

# ZAMBIA

## EXECUTIVE SUMMARY

Zambia is a republic governed by a democratically elected president and a unicameral national assembly. In multiparty general elections on September 20 that were considered generally free and fair by international and local observers, leader of the opposition Patriotic Front (PF) Michael Chilufya Sata was elected president. The previous ruling party, the Movement for Multiparty Democracy (MMD), had exerted considerable influence through its patronage and allotment of government resources. Security forces reported to civilian authorities.

Serious human rights abuses occurred during the year. The most important were security force attacks on the physical integrity of persons, including unlawful killings, torture, beatings, and abuse; life-threatening prison conditions; and arbitrary arrests and prolonged pretrial detention.

Other serious human rights problems included long trial delays; arbitrary interference with privacy; restrictions on freedom of speech, press, assembly, and association; government corruption; violence and discrimination against women; child abuse; trafficking in persons; discrimination based on sexual orientation and against persons with disabilities; restrictions on labor rights; forced labor; and child labor.

The government generally did not take steps to prosecute or punish officials who committed abuses, and impunity remained a problem.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

Unlike the previous year, there were a few reports that the government or its agents committed arbitrary or unlawful killings.

For example, on January 14, police killed two persons and injured several others during a violent crackdown on protests in Mongu and Limilunga, Western Province. Protesters had gathered in Limilunga to demand the restoration of the 1964 Barotseland Agreement (see section 6). The new government, which assumed power in September, appointed a commission of inquiry to look into the killings. By year's end, the commission had not issued a report.

The government rarely punished perpetrators. Officials encouraged police officers to use their weapons when apprehending suspects, despite a government directive that restricted the use of firearms by police officers and a government pledge to retrain police on the use of force.

There were no further developments in the following killings in 2010: the September shooting of a suspect by three police officers in Chipata, and the unconfirmed October reports of police killing of two persons in Mongu.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution prohibits such practices; however, police frequently used excessive force, including torture, when apprehending, interrogating, and detaining criminal suspects or irregular immigrants. The government's Human Rights Commission (HRC) urged the government to draft and enact legislation that would criminalize torture and provide for compensation to victims; however, no legislation had been drafted by year's end. Authorities also detained, interrogated, and physically abused family members or associates of criminal suspects in attempts to identify or locate the suspects. Officers who tortured, beat, or otherwise abused suspects generally were not disciplined or arrested for such acts.

For example, on May 27, police arrested Edwin Kambia and allegedly undressed him, soaked him in water, locked him in the trunk of a vehicle, and in the trunk set off a tear-gas canister from which he received multiple burns on his face and body. No action was taken against the perpetrators.

There were no further developments in the following 2010 reports of inhuman and degrading treatment: the September report by Human Rights Watch (HRW) noting that dozens of prisoners had been beaten or tortured with electricity in six prisons, or a November report that police tortured a man who died while in police custody in Lusaka.

According to human rights groups, there were reports of police demanding sex from female detainees as a condition for their release. There also were reports that police officers raped women and girls while they were in custody.

### **Prison and Detention Center Conditions**

Prison conditions were poor and life threatening. An inefficient judiciary delayed court proceedings, which contributed to the holding of large numbers of pretrial detainees in prison for extended periods and exacerbated overcrowding. The country's prisons, which were built to hold 5,500 inmates, held 16,670 prisoners and detainees in April 2010, according to the Prisons Service. For example, Lusaka Central Prison, which was designed to accommodate 200 prisoners, held more than 1,500. By law police can detain suspects up to 24 hours in holding cells before transferring them to one of the "remand prisons," which are supposed to house detainees prior to conviction exclusively but, in practice, were also used to hold convicted prisoners. Conditions in remand prisons did not generally differ from those in other prisons.

Poor sanitation, dilapidated infrastructure, inadequate and deficient medical facilities, meager food supplies, and lack of potable water resulted in serious outbreaks of dysentery, cholera, and tuberculosis, which the overcrowding exacerbated. Prisons generally had inadequate provisions for ventilation, temperature, lighting, and basic and emergency medical care.

Prisoners routinely complained that authorities denied them access to medical care as provided by law. Failure to remove or quarantine sick inmates and the lack of infirmaries at many prisons resulted in the spread of airborne illnesses, such as tuberculosis, leading to the reinfection and deaths of prisoners. The supply of tuberculosis drugs was erratic. Many prisoners were malnourished because they received only one serving of cornmeal and beans per day, called a "combined meal" because it represented breakfast, lunch, and dinner. Antiretroviral treatment was available to some prisoners with HIV/AIDS, but poor nutrition often rendered the treatment ineffective. Authorities denied many prisoners access to condoms. From 1995 to 2000, approximately 2,400 inmates and 260 prison staff died of AIDS-related illnesses. The percentage of prisoners infected with HIV/AIDS was significantly higher than the general population. Approximately 27 percent of men and 33 percent of women in prison were infected, while about 14.3 percent of the general population was HIV positive.

Juveniles often were not held separately from adults. Women and men were generally held separately. Prison conditions for women were somewhat better than for men. In a 2010 report HRW estimated that women made up 18 percent and juveniles 10 percent of all prisoners. Incarcerated women who had no alternative for childcare could choose to have their infants and children under the age of four with them in prison. However, prisons provided no food or medical services to such children, and mothers had to share their meager rations with them in an environment that often exposed the children to disease without appropriate medical care. Pretrial detainees were not held separately from convicted prisoners.

Prisoners and detainees had reasonable access to visitors and were permitted religious observance. The government did not actively investigate or monitor prison and detention center conditions. Prisoners and detainees generally could not submit complaints to judicial authorities or request investigation of credible allegations of inhumane conditions.

The government permitted prison visits by both domestic and international nongovernmental organizations (NGOs) during the year, including by religious institutions, and the Legal Resources Foundation. There were no ombudsmen who could serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate inhumane overcrowding; address the status and circumstances of confinement of juvenile offenders; or improve pretrial detention, bail, and recordkeeping procedures to ensure prisoners do not serve beyond the maximum sentence for the charged offense.

#### **d. Arbitrary Arrest or Detention**

Although the constitution and law prohibit arbitrary arrest and detention, the government did not respect these prohibitions in some instances.

On August 18, the High Court freed Mateo Mfula Kapotwe, who had been detained without trial for more than 10 years on charges of murder.

#### **Role of the Police and Security Apparatus**

The Zambian Police Service (ZPS), divided into regular and paramilitary units under the Ministry of Home Affairs, has primary responsibility for maintaining law and order. The Zambia Security Intelligence Service (ZSIS), under the Office of the President, is responsible for intelligence and internal security. The Central

Police Command in Lusaka oversees nine provincial police divisions with jurisdiction over police stations in towns countrywide. Although the government identified a need for 27,000 police officers and hired approximately 1,500 new officers during the year, only an estimated 15,000 police were on duty at year's end.

The approximately 21,600-member defense forces, divided into the army, air force, and national service, have primary responsibility for national defense and cooperation with the appropriate civilian authority in times of natural disasters and other emergencies. The defense forces have domestic security responsibility only in cases of national emergency. By law the vice president declares a national emergency in cases of natural disasters, and the president declares a national emergency in a state of war, insurrection, hostilities, or public emergency. Each service has a commander who reports to the minister of defense.

Paramilitary units of the ZPS, customs officers, and border patrol personnel conduct patrols on lakes and rivers. The Drug Enforcement Commission (DEC) is responsible for enforcing the laws on illegal drugs, fraud, counterfeiting, and money laundering. The DEC employs approximately 300 agents to oversee illegal drug enforcement.

Lack of professionalism, poor investigatory skills, and inadequate discipline in the security forces remained serious problems. Low salaries and substandard government housing exacerbated police corruption, as did poor working conditions.

In an effort to address these issues, the Police Public Complaints Authority (PPCA) encouraged aggrieved members of the public to report cases of human rights abuse by police. The PPCA met during the year to review complaints regarding police conduct that were not resolved through internal police channels. However, many cases of abuse went unreported due to citizen ignorance of the PPCA and fear of retribution.

Civilian authorities maintained control over security forces, and the government generally investigated credible reports of corruption or abuse by security forces.

### **Arrest Procedures and Treatment While in Detention**

The constitution and law provide that authorities must obtain a warrant before arresting a person for some offenses; other offenses have no such requirement.

Police are not required to obtain a warrant when they suspect that a person has committed offenses such as treason, sedition, defamation of the president, or unlawful assembly. In practice police rarely obtained warrants before making arrests.

According to the law, suspects being arrested must be informed of their rights, including the immediate right to an attorney. Although the law provides that indigents should have a state-provided attorney when they face serious charges, public defenders were overwhelmed, and many of the defendants had no legal counsel. Despite the law's providing that persons arrested must appear before a court within 24 hours of their arrest, detainees frequently were held for much longer periods because prosecutors routinely required that officers collect additional evidence before presenting cases to court. The law provides for prompt judicial determination of the legality of charges against a detainee; however, authorities often did not inform detainees promptly of charges against them.

Although there was a functioning bail system, prisons were overcrowded in part because indigent detainees and defendants did not have the means to post bail or were held for offenses for which bail is not granted, including murder, aggravated robbery, and violations of narcotics laws. In practice police generally did not respect a prisoner's right to apply for bail. The government's legal aid office, responsible for providing representation for indigent detainees and defendants in criminal or civil cases, assisted few arrestees.

Arbitrary Arrest: Arbitrary arrest and detention remained problems. Police arbitrarily arrested family members of criminal suspects. Criminal suspects were arrested in some instances on the basis of insubstantial evidence, uncorroborated accusations, or as a pretext for extortion. Police officials disciplined some officers found engaging in extortion of prisoners, including via suspensions and written reprimands, although dismissals for extortion were rare.

Pretrial Detention: Prolonged pretrial detention was a problem, and some defendants awaited trial for 10 years or even longer. Approximately one-third of persons incarcerated in remand and other prisons had not been convicted of a crime or received a trial date. Broad rules of procedure give wide latitude to prosecutors and defense attorneys to request delays or adjournments. According to human rights groups, prison administrators routinely altered paperwork to make it appear as though prisoners had appeared before a magistrate when they had not, often because prison authorities had no fuel to transport prisoners to courts. Judicial

inefficiency, lack of resources, and lack of trained personnel also contributed to prolonged pretrial detention.

Amnesty: During the year at least 1, 275 prisoners were granted amnesty. On March 9, then president Banda remitted the sentences of 574 inmates and ordered their immediate release from prisons across the country. On September 29, newly elected President Sata pardoned at least 28 prisoners who were involved in the January riots in Mongu, Western Province, and on October 23, he pardoned a further 673 prisoners from across the country.

### **e. Denial of Fair Public Trial**

While the constitution and law provide for an independent judiciary, the government did not consistently respect judicial independence, and the judicial system was hampered by inefficiency, corruption, and lack of resources. Government officials used their offices to circumvent standard police and judicial procedures. At the same time, during the year the courts in some instances made judgments and rulings critical of the government. In several instances the courts awarded damages in cases of police and other security force abuse or unlawful arrest.

### **Trial Procedures**

Defendants are considered innocent until proven guilty. Trials in the courts are public. Juries are not used. A magistrate renders judicial decisions and determines sentences. Although trials are open to the public, the public is not permitted to comment on an ongoing case. Defendants have the right to be present and to consult with an attorney, but many defendants lacked the resources to retain a lawyer. The law provides for free legal counsel when indigent defendants face serious charges. Public defenders, however, were overwhelmed with cases and assisted few detainees. Defendants can confront or question witnesses against them, and present evidence and witnesses on their behalf. Defendants and their attorneys have access to government-held evidence relevant to their cases. Defendants have the right to appeal.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

There is a largely independent and impartial judiciary in civil matters, and complainants have access to the High Court to seek damages for human rights abuses. There are administrative remedies available as well as judicial remedies for alleged wrongs. At the same time, there were problems enforcing civil court orders, due to insufficient judicial resources.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions, but the government frequently did not respect these prohibitions in practice. The law requires a search or arrest warrant before police may enter a home, except during a state of emergency. Police routinely ignored this requirement and arrested suspected criminals at their homes without an arrest warrant.

The law grants the DEC, ZSIS, and police authority to monitor communications using wiretaps on the basis of a warrant issued on probable cause.

Authorities sometimes detained, interrogated, and physically abused family members of criminal suspects to obtain their cooperation in identifying or locating suspects.

### **Section 2. Respect for Civil Liberties, Including:**

#### **a. Freedom of Speech and Press**

##### **Status of Freedom of Speech and Press**

Although the constitution and law provide for freedom of speech and press, the government restricted these rights in practice. The law includes provisions that may be interpreted broadly to restrict these freedoms.

Freedom of Speech: The government generally allowed but sometimes attempted by intimidation to impede individuals' right to criticize the government. For example, on January 18, police detained *The Post's* journalist Mwala Kalaluka for allegedly discussing the January 14 Barotseland Agreement riots over the cell phone.

Freedom of Press: Two of the most widely circulated newspapers were government-run. Until the September 20 national elections, the ruling party



exercised considerable influence over both newspapers, including reviewing articles prior to publication and censoring individuals responsible for published articles that criticized the government. Opposition political parties and civil society groups complained that government control of the two newspapers limited their access to mass communication.

The independent media were active and expressed a wide variety of views. A number of privately owned newspapers questioned government actions and policies. Although these circulated without government interference, officials used the law to suppress criticism of political or other leaders. For example, on September 8, law enforcement officers briefly detained *The Post's* photojournalist Thomas Nsama for allegedly taking pictures of accused prisoners outside the court and deleted the pictures from his camera, on grounds what he did amounted to espionage.

In addition to a government-controlled radio station, numerous private radio stations existed. The government-owned Zambia National Broadcasting Corporation (ZNBC) was the principal local-content television station. Several private television stations, including foreign-owned media, also broadcasted locally.

Violence and Harassment: Government officials and ruling party supporters repeatedly targeted the leading independent newspaper with threats and litigation for publishing information critical of the government.

On July 18, more than 100 supporters of the then-ruling MMD beat a Muvi-TV crew and seized media equipment and cell phones while the crew interviewed a woman whose land was allegedly confiscated by MMD supporters in Lusaka. At least 11 suspects were reportedly arrested and charged for their part in the violence. Their cases remained pending at year's end.

The government detained and censured individuals responsible for programs the government deemed offensive.

The law permits presidential investigative tribunals to call as witnesses journalists and media managers who printed allegations of parliamentary misconduct. Failure to cooperate with a tribunal can result in charges of contempt, which are punishable by up to six months in prison. The media criticized these provisions as infringements of freedom of the press and claimed they were means for

parliamentarians, some of whom concurrently served in cabinet positions, to bypass the court system.

Censorship or Content Restrictions: Journalists in the government-controlled media generally practiced self-censorship.

On January 14, police closed down Radio Lyambai for allegedly inciting violence during the Barotseland riots in Mongu; it remained closed by year's end.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

#### **Freedom of Assembly**

The constitution and law provide for freedom of assembly; however, the government restricted this right in practice. Although the law does not require a permit to hold a rally, it requires organizers to notify police seven days in advance. Police are empowered to decide when and where rallies may be held and who may address participants. The government on occasion used the law's broad mandate to change arbitrarily the time and date of rallies, particularly of opposition political parties and NGOs, and did so during the year, including during by-election campaigns.

There were cases of police using violence to disperse protests (see section 6 National/Racial/Ethnic Minorities).

For example, on April 18, police used violence to quell riots in Mansa, which led to the death of four persons and injured several others. Police arrested more than 220 protesters.

## **Freedom of Association**

The law provides for freedom of association, but the government has placed some limits on this right. All organizations must formally apply for registration to the Ministry of Home Affairs' Registrar of Societies. The registration process was long and permitted considerable discretion on the part of the registrar. Unlike previous years, there were no known cases in which the registrar refused to register an organization.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. Refugees were required to have permission from the government to move or live outside refugee camps. Such permission was frequently granted.

In-country Movement: The government intermittently limited in-country movement. Police used roadblocks to control criminal activity, enforce customs and immigration regulations, check drivers' documents, and inspect vehicles for safety compliance. Police sometimes extorted money and goods from motorists at these roadblocks.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

According to the UNHCR, by year's end, the country hosted 32, 242 refugees, mainly from Angola and the Democratic Republic of Congo (DRC). Approximately 27,000 resided in the refugee settlements of Meheba and Mayukwayukwa, and about 5,255 were living in urban areas.

Refugee Abuse: The law prohibits physical and sexual abuse of anyone within the country, including refugees. Although cases of sexual and gender violence against refugees were known to occur, no specific cases were reported during the year.

Access to Basic Services: Refugees were provided access to basic services, education, police, and courts. Government policy limited refugees' legal employment options to refugee camps, unless refugees obtained specific government authorization to work outside camps.

Durable Solutions: The government cooperated with the UNHCR in facilitating durable solutions for refugees. Over 2,000 Angolans voluntarily repatriated during the year along with smaller number of refugees from the DRC, Rwanda, and Burundi. The government announced that it would offer legal integration, including citizenship and permanent residence status, to at least 10,000 Angolans who wished to remain in Zambia. However, by year's end, no official steps had been taken to implement this offer formally.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees. However, there were reports during the year the government expelled Zimbabweans and other foreign nationals who could not provide evidence they were refugees and were therefore considered irregular migrants.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic elections held on the basis of universal suffrage.

#### **Elections and Political Participation**

Recent Elections: On September 20, Michael Chilufya Sata of the PF was elected president with 41.9 percent of the vote. Former president and MMD candidate

Rupiah Banda received 35.4 percent, and Hakainde Hichilema of the United Party for National Development (UPND) 18.17 per cent. The rest of the votes were shared by seven other contenders who each obtained less than 1 percent. Of the 150 constituency-based parliamentary seats, the PF won 60, the MMD 55, the UPND 28, the Alliance for Democracy and Development (ADD) one, and the Forum for Democracy and Development (FDD) one; three candidates were elected as independent members. The three remaining seats were contested on November 28; two went to the PF and one to the UPND. Although the then-ruling MMD campaign was characterized by abuse of public resources and a progovernment public media campaign, several local and international observers concluded that the elections were generally free and credible.

Political Parties: Political parties could operate generally without restriction or outside interference, and individuals could independently run for election. However, many observers believed that the then ruling MMD, in the lead-up to the general elections, exerted considerable influence over the electoral process by using government resources to conduct political campaigns. In the aftermath of the September 20 elections, several MMD officials faced victimization at the hands of the PF government and supporters. For example, on December 21, police arrested William Banda, a prominent MMD leader, for “unlawful assembly” while he held a meeting with 19 other MMD members at a restaurant in Lusaka. He was subsequently released.

Participation of Women and Minorities: During the September 20 general election, female candidates for parliament won 17 of 150 constituency-based seats. Two women were appointed to the 20-member cabinet, and five to the 11-member Supreme Court. There was one minority member of parliament who was subsequently appointed vice president. No laws or traditions directly prevent women from voting or participating in political life on the same basis as men.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption, and the government attempted to implement the law. Nevertheless, some officials engaged in corrupt practices with impunity. Petty corruption among police and other public authorities was particularly problematic. Police, who enjoyed a high degree of impunity, released prisoners for bribes, extorted money from victims, and required “document processing fees,” or “gas money” to commence investigations.

The World Bank's latest Worldwide Governance Indicators reflected that corruption was a serious problem. There remained a widespread public perception that corruption was pervasive in almost all government institutions.

The government has a National Anti-Corruption Policy and National Anti-Corruption Implementation Plan. The Anti-Corruption Commission (ACC), which reports independently to the president, is responsible for combating government corruption. The government continued its collaboration with the international community to improve its capacity to investigate and prevent corruption. Parliamentary committees sustained their scrutiny of operations of the executive branch and corrected some irregularities reported by the Office of the Auditor General. The ACC continued its prosecutions and public educational activities.

Upon assuming office on September 23, President Sata ordered investigations into alleged corruption in the procurement of oil by the Energy Regulation Board and the sale of the former parastatal Zamtel and the Zambia Revenue Authority. President Sata also dismissed several senior government officials from the former regime, including Director General for the ACC Colonel Godfrey Kayukwa, DEC Commissioner Aaron Zulu, Police Inspector General Francis Kabonde, and Attorney-General Abyudi Shonga, on suspicion of being corrupt or compromised.

Controls over government funds and property were often weak. Investigative units often lacked authority and personnel, and officials dealing with the public frequently demanded illicit payments with impunity. Additionally, the government had no clear policy for handling evidence in corruption cases, and the process to liquidate assets seized in these cases was not transparent.

During the year the government investigated and prosecuted corruption cases.

On November 16, former Minister of Mines Maxwell Mwale was arrested and charged with possession of more than 260 bicycles suspected to have been unlawfully obtained. The case was pending in court at year's end.

On November 30, police arrested and charged former Minister of Labor Austin Liato with receiving property suspected to have been stolen, following the unearthing of 2.1 billion kwacha (\$410,000) from his farm. The case was pending in court at year's end.

In a February 2011 report for the year which ended December 2009, the auditor-general revealed financial irregularities in all the ministries and Zambia's foreign

missions totaling 318 billion kwacha (\$62 million). The irregularities included petty cash abuse, unauthorized or wasteful expenditures, irregular payments, undelivered materials, overpayments, and revenue not properly accounted for.

Public officials were not subject to financial disclosure laws, although presidential candidates were required to disclose financial assets when filing their candidacies with the Supreme Court. Disclosures are made to the chief justice, but members of the public have a right to inspect the records.

The law does not provide for public access to government information; nonetheless, the government provided information to media and other interested parties, including foreign media, on an informal basis. Information related to defense and security forces was withheld from the public for reasons of national security.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

Although the government enacted a law to regulate NGOs in 2009, it had not officially implemented the law by year's end. The ministry tasked with implementing the law lacked the necessary resources and technical capacity. Many NGOs expressed concern that government officials would use the new law to punish or disband NGOs for publicly expressing critical views on human rights and governance issues. NGOs claimed the bill would force NGOs to focus on the government's development priorities at the expense of their own objectives and that the government-controlled NGO Registration Board created by the law would exert political pressure on NGOs.

UN and Other International Bodies: The government generally cooperated with local human rights observers and international human rights and humanitarian NGOs. The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations.

Government Human Rights Bodies: The HRC monitored human rights conditions, interceded on behalf of persons whose rights it believed the government denied, and spoke on behalf of detainees and prisoners.

The HRC oversees local human rights committees in all nine provincial capitals and nominally enjoyed the government's cooperation without substantial political interference. At the same time, independent human rights groups noted that the HRC was understaffed, underfinanced, and relied on the goodwill of police and other government agencies to enforce its recommendations.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit discrimination based on race, ethnic group (tribe), gender, place of origin, marital status, political opinion, color, disability, language, social status, or creed. However, the government did not effectively enforce the law, and violence and discrimination against women and children, discrimination based on sexual orientation, trafficking in persons, and discrimination against persons with disabilities remained problems.

### **Women**

Rape and Domestic Violence: The law prohibits rape, and courts have discretion to sentence convicted rapists to life imprisonment with hard labor. Rape is nonetheless widespread. The government did not enforce the law effectively and obtained few rape convictions.

In 2010 the ZPS's Victim Support Unit (VSU) recorded 254 cases of rape, 35 cases of attempted rape, and 170 cases of indecent assault; 45 defendants were convicted of rape, 17 were acquitted, and 10 cases were withdrawn. However, these totals greatly understated the actual extent of the problem. The law does not specifically prohibit spousal rape, and penal code provisions that criminalize rape cannot be used to prosecute cases of spousal rape.

Domestic violence against women was a serious problem, and wife beating was widespread. On April 12, former president Banda signed the Anti-Gender Based Violence Act and an amended penal code into law to protect women from gender-based violence. The law provides for protection orders for victims of domestic and gender violence. Most of the gender-based crimes are prosecuted under the revised penal code, and penalties for assault range from a fine to 25 years in prison, depending on the severity of injury and whether a weapon was used during the



assault. The VSU was responsible for handling cases of domestic assault, wife beating, mistreatment of widows, and property expropriation (grabbing) by a deceased husband's relatives. In practice the police were often reluctant to pursue reports of domestic violence and preferred to encourage reconciliation.

Harmful Traditional Practices: Polygamy is legally permitted under customary law. The practice of "sexual cleansing," in which a widow is compelled to have sexual relations with her late husband's relatives as part of a cleansing ritual, continued as a practice under customary law in a few rural areas. However, many local leaders banned the practice. The penal code prohibits "sexual cleansing" of children under the age of 16.

Sexual Harassment: Sexual harassment was common. Although the law only prohibits sexual harassment of children, the penal code contains provisions under which some forms of sexual harassment of women could be prosecuted. Although the government has sometimes successfully prosecuted persons for such actions, no such case was reported during the year.

Sex Tourism: Sex tourism occurred but was not prevalent.

Reproductive Rights: Although couples and individuals enjoyed the right to decide freely and responsibly the number, spacing, and timing of their children, they often lacked access to information. Scarcity of information effectively led to discrimination against women in the exercise of reproductive rights. Many women lacked access to contraception and skilled attendance during childbirth, including essential prenatal, obstetric, and postpartum care. According to a 2010 UN estimate, 27 percent of women aged 15 to 49 used a modern method of contraception and 47 percent of births were attended by skilled health personnel. A 2010 UN report estimated that in 2008 the maternal mortality ratio was 470 per 100,000 live births and a woman's lifetime risk of maternal death was one in 38 in 2008. Barriers that limited access to reproductive health services included limited information, cost implications, religious reasons, and some myths surrounding contraceptives, as well as lack of access to health facilities.

Women generally did not experience discrimination in terms of diagnosis and treatment for sexually transmitted infections. The number of women who received HIV testing and treatment increased substantially in recent years, and many more women than men sought treatment.

Discrimination: The law generally entitles women to equality with men. At the same time the government did not adequately enforce the law, and women experienced discrimination in employment, education, and land and property ownership. Employed women often suffered from discriminatory conditions of service, including pay inequity. Although the Ministry of Lands set aside special land quotas for women to redress the imbalance in property ownership, women lacked adequate access to credit to purchase land or property. In most cases women remained dependent on their husbands or male members of their family to cosign for loans, although some financial institutions allowed women to sign independently for loans. As a result, few women owned their own homes or businesses. The Gender and Child Development Division is the government's primary agency charged with promoting the status of women.

Local customary law generally discriminates against women. Despite constitutional and legal protections, customary law subordinates women with respect to property ownership, inheritance, and marriage.

Customary law dictates that rights to inherit property rest with the deceased man's family. Statutory law prescribes that the man's children equally share half of an estate, the widow 20 percent, the deceased's parents 20 percent, and other dependents 10 percent. In a polygamous marriage, the widow's share must be divided proportionally with other wives, based on the length of time each has stayed in the marriage. Property grabbing from widows remained widespread. The courts generally considered property grabbing a criminal offense and mandated up to three years' imprisonment for these cases. However, most property grabbing cases were decided in local courts, which administer customary law and do not have the power to impose prison sentences. The fines the local courts imposed were low.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory or from one's parents. The government's failure to register births did not result in the denial of public services, such as education or health care, to children.

Education: Although government policy calls for tuition-free basic education through grade seven, education was not compulsory, and many children did not attend school. Contrary to government policy, many teachers and school administrators required students to purchase uniforms or pay a fee before allowing them to attend classes, preventing some children from attending school. The

numbers of girls and boys in primary school were approximately equal; however, fewer girls attended secondary school. Sexual abuse by teachers discouraged many girls from attending classes.

Child Abuse: Although the law prohibits sexual harassment of children, child abuse and violence against children were common problems. The punishment for assault or battery on a child causing bodily harm is imprisonment for five to 10 years, and the law was generally enforced. For example, on June 22, a teacher reportedly beat and stripped a student for allegedly refusing to water flowers on school grounds. Ministry of Education officials publicly condemned the teacher's act.

Child Marriage: The 2007 Zambian Demographic and Health Survey published by the Central Statistical Office indicated that 46 percent of women between the ages of 20 and 49 were married by age 18, including 11.6 percent who were married by age 15. Child marriage was more common in rural areas than in urban centers. UNICEF estimated that 42 per cent of women aged 20-24 were married before the age of 18. Although a person must be at least 16 years old to marry under formal law, there is no minimum age under customary law. Some local leaders spoke against child marriage and took steps to discourage it; most, however, condoned the practice.

Harmful Traditional Practices: Female genital mutilation (FGM) is prohibited under the country's penal code and rarely occurred in practice. Most cases of FGM were limited to small communities of immigrants from other parts of Africa. There were no cases of FGM reported during the year.

Sexual Exploitation of Children: Defilement, which the law defines as the unlawful carnal knowledge of a child under the age of 18, was particularly common. The police's VSU recorded 2,419 defilement cases in 2010, a total thought to understate the true prevalence greatly; prosecutions resulted in 240 convictions and 162 acquittals.

The police and magistrates' courts intervened in cases of gross child abuse. The law criminalizes child prostitution and child pornography, with penalties of up to life imprisonment for perpetrators. Child victims of prostitution are not charged unless they are also pimps over 12 years of age. However, the law was not enforced effectively, and child prostitution was common. The country has a statutory rape law that provides penalties of up to life imprisonment in rape cases. The minimum age for consensual sex is 16 years.

Displaced Children: There were a large number of displaced and institutionalized children. According to the 2007 Zambian Demographic and Health Survey, the country had approximately 1.1 million orphaned children under age 17, including an estimated 600,000 children orphaned as a result of HIV/AIDS. Orphaned children faced greater risks of child abuse, sexual abuse, and child labor. The survey estimated four in 10 children under age 18 were not living with both parents, one in five was not living with either parent, and 15 percent were orphaned. Across the country about 200 children's care homes, accommodated approximately 5,000 children.

An estimated 20,000 to 30,000 children lived on the streets, often begging or prostituting themselves to survive. The Ministry of Education, Science, and Vocation Training; Community Development, Mother and Child Health; and ZPS Child Protection Unit (CPU) worked jointly with the police to identify and assist street children. The ministry's District Street Children Committee authorized the CPU to place children, including orphans and neglected children, in government- and NGO-operated shelters. The CPU reintegrated street children with their families, sent them to school, and placed others in shelters. The Ministry of Community Development, Mother, and Child Health also maintained a cash-transfer scheme to target vulnerable families who might otherwise send minors into the streets to beg or work. The Ministry of Labor, Sport, and Youth continued its efforts to rehabilitate street children by providing education and skills training at two converted national service camps for up to 200 girls in Kitwe and for 400 boys in Chipata. After graduating from the camps, the children were placed in youth resource centers throughout the country, where they received training in carpentry, tailoring, farming, and other trades.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

There were approximately 35 persons in the Jewish community; there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

## **Persons with Disabilities**

The law prohibits discrimination in general, but there is no law that specifically prohibits discrimination against persons with physical, sensory, intellectual, or mental disabilities in employment, education, access to health care, the provision of other state services or in other areas. Although the government did not restrict persons with physical or mental disabilities from voting or participating in civic affairs, the law prohibits those with mental disabilities from holding public office. Persons with disabilities faced significant societal discrimination in employment and education.

The Ministry of Education, Science and Vocational Training, and the Ministry of Community Development, Mother and Child Health have responsibility for ensuring the welfare of persons with disabilities. However, public buildings, schools, and hospitals rarely had facilities to accommodate persons with disabilities. The government did not mandate accessibility to public buildings and services for persons with disabilities. No patterns of abuse of persons with disabilities in prisons were reported.

## **National/Racial/Ethnic Minorities**

The country's seven major ethnic groups--Bemba, Kaonde, Lozi, Lunda, Luvale, Ngoni, and Tonga--are divided into 73 ethnic subgroups. The government protected their civil and political rights and any rights under the law to share in revenue from the exploitation of natural resources on tribal lands. The government generally permitted autonomy for ethnic minorities and encouraged the practice of local customary law. Some political parties maintained political and historical connections to tribal groups and promoted their interests.

The government grants special recognition to traditional leaders, including the Barotse Royal Establishment (BRE) as the political authority of the Lozi ethnic group. However, the government does not recognize the 1964 Barotseland Agreement signed by the United Kingdom, Northern Rhodesia, and the BRE immediately prior to Zambia's independence that granted the Lozi political autonomy. Some Lozi groups have demanded official recognition of Barotseland Agreement.

On January 14, police killed two persons, injured more than 20, and arrested 129 who gathered in Limilunga to demand the restoration of the Barotseland

Agreement. The protests spread to Mongu when police cracked down on protesters. Those arrested were charged with offenses ranging from treason to conduct likely to cause breach of peace. Upon assuming office on September 23, President Sata pardoned and released all the Barotse detainees and appointed a commission of inquiry to investigate the January disturbances (see section 2.b.).

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The law criminalizes consensual same-sex sexual activity and provides penalties of 15 years to life imprisonment for individuals who engage in “unnatural” acts. A lesser charge of “gross indecency” carries penalties of up to 14 years imprisonment. The government enforced the law against same-sex sexual activity and did not respond to societal discrimination. Societal violence against gay men occurred, as did societal discrimination in employment, housing, and access to education or health care. Some groups actively promoted the rights of lesbian, gay, bisexual and transgender (LGBT) persons, but none was formally registered. Groups held social gatherings but did not participate in open demonstrations or marches, due to societal discrimination against LGBT persons.

On March 17, Magistrate Mwaka Mikalile convicted three male students at Kabulonga Boys High School in Lusaka of committing indecent practices against other male students and sentenced them to 12 months in a reformatory school with counseling. Two other students were acquitted.

### **Other Societal Violence or Discrimination**

The government actively discouraged discrimination against persons with HIV/AIDS. However, there was strong societal and employment discrimination against such individuals. Government officials made announcements discouraging such discrimination, but they did not publicly acknowledge cases of HIV/AIDS among government officials. As a result the government made little headway in changing entrenched attitudes of discrimination and denial.

Individuals increasingly sought free access to HIV/AIDS counseling and testing, and more than 380,000 HIV patients, including more than 23,000 children, were receiving antiretroviral treatment by year’s end.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right of workers to form and join independent unions, conduct legal strikes, and bargain collectively. The law allows workers to form and belong to trade unions of their choice without previous authorization or excessive requirements, but police officers and military personnel were not permitted to form unions. The law allows unions to conduct their activities without interference.

No organization can be registered unless it has at least 25 members, and, with some exceptions, no trade union can be registered if it claims to represent a class of employees already represented by an existing trade union. Unions may be deregistered under certain circumstances, but the law provides for notice, reconsideration, and right of appeal to an industrial relations court.

The law provides the right to strike, except for those engaged in a broadly defined range of essential services, but requires that all other legal recourse be exhausted first. Essential services not permitted to strike include the defense force, judiciary, police, prison and health services, and the ZSIS. The law further defines essential services as any activity relating to the generation, supply, or distribution of electricity; the supply and distribution of water, and sewage removal; fire departments; and the mining sector. The process of exhausting other legal alternatives to striking is lengthy. The law does not limit the scope of collective bargaining.

The law also prohibits antiunion discrimination and employer interference in union functions, and provides remedies for workers dismissed for union activity.

The government generally protected unions' right to conduct their activities without interference in practice. The government enforced the law prohibiting antiunion discrimination and employer interference in union functions.

Freedom of association and the right to collective bargaining were generally respected.

Workers exercised most of these rights in practice. Workers' organizations were independent of government and political parties. Although there were no reports of antiunion discrimination or other forms of employer interference in union functions, there were reports of violence against labor protesters. For example, on January 18, a security guard shot and killed National Pensions Scheme Authority

(NAPSA) worker John Phiri on site during a protest by NAPSA workers demanding better working conditions.

On April 2, prosecutors discontinued the case against two Chinese managers at the Chinese Collum Coal Mine (CCM) in Sinazongwe, following compensation of the 13 victims who were shot and wounded during a protest. The government took some steps to improve working conditions at the mine.

Some employers reportedly frequently refused to bargain with workers' unions and often employed casual workers or workers on short-term contracts in order to avoid hiring workers on long-term basis and consequently empowering them with more bargaining power.

While the law provides for the right to strike, due to lengthy procedural requirements, most unions chose to strike illegally. Workers who engaged in illegal strikes can be dismissed by their employers; the government at times intervened for political reasons when such dismissals occurred.

For example, on March 27, workers at the Shoprite grocery chain went on strike for health benefits. The strike lasted more than three days. Although management dismissed all striking workers, the government and trade unions intervened, and all were reinstated.

There are no known special laws or exemptions from regular labor laws in the Lusaka and Chambishi Multi-Facility Economic Zones.

## **b. Prohibition of Forced or Compulsory Labor**

The law prohibits forced or compulsory labor, including by children. The law authorizes the government to call upon citizens to perform labor in specific instances, such as during national emergencies or disasters. The government also may require citizens to perform labor associated with traditional civil or communal obligations. The government largely effectively enforced such laws.

There were reports that such practices occurred in labor-intensive, informal-sector work, particularly in domestic service, hospitality, agriculture, and construction. Forced labor also occurred in the agriculture and mining sectors but was not common. Although forced labor most commonly involved Zambian women and children, Asians and South Asians continued to be brought to and through Zambia for forced labor in the mining and construction industries. An increasing number



of Chinese and Indian men recruited to work in Chinese or Indian owned mines in the Copperbelt region were reportedly kept in conditions of forced labor by mining companies.

Also see the Department of State's *Trafficking in Persons Report* at <http://www.state.gov/j/tip>.

There were no reports of the government's calling on citizens to perform traditionally obligatory communal work during the year.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits employment of children at any commercial, agricultural, or domestic worksite and the engaging of a child in the worst forms of child labor as defined in international conventions. The minimum age for employment is 15; for hazardous work, it is 18. The act makes no specific references to children. Restrictions on child labor relate to prohibiting work that harms a child's health and development, or work that prejudices a child's attendance at school. The law also prohibits slavery and the procurement or offering of a child for illicit activities. Although required by its international obligations, Zambia had not promulgated a list of occupations considered the worst forms of child labor. Among the worst forms prohibited by law are child prostitution, slavery in all its forms, forced military conscription of children, and work that is harmful to the safety, health, or morals of children and young persons.

The Ministry of Labor, Youth, and Sport serves as chair of the National Steering Committee on Child Labor, which is responsible for the implementation and enforcement of child labor laws and regulations, with penalties for violations ranging from a fine to a maximum of 25 years' imprisonment, or both. Labor inspectors may also enter family homesteads and agricultural fields to check for child labor violations.

The labor commissioner effectively enforced minimum age requirements in the industrial sector, where there was little demand for child labor; however, minimum age standards were seldom enforced in the informal sector, particularly in mining and agriculture. Because more than 92 percent of child labor occurred in the agricultural sector, most often with the consent of families, inspectors from the Ministry of Labor, Youth, and Sport focused on counseling and educating families that employed children in child labor and did not refer any cases for prosecution during the year. Due to the scarcity of transportation, labor inspectors frequently

found it difficult to conduct inspections in some rural areas. In cooperation with NGO partners, the government continued its efforts to remove children from abusive situations. The children, mainly orphans, were placed in formal and transitional classes, while others were given vocational skills training. Local governments maintained district child labor committees to perform outreach and plan activities for vulnerable and working children. The purpose of the committees was to increase awareness of child labor laws and the harmful effects of child labor, to mobilize communities to eliminate the worst forms of child labor, and to monitor the implementation of child labor programs at the district and village levels. The government continued to provide awareness and training activities for officials charged with enforcing child labor laws, but the Ministry of Labor, Youth, and Sport reported that resource constraints prevented it from providing all required training. The government participated in several projects to combat child labor and has generally been supportive.

Nevertheless, child labor was a problem in subsistence agriculture, domestic service, construction, farming, transportation, prostitution, quarrying, mining, and other informal sectors, where children under the age of 15 often were employed, and the law was not always effectively enforced. According to the Zambia Labor Force Survey released in August, over one-third of children aged 7-14 years, some 950,000 children in absolute terms, were at work in 2008. This was down from nearly 48 percent of children employed in 2005. Of those employed, nearly 92 percent worked in agriculture.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The minimum wage (basic pay, excluding other allowances) was raised in January from 268,000 kwacha (\$52) per month to 419,000 kwacha (\$82) per month, based on the legal maximum workweek of 48 hours. Significant parts of the workforce, including foreign and migrant workers, are not covered by minimum wage provisions and other acceptable conditions of work. The minimum wage for nonunionized workers, whose wages and conditions of employment were not regulated through collective bargaining, was determined by category of employment. For unionized workers, wage scales and maximum workweek limits were established through collective bargaining. In practice almost all unionized workers received salaries considerably higher than the nonunionized minimum wage. Most minimum wage earners supplemented their incomes through second

jobs, subsistence farming, or reliance on extended family. The minimum wage statutory instrument did not apply to domestic servants. The Ministry of Labor, Youth, and Sport is responsible for enforcing the minimum wage, and its inspectors received and resolved complaints.

According to the law, the normal weekly hours should not exceed 48 hours. The standard workweek is 40 hours for office workers and 45 hours for factory workers. There were limits on excessive compulsory overtime, depending on the category of work. The law requires that workers earn two days of annual leave per month, and there is no limit on how much leave they can accrue. The law provides for overtime pay. Employers must pay employees who work more than 48 hours (45 hours in some categories) in one week at a rate of one and one-half times their hourly rate for their overtime hours. Workers receive double the rate of their hourly pay for work done on a Sunday or public holiday.

The law also regulates minimum occupational safety and health (OSH) standards in industry. The law protects the right of workers to remove themselves from work situations that endangered health or safety without jeopardy to their continued employment. City and district councils were responsible for enforcement. The inspector of factories under the minister of labor handled factory safety. The Ministry of Labor, Youth, and Sport Youth continued to conduct labor inspections during the year and ordered businesses to close when it found significant violations of labor laws. Some small-scale employers and mining firms did not abide by the law on minimum wages.

The government effectively enforced the workweek standards. However, due to staffing shortages, the government enforcement of the OSH standards was limited.

An HRW report on Chinese mines released in November indicated that miners worked long hours without sufficient overtime pay, were often victims of preventable accidents, and worked under threat of being fired for refusing to work in areas reasonably perceived to be dangerous. Across these mines, workers reportedly developed serious lung disease, such as silicosis, due to poor ventilation and constant exposure to dust and chemicals. The government throughout the year engaged mining companies and took some steps to improve working conditions in the mines.

Despite the legal protection, workers did not exercise the right to remove themselves from work situations that endangered their safety and health in practice. The government acted when well known occupational health problems

existed, such as by requiring that underground mine workers receive annual medical examinations. However, the November HRW report stated that many mine accidents were not reported to the government and estimated that on average 15 fatalities were recorded each year since 2001.

On April 25, a contractor employee working for Avantech at Lumwana Mine in North Western Province was crushed to death by a grader.