

UNICEF inputs to the Universal Periodic Review of Zambia

I. Background and framework

This briefing note provides input to the Universal Periodic Review (UPR) of Zambia at the Human Rights Council during the 14th session of the UPR Working Group, to be held in Geneva from 22 October to 5 November 2012.

A. Scope of international obligations

- Zambia ratified the Convention on the Rights of the Child (1991).
- Zambia signed (29/09/2008) but has not yet ratified both the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Optional Protocol on the Involvement of Children in Armed Conflict.

B. Constitutional and legislative framework

The current constitution was enacted in 1996, whilst it guarantees rights to ‘all persons’ including children it does not define age of a child. In April 2012 Zambia was drafting a new constitution and bill of rights with the intent to ensure domestication of the Convention on the Rights of the Child through the constitutional reform process. Currently legal anomalies lead to inconsistency in defining the age of the child. CRC has not yet been domesticated in full although a review of children related legislation has been carried out and amendments to laws to address gaps in domestication of CRC are being undertaken.

Zambia has a dual legal system of statutory and customary law which are applied inconsistently resulting in poor implementation of the rights of the child. Customary law ordinarily is only supposed to be applied where it is not repugnant to natural justice. Zambia has at least 26 pieces of legislation which provide for and regulate the rights of the child.

The Committee on the Rights of the Child in its 2003 Concluding Observations on the initial CRC report recommended the government strengthen its efforts, notably through the Law Development Commission, to review existing legislation and customary laws with the aim of bringing them into conformity with the Convention

This process is underway with technical support from UNICEF. However, rather than pursuing a comprehensive children’s code as recommended by the Committee on the Rights of the Child, individual pieces of legislation are being reviewed rather than the pursuing adoption of a comprehensive children’s code.

Recent legislative initiatives have resulted in stronger protection of children’s rights, most notably the Gender Based Violence Act (2011) and the amendments to the Education Act (2011) which enshrines in legislation the right to free basic education.

C. Institutional and human rights infrastructure and policy measures

Zambia has a permanent Human Rights Commission (created under the 1996, the Human Rights Commission Act No. 39) but as noted by the Committee on the Rights of the Child it is not yet fully in line with the Principles relating to the status of national institutions for the promotion and protection of human rights. Within the NHRC is the Commissioner for

Children and the office has been active in monitoring certain child rights including periodic visits to places of detention and holding public hearings on violence against children. However the position is not regularized in the structure of the Human Rights Commission and as such does not receive regular and predictable allocation of financial or technical resources. Zambia has adopted a National Child Policy in 2006 and a National Plan of Action was subsequently developed. With the recent change in government there are plans to review and amend the policy. The Committee on the Rights of the Child expressed its concern that lack of sufficient human and financial resources would hamper implementation of the plan.

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies

Zambia submitted its first report to the Committee on the Rights of the Child 2002 with the Concluding Observations issued in July 2003. It is late submitting its 2nd, 3rd and 4th periodic reports to the Committee on the Rights of the Child. The Committee has advised the government to submit a combined report (covering 2nd, 3rd and 4th submissions) which is currently under preparation and expected to be submitted by June 2012.

B. Cooperation with special procedures

C. Cooperation with the Office of the High Commissioner for Human Rights

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

The Constitution enshrines general provisions against discrimination (arts. 11 and 23), right to life, liberty and security of the person. However, the Committee on the Rights of the Child expresses concern that the principle of non-discrimination is not adequately implemented with respect to children belonging to the most vulnerable groups such as girls, children with disabilities, orphans, disadvantaged children, refugee children and children born out of wedlock. The CEDAW Committee further notes the need to harmonize religious and customary law with the provisions of the Convention do prevent discrimination against women and girls.

Whilst the Affiliation and Maintenance of Children Act covers provisions for children's inheritance it does not yet comply with *UPR recommendation (4)*, in that children not born within the marriage are not covered. Furthermore enforcement of the Act remains problematic as customary marriage disputes and inheritance are often heard in Local Courts rather than under statutory courts.

B. Right to life, liberty and security of the person

Child and infant mortality

Between the 2002 and 2007 Demographic Health Surveys, more than 25% decline in under-five mortality rate (119) has been recorded, but the neonatal mortality rate (34) has remained

consistently high with minimal decline. The recent decline notwithstanding, the mortality rate among children remains unacceptably high.

The Committee on the Rights of the Child expressed its concern about the insufficient number of trained medical personnel; the weakness of family planning services; the high maternal, child and infant mortality rates; the high incidence of malaria and acute respiratory infections; the fact that, in some instances, male circumcision is carried out in unsafe medical conditions; and the poor sanitation and limited access to safe drinking water, especially in rural areas.

Zambia has responded to UPR recommendation (16), consider developing a strategy that ensures that the experiences of community practitioners are taken into account in the development of its national strategies to improve health standards in maternal neo-natal and child health. The Ministry of Health developed the National Community Health Worker Strategy with the goal of having an adequately trained and motivated community-based workforce that will contribute towards improved health service delivery and the attainment of national health priorities. The strategy calls for further training of existing community-based providers also building on their field experiences. The creation of the Ministry of Community Development, Mother and Child Health and of the Ministry of Chiefs and Traditional Affairs is envisioned to contribute to further strengthening of community participation and engagement and facilitating integration of community experiences into policy discussions.

Zambia remains challenged in reaching the MDG targets particularly in reducing maternal mortality and child mortality. Effective service delivery is critical to achievement of the MDGs and remains one of the major bottlenecks. Whilst improvements in immunization partly explain the decline in under-five mortality more concerted efforts particularly around HIV are needed to further reduce under-five mortality and reach the MDG target.

Maternal mortality

Maternal mortality ratio (MMR) has reduced from 729 per 100,000 live births in 2002 to 591 in 2007 however remains high. The direct causes of maternal death include haemorrhage (34%), sepsis (13%), obstructed labour (8%), hypertensive conditions (5%) and abortion (4%) - Figure 2. The main indirect causes are malaria (11%) and HIV (10%). The Committee on the Elimination of Discrimination against women recommends Zambia strengthen its efforts to reduce the incidents of maternal mortality and to raise awareness of and increase women's access to health-care facilities and medical assistance by trained personnel, especially in rural areas.

Violence against women and girls

Addressing violence, exploitation and abuse of children remains a challenge particularly in addressing harmful social norms. Reported rates of defilement of children below the age of 16 years are on the increase as are numbers of girls dropping out of basic education due to pregnancy. More than half of Zambian women and girls (53%) report having experienced beatings or physical mistreatment since the age of 15, according to the Zambia Demographic and Health Survey. The Victims Support Unit of the Zambia Police reports that 60% of cases of sexual violence are against children below the ages of 16 years. A confluence of factors renders children and young people at increased risk of abuse. Economic deprivation is aggravating the vulnerability of households and altering household priorities and intra-household dynamics. Further, the abuser is often an older male who is the primary

breadwinner for the family- compromising families' ability to respond to violence even when abuse transgresses traditionally acceptable practices. As a result, abusers often are not subject to judicial processes, which reinforce the status quo and subjects victims to sustained abuse. The Gender Based Violence Act (2011) has criminalized acts of gender based violence and mandated the government to establish services for victims including One Stop Centres and Shelters although resource allocation remains low.

C. Administration of justice, including impunity, and the rule of law

Justice for Children

Efforts are being made to strengthen the juvenile justice system with the Child Justice Forum established at national level and in 40 districts. However the Child Justice Forum has not legal status and continues to be reliant on external resources to function.

UPR recommendation (5) to train human rights judges in local courts, has not been fully implemented and a recent study on Access to Justice found a gap in capacity building at local court level particularly in the area of human rights.

UPR recommendation (8) related to improving the living conditions of detainees has in part been implemented for children. Separation of children from adults in custody has only been achieved in part with children still incarcerated in adult facilities, sharing the same bathing and exercise area and often transported with adults to and from court and police facilities. Prison congestion leads to children being held both pre and post trial in the same facilities. Concern raised by the Committee on the Rights of the Child remain in relation to the very poor conditions of detention, due mainly to overcrowding, the frequent recourse to and excessive length of pre-trial detention and the very limited rehabilitation and reintegration services for juveniles following judicial proceedings. Children's basic needs are not met in detention with lack of access to education, appropriate nutrition, shelter and welfare neglected. In addition rates of HIV infection in prisons is much higher than in the general community.

UPR recommendation (10) has in part been implemented with juvenile courts established. Although specific court facilities do not exist for juveniles, magistrate courts hold juvenile hearings on days allocated only for these cases. All magistrates receive training on juvenile matters with specific magistrates assigned to juvenile cases in Lusaka, Livingstone and Ndola. The Criminal Procedure Code excludes juveniles from proceedings tailored for adults and special courts are established for hearing cases involving juveniles except for offences of homicide or attempted murder. Concern remains though as the term 'child' is not defined in the Criminal Procedure Code and age of criminal responsibility remains low at 8 years of age.

D. Right to privacy, marriage and family life

Child Marriage

Incidences of child marriage are high in Zambia with 42% of women aged 20 -24 years, married before age 18 compared to only 5% of men. Marriage is not defined in the Marriage Act, and whilst the Act establishes the legal age for marriage at 21 years of age, it leaves legal provision for marriage below this age with consent of an adult. Under customary law where most marriages take place, a child can be married at puberty.

Children without parental care

Zambia has an estimated 1.2 million orphans. The Committee on the Rights of the Child recommends that the State party take all necessary measures to make institutional care a solution of last resort and to improve the quality of care, both in private and public institutions, via registration and enforcement of quality standards.

E. Freedom of movement

F. Freedom of religion or belief, expression, association and peaceful assembly; and right to participate in public and political life

G. Right to work and to just and favourable conditions of work

H. Right to social security and to an adequate standard of living

Standard of living

In 2010, Zambia ranked 150 out of 169 countries on the global Human Development Index. Poverty remains widespread in Zambia with a national poverty rate of 64 per cent (2006) which increases to 80 per cent in rural areas. Inequality is evident between rural and urban areas, and within provinces and districts with more remote and harder to access districts consistently underperforming on child rights indicators such as health and education. The Committee on the Rights of the Child noted widespread poverty, especially among female-headed households and the increasingly high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines. The Committee recommends the government of Zambia pay particular attention to the rights and needs of children when implementing its poverty reduction strategy and all other programmes intended to improve the standard of living in the country.

UPR recommendation (11) related to assistance to street children has partially been implemented with government budget allocation provided under the Gender and Child Development Division, Cabinet Office. Under Ministry of Community Development, Mother and Child Health several centres for street children have been established, however integration of services with broader social welfare services remains weak and there is no national strategy for prevention.

UPR recommendation (12) has in part been implemented with development of Social Protection services in particular the Child Grant, Provincial Welfare Assistance Scheme and other targeted social cash transfer programmes of the government. Disabled persons are also entitled to social protection assistance and specifically targeted, however, targeting and access to services remains weak. UNICEF provides assistance to government in this area.

Social Protection

During the period 2010-2011 government introduced two social assistance (cash transfer) programmes targeting children. These are the OVC and the child grant schemes. These programmes are currently being implemented in 5 of the most impoverished districts in the country and are expected to be scaled up to 5 more districts also considered to be among the 16 most vulnerable districts in the country. These programmes pay an amount of about US\$ 20 to households with OVC, disabled children and under-fives every two months.

A key priority for government for 2012 and 2013 is the development of a comprehensive social protection policy. The lack of an established policy framework for the implementation of social protection programmes makes it difficult to coordinate, integrate and ensure adequate coverage for all vulnerable groups across different sectors. The policy once in place will ensure comprehensive cross-sectoral strategies to respond to the needs of all the vulnerable segments of the population especially children. In late 2011 consensus and agreement was reached in the Social Protection Sector Advisory Group to commence policy development in 2012 and complete the process in 2013. Through the Social Protection Sector Advisory Group, government has made a formal commitment to fully support the policy development process. In addition to the formal commitment from government funds have also been sourced to support the process. The development of the policy will ensure comprehensive coverage of different groups across different sectors. As part of the policy development process government plans to undertake a comprehensive review of all social protection programmes and a targeting assessment of the different programmes focusing on accuracy and effectiveness of targeting in the social protection sector.

Birth registration

Birth registration is compulsory under Section 5 of the Births and Deaths Registration Act, CAP 51. Yet rates of birth registration remain low at less than 14%. Wide disparity exists in registration rates with only 5% of the poorest 20% of children have their births registered, compared to 31% of the richest 20% of children. Amongst rural children only 9 have their births registered compared to 28% of children in urban areas.

The Committee on the Rights of the Child recommends the Government strengthen its efforts to ensure that all children are registered at birth, including through awareness-raising campaigns (e.g. using the Day of the African Child); to reinforce its efforts to facilitate birth registration procedures; and to take measures to decentralize the system, consider introducing mobile registration units, and register without fees those children who were not registered at birth.

I. Right to health

Adolescent health

The Committee on the Rights of the Child expressed concern that insufficient attention has been given to adolescent health issues, including developmental, mental and reproductive health concerns, and substance abuse. The Committee is also concerned at the particular situation of girls, given, for instance, the very high percentage of early marriages and early pregnancies, which have a negative impact on their health and development.

HIV and AIDS

Zambia has an HIV prevalence of 14.3%, one of the highest in the world. Sub-national variations exist with Northern Province having a prevalence of 6.8% and urban areas such as Lusaka Province having high prevalence at 21 per cent. Women (16.1 per cent) are more likely to be HIV positive than males (12.3 per cent) due to biological, economic and social factors. Perinatal transmission or Mother-to-Child Transmission (MTCT) accounts for approximately 10 per cent of new infections.

Zambia has made progress in implementing UPR recommendation (17), improve access to anti-retroviral treatment for vulnerable groups, including women. The government developed the PMTCT Scale-up Plan 2007-2010 which placed emphasis on male involvement and

community engagement for facilitating access to ARVs especially by women and their children. Lay counselors (including men) and mother mentors programmes were initiated targeting underserved populations. The current e-MTCT 2011-2015 plan is focused towards commodity security and provision of more efficacious regimen.

Health Policy

Zambia committed to three policy and strategic areas under the UN Secretary General's Global Strategy for Women's and Children's Health, namely: (a) increase national budgetary expenditure on health from 11% to 15% by 2015 with a focus on women's and children's health; (b) strengthen access to family planning – including among adolescent girls; (c) scale up implementation of integrated community case management of common diseases of women and children. To raise awareness and political commitment around safe motherhood, the country has launched the AU sponsored Campaign for Accelerated Reduction in Maternal Mortality in Africa (CARMMA).

The National Health Strategic Plan 2011-2015 aims at improving the health status of the Zambian population, in line with the national, regional and global health objectives and targets, particularly the Vision 2030 for Zambia and the health related MDGs. The Ministry of Health has developed the National Health Policy which underscores Government's commitment to provision of equitable access to cost effective and quality health services as close to the family as possible in a caring, competent and clean environment.

The National Food and Nutrition Strategic Plan for Zambia (2011-2015) covers 12 key strategic directions related to improving food and nutrition and gives a major priority given to new multi sector, synergistic efforts to strengthen and expand interventions related to and promote “1,000 Critical Days” that prevent stunting in children under two years of age and bring added health and productivity to Zambian families and the productivity of the nation.

To respond to the health human resource crisis in the country, the Government has created the National Community Health Worker Programme with the aim of repositioning and expanding adequately-trained and motivated community health workers. These trained and remunerated “community health assistants” will deliver essential health services through a task-shifting approach.

J. Right to education

The recent amendment to the Education Act (2011) includes the introduction of Compulsory School Attendance for children of Basic Education, the legalization of the Community Schools, the ban on Corporal Punishment, the ban on marrying of school-going child. These measures, coupled with the budgetary increase to the education section in the 2012 budget, and on-going development of a policy on early learning, demonstrate the Government's commitment to implementing the *UPR recommendation: (13)* To continue its efforts to improve its educational system and seek international assistance in this regard. In addition *UPR recommendation (18)* to share the experiences and good practices which have enabled Zambia to obtain significant results in the field of education, particularly the access of girls to education and training, has been actively pursued with Zambia contributing to sharing of good practices in the area of universal access to education with the UNDG.

However, *UPR recommendation (14)* related to developing a national strategy for human rights education in the school system has not been implemented to date.

Challenges in the fulfilment of the right to education remain particularly in ensuring access to early learning and secondary education. In these sectors services are either limited or inaccessible to the poorest children due to user fees. Quality, infrastructure and resource allocation to the community level also remain challenges.

K. Cultural rights

L. Persons with disabilities

The Committee on the Rights of the Child highlighted a number of areas requiring strengthening including policy, data, early detection, provision of special education, awareness raising, increased human and financial resource and technical cooperation, to ensure children with disabilities obtain their full range of rights.

Zambia has made some progress, it has adopted a number of laws and policies on persons with disabilities, including the Persons with Disabilities Act No. 33 of 1996, which also transformed the Zambia National Council for the Disabled into the Zambia Agency for Persons with Disabilities. Recently, the Ministry of Community Development Mother and Child Health also formulated a national policy on disability. The Government of Zambia ratified the Convention on the Rights of Persons with Disability 1st February 2010, and has signed (2008) but not yet ratified the Optional Protocol to the Convention which establishes an individual complaint mechanism. The Government has also drafted a new Bill on disability to domesticate the Convention. The Bill is expected to be enacted by Parliament by mid-year. The Zambian vision 2030 recognizes streamlining provisions for the needs of the disabled in society as key to achieving the goals and objectives of the vision. In the SDNP governments key focus is to mainstream disability in all sectors. However, while plans and strategies are in place to address disability in most sectors, critical gaps exist in terms of the available information and systems supportive to effective coordination, programme design, budgeting and implementation.

M. Minorities and indigenous peoples

N. Migrants, refugees and asylum seekers

Zambia has ratified the 1951 Convention relating to the Status of Refugees a reservation on the right to elementary education (Article 22). To date, action has not been taken on lifting the reservations. The Committee on the Rights of the Child noted its concern about the situation of refugee children particularly in relation to health and education and recommended that legal protection of refugee children be strengthened. With the enactment of the cessation clause for certain categories of refugees actions need to be taken to ensure the protection of children being repatriated particularly for unaccompanied and separated minors, some of whom have no experience of their country of origin. Further efforts of government agencies, particularly Immigration Police to screen and identify children who are asylum seekers, victims of trafficking or vulnerable migrants need strengthening to ensure these children receive timely and appropriate services and are not detained for lengthy periods in adult prisons.

O. Internally displaced persons

P. Right to development and environmental issues

Q. Human rights and counter-terrorism

R. Situation in or in relation to specific regions or territories