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## 2009 Human Rights Report: Zambia

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2009 Country Reports on Human Rights Practices

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Zambia is a republic of 12.5 million citizens governed by a president and a unicameral national assembly. The ruling Movement for Multiparty Democracy (MMD) exerted considerable influence through its patronage and allotment of government resources. In an October 2008 by-election, then-vice president Rupiah Banda was elected president in generally free and fair multiparty elections. Civilian authorities generally maintained effective control of the security forces.

The government's human rights record remained poor, and it deteriorated during the year in a few areas. Human rights problems included an unlawful killing; torture, beatings, and abuse of suspects and detainees by security forces; official impunity; life-threatening prison conditions; arbitrary arrests and prolonged pretrial detention; 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.

#### RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed politically motivated killings; however, security forces committed an unlawful killing during the year. The Legal Resources Foundation (LRF), an independent human rights nongovernmental organization (NGO) that counseled victims' families and represented them in actions against the government, consistently investigated and publicized such incidents; however, the government rarely punished perpetrators. Police and government 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.

On February 22, police officers at Chelstone Police Post in Lusaka shot and killed 20-year-old student Maybin Chongo as he fled by car. Police stated that they suspected Chongo was eluding capture. The case remained pending at year's end.

There were no developments, and none were expected, in the following 2008 cases: the April police beating to death of Alfred Nyanga; the May police beating to death of Robert Chimwang'a; and the September alleged killing of Gregory Kalezhi by a police patrol.

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There were no developments, and none were expected, in the following 2007 police killings: the January shooting death of a man caught siphoning fuel; the February alleged rape and killing of a female suspect in custody; and the October shooting death of a suspect who refused to relinquish a fuel container to police.

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In 2007 the Lusaka High Court ordered the government to pay the family of the late Chanda Chayafya 13.36 million kwacha (\$2,672) plus interest as compensation for Chayafya's death. The police killed Chayafya, a security guard, in 1998. Chayafya was a suspect in the murder of former finance minister Ronald Penza. Chayafya's family's lawyers advised the family to appeal the amount of compensation to the Supreme Court.

Mob violence that targeted suspected criminals, persons accused of witchcraft, persons suspected of sexual impropriety, or persons with mental illness resulted in killings; no action was taken against perpetrators.

In February a mob in Kaoma killed an alleged arsonist and killer identified as "Kalaye" after he attempted to kill a couple with an assault rifle and burn down their house. Kaoma residents beat him to death when he attempted to escape from police custody.

There were no developments, and none were expected, in the following 2008 cases: the February mob stoning to death of a minibus driver; the March mob stoning of two men, one of whom died; and the April killing by a mob that stoned and set ablaze a man. No action was taken in cases of mob killings in 2007.

#### 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 illegal immigrants. In 2008 the government's Human Rights Commission (HRC) reported that torture was prevalent in police stations and noted that "police officers continue to rely on torture as an interrogation technique." The 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.

On February 5, the Lusaka High Court ordered the government to pay 65.7 million kwacha (\$13,140) plus 14 percent interest as compensation to Godfrey Michelo's family. Michelo died in 2000 in police custody after a police officer threw a teargas canister into his cell at the police station in Monze.

On March 16, Kawambwa police detained and assaulted two Copperbelt University lecturers, Edward Nkonde and Ephraim Munshimfwa, before releasing them the next day. Police allegedly mistook them for thieves when the lecturers visited the area on a field research trip.

On July 14, a 27-year-old woman gave birth to a baby boy at Kasama police station after police detained her for alleged child abuse. The woman claimed that a police officer denied her bond and that another female detainee assisted her with

delivering the baby. On July 21, Police Inspector General Francis Kabonde ordered the officer arrested for unprofessional conduct. Police arrested the officer and charged her with negligence of duty. The case remained pending at year's end.

On July 27, a police officer shot and wounded Copperbelt University student Cornelius Mwape as Kitwe police tried to quell student demonstrations. On July 28, President Banda expressed disappointment that the police had used live ammunition to quell the protests and ordered a police review of the incident. No action was taken by year's end against the officer who allegedly wounded Mwape.

There were no new developments, and none were expected, in the July 2008 alleged police abuse of Monde Naluli. There were no new developments, and none were expected, in the 2007 case of prisoners allegedly stripped and beaten by guards at Mufulira State Prison.

There were instances of mob violence reported during the year. On August 12, Copperbelt University students reportedly beat Konde Mamadi and destroyed his vehicle for his allegedly having stolen a laptop computer. Mamadi's case remained pending at year's end.

According to human rights groups, police occasionally demanded sex from female detainees as a condition for their release. There also were reports that police officers raped women and young girls while they were in custody. There were no new developments, and none were expected, in the following 2007 cases: the alleged rape of a 14-year-old girl on numerous occasions by police officer Sitali Ikowa and the arrest of a police officer for raping a suspect at Nkana East Police Station.

#### Prison and Detention Center Conditions

Prison conditions were poor and life threatening. An inefficient judiciary delayed court proceedings and exacerbated overcrowding. The country's prisons, which were built to hold 5,500 inmates, held nearly 15,000 prisoners and detainees. For example, Lusaka Central Prison, which was designed to accommodate 200 prisoners, held more than 1,500. 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.

Prisoners routinely complained that authorities denied them access to medical care as provided for 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 death of prisoners. Drugs to combat tuberculosis were available, but the supply 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.

The HRC estimated that the HIV/AIDS prevalence rate in prisons in 2008 was 27 percent. Antiretroviral treatment was available to some prisoners with HIV/AIDS; however, poor nutrition often rendered the treatment ineffective.

Juveniles often were not held separately from adults. Incarcerated women who had no alternative for child care could choose to have their infants and young children with them in prison until the children reached the age of four. Pretrial detainees were not held separately from convicted prisoners.

The government permitted prison visits by both domestic and international NGOs and by resident foreign diplomats during the year. The International Committee of the Red Cross (ICRC), provincial human rights committees, and the LRF periodically inspected prisons during the year. ICRC visits were performed in accordance with standard modalities.

In January the HRC Children's Rights Committee visited three reformatory centers and documented violations of children's rights in those centers. According to the committee's report released during the year, reformatory centers recorded cases of child abuse in the form of corporal punishment.

In August HRC chairperson Pixie Yangailo visited Kasama Central Police Station and described conditions at the station as "pathetic." She noted that suspects were forced to sleep on the floor without blankets.

The HRC recommended in its 2009 report that prisons be rehabilitated to meet acceptable humane and sanitary standards and that prisoners be separated by age and gender. The government had not responded to these recommendations by year's end.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, the government did not respect these prohibitions.

#### 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 1,500 new officers during the year for the first time in several years, only 16,500 police were on duty at year's end. The HRC recommended in its 2009 report that the police increase its budget, enhance logistical support, improve working conditions for police officers, and implement human rights training as well as punitive and preventative measures to curb police misconduct. The government had not responded to these recommendations by year's end.

The approximately 21,600-strong military, divided into the army, air force, and national service, have primary responsibility for defending sovereignty and territorial integrity and cooperating with the appropriate civilian authority in times of emergencies and natural disasters. 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, and money laundering and employs approximately 300 agents to oversee drug enforcement and interdiction.

Lack of professionalism, investigatory skills, and discipline in the security forces remained serious problems. Low salaries and substandard government housing exacerbated police corruption, as did poor working conditions. Police released prisoners for bribes, extorted money from victims, and required "document processing fees" or "gas money" to commence investigations. Police enjoyed a high degree of impunity.

In an effort to address these issues, the Police Public Complaints Authority (PPCA) met during the year to review complaints regarding police conduct that were not resolved through internal police channels. The PPCA reported that between January and November it received 245 complaints regarding police misconduct; 32 were related to unlawful detention, 72 to unprofessional conduct, 25 to police brutality, 48 to police inaction, 56 to abuse of authority, and four to death in police custody. In 27 of the 245 cases, the perpetrator was punished or a settlement was mediated. The PPCA recommended and imposed punishments that included fines, demotion in rank, and dismissal. Many cases of abuse went unreported due to citizen ignorance of the PPCA and fear of retribution.

Many complainants dropped their cases after involved police officers intimidated complainants or offered compensation to avoid a formal PPCA investigation, according to the PPCA.

Security forces failed to prevent limited societal violence during by-elections (see section 3).

#### 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. For example, 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, unlawful assembly, or abuse of office. 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. The law provides that persons arrested must appear before a court within 24 hours of their arrest; however, detainees were frequently held for much longer periods because prosecutors routinely required that officers collect additional evidence before presenting cases to a magistrate. 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.

There was a functioning bail system; however, 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 treason, murder, aggravated robbery, and violations of narcotics laws. In practice police generally did not respect prisoners' 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 and detention remained problems. Police arbitrarily arrested family members of criminal suspects. Criminal suspects were arrested 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 suspensions and written reprimands, although dismissals for extortion were rare.

On July 13, Lusaka police briefly detained *The Post* news editor Chansa Kabwela for allegedly circulating obscene material (see section 2.b.).

Prolonged pretrial detention was a problem, and some defendants awaited trial for as long as three years. Approximately one-third of persons incarcerated in 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.

For example, Siavonga resident Nobert Chisanga was convicted by the Siavonga Magistrate's Court and imprisoned in 2006 for defiling three girls. However, at year's end he still awaited final sentencing by the Lusaka High Court. Lusaka resident Over Mumba was convicted by the Lusaka Magistrate's Court and imprisoned in 2005 for heroin possession; at year's end he still awaited final sentencing by the Lusaka High Court. Zacheous Sakala had been held in pretrial detention since 2002 without conviction. The HRC demanded in 2008 that the judiciary resolve his case.

There were no new developments, and none were expected, in the April 2008 case of alleged unlawful detention of Rachel Bwalya and the case of Ernest Banda, who had been in detention since 2005.

## Amnesty

On January 16, President Banda commuted the death sentences of 53 prisoners to custodial sentences or life imprisonment.

### e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary; however, 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. However, during the year the courts at times 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.

For example, on August 31, the Lusaka High Court awarded Patriotic Front (PF) party leader Michael Sata damages for malicious prosecution. In 2002 Sata was arrested and indicted for allegedly stealing two motor vehicles, but a magistrate exonerated him.

The nine-member Supreme Court in Lusaka has final appellate jurisdiction for all legal and constitutional disputes. The High Court, with branches based in Lusaka, Ndola, Kitwe, Livingstone, and Chipata, is second in jurisdiction to the Supreme Court and regularly held mobile court sessions in all nine provincial capitals. The High Court has primary jurisdiction over civil litigation and criminal matters relating to treason, murder, and aggravated robbery, and it has appellate authority in cases referred to it from lower courts. High Court decisions can be appealed to the Supreme Court. The High Court handles parliamentary election petitions; the Supreme Court has jurisdiction over presidential election disputes. One Supreme Court justice is chairperson of the Electoral Commission of Zambia.

The Justice Ministry oversees 75 lower magistrate courts countrywide that have original jurisdiction in some criminal and civil cases and limited appellate authority over matters referred to them from local courts. Local or customary courts heard most civil and petty criminal cases in rural areas.

The military forces have a separate court with jurisdiction over military cases. Accused military personnel may appear for summary trial before their commanding officers or be referred for trial by a court-martial. A court-martial sentence can be appealed to the Supreme Court. Military courts cannot try civilians and generally provided the same rights as civil criminal courts. The ZPS uses police tribunals to resolve internal police matters. Police tribunals try cases of police misconduct. However, they cannot try civilians or criminal cases involving police officers and generally provided the same rights as civil criminal courts.

The constitution permits judges to serve on the Supreme and High Court up to age 65. The president, in consultation with the Judicial Service Commission, may permit a judge at age 65 to continue in his office. The president, in consultation with the commission, may also appoint a judge to the Supreme or High Court for a period of up to seven years.

On September 17, the Lusaka High Court dismissed a petition by Lusaka businessmen Faustin Kabwe and Aaron Chungu to order Supreme Court Chief Justice Ernest Sakala and Justice Peter Chitengi to vacate their offices because they had passed the constitutionally mandated retirement age of 65. Kabwe and Chungu, who were convicted August 17 in a corruption case brought against them and former president Frederick Chiluba, had submitted their petition following a June 9 Supreme Court decision to allow their corruption cases to proceed (see section 4).

There were 150 magistrates at the end of the year. Attorneys who had a law degree held approximately 41 magistrate positions during the year; lay magistrates filled the rest. However, poor working conditions caused many magistrates to leave their jobs. The HRC recommended in its 2009 report that the government increase the number of magistrates and

magistrate courts, improve accused persons' access to bail, and reduce abuses of judicial authority. The government had not responded to these recommendations by year's end.

#### Trial Procedures

Defendants are considered innocent until proven guilty, and trials in the High Court as well as in magistrate and local 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; however, many defendants lacked the resources to retain a lawyer. The law provides for free legal counsel when indigent defendants face serious charges; however, public defenders were overwhelmed with cases, and many defendants did not have legal representation. 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.

Although statutory (common) law extends these rights to all citizens, the 1964 Local Courts Act permits local courts to employ customary (tribal or traditional) laws that vary widely throughout the country. Statutory law takes precedence over customary law, and any citizen may bring a case to magistrate court. However, the government encourages the use of customary law by local courts to augment the justice system and resolve disputes in rural areas. Lawyers are barred from participating in proceedings in courts that apply customary law, and there are few formal rules of procedure. Local court justices frequently do not have legal training but are expected to be versed in the traditions and customs of the ethnic group the court represents. Local courts cannot sentence convicted persons to imprisonment; they impose fines as punishment.

Courts were congested, and there were significant delays in trials while the accused remained in custody. In cases in which the magistrate's court did not have jurisdiction, at least six months elapsed before a magistrate committed the defendant to the High Court for trial. Following committal, preparation of the magistrate court record for transmittal to the High Court took months, or in some cases, as long as a year. Once a case reached the High Court for trial, court proceedings lasted an average of six months.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

There is an 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. However, 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; however, 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 and the ZSIS authority to monitor communications using wiretaps based on probable cause.

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

In January the Lusaka High Court ordered the DEC to pay Christine Luunga of Mwenda–Lice 12 million kwacha (\$2,400) for unlawful imprisonment. The court found that DEC agents illegally arrested and detained her at Kabwata Police Station in Lusaka after failing to arrest her husband, Levy Hamalala, for allegedly cultivating marijuana. Agents released Luunga after Hamalala turned himself in to Lusaka police.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

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

The government allowed but sometimes attempted to impede individuals' right to exercise public or private spoken criticism by using intimidation; for example, it thwarted a car honk-and-whistle campaign by arresting nine individuals for disturbing the peace (see section 2.b.). The government allowed press criticism but sometimes attempted to impede it using intimidation.

The government-controlled *Times of Zambia* and *Zambia Daily Mail* were two of the most widely circulated newspapers. The government 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. Journalists in the government-controlled media generally practiced self-censorship.

The international media generally operated freely.

The independent media were active and expressed a wide variety of views. A number of privately owned newspapers questioned government actions and policies, and although these circulated without government interference, officials used the law to suppress criticism of political or other leaders. Government officials and ruling MMD supporters repeatedly targeted the leading independent newspaper, *The Post*, with criticisms, threats, and litigation for publishing information critical of the government.

The law permits presidential investigative tribunals to call as witnesses journalists and media managers who print 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 clear infringements of freedom of the press and claimed it was a means for parliamentarians, some of whom concurrently served the president in cabinet positions, to bypass the court system.

Ruling party supporters harassed independent journalists. On February 28, MMD supporters assaulted Thomas Nsama, a photojournalist at *The Post*, at Chipata Airport while he covered President Banda welcoming South African President Zuma. No charges were filed. On May 2, MMD supporters assaulted *The Post* journalists George Chellah and Eddie Mwanaleza at Lusaka City Airport while they covered the return of President Banda. No charges were filed against those involved in the assault. On May 17, Minister of Information and Broadcasting Ronnie Shikapwasha defended the harassment of *The Post* journalists by saying that "they were reaping what they sowed." He claimed that the criticism of the president was unjustified and accused the newspaper of "promoting discontent in the country." On July 29, MMD Lusaka Province Youth Chairman Chris Chalwe assaulted *The Post* journalist Chibaula Silwamba and *Times of Zambia* reporter Anthony Mulowa as they covered President Banda's arrival at Lusaka International Airport. On August 6, the Lusaka Magistrate's Court released Chalwe on bail. His case remained pending at year's end. On August 7, Shikapwasha justified violence against journalists by MMD supporters, saying "President Banda's supporters demand that the president

be given due respect by *The Post*." Shikapwasha warned that "unless the media operated within the set confines of their profession," the public would be forced to call for a statutory body to regulate the media.

On July 13, police arrested *The Post* news editor Chansa Kabwela and charged her with circulating obscene material. Kabwela received photos of a woman giving birth on the sidewalk outside a hospital shuttered due to a healthcare workers' strike, and later Kabwela sent the unpublished photos to government, women's groups, and church leaders to raise awareness of hospital conditions during the strike. On November 16, Lusaka Chief Magistrate Charles Kafunda acquitted Kabwela. On July 28, Vice President Kunda dismissed chairperson Tamala Kambikambi and spokesperson Amos Chanda from the National Governing Council of the African Peer Review Mechanism, a voluntary organization that assesses countries' adherence to international and African human rights standards, for publicly supporting Kabwela.

On September 2, Lusaka Chief Magistrate Charles Kafunda found *The Post* deputy editor Sam Mujuda guilty of contempt of court and issued an arrest warrant for *Post* editor Fred M'membe for publishing an editorial written by Cornell University law professor Muna Ndulo that criticized the Kabwela case. On September 25, Lusaka High Court Judge Albert Wood overturned Kafunda's ruling. On October 14, prosecutors submitted the case to a different magistrate, David Simusamba. On November 18, Simusamba ordered M'membe's case reinstated, and his trial began on December 4. At year's end the trial continued.

There were no new developments, and none were expected, in Deputy Secretary to the Cabinet Robert Mataka's 2007 defamation suit against the *Zambian Watchdog* newspaper.

In addition to a government-controlled radio station, there were numerous private radio stations. The government-owned Zambia National Broadcasting Corporation (ZNBC) was the principal local-content television station. Several private television stations, including foreign-owned media, also broadcast locally. The government detained and censured individuals responsible for programs the government deemed offensive. Opposition political parties and civil society groups charged that government control of the ZNBC limited their access to mass communication.

On July 27, Minister of Information and Broadcasting Shikapwasha threatened to close the Sky FM radio station in Monze for broadcasting "unpalatable remarks" from a radio listener criticizing President Banda and the visiting King Mswati III of Swaziland.

On September 5, Minister Shikapwasha warned television and radio stations in a press statement that they risked having their licenses revoked if they broadcasted material outside the parameters of the provisions of their licenses. Shikapwasha further indicated that the government would investigate reports that television station MUVI TV and some private radio stations circumvented the provisions of their broadcasting licenses by using digital satellite technology to broadcast countrywide. On October 11, Shikapwasha accused *The Post* of encouraging individuals to participate in live call-in programs on Sky FM radio.

There were no developments, and none were expected, in the investigation of Cabinet Protocol Officer Lovewell Jere's 2007 barring of local journalists from covering the Southern African Development Community Summit.

#### Internet Freedom

There were no government restrictions on access to the Internet or 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. Although the Internet was available to and used by citizens, a lack of infrastructure limited public access. According to International Telecommunication Union statistics for 2008, approximately 5.5 percent of the country's inhabitants used the Internet.

During the year the government revoked the visa of a foreign national living in Zambia who criticized a deputy minister on her blog. The government threatened to deport another foreign national who posted remarks on the Internet deemed critical of the government.

#### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events. Although the law gives university councils at the three public universities a mandate to address faculty concerns, the minister of education may appoint council members. Some academics criticized this provision as an infringement of academic freedom.

#### 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 are held and who may address participants. The government on occasion used the law's broad mandate to arbitrarily change the time and date of rallies, particularly of opposition political parties and NGOs, and did so during by-election campaigns during the year.

Unlike in previous years, there were no cases of police using violence to break up protests.

On October 2, police arrested nine individuals, including PF members of parliament (MPs) Mumbi Phiri and Jean Kapata, in Lusaka for protesting the acquittal of former president Frederick Chiluba with car honks and whistles (see sections 2.a and 4). They were released on October 7.

There were no developments in the May 2008 police shooting of two University of Zambia students in Lusaka.

##### Freedom of Association

The law provides for freedom of association, but the government placed some limits on this right. All organizations must formally apply for registration to the Ministry of Home Affairs' Registrar of Societies. However, the registration process was long and permitted considerable discretion on the part of the registrar. During the year there were no cases in which the registrar refused to register an organization, although it deregistered the Islamic Council of Zambia and threatened to deregister organizations that had not paid fees or were otherwise not in compliance with the law (see section 2.c.). On August 26, the government enacted the NGO Law regulating NGOs operating in the country (see section 5).

#### c. Freedom of Religion

The constitution and law provide for freedom of religion, and the government generally respected this right in practice. Although the constitution declares the country to be a Christian nation, the government generally respected the right of all religious groups to worship freely.

On October 4, the registrar of societies deregistered the Islamic Council of Zambia for violating the constitution and infighting between members related to accusations by one faction of financial improprieties.

The government required the registration of religious groups and approved all applications for registration from religious groups without discrimination.

#### Societal Abuses and Discrimination

There were approximately 80 persons in the Jewish community and no reports of anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at [www.state.gov/g/drl/rls/irf](http://www.state.gov/g/drl/rls/irf).

#### 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. However, 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.

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.

The law prohibits forced exile, and the government did not use it.

#### Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and the 1969 African Union Convention Governing the Specific Aspects of the Refugee Problem in Africa. The law provides for asylum based on these conventions and protocol.

The law provides for the granting of asylum or refugee status, and the government has established a system for providing some 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. The government also provided temporary protection to individuals who may not qualify as refugees. There were reports during the year that the government expelled Zimbabweans and other foreign nationals who could not provide evidence that they were refugees and were therefore considered migrants.

According to the UNHCR, at year's end the country hosted 64,000 refugees, mainly from Angola and the Democratic Republic of Congo. During the year the government assisted in the repatriation of 16,000 Congolese refugees. Refugees were provided access to basic services, education, and police and courts. Government policy limited refugees' legal employment options to refugee camps, except where refugees obtained specific government authorization for employment outside camps.

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

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

#### Elections and Political Participation

In October 2008 then-vice president Rupiah Banda was elected president in a generally free and fair by-election conducted following the August 2008 death of then-president Levy Mwanawasa. After Banda defeated lead opposition candidate and PF leader Michael Sata by 35,209 votes, Sata petitioned the Supreme Court to request a recount. On March 11, the court ruled against Sata's petition and affirmed Banda's election on April 27. In its ruling, the Supreme Court dismissed Sata's allegations of election irregularities, stating that Sata submitted insufficient evidence of anomalies in the counting, compilation, and transmission of election results.

The constitution requires all elected officials except the president and vice president to vacate their offices one month prior to running for election. The vice president is appointed and dismissed by the president. During the year several by-elections were held after incumbent deaths or resignations. Reports of vote buying and misappropriation of government resources for unfair political advantage continued and in some cases were challenged in court.

On August 13, MMD candidate Solomon Musonda was elected the MP representing Chitambo. Reportedly, violence occurred during an altercation between Deputy Minister Gaston Sichilima from the Office of the Vice President and a United National Independence Party supporter. Some observers alleged that ruling party supporters engaged in vote buying, misused government vehicles, distributed food and clothing for partisan purposes, and promised local development projects to entice voters to the polls.

On October 15, PF candidate Geoffrey Bwalya Mwamba was elected the MP representing Kasama Central following the resignation of the incumbent MP from the PF to form his own political party. On October 14, violence reportedly occurred during an altercation between MMD and PF supporters. As in the Chitambo by-election, some observers alleged that MMD supporters engaged in vote buying and misuse of government resources for partisan purposes. On October 14, opposition supporters chased Minister of Commerce, Trade, and Industry Felix Mutati and Minister of Health Kapembwa Simbao from a Kasama market where they were allegedly engaging in vote buying.

On November 19, United Party for National Development (UPND) candidate Watson Lumba was elected the MP representing Solwezi Central following the September 5 death of incumbent MP and Minister of Housing Ben Tetamashimba. Violence occurred during reported altercations between MMD and UPND supporters. As in other by-elections during the year, some observers alleged that ruling party supporters engaged in vote buying and similar abuses for partisan purposes.

Political parties could operate without restriction or outside interference, and individuals could independently run for election. However, the ruling MMD exerted considerable political influence over the electoral process by using government resources to conduct political campaigns.

There were 21 women in 158-seat parliament, three in the 27-member cabinet, and three on the Supreme Court. There was one minority MP; there were no minorities serving in the cabinet or on the Supreme Court. There were no female or minority provincial ministers. Political parties did not allocate parliamentary seats to minorities or women.

The National Constitutional Conference (NCC) continued to meet throughout the year to consider the draft constitution proposed by the 2005 Mung'omba Constitutional Review Commission. Some civil society groups, including large umbrella organizations representing women's and church groups, maintained their boycott of the NCC in protest of what they perceived as disproportionate government and ruling party representation. On September 7, President Banda extended the NCC's mandate through April 2010.

#### Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government attempted to implement the law; however, some officials engaged in corrupt practices with impunity. Petty corruption among the police and other public authorities was particularly problematic.

The World Bank's latest worldwide governance indicators reflected that corruption was a serious problem; however, the government made some improvements in fighting it. On August 27, the government announced its National Anti-Corruption Policy. The Anti-Corruption Commission (ACC), which reports independently to the president, is responsible for combating government corruption. On October 30, Vice President Kunda disbanded the Task Force for Corruption

(TFC), which prosecuted cases of corruption committed during then-president Chiluba's administration, and assigned its duties to the ACC. The disbandment drew criticism from some civil society representatives as a sign that the government would not prosecute Chiluba-era corruption cases. The government continued its collaboration with the international community to improve its capacity to investigate and prevent corruption. Parliamentary committees sustained their scrutiny of executive branch operations, and the ACC continued its prosecution and public educational activities. During the year the ACC received 2,073 reports of corruption, 658 of which were investigated. Of those, 17 resulted in convictions. The ACC maintained a toll-free hotline for reports of corrupt practices.

There remained a widespread public perception that corruption was pervasive in almost all government institutions. 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 the disposal of confiscated assets, and the process to liquidate assets seized in the anticorruption campaign was not transparent. 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.

During the year the ACC and TFC prosecuted several military commanders and government officials for corruption.

On January 12, a judge convicted former air force commander lieutenant general Christopher Singogo of embezzlement and abuse of authority and sentenced him to six years' imprisonment with hard labor. Singogo was convicted on a second abuse of authority charge on February 26 and sentenced to an additional five years' imprisonment with hard labor. Both cases remained on appeal at year's end.

On February 14, a judge convicted former minister of lands Gladys Nyirongo of corrupt practices and abuse of authority and sentenced her to four years' imprisonment with hard labor. The case remained on appeal at year's end.

On March 2, a judge convicted former army commander lieutenant general Georjago Musengule of 12 counts of corruption and abuse of authority and sentenced him to 16 years' imprisonment with hard labor. Musengule's accomplice, Base Chemicals Zambia Limited chief executive officer Amon Sibande, was convicted in the same case and sentenced to three years' imprisonment. The case remained on appeal at year's end.

On March 3, a judge convicted former president Chiluba's wife Regina of theft and sentenced her to three-and-a-half years' imprisonment in a case stemming from items she illegally received from her husband while he served as president. Her appeal remained pending, and she remained free on bail.

On March 3, a judge convicted former air force commander lieutenant general Sande Kayumba of corruption and sentenced him to seven years' imprisonment with hard labor. His accomplices, former air force chief of logistics brigadier general Andrew Nyirongo and base executive Amon Sibande, were also convicted of corruption in the same case and sentenced to seven years' imprisonment with hard labor. On May 4, Kayumba was also convicted of abuse of authority and sentenced to two years' imprisonment with hard labor.

On May 13, the ACC announced that it was investigating allegations of embezzlement of more than 35.7 billion kwacha (\$7.14 million) at the Ministry of Health by 32 ministry officials. The case remained pending at year's end.

On August 17, Magistrate Jones Chinyama acquitted former president Chiluba of embezzling 2.5 billion kwacha (\$500,000) in public funds. At the same hearing the magistrate convicted two Chiluba accomplices, Faustin Kabwe and Aaron Chungu, of embezzlement in the same case and sentenced them to five years in prison. On August 24, TFC Director Max Nkole appealed the Chiluba case to the High Court. On August 25, President Banda dismissed Nkole and named ACC Chairperson Godfrey Kayukwa acting TFC director, and Director of Public Prosecutions Chalwe Mchenga

withdrew Nkole's appeal. On August 19, Chiluba appealed for an unprecedented reinstatement of his political immunity. On September 23, Vice President Kunda asserted that the government would not appeal Chiluba's acquittal.

As of year's end the attorney general had not registered in the Zambian courts a British court's 2007 finding that Chiluba, his wife Regina, and several accomplices' misappropriated 164 trillion kwacha (\$32.8 million) in public funds.

The law does not provide for public access to government information; however, the government provided information to media and other interested parties, including foreign media, on an ad hoc 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.

Major local, independent human rights NGOs included the LRF, Jesuit Centre for Theological Reflection, Women for Change, NGO Coordinating Council, Civil Society for Poverty Reduction, and Southern Africa Center for Constructive Resolution of Disputes.

On August 26, the government enacted a law to regulate NGOs. 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 that 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. At year's end the government had not implemented the law, and there had been no cases where the law had directly restricted NGO operations.

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, the ICRC, and other organizations.

The HRC monitored human rights conditions, interceded on behalf of persons whose rights it believed were denied by the government, 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. However, independent human rights groups noted that the HRC was understaffed, underfinanced, and relied on the police to enforce its recommendations.

The HRC noted in its 2009 report abuses by the judiciary and the police and called on the government to implement reforms, including further criminalizing human rights violations.

#### 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 persons with disabilities remained problems.

Women

The law prohibits rape, and courts have discretion to sentence convicted rapists to life imprisonment with hard labor. However, rape was widespread. The government did not enforce the law effectively and obtained few rape convictions. In 2008 the ZPS's Victim Support Unit (VSU) recorded 229 cases of rape, 34 cases of attempted rape, and 141 cases of indecent assault; 72 defendants were convicted, four were acquitted, and three cases were withdrawn. 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. There is no specific law against domestic violence, including spousal abuse, and cases of domestic violence were prosecuted under the penal code's general assault provisions. Penalties for sexual assault range from two 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 the deceased husband's relatives. In practice the police were often reluctant to pursue reports of domestic violence and preferred to encourage reconciliation.

The government and NGOs expressed continued concern about violence against women. Fear of retribution and cultural considerations deterred women from reporting domestic violence cases, and the VSU stated in a June report that this meant the true extent of sexual and gender-based violence was unclear; however, increased public awareness resulted in more reporting of such incidents to police and other authorities than in previous years. The VSU reported that victims often refused to cooperate and that the unit lacked equipment to analyze forensic evidence. The government operated gender-based violence shelters, a toll-free hotline, and six one-stop centers to provide comprehensive assistance to victims of sexual and gender-based violence. During the year the government provided gender-based violence training to more than 120 police officers.

Although prostitution is not illegal, the penal code criminalizes certain conduct associated with prostitution. Police routinely arrested street prostitutes for loitering. Prostitution was prevalent in major cities. Sex tourism occurred but was not prevalent.

Sexual harassment was common. The law prohibits sexual harassment in the workplace, and the government has successfully prosecuted persons for such actions. The government has also successfully prosecuted persons for other forms of harassment under other sections of the penal code.

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, and that lack 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 obstetric and postpartum care. 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.

The law generally entitles women to equality with men. However, the government did not adequately enforce the law, and women in practice experienced discrimination in employment, education, and land and property ownership. Women who were employed 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. As a result few women owned their own homes or businesses, although some financial institutions allowed women to sign independently for loans. The government was proactive in improving the

status of women through legal protections and public awareness campaigns. The Gender in Development Division in the cabinet office is the government's agency especially 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. Polygamy is legally permitted under customary law if the first wife agrees to it at the time of her wedding or both families agree and the man has paid a dowry. 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. However, many local leaders banned the practice. The penal code prohibits "sexual cleansing" of children under the age of 16.

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 man's parents 20 percent, and other relatives 10 percent. The widow's share must be divided proportionally with other women who can prove a spousal relationship with the deceased man. As a result property grabbing from widows remained widespread. The courts generally consider property grabbing a criminal offense and mandate up to three years' imprisonment in these cases. However, most property grabbing cases were decided in local courts, and the fines they handed down were low.

#### Children

The Ministries of Labor and Social Security (MLSS), Sport, Youth, and Child Development (MSYCD), Community Development and Social Services (MCDSS), and Education shared responsibility for promoting children's welfare. However, scarce resources and ineffective implementation of social programs continued to hinder their ability to assist children.

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. The ICRC indicated in 2002 that fewer than 10 percent of births in the country were registered.

Although government policy calls for 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.

Although the law prohibits sexual harassment of children, child abuse and violence against children were common problems. Defilement, which the law defines as the "unlawful and carnal knowledge of a child under the age of 16," was particularly common. The police VSU recorded 1,224 defilement cases in 2008; prosecutions resulted in 150 convictions and seven acquittals.

Child marriage was a minor problem and was not common. Although a person must be at least 16 years old to marry under the formal law, there is no minimum age under customary law. Some local leaders spoke against child marriage and took steps to discourage it; however, most condoned the practice. Magistrates' courts intervened in cases of gross abuse.

The law criminalizes child prostitution and child pornography with penalties of up to life imprisonment. 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.

There are a large number of displaced and institutionalized children. Approximately 1.2 million children under the age of 15 were orphaned, including an estimated 800,000 as a result of HIV/AIDS. These children faced greater risks of child

abuse, sexual abuse, and child labor. Approximately 75 percent of all households cared for at least one orphan, and orphaned children headed an estimated 7 percent of households.

An estimated 20,000 to 30,000 children lived on the streets, often begging or prostituting themselves to survive. The MCDSS' Child Protection Unit (CPU) worked with the police to identify and assist street children. The MCDSS District Street Children Committee authorized the CPU to place children, including orphans and neglected children, in government - and NGO-operated shelters. In 2007 the CPU reintegrated 346 street children with their families, sent 234 children to school, and placed 185 in shelters. The MCDSS also maintained a cash transfer scheme to target vulnerable families who might otherwise send minors into the streets to beg or work. In 2007 the transfer program benefited 7,476 households. The MSYCD 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 are placed in youth resource centers throughout the country, where they receive training in carpentry, tailoring, farming, and other trades.

#### Trafficking in Persons

The law prohibits trafficking in persons for all purposes, including transporting, receiving, and harboring of trafficking victims. However, the country was a source, transit point, and destination for trafficked persons, and internal trafficking occurred. Victims, principally women and children from rural areas, were trafficked within the country and to other parts of Africa and to Europe, and the country was used as a transit point for regional trafficking.

The government did not collect or maintain data on the extent or nature of trafficking; however, trafficking, particularly in the form of child prostitution, was believed significant. A 2007 International Labor Organization (ILO) study on child trafficking in the country concluded that trafficking was predominantly domestic and informal. The ILO noted that children were often trafficked as a source of cheap labor and that girls were more at risk of being trafficked than boys.

The ILO indicated that traffickers frequently included parents, other relatives, truck drivers, businesspersons, traders, and religious leaders. Traffickers often used false promises of employment to entice victims to leave their homes and families and then forced them into prostitution or domestic service.

The law provides for penalties of 25 years' to life imprisonment for those convicted of human trafficking. Law enforcement and immigration officers had varying levels of knowledge about trafficking, a problem exacerbated by the challenge of monitoring extensive and extremely porous borders. The government assisted with international investigations or extradited citizens who were accused of trafficking in other countries. The government investigated one case of trafficking and convicted one trafficker in 2008.

Through its social welfare agencies, the government provided counseling, shelter, and protection to victims of child prostitution or referred victims to NGOs that provided such services. In some cases victims were placed in protective custody at rehabilitation centers or victim support shelters operated by NGOs.

The government did not knowingly detain, jail, deport, or prosecute victims for violations of other laws. When trafficking investigations substantiated allegations, the government encouraged victims to assist with investigation and prosecution. The government did not have its own means of protecting victims and witnesses; however, it arranged for protective custody and security protection through facilities operated by NGOs.

The government did not have programs that specifically targeted trafficking, although law enforcement officers attended training courses that raised awareness of the problem. A government interagency committee on human trafficking, chaired by the Ministry of Home Affairs, met during the year to promote coordination and information sharing among agencies.

Government agencies responsible for combating trafficking included the police, immigration authorities, and the Ministries of Justice, Labor and Social Services, and Education.

The State Department's annual *Trafficking in Persons Report* can be found at [www.state.gov/g/tip](http://www.state.gov/g/tip).

#### Persons with Disabilities

The law prohibits discrimination in general, but there is no law that specifically prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, or the provision of other state services or in other areas. Persons with disabilities faced significant societal discrimination in employment and education.

The MCDSS has responsibility for ensuring the welfare of persons with disabilities. 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. On September 19, *The Post* reported that conditions at the country's only mental health facility, Chainama Hills Mental Hospital, were generally good.

#### Indigenous People

The country's seven major indigenous groups--Bemba, Kaonde, Lozi, Lunda, Luvale, Ngoni, and Tonga--are divided into 73 ethnic subgroups. Indigenous persons participated in decisions affecting their lands, cultures, traditions, and the exploitation of energy, minerals, timber, or other natural resources on indigenous lands. The government effectively protected their civil and political rights and any existing rights under the domestic law to share in revenue from the exploitation of natural resources on indigenous lands. The government generally permitted autonomy for indigenous people by encouraging the practice of local customary law. Some political parties maintained political and historical connections to indigenous groups and promoted their interests.

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

The law criminalizes homosexual behavior and provides penalties of up to 14 years' imprisonment for individuals who engage in homosexual acts. The government enforced the law that criminalizes homosexual conduct and did not respond to societal discrimination. Societal violence occurred based on sexual orientation, and societal discrimination based on sexual orientation occurred in employment, housing, or access to education or health care. There were no known cases of lesbian, gay, bisexual and transgender persons becoming stateless because of their sexual orientation. There were active groups promoting rights of such persons, but the Ministry of Home Affairs' Registrar of Societies continued to refuse to register them. Groups held social gatherings but did not participate in open demonstrations or marches.

#### Other Societal Abuses and 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 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.

On October 5, the High Court agreed to hear a case in which two former air force officers, Stanley Kingaibe and Charles Chookole, had sued the air force for dismissing them because they were diagnosed HIV-positive. Kingaibe and Chookole alleged that the air force tested them for HIV in 2001 without their knowledge or consent and later dismissed them.

Individuals increasingly sought free access to HIV/AIDS counseling and testing, and more than 200,000 HIV patients were receiving antiretroviral treatment by year's end.

## Section 7 Worker Rights

### a. The Right of Association

The law allows workers to form and belong to trade unions of their choice without previous authorization or excessive requirements, and workers exercised these rights in practice. Police officers and military personnel were not permitted to form unions. Approximately two-thirds of the country's 300,000 formal sector employees were unionized. The law allows unions to conduct their activities without interference, and the government generally protected this right in practice.

The Industrial and Labor Relations Act governs union activity. 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; however, the law provides for notice, reconsideration, and right of appeal to an industrial relations court.

The law provides for 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 service, 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. Because the process of exhausting other legal alternatives to striking was lengthy, most unions chose to strike illegally. The last legal strike in the country occurred in 1993. Workers who engaged in illegal strikes could be dismissed by their employers; the government at times intervened for political reasons when such dismissals occurred. During the year there were no such dismissals.

### b. The Right to Organize and Bargain Collectively

The right to collective bargaining, without government interference, is protected in law and freely practiced. The law also prohibits antiunion discrimination and employer interference in union functions, and the government enforced this right.

During the year the government established Multi-Facility Economic Zones in Lusaka and Chambishi. There are no known special laws or exemptions from regular labor laws in these zones.

### c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred in labor-intensive, informal-sector work such as domestic service, hospitality, agriculture, construction, and sexual exploitation. 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, as when a traditional leader or other dignitary calls upon all members of a village to assist in preparing for a visit; however, there were no reports of such activities during the year.

### d. 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. Nevertheless, child labor was a problem in subsistence agriculture, domestic service, construction, farming, transportation, prostitution, quarries, mines, and other informal sectors, where children under the age of 15 often were employed, and the law was not enforced. The law also prohibits slavery and the procurement or offering of a child for illicit activities.

The minimum age for employment is 15; for hazardous work, it is 18. 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. Zambia ratified ILO Convention 182 in 2001 but had not promulgated a list of occupations considered to be the worst forms of child labor. Among the worst forms prohibited by law are child prostitution, slavery in all its forms, military conscription, and work that is harmful to the safety, health, or morals of children and young persons.

During the year children, particularly those who had lost both parents to HIV/AIDS, were sent to rural areas to be cared for by relatives, or they lived on the streets.

The MLSS is responsible for the implementation and enforcement of child labor laws and regulations. The MLSS can bring charges that provide for penalties ranging from a fine to a maximum three months' imprisonment, or both, for violations. Labor inspectors may also enter family homesteads and agricultural fields to check for child labor violations.

Because more than 85 percent of child labor occurred in the agricultural sector, most often with the consent of families, the MLSS labor inspectors focused on counseling and educating families that engaged 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. By year's end local governments had established 16 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 and to mobilize communities to eliminate the worst forms of child labor.

The government continued to provide awareness and training activities for officials charged with enforcing child labor laws; however, the MLSS reported that resource constraints prevented it from providing all required training. The government participated in several projects to combat child labor and had generally been supportive. During the year a government-supported project to withdraw 3,000 children from exploitive work and prevent 7,000 other children from entering it through the provision of education and training services concluded. A second multinational project to combat child labor through education continued at year's end.

#### e. Acceptable Conditions of Work

The minimum wage in the formal sector was 268,000 kwacha (\$53.6) 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. The minimum wage did not provide a worker and family with a decent standard of living; most minimum wage earners supplemented their incomes through second jobs, subsistence farming, or reliance on extended family. The minimum wage act did not apply to domestic servants. The MLSS is responsible for enforcing the minimum wage, and its inspectors received and resolved complaints.

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. The standard workweek was 40 hours, and there were limits on excessive compulsory overtime, depending on the work category of work. The law requires required 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 government effectively enforced these standards.

The law also regulates minimum health standards in industry, and city and district councils were responsible for enforcement. The inspector of factories under the minister of labor handled factory safety; however, staffing shortages limited enforcement effectiveness. The MLSS continued to conduct labor inspections during the year and ordered businesses to close when it found significant violations of labor laws.

On January 14, the government closed operations at the Chinese Collum Coal Mine in Sinazongwe after two miners died in two mine accidents caused by poor safety conditions. The mine was reopened on February 23 after the mine owners complied with the required safety rules.

The law protects the right of workers to remove themselves from work situations that endangered health or safety without jeopardy to their continued employment, but workers did not exercise this right in practice. The government acted when well-known occupational health problems existed, such as by requiring that underground mine workers receive annual medical examinations.