to mean that persons wishing to assemble should seek permission from the State.

Chapter four (Right to Political Choice), mostly showed that the integrity of the 2001 presidential and parliamentary elections needed to be questioned, as most election petitions in the year under review were characterised by revelations of anomalies in the conduct and administration of the elections.

Chapter five (The Police, Torture and the Victims) showed that the police often abrogated their responsibility of being the protectors of life and property and the preservers of law

and order. The police subjected citizens to unlawful detentions, extrajudicial killings and torture.

Part two - economic, social and cultural rights,

Chapter Six (Food, Poverty, and the State) showed that the State's endeavour to provide sustainable livelihoods in the face of hunger was characterised by ill-planning, and political denial of the realities of hunger in Zambia.

Chapter seven (Getting Educated), showed that where the State to strive to meet its endeavour in providing education, apart from the declaration that primary education would be free, there is need to increase assess and availability of education institutions, provide adequate of staff levels and financing.

Chapter eight (Health and the State), showed that HIV/AIDS and reproductive health are still a major constraint to attaining the highest attainable standards of health for the citizenry.

Part three - women and the State,

Showed that if women are to enjoy most rights provided for in international human rights instruments there is need for the State to domesticate the international instruments and implement the national gender policy.

Part four - State Institutions and human rights protection,

Showed that the reviewed institutions, that is the ACC and DEC had appreciable levels of performance, with the increased financing levels to the ACC being to some extent a measure of commitment of the State to control of corruption.

Appendix I

List of International Instruments ratified or acceded to by the Zambian Government (the year of ratification or accession is provided in brackets)

- The International Convention on the Elimination of All forms of Racial Discrimination (1972)
- The International Covenant on Economic, Social and Cultural Rights (1984)
- The International Covenant on Civil and Political Rights (1984), and the First Optional Protocol
- The African Charter on Human and People's Rights (1984)
- The International Convention on the Elimination of All forms of Discrimination Against Women (1985)
- The International Convention on the Rights of the Child (1991)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1998)