

Universal Periodic Review of Zambia

28th Session

Engender Rights Centre for Justice
Friends of Rainka
Generation Alive
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Executive Summary

1. This report presents key issues of concern, and recommendations on three main themes: access to health – focusing on HIV/AIDS and sexual and reproductive health and rights (SRHR) information and services; gender based violence; and discrimination, particularly against sex workers, persons with non-normative sexual orientations and gender identities and expressions, and women.
2. Criminalisation as well as legal and policy barriers play a key role in vulnerability to HIV, discrimination and violence. The current legal context for women, girls, sex workers, persons with non-normative sexual orientations and gender identities and expressions increases their vulnerability to violence and discrimination, and reduces their access to services and justice.
3. Violence based on non-normative sexuality and gender identity and expression often goes unreported because of criminalization, social stigma, victims' distrust of the police and other state authorities, fear of reprisals and unwillingness to be "out" as lesbian, gay, bisexual or transgender or sex worker,.
4. Access to SRHR information and services remains a serious challenge for many young people, particularly young women in rural areas. Conservative interpretations of culture and tradition, result in discriminatory attitudes and at times even denial of services, by health service providers to provide information about contraception to unmarried girls. In addition, the fear of social stigma and discrimination also prevent young women from approaching service providers.
5. Complicated procedural requirements and inadequate services limit the number of legal abortions performed in Zambia. Thus, despite the legal provision for access to safe abortion services, there are continuing obstacles to obtaining a legal abortion and therefore a continued reliance on illegal abortion. The Ministry of Health estimate that unsafe abortion is the cause of 1 in 3 maternal deaths.

ACCESS TO HEALTH: HIV/AIDS

Legal Context

6. There are no specific provisions within Zambian law that prohibit discrimination against people living with HIV or create an enabling environment for ensuring the right to health for all in Zambia. The Penal Code Act Amendment 15, 2005 of the laws of Zambia, Cap 155 and 158¹ outlaws consensual same-sex relations, calling for prison sentences of up to 15 years or more.

Policy Context

7. There is no consistent definition of key populations in Zambia in national health and HIV policies and strategies. The Revised National HIV/AIDS Strategic Framework (NASF) defines key populations as “People living with HIV, women and children, adolescents (10-14), young people (15-24), people with disabilities, prisoners, sex workers and their clients, migrant and mobile populations.” The Joint Mid-Term Review of the NASF defines key populations as these above-mentioned groups, as well as men who have sex with men (MSM) and injecting drug users (IDU). The lack of clarity in these critical HIV-specific national policies may lead to some vulnerable groups falling through the cracks and not receiving necessary HIV programming. The absence of a clear definition of key populations in national HIV policies also inhibits government accountability as it relates to key populations.²
8. The NASF’s priorities are: treatment, HIV testing and counselling, elimination of mother to child transmission, voluntary medical male circumcision, condom programming and social and behaviour change messages. It is worth noting that despite having included treatment as a priority, this is not accompanied by care and this should be of concern. Treatment in this case refers to the provision of medicines while care extends to the social and economic support that impacts on continuous and consistent access to health care.

Problem identification

9. Marginalized groups – sex workers, men who have sex with men, gay, bisexual and transgender individuals, adolescents and youth – are disproportionately affected by HIV and AIDS due to factors such as discrimination, poverty, lack of access to

¹<http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>

² https://www.nastad.org/sites/default/files/Zambia_Law_Review.pdf

education, health, mental wellbeing and other services that promote the access to health awareness.

10. There is a prevailing view that women who have sex with women are at no or low risk of HIV infection, leading to exclusion of this group from HIV prevention and response efforts such as access to health care services, education, treatment and research.
11. While prevalence rates show that MSM HIV prevalence is almost three times as high as the general adult population, there is little to no data available on the prevalence rate among transgender, WSW or other vulnerable groups. The National AIDS Council does not keep disaggregated data on these groups.
12. The successful implementation of the NASF is heavily dependent on foreign aid. In 2009, roughly 80 percent of Zambia's national HIV/AIDS response was funded by donors, primarily the United States government (mostly through PEPFAR), and The Global Fund to Fight AIDS, Tuberculosis and Malaria.
13. Despite being one of the top recipients of Global Fund support worldwide, a negligible amount of this funding has been directed to sex worker and MSM-specific interventions and none to transgender individuals.

ACCESS TO HEALTH: SRHR

Legal Context

14. Abortion is permitted to save the life of the pregnant woman, to preserve physical and mental health of the pregnant woman, to preserve the physical or mental health of any existing children of the pregnant woman, in the case fetal impairment that if the child were to be born it would suffer from such mental and physical abnormalities or be severely handicapped. The law also takes into consideration; the age of the pregnant woman or girl, her present reasonably foreseeable environment (economic or social reasons), rape and defilement of a female child. Three (3) registered medical practitioners are required to be of the medical opinion and consensus in support of the decision to terminate.
15. There are harsh penalties (sentences of 14 years' imprisonment) imposed on anyone performing an abortion deemed illegal, or on a woman who undertakes or gives

consent to such an abortion (subject to 7 years' imprisonment). In 2013, 32 cases relating to abortion (including the procurement of an abortion) were opened.

Policy Context

16. Zambia is a signatory to the Maputo Plan of Action on SRHR, which places emphasis on the need to reduce the incidence of unsafe abortions, increase government budget allocation to health and SRHR, and recognition of youth-friendly SRHR services as integral to youth empowerment, development and wellbeing.
17. Zambia is a signatory to the 2013 Ministerial Commitment on CSE and sexual and reproductive health services for adolescents and young people and has since 2014, rolled out comprehensive sexuality education for learners in grades 5 to 12.
18. On 19th September 2016, United Nations Population Fund (UNFPA) and the Ministry of Youth, Sport and Child Development launched a twelve-day training on the Comprehensive Sexuality Education (CSE) curriculum for out of school youth in Zambia³. However, topics such as sexual orientation and gender identity/expression, are excluded from the curriculum.

Problem identification

19. Complicated procedural requirements and inadequate services limit the number of legal abortions performed in Zambia. Thus, despite the liberal nature of its abortion law, there are continuing obstacles to obtaining a legal abortion and therefore a continued reliance on illegal abortion. The Ministry of Health estimate that unsafe abortion is the cause of 1 in 3 maternal deaths⁴. Locally, the Ministry of Health estimates that about 23 per cent incomplete abortions occur among women younger than 20 years, while 25 per cent of maternal deaths due to induced abortions occur among girls younger than 18 years.⁵
20. There is a reluctance to provide information about contraception to unmarried girls due to cultural and religious expectations. Girls are often not comfortable in receiving

³ <http://zambia.unfpa.org/news/comprehensive-sexuality-education-out-school-youth-launched-zambia#sthash.HJD7iWYF.dpuf>

⁴ https://www.guttmacher.org/sites/default/files/report_pdf/ib-unsafe-abortion-zambia.pdf

⁵ <http://www.times.co.zm/?p=8045>

contraceptives because they fear being judged by the community.⁶

21. Early marriages correlate with the high instance of pregnancies amongst adolescent women.⁷ Zambia has one of the highest child marriage rates in the world with 42% of women aged 20-24 years married by the age of 18⁸.
22. There is a lack of support and resources for the establishment of a youth friendly corner where young people can obtain family planning advice from trained peers.⁹
23. Zambia has made some strides in improving maternal health, with a decline in maternal mortality from 729 deaths per 100,000 live births in 2001/2002 to 398 deaths per 100,000 live births in 2013/14 – or a 54% decline¹⁰. However, this rate is still one of the highest in sub-Saharan Africa and is a result of lack of access to emergency obstetric care, skilled attendants during pregnancy, childbirth and postnatal period, family planning and abortion services.
24. Lack of access to family planning services, particularly in rural areas where a high percentage of Zambia's youth reside, is a major contributor to the 16% of births which are reported in Zambia as unwanted¹¹. There is 27% unmet contraceptive need among women aged 15 – 49 years¹². The current total fertility rate stands at 5.67 children born/woman¹³

GENDER BASED VIOLENCE

Legal Context

⁶ <http://www.youthpolicy.org/blog/youth-work-community-work/sexual-and-reproductive-health-in-zambia-rights-versus-reality/>

⁷ Ibid

⁸ <http://www.wvi.org/zambia/article/situation-report-child-marriages-zambia>

⁹ Ibid

¹⁰ <http://zambia.unfpa.org/news/zambia-records-98-increase-family-planning-and-54-drop-maternal-mortality-during-mdg-period>

¹¹ Coast, Ernestina and Murray, Susan (2014) Pregnancy termination trajectories in Zambia. IUSSP working papers, International Union for the Scientific Study of Population (IUSSP), Paris, France.

¹² <http://www.carmma.org/fr/scorecard/zambia>

¹³ http://www.indexmundi.com/zambia/total_fertility_rate.html

25. Zambia passed the Anti-Gender Based Violence Act of 2011 (MGCD, 2011) and instituted the National Gender Policy of 2014 (MGCD, 2014).

26. Marital rape is currently not criminalized under either the Anti-Gender Based Violence Act or the Rape Act.

Policy Context

27. The NASF recognises Gender inequality and Gender-based violence are both important human rights and development themes beyond HIV responses. The NASF also acknowledges that they are significant barriers to the overall goal of reducing new HIV infections and ensuring all Zambians have access to appropriate treatment.

Problem identification

28. The Zambian Demographic and Health Survey (ZDHS) data indicates that 47 percent of ever-married women age 15-49 report ever having experienced physical, sexual, and/or emotional violence from their current or most recent husband or partner, and 31 percent report having experienced such violence in the past 12 months.

29. One in five women has experienced sexual violence in their lives, 64% of which is perpetrated by an intimate partner. However, less than half (46%) of abused women and girls seek help (with some research placing this as low as 9% for various personal, economic, and social concerns; especially fear of stigma¹⁴).

30. Underreporting is also coupled with poor conviction rates – for example only 18% of reported rape cases resulted in a conviction¹⁵. Together these translate into de facto impunity for perpetrators of rape.

31. Despite the potential of Victim Support Units (VSU) to increase access to services for survivors of gender based violence, these are usually not situated in police posts within the reach of the majority of the population. VSU officers have limited training in addressing various types of violence against women and children, and interview

¹⁴ <https://www.dhsprogram.com/pubs/pdf/FR304/FR304.pdf>

¹⁵

http://www.zambiapolice.gov.zm/images/NATIONAL_GENDER_CRIME_STATISTICS_FOR_THE_YEAR_2013.pdf

offices may not be private¹⁶.

32. Social acceptance of gender based violence is often reinforced by state and non-state actors, including religious leaders and senior government representatives. For instance, the then defense Minister in Zambia in 2013 commented in a newspaper that when a man beats his wife it is a sign of love, and that it was acceptable in Zambian culture¹⁷.

Discrimination

Legal Context

33. The Penal Code Act Amendment 15, 2005 of the laws of Zambia, Cap 155 and 158¹⁸ outlaws consensual same-sex relations, calling for prison sentences of up to 15 years or more.

34. Zambia held a referendum in 2016 on a proposed amendment to the Constitution's Bill of Rights (to include civil, political, economic, social, cultural, environmental, further and special rights) and to repeal and replace Article 79. Despite the majority of voters supporting the amendments, poor voter turnout meant that the referendum failed to meet the 50% threshold required for the amendments to be passed.

35. Sex work in Zambia is criminalised under Part III, Section 146 of the Penal Code, Chapter 87¹⁹ of the laws of Zambia, which provides that any person who knowingly lives wholly or in part on the earnings of prostitution or in any public place, persistently solicits or importunes for immoral purposes commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years.

36. Although the Constitution protects women from discrimination and forbids laws that discriminate on the basis of sex/gender, it explicitly excludes from its provisions, specific laws on inheritance of property, and the application of customary law.

¹⁶ <http://www.rassweb.com/wp-content/uploads/PDF/SSSH/Vol-4/Issue-2/Paper%205.pdf>

¹⁷ <https://www.lusakatimes.com/2013/05/23/womens-organisation-condemn-gbm-for-saying-beating-a-wife-is-a-sign-of-love/>

¹⁸ <http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>

¹⁹ See footnote 1.

37. The legacy of colonial rule continues in modern Zambia, which has resulted in two categories of marriage –under statutory law (and the church) and marriages contracted under customary law (regarded as inferior). Statutory marriages include those contracted in churches and at places like civic centres. Customary marriages are contracted using Zambian customary law that lacks statutory protection. For statutory marriages, the High Court has jurisdiction when it comes to dissolution (or divorce). Customary marriages fall under the Local Court Act, and can be dissolved by the Local Courts. Payment of dowry is an integral part of customary marriages.

38. There is no legal recognition of co-habitation or domestic partnerships.

Policy Context

39. Favorable policies exist in Zambia but implementation has not been effective due to limited resources directed towards the implementation of policies.

Problem identification

40. The position of women in Zambia remains subordinate to that of their male counterparts, mainly as a result of conservative interpretations of religion, patriarchy and gender stereotypes and norms, which is bolstered through the dual legal system and in particular the application of customary laws most of which institutionalise patriarchal views of the role of women in the family.

41. In particular, customary law and practice on marriages, divorce and inheritance, fail to adequately protect women and ensure that their rights to non-discrimination and equality are realised.

Recommendations for action by the Government of Zambia

1. Allocate resources and roll out Comprehensive Sexuality Education (CSE) for both in and out of school youth to provide them with information to make informed choices and access youth-friendly, non-judgmental SRH services.
2. Remove legal barriers such as three (3) medical practitioner requirements and non-recognition of midlevel providers in the provision of safe abortion services in line with the World Health Organization (WHO) safe abortion guidelines.
3. Repeal laws that explicitly or implicitly criminalize sex work and same sex sexual conduct and municipal bylaws which are used to harass and detain sex workers.

4. Harmonise customary and statutory law, ensuring that both are in line with international human rights standards.
5. Implement the Abuja Declaration and Technical Guidance on the Application of a Human Rights-Based Approach to the Implementation of Policies and Programmes to Reduce Preventable Maternal Mortality and Morbidity (MMM HRBA) including provisions relating to increased funding to the health sector to ensure sufficient human resources and procurement and supply chain management of reproductive health commodities, including medical abortion drugs
6. Engage in nationwide rights based education and awareness programs that name the root causes of inequality and violence.
7. Revise the Anti-Gender Based Violence Act and Rape Act, ensuring that marital rape and rape by intimate partners is criminalized.
8. Increase funding directed towards shelters and services for survivors of gender based violence ensuring that these are survivor-centred and holistic, and accessible in rural and urban areas.
9. Upscale programming aimed at reducing the HIV prevalence rates among MSM, transgender and WSW by engaging in research and making IEC services targeting the populations readily available as well as making access to products that reduce the risk such as Lubricants and Dental dams available.