

SUFFERING IN SILENCE

The Links between Human Rights Abuses and HIV Transmission to Girls in Zambia

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I. SUMMARY

After my mother died, I went to my mother's mother. In 2001, she died, so I stopped school. . . . Then we went to my auntie, my mom's younger sister. . . . Most girls find that they start keeping up with [having sex with] stepfathers or uncles. Most are raped. They have no say. They think if you bring them to the police, there will be no one to keep me. So they keep quiet.
—Patricia M., age sixteen¹

Each year, children are ushered into roles they're not supposed to perform; heading households, unable to attend school, getting pregnant, on the street, into commercial sex. Living with HIV/AIDS has a huge impact on the mind of a child. They lose parents very early, and they're ushered into these roles.
—Alick Nyirenda, Copperbelt Health Education Project, May 25, 2002

The catastrophe of HIV/AIDS (human immunodeficiency virus/acquired immune deficiency syndrome) in Africa, which has already claimed over 18 million lives on that continent, has hit girls and women harder than boys and men. In many countries of eastern and southern Africa, HIV prevalence among girls under age eighteen is four to seven times higher than among boys the same age, an unusual disparity that means a lower average age of death from AIDS, as well as more deaths overall, among women than men.

Abuses of the human rights of girls, especially sexual violence and other sexual abuse, contribute directly to this disparity in infection and mortality. In Zambia, as in other countries in the region, tens of thousands of girls—many orphaned by AIDS or otherwise without parental care—suffer in silence as the government fails to provide basic protections from sexual assault that would lessen their vulnerability to HIV/AIDS.

Through girls' own testimonies, this report shows sexual assault of girls in Zambia in the era of HIV/AIDS to be widespread and complex. It documents several categories of abuse that heighten girls' risk of HIV infection, including (1) sexual assault of girls by family members, particularly the shocking and all too common practice of abuse of orphan girls by men who are their guardians, or by others who are charged to assist or look after them, including teachers, (2) abuse of girls, again often orphans, who are heads of household or otherwise

¹ Human Rights Watch interview, Lusaka, May 22, 2002.

desperately poor and have few options other than trading sex for their and their siblings' survival, and (3) abuse of girls who live on the street, of whom many are there because they are without parental care. All of these situations of abuse must be addressed as part of combating the HIV/AIDS epidemic in Zambia.

In addition, sexual violence and coercion of girls are fueled by men's targeting for sex younger and younger girls who are assumed to be HIV-negative or seeking them out based on the myth that sex with virgins will cure AIDS: the phenomenon of "sugar daddies," unscrupulous older men who entice girls into sex with offers of gifts or money, has been a particular focus of media and other accounts of the impact of HIV/AIDS on girls in Zambia and elsewhere in Africa. The subordinate social and legal status of women and girls makes it difficult for them to negotiate safer sex and to take steps to protect themselves from HIV infection and other sexually transmitted diseases (STDs). The incidents of sexual assault documented in this report were exacerbated by a number of factors, including discrimination girls in Zambia face in access to education. Many of the girls interviewed by Human Rights Watch were unable to continue in school either because their income or labor or capacity for caring for a sick person was needed in an AIDS-affected family while most boys in the family stayed in school, or due to other exclusionary barriers faced more by girls than by boys. The AIDS epidemic itself, which continues to claim the lives of parents and leave orphans at a rate unprecedented in history, perpetuates situations of particular vulnerability for girls as orphans and household heads.

As this report notes, one of the key problems in the state response is the failure of the criminal justice system to deal appropriately with complaints of sexual abuse. There are many barriers to effective reporting and prosecution of crimes of sexual assault, including additional elements of coercion. For orphaned girls being abused by men who are meant to be their guardians or otherwise to be helping to look after them, reporting the abuse may mean risking abandonment or violent punishment. Families will often go to great lengths to conceal this abuse. In other cases, victimized girls remain silent in the face of legal and social services systems that fail to act to protect girls' rights. To report a crime of sexual violence or abuse, a girl would face a police department that is rarely child- or gender-sensitive, health service providers that may scold her for being promiscuous, a court system lacking any facilities for youths, and a societal structure that teaches girls to be submissive to men. Even if she did report abuse, chances that officials would act against the abuser are minimal. As a result, the perpetrators remain free to abuse, and to infect, again.

The case of sexual abuse of girls, especially orphans, by members of their own family is particularly shocking, not least because adult female relatives often stand by, afraid or intimidated, but nevertheless silent in the face of this

abuse. As the ranks of orphans continue to grow sharply, this silence and effective complicity within families bodes ill for Zambian society's ability to confront an epidemic that has favored women and girls among its victims.

The complexity of the risk of HIV transmission among girls is painfully apparent and poses a clear challenge to the global response to the pandemic. However, one relatively simple place to start is to improve the criminal justice system's response to complaints of sexual violence or other abuse. Although criminal prosecutions will never reach all those guilty of such abuse they can ensure that some perpetrators are imprisoned and are unable to reoffend, and they also send an important signal to society that such behavior is unacceptable, helping to change the attitudes that ensure social acceptance of, for example, the sexual exploitation of underage girls. The remedies required to improve the state's efforts to protect millions of girls in Africa represent a very small part of the cost and effort required to mount a comprehensive national program on HIV/AIDS. They do not require a massive overhaul of the justice system. In Zambia, as in many African countries, most of the laws that would protect girls from sexual assault are on the books, but they need to be enforced. The police need special training in gender violence and child abuse, as do medical professionals and educators. Abuses against girls must be investigated and prosecuted and appropriate punishments meted out. Discriminatory practices against girls and women, including under the customary law that is still widely applied in Zambia (even where statutory law or the constitution outlaws such practices), must be addressed. Communities need to be empowered to recognize and act upon signs of abuse. Governments, schools and communities should enhance programs to keep girls in school and in a safe environment. Traditional counselors and healers should be encouraged to incorporate AIDS education into their work, and cultural practices that put girls at risk of HIV infection should be stopped.

This is an important moment for Zambia and for the international struggle against HIV/AIDS. Recent studies have indicated a reduction in HIV prevalence among young adults in Zambia, reportedly due to sexual behavior change, including increased condom use. However, progress in reducing new cases will be stalled if the abuses that put girls at risk of infection are not addressed. In addition, significant resources are being made available for HIV/AIDS programs in Zambia through the Global AIDS Fund as well as through bilateral donors and the World Bank. International and national policymakers should muster the political will and take the steps necessary to break this cycle of abuse and transmission and must make protection of girls' human rights a central part of their anti-HIV/AIDS strategies. Allowing girls to

suffer in silence not only perpetuates serious human rights violations; it ensures that the HIV/AIDS epidemic will continue on its destructive course.

II. RECOMMENDATIONS

To the Government of Zambia

- Design and implement programs that would afford girls some basic protections from sexual violence and exploitation. Such programs should include greatly increased capacity for reporting and investigating abuses and providing counseling and treatment for victims. These should include training of police, social welfare workers and legal officers to improve their capacity to work with girls and encourage them to report sexual violence and other human rights abuses, establishing clear procedures for reporting and follow up, and strengthening coordination among all service providers. The government should consider creating special centers where abuses against girls can be reported, staffed by trained police, medical personnel, and counselors, and should establish monitoring mechanisms to ensure that the procedures are effective and accessible. All of these improvements should be based on wide consultations with governmental and nongovernmental actors. Disseminate information about these initiatives as part of the national strategy to combat HIV/AIDS.
- Take all necessary steps to ensure that police and other law enforcement agencies fully investigate and prosecute cases of sexual violence and coercion of girls. Ensure that prosecutors treat cases of sexual violence seriously and seek appropriate penalties and punishment.
- Train all police officers in the recognition and combat of gender-based violence and child abuse, including developing relevant forensic skills. In particular, target the Victim Support Unit for sustained and in-depth training in investigating sexual violence and child abuse, as well as in national and international law prohibiting sexual violence.
- Strengthen support services for victims of rape and sexual assault, such as counseling, testing, health and medical services, legal and financial services, and providing the indicated short course of antiretroviral drugs (post-exposure prophylaxis) for rape victims. Promote the expansion of youth-friendly health services that address the physical and psychological health needs of girls, including counseling related to sexually transmitted diseases.
- Make spousal rape a crime along with other categories of sexual violence.
- Provide training to develop the capacity of medical, judicial, and law enforcement personnel to assist victims of child abuse and sexual violence. Train teachers, social workers, and counselors to identify vulnerable or abused children and to take steps to provide protection.
- Implement and enforce laws and regulations in conformity with the constitutional provision against discrimination and with international

standards, with specific reference to discrimination against women and girls in education, inheritance rights and custody of children. Promote gender equality under law and take steps to remove discriminatory provisions of customary law. Launch awareness campaigns to inform and educate all Zambians about these rights.

- Enact anti-discrimination laws to reduce human rights violations against children affected by HIV/AIDS, including abuses of their property rights. Ensure access of all children to HIV/AIDS-related information and education. Investigate and prosecute cases of police violence against girls who are street children or sex workers.
- Take steps to protect sex workers from violence, including training law enforcement and judicial personnel to treat their cases without discrimination or bias, and to provide them with HIV/AIDS information, counseling and treatment.
- Review and reform the legal system in light of the AIDS crisis to ensure legal protection for people infected with HIV/AIDS, as well as those orphaned or widowed due to HIV/AIDS. Where necessary, enact new laws to deal with specific problems raised by HIV/AIDS.
- Modify education policy to eliminate the practice of banning pregnant girls from school for any amount of time. Design and implement programs to ensure that pregnant students stay in school and return if desired after the birth of a child.
- Promote awareness of the dangers of cultural practices that put girls at risk of HIV infection. Engage traditional leaders, healers, birth attendants, and other guardians of tradition at the community level to recognize and address traditional practices that further girls' vulnerability to HIV infection.
- Enact national laws to ensure compliance with human rights instruments to which Zambia is a party, particularly the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Put in place national institutions to promote and protect these rights and to monitor their implementation.

To the donor community

- Assist in the development of governmental and nongovernmental programs designed to address the link between sexual violence and coercion and HIV/AIDS in Zambia. Target support at programs to enhance protection of girls' rights and to develop mechanisms to monitor these abuses. Provide financial and technical assistance to civil society organizations that seek to

address abuses against girls, including legal services, counseling and testing, and medical assistance.

- Contribute to training law enforcement and judicial personnel on the links between sexual violence and HIV/AIDS, and on international legal standards. Assist law enforcement agencies in acquiring necessary forensic skills and equipment for investigating cases of sexual violence.
- Engage publicly and privately with the Zambian government to highlight the importance of including violence against girls and women in broader AIDS prevention programs. Ensure that the specific needs of girls at risk of HIV infection are addressed.

To the United Nations

- Engage in high-profile advocacy about the link between human rights abuses and HIV transmission to girls in Zambia, and reflect this link in HIV/AIDS programs supported by the U.N. in the country. In particular, ensure that UNICEF programs reflect the special protection needs of girls with respect to the AIDS epidemic.

III. METHODS

Human Rights Watch conducted research for this report in Zambia in May and June 2002. Two Human Rights Watch researchers visited about thirty-six nongovernmental organizations (NGOs), orphanages or other centers for children and, with their help, interviewed approximately 100 girls under eighteen years of age.² Most interviews were conducted in Lusaka, the capital city; Kitwe and Ndola in Copperbelt Province; and Kafue, a town forty-four kilometers outside Lusaka. Interviews were generally open-ended and covered many topics. In this report, the names of girls are changed for their protection. Human Rights Watch also met with a number of government officials, including representatives of the National AIDS Council, the police force, the Child Affairs Department of the Ministry of Sport, Youth and Child Development, and the Ministry of Community Development, Department of Social Welfare, as well as with United Nations agency and bilateral donor agency representatives.

Most interviews took place in NGO, government or donor agency offices or in orphanages or other service centers. Interviews with girls were conducted by one or two Human Rights Watch researchers in settings that were as private as possible. Some interviews were in English, but where that was not possible, NGO staff provided translation as necessary. In addition, Human Rights Watch collected information from a wide range of sources and conducted a number of interviews by telephone.

Sexual abuse of girls leading to heightened risk of HIV transmission is a widespread phenomenon, and research similar to that reported here could have been conducted in any one of a number of countries. Human Rights Watch chose to do this work in Zambia for a number of reasons, including (1) that the national AIDS policy and accompanying legislation are only now being

² The Convention on the Rights of the Child defines children as “Every human being under the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” Convention on the Rights of the Child, art 1, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989). Human Rights Watch considers all persons under age eighteen to be children. A few of the girls interviewed were over eighteen years of age but recounted to Human Rights Watch experiences from before they turned eighteen.

finalized in Zambia, (2) that the recent influx of considerable donor resources to combat the epidemic presents an opportunity for strengthening protections for girls, and (3) that a range of organizations and institutions in Zambia are active in assisting children, including orphans and street children, in promoting the rights of women and girls, and in providing services and education related to HIV/AIDS.

IV. BACKGROUND

HIV/AIDS in Africa

We are facing a silent and invisible enemy that is threatening the very fabric of our society.

—Nelson Mandela, World AIDS Day Message, December 1, 2000

The magnitude of the HIV/AIDS crisis in Africa is staggering and numbing: sub-Saharan Africa, the epicenter of the AIDS epidemic, accounts for over 75 percent of those infected worldwide. Over 28 million Africans are living with HIV/AIDS, and in several countries, more than 25 percent of the adult population is infected.³ Yet, at the end of 2001, the U.N. estimated that fewer than 30,000 people were benefiting from antiretroviral drug therapy.⁴ AIDS has become the most important cause of death in Africa, having killed more than 18 million people since the mid-1980s. The epidemic has been concentrated particularly in East, Central and Southern Africa, though prevalence rates are now rising in West Africa. Given these grim realities, it is no wonder that former South African President Nelson Mandela described AIDS as a “war against humanity.”⁵

Since so many of those dying from AIDS are between the ages of twenty and forty, AIDS is orphaning millions of children. Although it is impossible to get exact statistics on the numbers of children orphaned by AIDS, due in part to the stigma associated with the disease, the United Nations estimates that 13 to 15 million children under age fifteen in sub-Saharan Africa have lost one or both parents to AIDS; that number is expected to rise to 25 million by 2010.⁶ In addition to children orphaned by AIDS, there are many more who are caring for sick relatives, acting as breadwinners for the family, and unable to continue in school.

The secretary-general’s report to the U.N. General Assembly Special Session (UNGASS) on HIV/AIDS in June 2001 put the AIDS crisis in Africa in stark terms:

³ UNAIDS, “Report on the Global HIV/AIDS Epidemic 2002,” (Geneva: July 2002), pp. 8, 14.

⁴ Ibid., pp. 22-23.

⁵ British Broadcasting Corporation (BBC) News, “Mandela calls for end to Aids stigma,” July 12, 2002.

⁶ USAID/UNICEF/UNAIDS, “Children on the Brink 2002,” p. 3. Available at www.unaids.org/barcelona/presskit/childrenonthebrink/introduction.pdf (retrieved July 15, 2002).

Africa faces a triple challenge of daunting proportions: it must reduce new infections by enabling individuals to protect themselves and others; it must bring health care, support and solidarity to an increasingly infected population; and it must cope with the cumulative impact of millions of AIDS deaths on survivors, communities and national development.⁷

The U.N. Joint Programme on HIV/AIDS (UNAIDS) released data for the Group of Eight (G8) meeting in June 2002 indicating that sub-Saharan Africa's rate of economic growth has fallen up to 4 percent because of the pandemic and that labor productivity has been cut by up to 50 percent in the hardest-hit countries. "The devastating impact of HIV/AIDS is rolling back decades of development progress in Africa," said Peter Piot, executive director of UNAIDS.⁸

HIV/AIDS and Women and Girls

[T]o this catalogue of horrors, there must be added, in the case of Africa, that the pandemic is now, conclusively and irreversibly, a ferocious assault on women and girls. . . . The toll on women and girls is beyond human imagining; it presents Africa and the world with a practical and moral challenge which places gender at the center of the human condition. The practice of ignoring a gender analysis has turned out to be lethal.

—Stephen Lewis, U.N. Secretary-General's Special Envoy for HIV/AIDS in Africa, July 3, 2002.

Africa is the only region where women and girls outnumber men and boys among persons living with AIDS. A study released in July 2002 by the United Nations Children's Fund (UNICEF) found that in Ethiopia, Malawi, Tanzania, Zambia and Zimbabwe, "for every 15-19-year-old boy who is infected, there are

⁷ United Nations General Assembly, "Special Session of the General Assembly on HIV/AIDS: Report of the Secretary-General," February 16, 2001, p. 5.

⁸ UNAIDS, "UNAIDS releases new data highlighting the devastating impact of AIDS in Africa," Geneva, June 25, 2002.

five to six girls infected in the same age group.”⁹ This disparity is present in a number of other heavily affected countries in Eastern and Southern Africa.¹⁰

There is ample evidence that gender inequality, and the resulting economic deprivation and dependency, are fueling Africa’s HIV/AIDS epidemic. Stephen Lewis, the U.N. secretary-general’s special envoy for HIV/AIDS in Africa, has tried to draw attention to the gender dimension of the crisis in Africa:

In a pretty fundamental way the biggest challenge is gender. It is to get the entire continent to understand that women are truly the most vulnerable in this pandemic, that until there is a much greater degree of gender equality women will always constitute the greatest number of new infections and there is such a degree of cultural oppression that has to be overcome before we really manage to deal with the pandemic. You simply cannot have millions of women effectively sexually subjugated, forced into sex which is risky without condoms, without the capacity to say no, without the right to negotiate sexual relationships. It’s just an impossible situation for women and there has rarely been a disease which is so rooted in the inequality between the sexes. Therefore, gender is at the heart of the pandemic and until governments and the world understand that it will be very difficult to overcome it. . . .¹¹

A recent study published in the medical journal *The Lancet* confirmed that HIV is far more prevalent in young women than young men in sub-Saharan Africa, and that having an older sexual partner is associated with increased risk of HIV infection.

It has long been suspected that younger women having relationships with older men contributes to the spread of HIV infection in young women. . . . This aspect of sexual partner networks has a pivotal role in the persistence of major HIV epidemics because not only do large segments of successive

⁹ UNICEF, UNAIDS, World Health Organization (WHO) press release, “Major UN study finds alarming lack of knowledge about HIV/AIDS among young people,” July 2, 2002. Available at www.unicef.org/newsline/02pr42opportunity.htm (retrieved July 15, 2002).

¹⁰ “Special Session of the General Assembly on HIV/AIDS,” p. 7.

¹¹ U.N. Integrated Regional Information Network (IRIN), “Interview with Stephen Lewis, U.N. Special Envoy for HIV/AIDS,” December 3, 2001.

cohorts of young women become infected through this route, but many further infections result when these women marry and have children. Breaking this link in the pattern of transmission must become a central focus of HIV prevention strategies.¹²

In addition, the study notes that “[p]ractices such as dry sex and forced sex may magnify underlying female biological susceptibility.”¹³ (“Dry sex” is explained below in the section “Traditional Practices.”)

Young women are at a higher risk of HIV transmission than are older women because the vagina and cervix are less mature and less resistant to HIV and other STDs such as chlamydia and gonorrhea. This is linked to changes in the reproductive tract during puberty that make the tissue more susceptible to HIV transmission, and to the fact that young women produce less of the vaginal secretions that provide a barrier to HIV in older women.¹⁴ In addition, the presence of other STDs, which are highly prevalent among young people in some parts of Africa, greatly increases the risk of transmission of HIV.

The consequences of the AIDS pandemic for women and girls themselves become causal factors in further transmission. Girls are more likely than boys to be pulled out of school when a parent becomes ill, thus depriving them of the preventive impacts of a general basic education (see below). Girls frequently have to become the breadwinners of the family,¹⁵ and AIDS-affected children, including large numbers of girls, continue to swell the numbers of street children. Girls in these situations increasingly have to engage in trading sex to survive, putting them at high risk of HIV transmission.¹⁶

¹² Simon Gregson, Constance A. Nyamukapa, Geoffrey P. Garnett, Peter R. Mason, Tom Zhuwau, Michel Caraël, Stephen K. Chandiwan, Roy M. Anderson, “Sexual mixing patterns and sex-differentials in teenage exposure to HIV infection in rural Zimbabwe,” *The Lancet*, Vol. 359, June 1, 2002, p. 1901.

¹³ *Ibid.*, p. 1902. “Dry sex” refers to a traditional practice by women to use herbs to dry their vaginas to enhance the sexual pleasure of a male partner.

¹⁴ The Population Information Program, Center for Communications Programs, The Johns Hopkins University Bloomberg School of Public Health, “Population Reports: Youth and HIV/AIDS,” Volume XXIX, Number 3, (Baltimore, MD, Fall 2001), p. 7.

¹⁵ Ministry of Health/Central Board of Health, “HIV/AIDS in Zambia: Background, Projections, Impact, Interventions,” (Lusaka: September 1999), p. 51.

¹⁶ National HIV/AIDS/STD/TB Council, “Strategic Framework 2001-2003,” (Lusaka: October 2000), p. 10.

HIV/AIDS in Zambia

Generally, women lack complete control over their lives and are taught from early childhood to be obedient and submissive to males, particularly males who command power such as a father, uncle, elder brother or guardian. In sexual relations, a woman is expected to please her male partner, even at the expense of her own pleasure or well-being. Dominance of male interests and lack of self-assertiveness on the part of women puts them at risk. Women are taught never to refuse having sex with their husbands, regardless of the number of partners he may have or his non-willingness to use condoms, even if he is suspected of having HIV or another STD.

—Ministry of Health/Central Board of Health, “HIV/AIDS in Zambia: Background, Projections, Impacts, Interventions,” September 1999

Zambia is confronting a devastating HIV/AIDS crisis. There has been an explosion in prevalence of the epidemic in the twenty years since AIDS first appeared there. With HIV/AIDS and AIDS-related infections as a leading cause of mortality in Zambia,¹⁷ adult life expectancy dropped from fifty-four years in the mid-1980s to thirty-seven years by 1998. The government has declared HIV/AIDS a national emergency.

The rate of new infection is judged by some experts to have peaked in the mid-1990s but prevalence remains high.¹⁸ HIV prevalence is now estimated at 19.95 percent in the adult population.¹⁹ The Zambian Ministry of Health reports that prevalence of HIV in urban areas is about twice as high as in rural areas, with urban prevalence among adults as high as 27.9 percent. Of Zambia’s population of approximately 10 million, half are under twenty. Persons aged fifteen to twenty are thought to be the most vulnerable to HIV, albeit some recent studies (see below) attribute the decline in the rate of new infection in part to a slight decline in prevalence among young people.

These figures are estimates, rather than an accurate count, because the stigma associated with HIV/AIDS remains pervasive and is a factor inhibiting people from being tested to learn their status, while for those who go through

¹⁷ National AIDS Council, p. 1.

¹⁸ Ministry of Health/Central Board of Health, p. 13.

¹⁹ UNAIDS and the World Health Organization, “Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections – Zambia, 2000 Update (Revised),” p. 3.

with the test, the stigma influences whether that person decides to disclose HIV/AIDS infected status.²⁰

The two main modes of HIV transmission in Zambia are sexual transmission and mother-to-child transmission (MTCT), with the large majority of new infections from sexual transmission. According to the National AIDS Council: “Heterosexual transmission of HIV in Zambia is dramatically increased by the presence of a sexually transmitted infection by one partner during unprotected sex, the practice of dry sex that is likely to cause ulcerations in the genital area, and unprotected sex with multiple partners.”²¹

In its official strategy paper, the government’s National AIDS Council emphasized the seriousness of the threat against young girls:

Approximately 1.75 million girls in Zambia are vulnerable to HIV and this is due to a host of socio-cultural and economic factors as well as those that are socio-biological in nature. Initiation ceremonies and practices that prepare the girl-child for marriage are common and widespread in both rural and urban Zambia. Some of these practices may increase risks associated with STD and HIV transmission. For example, among the Tonga and Bemba people of Southern and Northern Provinces respectively, instructions include lessons on how to use corrosive herbs and ingredients to dry out the vagina in order to increase male sexual pleasure. This form of sex has been earlier referred to as *dry sex*. . . . The practice of incest and coerced sex wherein young girls are victims are not uncommon and yet they have little or no legal recourse to addressing these matters.²²

STDs are reportedly widespread among adolescents in Zambia. An obstacle to treatment of STDs that is frequently cited, especially for girls, is the attitude of health workers who have reportedly often scolded adolescents presenting with STDs and accused them of promiscuity.

As is the case elsewhere on the continent, there is a strong link between poverty and HIV/AIDS in Zambia. AIDS-affected families suffer severe financial strains related to illness and death among breadwinners and the requirements of dealing with orphans, which propel girls into risky situations to generate income. Meanwhile, circumstances of poverty in general generate

²⁰ National AIDS Council, p. 4.

²¹ National AIDS Council, p. 2.

²² National AIDS Council, p. 9.

high-risk behavior and make girls more vulnerable to HIV transmission, since girls are compelled to seek alternative sources of income for their families, which all too often means having to trade sex for survival. The economic downturn in Zambia, symbolized by the closing of factories and mines for copper, the country's main export, clearly increases economic pressures on all families. Dr. Gordon Bolla, the director general of Zambia's National AIDS Council, stressed the link between HIV/AIDS and poverty: "Poverty is a big issue. People say, do I live now, or do I go into the street and earn a living? A person who is so poor, who will die if he doesn't eat, will do bad things to survive."²³

Regarding MTCT, infants can be infected either during pregnancy, in childbirth, or after birth through breastmilk, with the biggest percentage being infected during childbirth. The National AIDS Council estimates that the risk of MTCT was 39.5 percent in Zambia in 2000, which meant that some 30,000 infants were believed to have been born with HIV or to have become infected during breastfeeding that year.²⁴

Social welfare indicators in Zambia paint a bleak picture of the deteriorating social and economic situation: life expectancy is down, infant mortality is up, primary school enrollment rates are down, immunization rates are down, adult literacy rates are down.²⁵ Zambia is struggling under an enormous debt burden, aggravated by the fall in copper prices. A report by Oxfam released for the Barcelona AIDS conference in July 2002 noted that the Zambian government now spends 30 percent more on debt repayment than on health.²⁶

Emerging positive trends and interventions

In the midst of such grim statistics, Zambia may be beginning to experience a more positive trend. A July 2002 report by UNAIDS signaled that Zambia may be one of very few countries to begin to see a decline in HIV prevalence rates, especially among young people. The report found that prevalence among young adults in urban areas had fallen from 28 percent in 1996 to 24 percent in 1999, and that prevalence among young adults in rural

²³ Human Rights Watch interview with Dr. Gordon Bolla, director general, National HIV/AIDS/STD/TB Council, Lusaka, May 30, 2002.

²⁴ National AIDS Council, p. 2.

²⁵ Sources: World Bank Development Indicators, Living Conditions Monitoring Survey Report 1996 and Living Conditions Monitoring Survey 1998.

²⁶ Oxfam-UK, "Debt relief and the HIV/AIDS crisis in Africa," Briefing Paper no. 25, July 9, 2002.

areas had fallen from 16 to 12 percent.²⁷ A study released by the U.S. Agency for International Development (USAID) for the July 2002 international AIDS conference in Barcelona, documented this trend:

Recent analyses of age-specific prevalence levels show encouraging trends among 15- to 19-year olds and 20- to 25-year olds. Between 1993 and 1998, there was a 42 percent decline in HIV seroprevalance among Zambian youth 15 to 19 year old. Seropositivity rates dropped from 28 percent in 1993 to 15 percent in 1998 for the 15- to 19-year old group in Lusaka. National behavioral surveillance data indicate a reduction in reported casual sexual behavior from 17 percent in 1996 to 11 percent in 1999. The decline was validated by an external UNAIDS analysis.²⁸

This report attributes the decline to mobilization of community and faith-based groups in awareness campaigns with a focus on young people.

The emergence of youth-friendly health services is meant to counter the failure to address STDs among young people appropriately. Designed for young people, including counseling and health education by specially trained staff, often including young people serving as “peer counselors,” and featuring designated time slots during which youth get special attention, these services are thought by experts to increase the likelihood that young people with STDs will seek treatment and be present for follow-up examinations. “Youth-friendly health corners have been helpful because girls have had serious problems in going to clinics because they are seen as prostitutes. There has been a sharp rise in young people seeking treatment . . . due to these clinics,” noted Elizabeth Mataka of Family Health Trust in Lusaka.²⁹

Orphans and Vulnerable Children

Father died when I was two. I lived with my mother, but she died when I was six. Mother's sister kept me, but not very well. She didn't support me in school, so I left school in 2001. There was no one to care for me. When I was sick, she didn't

²⁷ U.N. IRIN, “Africa: Report on Global HIV/AIDS Epidemic – UNAIDS,” Johannesburg, July 2, 2002.

²⁸ USAID, “HIV/AIDS in Zambia: A USAID Brief,” July 2002.

²⁹ Human Rights Watch interview with Elizabeth Mataka, executive director, Family Health Trust, Lusaka, May 20, 2002.

care for me. I was twelve when I ran away. . . . When people wanted water, I'd fetch twenty liters. That's how I got money for food. I also sold vegetables Boys liked to chase us, sometimes they'd beat us.

—Elsie R., fourteen, interview at FLAME Orphanage, Lusaka, May 24, 2002

Zambia is facing a dramatic challenge of coping with orphans and vulnerable children (OVC). Estimates of the number of orphans vary. The U.N. has put the figure for AIDS orphans (having lost their mother or both parents) under age fifteen in Zambia at 570,000;³⁰ others estimate that the total number of orphans and vulnerable children is one million. The 1996 Living Conditions Monitoring Survey for Zambia defined an orphan as a person eighteen or under with at least one parent dead and estimated that 13 percent of children in the country are orphans.³¹ Other sources estimate that the figure could rise to nearly 19 percent by 2010.³² In his address to the U.N. General Assembly Special Session on Children in May 2002, Zambia's President Levy Mwanawasa stated that 44 percent of Zambian households have taken in orphans.³³

The enormous numbers of children from AIDS-affected families are in very difficult circumstances, even before they lose a parent. As Brenda Yamba, project manager for SCOPE-OVC (Strengthening Community Partnerships for the Empowerment of Orphans and Vulnerable Children) in Zambia, put it: "They suffer the trauma of neglect, the trauma of watching their parents get sick, the trauma of knowing they will die."³⁴ Stigma remains pervasive, and—as it affects the family of the infected person as well as the individual—children are often stigmatized because of their parent's status, even before the parent dies.

³⁰ UNAIDS, "Report on the global HIV/AIDS epidemic 2002," (Geneva: July 2002), p. 190. The USAID/UNICEF/UNAIDS report released for the Barcelona AIDS conference, *Children on the Brink 2002*, defines orphans as children under fifteen who have lost one or both parents.

³¹ Government of the Republic of Zambia, "Orphans and Vulnerable Children: A Situation Analysis, Zambia 1999," Joint USAID/UNICEF/SIDA Study Fund Project, November 1999, p. 151.

³² The World Bank ACTafrica, "Exploring the Implications of the HIV/AIDS Epidemic for Educational Planning in Selected African Countries: The Demographic Question," March 2000, p. 7.

³³ Brian Saluseki, "HIV/AIDS has continued to rob Lusaka of its People – Levy," *The Post*, May 10, 2002.

³⁴ Human Rights Watch interview with Brenda Yamba, project manager for SCOPE - OVC, Lusaka, May 18, 2002.

Given the dimensions of the AIDS crisis in Zambia, it is clear that many children from AIDS-affected families are at risk of contracting HIV. An analysis of the situation of orphans and vulnerable children in Zambia undertaken by the Zambian government in cooperation with USAID, UNICEF and the Swedish International Development Agency (SIDA) painted a grim picture of the problems confronting orphans and vulnerable children. It reported that some 4.1 million children below the age of eighteen live in Zambia, with almost three quarters living below the poverty line. The report estimated that 86 percent of orphans were single orphans, 64 percent of them had a deceased father, 22 percent had a deceased mother, and 14 percent were double orphans.³⁵ The report described the crisis:

Currently, Zambia faces a silent crisis. The suffering of orphans and vulnerable children is contained within the confines of the family and the community. Daily, children suffer from malnutrition and childhood illnesses. Their suffering is seldom seen outside their immediate surroundings, while those not affected continue without knowledge of the growing crisis and the pending impact the crisis will have on the country as a whole. . . . Increasingly, growing numbers of street kids are seen in the hubs of Zambia's urban centers. Young boys fight to carry parcels to earn a few hundred kwacha,³⁶ they guard cars day and night to earn extra money. Increasingly, young girls and boys sell their bodies in exchange for food. The daily pains of life are worn on the faces and seen in the eyes of many children in Zambia.³⁷

Girls, particularly orphans, are often used to perform domestic service. For that reason, girl orphans are more likely than boys to be taken in by relatives or other families, a setting in which they are vulnerable to sexual abuse (as detailed below). There are also potential incentives, since the families hope to marry off the girl and receive the *lobola* or bride price.³⁸

³⁵ "Orphans and Vulnerable Children," p. 9.

³⁶ The kwacha is Zambia's currency, currently exchanged at about 4300 to the U.S. dollar.

³⁷ Government of the Republic of Zambia, "Orphans and Vulnerable Children: A Situation Analysis, Zambia 1999," Joint USAID/UNICEF/SIDA Study Fund Project, November 1999, p. 8.

³⁸ Human Rights Watch interview with James Gutinyu, director, Messiah Ministries Orphanage, Lusaka, May 19, 2002; Human Rights Watch interview with Grace

Traditional Practices

Girls are very disadvantaged in our environment. It's not an accident; the reasons are known. Zambia is a culture of men.

—John Zulu, director, Child Affairs Department, Ministry of Sport, Youth, and Child Development, Lusaka, May 30, 2002

Within Zambia, many traditions and practices impede efforts to tackle HIV-related issues. Deep-rooted cultural taboos inhibit parents from discussing sex with their children, and create obstacles to effective sex education.³⁹ “Culture has an incredible influence,” said Caroline Chanda of Kara Counseling. “That’s why we barely talk about HIV.”⁴⁰ Moreover, some of the diverse range of traditional practices among Zambia’s seventy-three ethnic groups put girls at heightened risk of HIV infection. Formulating appropriate prevention strategies depends on an understanding of these practices. As Elizabeth Mataka of Family Health Trust put it: “Any prevention strategy has to be culturally sensitive. We have to begin to break down barriers.”⁴¹

The government of Zambia acknowledges that the key underlying cultural factor that makes girls vulnerable to HIV is the subordinate status of women and girls, which deepens their social and economic dependency on men.⁴² Just as described by UN Special Envoy Stephen Lewis in his Africa-wide analysis, Zambian girls are raised to be obedient and submissive to males and not to assert themselves. These ingrained tendencies make it extremely difficult to negotiate safe sex and to control their sexual lives and therefore place them at high risk of HIV transmission. In a commentary on the government’s report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a group of women’s NGOs noted:

Muzyamba, Director Social Welfare, Ministry of Community Development, Department of Social Welfare, Lusaka, May 30, 2002.

³⁹ Human Rights Watch interview, May 20, 2002; Human Rights Watch interview, May 18, 2002; Human Rights Watch interview with Judge Lombe Chibesakunda, chair of the National Human Rights Commission, Lusaka, May 30, 2002.

⁴⁰ Human Rights Watch interview with Caroline Chanda, training manager, Kara Counseling, Lusaka, May 17, 2002.

⁴¹ Human Rights Watch interview with Elizabeth Mataka, Lusaka, May 20, 2002.

⁴² Republic of Zambia, Gender in Development Division, Office of the President, “National Gender Policy,” (Lusaka: March 2000), p. 2, 9-11; Ministry of Health/Central Board of Health, “HIV/AIDS in Zambia: Background, Projections, Impacts, Interventions,” (Lusaka: September 1999), p. 49.

HIV/AIDS has a special gender dimension. First, women who are married are at the greatest risk of infection because of male promiscuity which is tolerated by social and cultural norms. There are no criminal or civil sanctions for HIV transmission. It is not covered by the Public Health Act, which seeks to contain and regulate infectious diseases. Traditionally, men cannot commit adultery except with another man's wife. Safe sex is rarely practiced within marriage. Traditional practices which contribute directly to high levels of HIV transmission are not prohibited.⁴³

Beyond women's subordination, there are a number of traditional practices that take on added risks in the era of HIV/AIDS.

Sexual Cleansing

Sexual cleansing is a practice whereby a widow has sex with another man following the death of her husband. This may affect adolescent girls as well as women since there is no minimum marriage age for women or girls under customary practices. This "cleansing" is meant to purge the husband's spirit from his wife. The National AIDS Council described it as "very common and prevalent," and explained that:

To be purged of the "evil forces" assumed to have caused the death of a spouse, the widow or widower is "cleansed" through the act of sexual intercourse with a relative of the deceased. Closely related to the issue of ritual cleansing is the notion of wife inheritance whereby close relatives take over the widow or widower. Both practices are insisted on irrespective of the HIV status of the person appointed to perform these rituals.⁴⁴

Given the AIDS epidemic, the dangers of this practice are apparent since a woman whose husband died from AIDS would in many cases be infected herself. Human Rights Watch was told about one man who was always the one

⁴³ Women in Law and Development in Africa (WILDAF)-Zambia, "NGO Commentary on the Government of Zambia Combined Third and Fourth Report on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," (Lusaka: May 2002), p. 15.

⁴⁴ National AIDS Council, p. 10.

in his community who volunteered to cleanse the widow after the funeral. Not surprisingly, he is dead now, apparently due to HIV/AIDS.⁴⁵

Some observers say the practice of sexual cleansing has been misunderstood. Mulenga Kapwepwe, a consultant on adolescent health, explained it this way: “Sex is seen as a potent force, traditionally. It creates a bond that can’t be broken easily. In our tradition, there were so many rules we followed, especially about sex. . . . When the other party died, that bond had to be broken by someone else, to free you of that bond. It had to be a relative [But] you can wreck communities if these practices are used or abused.”⁴⁶

Despite information both in government documentation of the AIDS crisis and in materials disseminated by counselors and AIDS outreach workers about the risks associated with sexual cleansing, it is not easy for a woman to refuse to participate in such practices, especially in rural areas. A group of HIV-positive women told Human Rights Watch that more women are at least attempting to refuse to comply with the practice. However, by doing so, they make enemies with the family, who then might refuse to support them.⁴⁷ The consequences of being rejected by the family are severe, given a woman’s economic and social dependency.

Dry Sex

In certain parts of southern Africa, including Zambia, so-called “dry sex” is frequently practiced whereby girls and women attempt to dry out their vaginas in an effort to provide more pleasurable sex to men.⁴⁸ As alluded to above, the dryness is achieved by using certain herbs and ingredients that reportedly reduce vaginal fluids and increase friction during intercourse. Given the likelihood that dry sex will cause tears and lacerations in the vaginal wall, especially among adolescent girls, the practice clearly increases the risk of HIV transmission.⁴⁹ A 1999 report by the Zambian Ministry of Health and the Central Board of Health stated: “to enhance male pleasure, a number of women continue to practice dry sex, which can increase vulnerability to infection through exposing genital organs to bruising and laceration.”⁵⁰

⁴⁵ Human Rights Watch interview at Umoya, May 22, 2002.

⁴⁶ Human Rights Watch interview with Mulenga Kapwepwe, Lusaka, May 24, 2002.

⁴⁷ Human Rights Watch interview with members of Positive and Living Squad (PALS), Lusaka, May 23, 2002.

⁴⁸ National AIDS Council, p. 9.

⁴⁹ National AIDS Council, p. 9.

⁵⁰ Ministry of Health/Central Board of Health, p. 49.

While the practice is being discouraged by counselors working with young people and in official government documents, it is hard to know whether it is on the decline. “Like condoms, it is difficult to say if people follow what they know,” noted Brenda Yamba of SCOPE-OVC.⁵¹ AIDS educators discuss the dangers of dry sex in outreach programs, explaining that it is an easy way to transmit HIV. But, as one counselor told Human Rights Watch, “Men love dry sex. If you’re wet, they think it’s not normal. So we talk about it in outreach; we say ‘stop eating those herbs.’”⁵²

Counselors at the YWCA drop-in center, one of the main NGOs providing counseling for abused girls, explained that girls are made to believe that they are supposed to be dry. There is even a name given to girls who are too wet—Chambeshi River, referring to a river in Zambia.⁵³ Some men tell girls that being wet means that they have been with too many men. Service providers working with sex workers noted that they do not generally practice dry sex; rather, it occurs more in “stable” unions where the girl or woman is seeking to maintain the relationship.⁵⁴

Initiation Ceremonies

Some observers also noted that the preeminence of men’s sexual pleasure is a feature of the initiation ceremonies undergone by Zambian girls in some

⁵¹ Human Rights Watch interview, May 19, 2002.

⁵² Human Rights Watch interview with women from PALS, Lusaka, May 23, 2002.

⁵³ Human Rights Watch interviews with counselors at YWCA, May 20, 2002.

⁵⁴ Human Rights Watch interview with Professor Nkandu Luo, Lusaka, May 21, 2002.

ethnic groups.⁵⁵ In these rituals, which are meant to prepare girls for marriage and teach them about sex and child-bearing, a girl may be taught to focus on the man's sexual pleasure and not to refuse her husband's demands for sex. Still, some traditional leaders are becoming sensitized to the need to integrate HIV/AIDS education into these ceremonies.⁵⁶

⁵⁵ Kamuwanga Chaze, "A study to determine how cultural practices and beliefs influence the spread of HIV/AIDS in Lusaka," a research study submitted to the University of Zambia, School of Medicine, Department of Post Basic Nursing, December 2000, p. 18.

⁵⁶ Human Rights Watch interview, May 18, 2002.

V. ABUSES RELATED TO RISK OF HIV TRANSMISSION: VOICES OF GIRLS

Sexual Abuse Within the Family

My uncle used to beat me with electricity wires. Before I went to live with my uncle and auntie, I stayed with my big sister's mother, and my brother used to take me in the bush. Then he raped me. I was eight or nine. I was scared. He said "I'm going to beat you if you ever tell anyone."

—Melanie Y.,⁵⁷ twelve, Messiah Orphanage, Lusaka, May 19, 2002

An alarming and apparently increasing number of abuses against girls comes from members of their own families. Given the high HIV prevalence in the Zambian population, sexual abuse carries a high risk of HIV transmission. Nevertheless, the family, the broader community, and the law enforcement agencies are often complicit in attempting to hide the abuse. Effective protection mechanisms targeted at abuse against girls in the family are virtually nonexistent.

Those knowledgeable about the sexual abuse of girls, and the girls themselves, repeatedly described to Human Rights Watch abuses by uncles, stepfathers, fathers, cousins, and brothers. However, these abuses by relatives are often hidden by the family, and girls are widely silenced; some do not even attempt to disclose what is being done to them. In particular, orphans being cared for by relatives are acutely aware of their dependency, and fear loss of support and rejection if they reveal that they are being abused. Other girls who try to tell another adult family member about abuse they are suffering are often silenced and told not to bring shame upon the family. In some cases, girls are threatened with physical abuse if they tell anyone. Shame and stigma upon themselves that some girls associate with sexual violence is also a serious constraint to reporting, including the stigma associated with possible HIV infection.

Shame associated with rape and incest also discourages the families from revealing what is happening. Far too often, the girl herself is blamed for instigating the abuse. According to Mary Silavwe Mulenga of the YWCA: "Society blames you and then the legal system isn't there to protect you. If a girl is defiled by a relative, they want to hush it up. Culture teaches us to keep

⁵⁷ The real names of children are not used in this report.

quiet about all these things. There's no support to come out."⁵⁸ According to Priscilla Chileshe of Women and Law in Southern Africa (WLSA), "Abuse in the family is the most difficult to actually bring out. The family sits on it. The abusers are often the economic providers. They use their power to get everyone to shut up, so it's difficult to penetrate. Even the police are frustrated."⁵⁹

Despite the obvious dimensions of the problem, the reporting of sexual abuse against girls within families is a relatively recent phenomenon. Constance Lewanika of Women in Law and Development in Africa (WILDAF), noted, "This is just emerging now as a crime . . . in the last three years or so, it's becoming more and more prominent."⁶⁰

This apparent increase in cases of abuse by family members has in turn been linked in part to the massive problem of orphans and vulnerable children, which is stretching the traditional extended family structures to the breaking point. The problem of caring for these children permeates all sectors of society. Throughout the country, families are either taking in children who have lost one or both parents, often due to HIV/AIDS, or are supporting them in other ways, such as paying school fees. Brenda Yamba of SCOPE-OVC, described the particular burden that falls on girls: "Most vulnerable families are made more vulnerable by new orphans being brought in, so they all become vulnerable. They lack adequate shelter, so they send some children away. Or they share a room with adults, and some may be molested. The burden on girls is always greater."⁶¹

Many social workers, lawyers and medical professionals who work with girls and have seen the extent of this problem are trying to speak out. Dr. Cheswa Vwalika, a doctor involved in adolescent health services, explained her efforts to shed light on the problem:

It's important to talk about it. I even say it in churches. Incest exists. Then you see heads looking down, but maybe you put fear in the abusers. We need to talk to children too, in simple language, to tell them "don't let anyone take your underwear

⁵⁸ Human Rights Watch interview with Mary Silavwe Mulenga, executive director, Young Women's Christian Association (YWCA), Lusaka, May 17, 2002.

⁵⁹ Human Rights Watch interview with Priscilla Chileshe, research associate for Women and Law in Southern Africa (WLSA), Lusaka, Zambia, May 29, 2002.

⁶⁰ Human Rights Watch interview with Constance Lewanika, Country Coordinator for Women in Law and Development in Africa (WILDAF), Lusaka, May 21, 2002.

⁶¹ Human Rights Watch interview with Brenda Yamba, Project Manager for SCOPE-OVC, Lusaka, May 18, 2002.

off, or touch your wee-wee, and if someone does, tell your mother or teacher.”⁶²

These points were echoed by Dr. Gordon Bolla, director general of the National AIDS Council: “We must be very frank with ourselves—it does happen, there’s a lot of incest, and girls are taken advantage of.”⁶³ But he noted that it is very difficult to protect these girls.

Despite girls’ frequent reluctance to disclose the abuse they suffered, with the assistance of counselors, social workers, medical professionals, children’s rights and women’s rights activists, lawyers, police and others, Human Rights Watch was able to document numerous cases of sexual abuse against girls by family members. Some abused girls described abuses against friends or relatives more readily than their own experiences.

Patricia M. is a vivacious and articulate sixteen-year-old. Her father died reportedly of cerebral malaria in 1996;⁶⁴ her mother died of tuberculosis in 2000. Counselors working with her told Human Rights Watch that she was sexually abused by her uncle after her mother died. Because the uncle became sick, the managers of her training program were trying to encourage her to get an HIV test. As Patricia M. told it:

After my mother died, I went to my mother’s mother. In 2001, she died, so I stopped school, because I had no more sponsor. My brother was six, and also had to stop. Then we went to my auntie, my mom’s younger sister. . . . Most girls find that they start keeping up with [having sex with] stepfathers or uncles. Most are raped. They have no say. They think if you bring them to the police, there will be no one to keep me. So they keep quiet. Older men give a lot of money—girls think they’ll have what they need, because of all the poverty. A friend of mine, Mildred, went with this big man. He gave her a lot of money, she started looking nice, not like she was an orphan from a poor family. After he left her, she went for an HIV test, and it was positive. Now she has a baby girl. She was fifteen or sixteen at the time. The man

⁶² Human Rights Watch interview with Dr. Cheswa Vwalika, medical officer with the HIV project of the Lusaka Urban Health Management Team, Lusaka, May 19, 2002.

⁶³ Human Rights Watch interview with Dr. Gordon Bolla, Director General, National HIV/AIDS/STD/TB Council, Lusaka, May 20, 2002.

⁶⁴ Numerous people reported to Human Rights Watch that children whose parents died of AIDS were often told they died of cerebral malaria.

was old enough to be her grandfather. Other friends have been raped by their uncles—they fear their aunties will chase them out. . . . Most girls stop going to school after the death of their parents. There's nobody to sponsor them. Some decide to go to the streets. . . . God willing, I'll be what I wanted to be [before my parents died]. After the deaths of my parents, it seemed life was finished, but now I see lots of opportunities and open doors.⁶⁵

Melissa B. is fifteen years old, in grade six of primary school, and was brought to an orphanage by the Department of Social Welfare.

My mother and father died, I don't know how. They were sick for a long time. I went to live with my auntie; I was in grade six, and stayed in school. Auntie [actually a stepsister] wasn't married, but she had two children. . . . Stepbrother was older, like a father. He raped me. He said if I tell some people, he'd kill me. My teacher at school, she told me she'd help me find a place to stay. She took me to the hospital to check me. I was bleeding from the vagina for three days. I told the stepsister—she wanted to hit me. She said her husband wants to kill me. She said "go find your own place." That's when I told the teacher. The teacher, Mrs. Changai, brought me here.⁶⁶

Mary W. is twelve years old, with colorful barrettes and a lovely smile. Her parents both died, and her brothers and sisters were split up between an aunt and their grandfather. Mary W. told Human Rights Watch she was sexually abused by her uncle and eventually ran away to a neighbor's house. The neighbor contacted the orphanage and explained what was happening, and the director of the orphanage took her in. Since the uncle was feared to be HIV-positive, the orphanage had Mary W. tested. Her test came out negative.⁶⁷

Anne P. is fifteen years old. After her father died, her mother remarried and she lived with her mother and stepfather. Her mother died, and she went to live with her aunt. She told Human Rights Watch:

⁶⁵ Human Rights Watch interview at Umoyo Training Center, Lusaka, May 22, 2002.

⁶⁶ Human Rights Watch interview at New Horizon Orphanage, Lusaka, June 1, 2002.

⁶⁷ Human Rights Watch interviews at Messiah Orphanage, Lusaka, May 19, 2002.

Auntie mistreated me—she didn't give me food or send me to school. After some time I ran away from auntie's place and stayed with auntie's friend, who was married to a Tanzanian man. But he didn't like me, so I'd hide under the bed when he came home. . . . When your parents die, sometimes the uncle will tell the girl that she has to sleep with him for school fees.⁶⁸

According to counselors working with her, Anne P. was abused by an HIV-positive uncle, and she ran away. The orphanage found her sleeping in ditches beside the road.⁶⁹

Some girls described their fears of reporting sexual abuse, and the threats made against them by the abusers. For instance, Catherine R. is seventeen years old, in grade nine, and with a direct gaze. She told Human Rights Watch:

When I was eight, my parents both died. First my mother got sick, then father died a year later. My auntie came to pick me. I stayed with her, but then my uncle started sexually abusing me. He was about thirty-four. He threatened he'd kill me if I told anyone about it. Last year, I saw a program about the YWCA and came here and reported it. I'm scared to go for an HIV test. Cecilia [the counselor] talked to my auntie, but she got so mad. Another auntie came to pick me. I'm scared. Sometime he [the uncle] hurt me—he slapped me, threatened me. I want to go for a test to see if I'm OK or not. I feel if it can happen to me, it can also happen to other girls my age. People like that are so cruel—they should be locked behind bars. I only told my closest friend and aunties. We need to teach girls about what is abuse, and about sex.⁷⁰

Melanie Y. is a thin twelve-year-old girl who spoke just above a whisper. She explained to Human Rights Watch what followed the death of her parents:

I went to live with my uncle and aunt—they used to mistreat me. I had to fetch water from long distances, and I didn't used to eat most of the day. I used to get sick, and nobody looked

⁶⁸ Human Rights Watch interviews at Messiah Orphanage, Lusaka, May 19, 2002.

⁶⁹ Human Rights Watch interviews at Messiah Orphanage, Lusaka, May 19, 2002.

⁷⁰ Human Rights Watch interview at YWCA, Lusaka, May 22, 2002.

after me. My uncle used to beat me with electricity wires. Before I went to live with my uncle and auntie, I stayed with my big sister's mom and my brother used to take me in the bush, then he raped me. I was eight or nine. I was scared—he said, “I’m going to beat you if you ever tell anyone.” He was fourteen or fifteen.⁷¹

A social worker at a youth-friendly clinic in Lusaka described to Human Rights Watch a case involving Joan S., now sixteen, who was abused since the age of nine by her stepfather. By the time she was eleven, she realized that he was abusing her. Because she was afraid to tell her mother, she told her aunt, who in turn told her mother. The mother's reaction was to chase the girl out of the house. The girl was suffering from STDs. But the case was never reported to the police. “They kept it within the family,” the social worker noted.⁷²

Silvia M. was sixteen years old when she was reportedly raped by a relative living in her house. He was about thirty years old. Silvia M.'s mother had gone to a funeral and had left the children for three days. When she returned and learned what had happened, she chased him out of the house. However, the family suspected that he was sick, and he died in December 2001. Silvia M.'s mother still does not want her to have an HIV test.⁷³

A family may also seek compensation: where feasible, for some the solution is to demand that the abuser take the girl as a wife; others seek monetary compensation. A girl's family may be willing to confront the abuser but may not want to involve the police.

There are also situations where the family is aware of the abuse, and decides to do nothing, or worse, even encourages the abuse, as in the case of Sharon R., who at age sixteen was living with her father and her cousin. She was raped by her cousin and now has a three-year-old boy. She told her family, but since he was a relative, they did not pursue the matter.⁷⁴ Even worse are cases where the family actually encourages the abuse. The social worker at the Lusaka clinic mentioned above described to Human Rights Watch a case of Mildred E., a fourteen-year-old girl, who was being sexually abused by her two brothers. By the time Mildred E. told her mother, she was already aware of what was happening, and said that she thought it was safer for the boys to have

⁷¹ Human Rights Watch interview at Messiah Orphanage, Lusaka, May 19, 2002.

⁷² Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, Lusaka, May 30, 2002.

⁷³ Human Rights Watch interview with Catherine Mbewe, Anti-STD and Youth International (ASAYI), Kitwe, May 26, 2002. This case involved her relatives.

⁷⁴ Human Rights Watch interview in Kafue, May 29, 2002.

sex in the family. The clinic reported the case to the Victim Support Unit (VSU—see below), and it is apparently being investigated.⁷⁵

Relatively few cases are ever reported to the authorities, however, and of those that are, many are apparently reported too late for action to be taken. Eugene Sibote, a spokesperson for the VSU office at the Zambian police service headquarters in Lusaka, described the case of an eight-year-old child who had been infected with HIV by her father. The abuse continued until the girl was eleven years old, when it was discovered after the father became sick. He died in prison in September 2001, apparently having been jailed for the abuse. The girl's family refused to take responsibility for her when she fell sick and brought her to the VSU. They said they knew she was sick and that she would die. She died on December 14, 2001.⁷⁶

Sexual Violence and Coercion by Non-Family Perpetrators

Girls are at greater risk than boys for HIV because the man only has the power.

—Beth S., seventeen, a person living with HIV/AIDS, Lusaka, June 1, 2002

Many counselors and activists interviewed by Human Rights Watch described the breakdown in social values that has contributed to the rise in sexual violence and coercion faced by Zambian girls. They pointed to the strains of economic deprivation, urbanization, and the lack of social safety nets for children. Meanwhile, the fear of reporting abuse and the imperative to keep quiet about what happens to girls is widespread. “The culture of silence is the biggest problem in this country,” according to Daphne Chimuka of the Forum for African Women Educationalists, Zambia National Chapter (FAWEZA). “Girls suffer abuse in silence; it’s taboo to say a teacher or a man did this to me.”⁷⁷

Girls from all social strata are vulnerable to sexual abuse and coercion. Danger factors include men’s targeting for sex younger and younger girls who

⁷⁵ Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, Lusaka, May 30, 2002.

⁷⁶ Human Rights Watch interview with Eugene Sibote, Community Services department, Zambia Police, Lusaka, May 22, 2002.

⁷⁷ Human Rights Watch interview with Daphne Chimuka, National Coordinator, Forum for African Women Educationalists, Zambia National Chapter (FAWEZA), Lusaka, May 31, 2002.

are assumed to be HIV-negative, or based on the myth that sex with a virgin will cure AIDS. In Zambia, it is a criminal offense to “carnally know” any girl under the age of sixteen. Although the Penal Code stipulates such a crime as a felony with sentences up to life in prison, that provision is rarely enforced.⁷⁸ Girls are at risk of abuse and HIV transmission in various settings: selling vegetables or other goods in markets or by the roadsides, they are subject to abuse by male customers; simply playing on the streets in their communities, at school, even at church they can face risks. Human Rights Watch received testimonies about cases of sexual abuse of girls in many environments outside the home (and even in the home) by strangers or by acquaintances, by boys as well as men.

Brenda K. is seventeen years old. She told Human Rights Watch that she was raped in early 2002:

I had a problem. I used to go to church, and I was raped by the priest. I used to be in the youth group, and did things for church, like sweeping and other things. The priest used to be a good man. I thought I could rely on him, but after what happened. . . . I went to work, he called me to his office, telling me what work we [she and the other girls] should do. He started undressing me, and said if I screamed, he'd shoot me and my parents. I never told my parents what happened. . . . I told a friend, and she told me to come to the YWCA. People here are very good, and I'm being counseled. I hope when I tell my parents they'll believe me and understand. I think there are other girls too. What can stop this from happening? I'm scared to tell the police; they won't believe me because he's a priest. I might have HIV/AIDS or STDs. It happened three months ago. I haven't had a period since then. I'm so scared. I've stopped going to church, I stay away from men. We need education for girls. We need to talk to young girls, tell them these things are real. Girls need to learn to speak out and reach out to other people. I feel ashamed. Others think you wanted it to happen.⁷⁹

A doctor working with adolescents described one of her cases to Human Rights Watch involving a five-year-old girl with STDs, apparently sexually abused by a babysitter. The girl's mother brought her to the clinic because the

⁷⁸ Zambia Penal Code, Section 138(1). See also Legal Framework, Part VI, below.

⁷⁹ Human Rights Watch interview at YWCA, Lusaka, May 22, 2002.

child was crying every time she urinated. The doctor told her the child had vaginal warts, a common symptom of sexually transmitted disease.⁸⁰

The director of the Nissi Care Centre in Ndola told Human Rights Watch about the case of Maureen C., who was ten years old and HIV-positive when she died in 2000. After her mother died, she stayed with her father and older siblings. Then the father died, and the older children went out to look for food. Maureen C. was left at home and was reportedly abused by a neighbor. She was sickly when she was brought to an orphanage in 1999, and she tested positive for HIV at a clinic.⁸¹

Molly K., sixteen years old, lost her mother and went to live with her grandmother but was reportedly being sexually abused by a neighbor. Others in the community ultimately reported her case, and she was sent to an orphanage. The orphanage was concerned because she was always sick, and they had her tested for HIV. The test was positive, but, according to counselors working with Molly K. now, the orphanage staff did not tell the girl.⁸²

Like Brenda K., quoted above, in most cases encountered by Human Rights Watch the girls were afraid to report their abuse to the police or other authorities, albeit cases were still identified where the police had become involved. In mid-May, for example, the YWCA received a case of an eight- or nine-year-old girl who had reportedly been raped in 2001 by a boy on her street. She had been playing near her home when the boy called her over and raped her. The doctor who treated her did an HIV test, and it was positive. The doctor did not tell the mother the results but wrote a note to the YWCA, which notified the police. The boy was arrested.⁸³

Some doctors report that girls who are tested for HIV after being sexually assaulted often do not come back for the results and counseling.⁸⁴ Melinda O., for example, is seventeen years old and was reportedly raped in May 2002 in Kafue, a town outside Lusaka. She had gone to do some shopping when men in a cab kidnapped her, raped her, and then dumped her at a police station. Since her father died in January 2002, her sister is her guardian. The sister and a policeman took her to be tested for HIV, but at the time of the interview, they

⁸⁰ Human Rights Watch interview with Dr. Cheswa Vwalika, Lusaka, May 19, 2002.

⁸¹ Human Rights Watch interview with director of Nissi Care Centre, Ndola, May 28, 2002.

⁸² Human Rights Watch interview with counselors at Jesus Cares Ministries, Lusaka, May 24, 2002.

⁸³ Human Rights Watch interview with Cecilia Chomba, youth coordinator for YWCA, Lusaka, May 20, 2002. The boy was later released on bail. Subsequent developments in the case are not known.

⁸⁴ Human Rights Watch interview with Dr. Cheswa Vwalika, Lusaka, May 19, 2002.

had not gone back for the results.⁸⁵ Until very recently, this tendency not to follow up on testing was exacerbated by the costs associated with treatment and medical reports. However, in early 2002 the Central Board of Health published a circular notifying clinics and hospitals that rape victims were no longer required to pay for health services.⁸⁶

The phenomenon of “sugar daddies”—that is, older men who entrap young girls by offering gifts, treats, food, clothes, or money in exchange for sex—is reportedly widespread and puts girls at serious risk of HIV infection. The HIV epidemic seems to be pushing these men to seek increasingly young girls on the assumption that, other things equal, younger girls are less likely to be HIV-infected. This predation forces girls to become sexually active at very young ages with obvious HIV risks. According to Ken Ofosu-Barko of UNAIDS in Zambia: “mobile men with money—MMM—is a huge part of the problem.”⁸⁷ Moreover, as the director of an orphanage in Ndola put it:

Well-to-do men with the disease think that by going to young girls, they’ll be innocent and won’t suspect [that the men have] the disease. This is selfishness on the part of our men. . . . Girls are not made aware of their rights and where they can run in case of such problems. There the blame should be on us adults.⁸⁸

In cases of rape or sexual abuse by acquaintances, as with abuse within the family, sometimes the girl’s family seeks monetary compensation from the perpetrator rather than criminal penalties. John Zulu at the Ministry of Sport, Youth, and Child Development, noted that this tendency was widespread: “When there are abuses, by police and teachers even, then he agrees to pay—in dollars, it would only be cents. And the abuse goes on.”⁸⁹

⁸⁵ Human Rights Watch interview with a peer educator and friend of Melinda O. in Kafue, May 29, 2002.

⁸⁶ Human Rights Watch interview with Dr. Bellington Vwalika, gynecologist at the University Teaching Hospital, Lusaka, May 19, 2002; Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, Lusaka, May 30, 2002.

⁸⁷ Human Rights Watch interview with Ken Ofosu-Barko, Country Program Advisor, UNAIDS, Lusaka, May 18, 2002.

⁸⁸ Human Rights Watch interview with Elizabeth Kabamba, Nissi Care Centres, Ndola, May 28, 2002.

⁸⁹ Human Rights Watch interview with John C. Zulu, director, Ministry of Sport, Youth, and Child Development, Child Affairs Department, May 30, 2002.

The case of Margaret T., a fifteen-year-old girl with a one-month-old baby, illustrates a family's efforts to obtain some measure of redress from the perpetrator. As she told Human Rights Watch:

I was employed at Arakan barracks, a military camp, where I worked as maid for an officer. One day, he sent me to a pub for something, and I met other officers. A certain captain followed me and took me to his house. He took me to his house six times last year in June [2001]. . . . He told me "if you tell anyone, I'll beat you." I was too scared to tell. I was fourteen at the time, and only had had one period. But I got pregnant. I didn't know I was pregnant; my stepmother said I was pregnant, and my father was told by my stepmother. My father followed up.⁹⁰

According to her father, his wife and his sister asked why Margaret T. was getting fat. When they realized she was pregnant, the father made the two-hour trip to the barracks to find the captain who they thought was responsible. But each time he went to the military camp, he was told that the captain wasn't there. After the baby was born in March, the father returned to the camp and was told that the captain had been transferred. The father was so upset that he went straight to the VSU, and VSU officers accompanied him back to the barracks, where the same story was repeated. The VSU agreed to issue a summons to the captain and his sister, who happened to be a former vice-president's wife. No one appeared for the meeting. The father says that he is just seeking payments for child support.⁹¹

Sex for Survival and Sex Work

*When someone is playing injustice on you, what can you do?
Go to the street and sell yourself. Now you're your own
enemy.*

—Clemire Karamira, MAPODE (Movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation), May 20, 2002

⁹⁰ Human Rights Watch interview at YWCA, Lusaka, May 22, 2002

⁹¹ Human Rights Watch interview at YWCA, Lusaka, May 22, 2002

My stepmother treated me like an animal—and Daddy said “you’re just a liar.” He said there was no money for school (I was in grade three), so I started selling fritters for neighbors. Then I met a group of people—prostitutes. They all stayed in a one-room house. They said they’d buy all my fritters if I would cook and clean for them. Then [they] said [I] should join them. So I ran away, and started with them. They brought me men to sleep with. . . . They bought me clothes and shoes so I could go to the street. I went looking for men. I’d come back at 5:00 or 6:00 in the morning. Sometimes I met some savages. They grabbed my money and ran away, or they’d hit me and take me to the bush far away and leave me there. The queen mother was twenty-one—us, we were young, about ten or twelve. The youngest one was nine. One day I got pregnant, and didn’t know who the father was. The queen said I have to abort it. She took a stick and entered me until I aborted. I got sick with STDs. I was tested at the clinic. The doctor there insulted me. The queen brought me herbs—traditional medicine. Even though I was sick, she said I have to work. When I asked men to use condoms, they refused. Sometimes, sex with condoms was cheaper.

One night, I was in a nightclub with a friend, and we met two men. They said they’d give us 200,000 [U.S.\$46.50] each. We went to the bush, and they said they were going to kill us. I started crying. So the man felt pity, and he told me to run away. I ran until I reached the road, and I got into a car that brought me home. I told the queen mother what happened. Then my friend came back, crawling. The man had taken a stick, pushed it inside her, and left the stick in. We took her to the hospital, but she died. She was ten years old. We didn’t know where her parents were. The queen said we have to go to work to buy a coffin. That day, I started thinking—what next? Maybe I’ll die.

—Agatha T., former sex worker, now eighteen⁹²

Girls who are orphaned, often taking care of younger siblings, or who have fled their homes due to abuse, neglect, or poverty reported finding themselves having to trade sex to survive, having nothing else to trade, and in some cases

⁹² Human Rights Watch interview at Tasintha, Lusaka, May 23, 2002.

engaging in more regular sex work. This puts them at high risk for contracting HIV/AIDS and suffering a range of other abuses. Increasing poverty in Zambia has contributed to a rise in the sexual exploitation of girls. The National AIDS Council summarized the situation as follows: “In order to cope, households pull their children, particularly girls, from school, reduce their food intake and in some cases [they] resort to begging. In these circumstances, some women and girls are forced to engage in sex for money to meet their household expenses.”⁹³

Joe Kaunda, the news editor of *The Post*, an independent Zambian newspaper, described to Human Rights Watch the burdens placed on girls and young women:

They have no access to money to start their own business or whatever. They need to make money to support their siblings. Some go to the streets, where older men, most of whom are infected, offer them more money if they don't use a condom. These men prefer young ones, and they'll pay much more without a condom. Look at the suffering she's going through and the responsibilities she has to bear, and she ends up giving in.⁹⁴

Child prostitution is banned under international law, as is “inducement or coercion” leading to sexual exploitation of children.⁹⁵

Sex for Survival

Although the line is sometimes blurred, there are distinctions between young women who sell sex at various times and those who are sex workers. Girls and young women may trade sex as a currency in exchange for food, money or protection but may not consider themselves to be sex workers. According to the 1999 report by the Ministry of Health/Central Board of Health, this is a “frequent occurrence”: “Exchange of sex for money or gifts is a coping strategy for dealing with poverty and may not be perceived as commercial sex work.”⁹⁶

⁹³ National AIDS Council, p. 10.

⁹⁴ Human Rights Watch interview with Joe Kaunda, news editor, *The Post*, May 31, 2002.

⁹⁵ Convention on the Rights of the Child, Article 34. (See also Legal Framework, Part VI.)

⁹⁶ Ministry of Health/Central Board of Health, p. 50.

Sara A., twenty, interviewed by Human Rights Watch in Kafue outside Lusaka, lost her father when she was a girl, and five of her siblings also died, three apparently from tuberculosis. Sara A. was unable to continue in secondary school because of financial pressures on the family. "I was seventeen when I left school. I wanted to be a journalist in Lusaka. That didn't work, but I wanted to start working and find a job, even to be a maid. But if you look here, you can't find any work," she said. She eventually found work serving drinks in a bar where, she said, the main money-making opportunities for girls were in trading sex.

Polly A. is sixteen. After her mother died, there was no one to take care of her and her siblings. "Our relatives refused to help us; they said we should take care of ourselves," she said. "I was eight; my sisters were ten and thirteen. My elder brother took us, and we went to Livingstone. He stopped school and went looking for piece work, carrying heavy things. My sister started prostitution."⁹⁷

Sex Work

The Zambian government's report on the implementation of CEDAW recognized the stigma associated with prostitution in Zambian society:

Prostitution generally refers to a woman or man who engages in sexual activity for payment. However, in the Zambian context, men are not associated with prostitution due to cultural values that permit and encourage male promiscuity. The case for women is very different in that any woman who has a sexual relationship with a man who is not her husband, whether for economic gain or not, is considered a prostitute. Zambian society does not condone prostitution and a known prostitute is stigmatized.⁹⁸

HIV prevalence is extremely high among sex workers, estimated in 1998 at over 68 percent.⁹⁹ Counselors who work with sex workers note their general disinclination to be tested for HIV. One counselor explained it succinctly: "What's the likelihood of being negative?"¹⁰⁰

⁹⁷ Human Rights Watch interview at Anglican Children's Project, Lusaka, May 18, 2002.

⁹⁸ Republic of Zambia, "United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Combined Third and Fourth Country Report," p. 22.

⁹⁹ Global Report 2002, p. 192.

¹⁰⁰ Human Rights Watch interview with Caroline Chanda, May 17, 2002.

Recruitment into sex work is often subtle. Street girls are easy targets for recruitment, since they sometimes beg in public as they try to scrape by on their own. Orphans suffering physical and psychological abuse are sometimes drawn in by sex workers who offer some form of assistance or protection. And girls may be approached while simply sitting together at a local market or mall, or are brought into the trade by their relatives.¹⁰¹

A number of cases encountered by Human Rights Watch show some of the abusive situations that lead girls to sex work. Often they come from broken homes where they were abused and from which they fled. Some providers of services to sex workers say some were drawn to sex work by peer pressure, but their dismal economic situation and the corresponding desperation are often key determinants.¹⁰²

For example, Beatrice S. is fourteen years old. Her mother married a man who did not want Beatrice S. around, so she was sent to live with an aunt. Although her mother sent money to the aunt to provide for the daughter, the aunt kept the money and compelled Beatrice S. to earn money by selling fritters on the street; she was told not to come home until she sold all the fritters. She worked near a tavern, and the women who worked as prostitutes in the tavern began buying all her fritters so she could go home. At the start, these women protected her from the men in the tavern. The women asked Beatrice S. to go to where they lived and do cooking and washing for them in exchange for buying all her fritters. Eventually, she was recruited to work with them.¹⁰³

Areas where minors are at particular risk of being drawn into prostitution are border towns and trucking routes. Chirundu is on the Zambia-Zimbabwe border, and trucks are often stuck there for days waiting to cross. There are no facilities for showers, so girls and women carry jugs of water several kilometers to sell to the drivers. Karen Doll Manda of Family Health International, who directs a project with sex workers and truckers in Chirundu, described the situation: "There's no water in Chirundu, so rural girls carry twenty-liter containers and sell them for 500 kwacha [U.S.\$0.12]. You can do that two or three times a day, or you can get 10,000 kwacha [U.S.\$2.30] for an hour's [sex] work. Once they end up at the border, it's almost too late."¹⁰⁴

Dr. Kwasi Nimo of World Vision, which oversees the Chirundu project, said the truckers call these girls "village chickens."

¹⁰¹ Ibid.

¹⁰² Human Rights Watch interview with Prof. Nkandu Luo, May 21, 2002.

¹⁰³ Human Rights Watch interview with Caroline Chanda, May 17, 2002.

¹⁰⁴ Human Rights Watch interview with Karen Doll Manda, Country Director, Family Health International, Lusaka, May 21, 2002.

They come from near-by villages, and sell bananas, oranges, muffins, and then get entangled. The truckers tell them to climb up to the trucks and get extra money. The truckers say ‘you buy chickens from the villages cheaper than from supermarkets.’¹⁰⁵

Even though prostitution is not illegal under Zambian law, it is illegal to solicit customers or to live off the earnings of someone engaged in sex work,¹⁰⁶ and it is difficult for sex workers who suffer physical or sexual violence to report it to the police. Societal attitudes against sex workers and the stigma associated with them further discourage reporting. Police conduct round-ups of sex workers and charge them with loitering or indecent exposure. Usually, the women pay 10,000 kwacha (U.S.\$2.30) and are freed in the morning;¹⁰⁷ other times, the police take the women’s money or demand sexual services as payment.¹⁰⁸ In April 2002, a group of sex workers publicly complained about abuses by Zambian police officers who they said had repeatedly arrested them and abused them sexually.¹⁰⁹

Two Zambian NGOs providing services to sex workers are Tasintha, which means “we have changed” in the Nyanga language, and MAPODE or Movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation. These groups

¹⁰⁵ Human Rights Watch interview with Dr. Kwasi Nimo, World Vision, Lusaka, May 22, 2002.

¹⁰⁶ Section 146 (1) of the Zambian Penal Code states: “Every male person who—(a) knowingly lives wholly or in part on the earnings of prostitution; or (b) in any public place persistently solicits or importunes for immoral purposes; is guilty of a misdemeanor.” And Section 147 states: “Every woman who knowingly lives wholly or in part on the earnings of the prostitution of another or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanor.”

¹⁰⁷ Human Rights Watch interview with Eric Ngoma, Tasintha program manager, Lusaka, May 23, 2002.

¹⁰⁸ Human Rights Watch interview with Clemire Karamira, MAPODE, Lusaka, May 20, 2002.

¹⁰⁹ BBC News, “Sex-workers ‘raped’ by Zambian police,” April 23, 2002. Several persons interviewed by Human Rights Watch said this case has simply faded away as the investigations are not being pursued. Also Email communication from Winstone Zulu, director of the Zambia Network of People with HIV/AIDS, to Human Rights Watch, August 31, 2002.

describe a life of violence and deprivation among sex workers: “Girls die in a very short time—that’s the bottom line. STDs, HIV/AIDS, violence, mental abuse, physical abuse. They don’t have time to make money,” said Clemire Karamira of MAPODE. She noted that the majority of prostitutes she has worked with are twelve to eighteen years old, “They are dramatically young—that’s one aspect of vulnerability.”¹¹⁰ Professor Nkandu Luo, founder of Tasintha, former Minister of Health and professor of microbiology and immunology, told Human Rights Watch: “There have been so many deaths [among sex workers]—we’ve lost a lot. That’s one of the biggest tragedies. The majority are from HIV-associated deaths.”¹¹¹ Emily Joy Sikazwe, a women’s rights activist, recounted some of her dealings with young girls who had become sex workers: “A girl told me: ‘HIV is not a monster, it’s not a lion. What I see is hunger. I’m fourteen—my siblings are crying for food, so I sell my body. I use condoms sometimes; otherwise, it’s raw sex. I need to buy mealie meal¹¹² and relish for the children. Yes, I know I’ll die. But my brothers and sisters are crying.’”¹¹³

Abuses Against Street Children

The child on the street should be your concern. I am a child in need. . .

—Poem written and performed by former street children and orphans at FLAME Orphanage, May 24, 2002

There is a growing problem of street children in Zambia, with numbers estimated at more than 75,000, according to a 1998 Zambia Human Development Report.¹¹⁴ The majority of street children are boys. Counselors who work with street children report that girls go to the streets at ages four or five, but fewer girls are on the street after about age thirteen. At that point, adolescent street girls tend to be either married off, selling at the market, or involved in sex work.

¹¹⁰ Human Rights Watch interview with Clemire Karamira, Movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation (MAPODE), Lusaka, May 20, 2002.

¹¹¹ Human Rights Watch interview with Professor Nkandu Luo, Lusaka, May 21, 2002.

¹¹² Mealie meal is a staple food in the region and is made from maize flour.

¹¹³ Human Rights Watch interview with Emily Joy Sikazwe, Women for Change, Lusaka, May 31, 2002.

¹¹⁴ Cited in Orphans and Vulnerable Children, p. 19.

Those who work with street children emphasize the difference between those “in the streets” and those “on the streets.” “On the streets” means that the children go there, try to beg or otherwise make money, but go home at night. “In the streets” implies that the children actually live there and sleep there, with the street being their home. A rapid assessment of street children in Lusaka published by several Zambian NGOs in 2002 reported that over 70 percent were on the streets during the day while only a quarter spent both days and nights on the streets. The report cited a number of factors that render street children at high risk for contracting STDs or HIV: “lack of parental guidance and supervision, low levels of education, exposure to sexual abuse, and economic pressures that can lead to selling sex.”¹¹⁵

Children end up on the streets for various reasons. Some go to the streets after the breadwinner dies or are pushed out of the house by relatives; some are simply abandoned (Human Rights Watch met a set of four-year-old girl triplets who had been abandoned by an uncle at Soweto market in Lusaka after their mother died). Street children try to make a living: the NGOs’ assessment report noted the wide differentials in earnings, ranging from 100 to 100,000 kwacha (U.S.\$0.02 to \$23.25) per day, with the higher range resulting from prostitution.¹¹⁶ Ultimately, the report provided a grim forecast on the likely increase in street children:

The number of street children is likely to increase even more because of the growing numbers of children being orphaned due to parents dying of AIDS. As the number of orphaned children swells, a severe strain is being put on the extended family which has traditionally taken care of orphans. Living under conditions of virtual starvation and unable to attend school because of the high cost of education, more children will have little option but to fend for themselves on the streets.¹¹⁷

Many of those interviewed in the rapid assessment had lost one or both parents and had no one to take care of them; others had been sexually abused and run away; others simply fled poverty. Cosmas Musumali, health policy

¹¹⁵ Project Concern International Zambia and Dr. Musonda Lemba, “Rapid Assessment of Street Children in Lusaka,” March 2002, p. 21. The assessment was implemented by Fountain of Hope, FLAME, Jesus Cares Ministries, Lazarus Project, MAPODE, Zambia Red Cross Drop-In Centre, St. Lawrence Home of Hope, and Mthunzi Center.

¹¹⁶ Rapid Assessment, p. 2.

¹¹⁷ Rapid Assessment, p. 5.

advisor for the *Zambian Integrated Health Program (ZIHP)*, described children going to the street as a coping mechanism:

They've got nowhere to go. They've run away from poverty, hunger, being beaten or raped or insulted or discriminated against by the family. . . . Girls use their charm, cry for pity, sell something on behalf of someone else or get a commission. Or they sell themselves for money, which exposes them to abuses.¹¹⁸

Children may end up on the street or leave their homes due to abusive situations.

Gwendolyn P. is fifteen. She told Human Rights Watch her mother died “long ago”; her father is in Ndola and remarried. She continued:

She [my stepmother] stopped paying [my] school fees. Father gave her money for school fees, but she bought flour for fritters, and sent me to sell them. If all the fritters weren't sold, she wouldn't let me eat—I went to sleep hungry. I told my father, but he did nothing. So I went to mother's mother. My uncle died, he was paying some school fees—then went to grandmother in Lusaka. Once, I was about to be abused by my uncle—he said he wanted sex, I don't know what. He wanted to remove my clothes. I started crying. In the morning, I ran away.¹¹⁹

Girls living in the streets are particularly vulnerable, both physically and economically. The NGO rapid assessment report described that a higher percentage of girls than boys reported fear of physical and sexual harassment and sexual abuse.¹²⁰ Human Rights Watch learned that in Kitwe, Copperbelt Province, street girls were encouraged by security guards to sleep upstairs in a commercial building in the business district called Marbel House. The guards then reportedly sexually abused them. When this incident came to light, the building management apparently got rid of some of the guards, but no

¹¹⁸ Human Rights Watch interview with Cosmas Musumali, Health Policy Advisor, *Zambian Integrated Health Project (ZIHP)*, May 16, 2002.

¹¹⁹ Human Rights Watch interview at Fountain of Hope, Lusaka, May 23, 2002.

¹²⁰ Rapid Assessment, p. 23.

investigation was conducted or charges filed.¹²¹ Girls living in the streets are also exposed to risky consensual sexual relationships.

Ellie S. is fourteen years old. Her father died when she was two. As she told Human Rights Watch:

I lived with my mother, but she died when I was six. Then my mother's sister kept me, but not very well. She didn't support me in school, so I left school in 2001. There was no one to care after me. When I'm sick, she didn't care after me. I was twelve when I ran away. I went to Quick Save at the market. When people wanted water, I'd fetch twenty liters. That's how I got money for food. I also sold vegetables, and I'd bring the money back to the person for food. I slept at flats. Boys liked to chase us—they'd beat us—big boys. They beat me and my friends. Once, big boys were drunk, and we were sitting at the flat. We said just go; we don't want to fight. They chased us—one man and one big boy caught my friend and beat her. My friend was hurt badly. My friends were sick.¹²²

Human Rights Watch encountered Priscilla N., age nine, with dirty clothes and no shoes. She said her parents were blind, and they begged at City Market. She didn't go to school. She said friends her age sell groundnuts for money, and they also sleep with boyfriends. "My friends have boyfriends because they're given 500 kwacha (U.S.\$0.12) [to sleep with them]. When it gets dark, they sleep with them and then go home. I don't do it. I don't want it, don't like it."¹²³ Girls also risk sexual abuse at homes for street children. Human Rights Watch learned of a fifteen-year-old street girl named Cecilia R., who had been abused in her home in Lusaka and ran away, ultimately to Kitwe. She was abused by one of the guardians at the street children's home and became pregnant. The guardian lost his job, but again, there is no indication that any further actions were taken against him.¹²⁴ The NGO rapid assessment also indicated that one of the main reasons given by girls for not staying in centers for street children involved fear of sexual abuse.¹²⁵

¹²¹ Human Rights Watch interviews with Copperbelt Health Education Project (CHEP) and managers of Salem Children's Village, Kitwe, May 27, 2002.

¹²² Human Rights Watch interview at FLAME Orphanage, Lusaka, May 24, 2002.

¹²³ Human Rights Watch interview at Family Health Trust, Lusaka, May 21, 2002.

¹²⁴ Human Rights Watch interviews with CHEP in Kitwe, May 27, 2002.

¹²⁵ Rapid Assessment, p. 3.

Risk Factors Related to Schooling

If we don't get involved in the fight against HIV/AIDS, there will be no girls left to educate.

—Daphne Chimuka, FAWEZA, Lusaka, May 31, 2002

Discrimination in Access to Education

Most of the girls interviewed by Human Rights Watch focused on the need to provide girls with education as a way to address the AIDS crisis, but the HIV epidemic has produced new impediments to girls' access to education and accentuated old ones. While the government has stated its commitment to eliminating gender imbalances and discrimination in education, much remains to be done.

The link between education and protection against HIV infection has been widely discussed. School completion rates for girls in Zambia are 10 to 15 percent lower than for boys,¹²⁶ and data suggest that staying in school can help protect girls from HIV infection. A new World Bank report on education and HIV/AIDS in Africa states:

For boys and girls, education has been proven to provide protection against HIV infection. A general basic education itself has an important preventive impact: it can inform children and youth and equip them to make decisions concerning their own lives; bring about long-term behavioral change; and give them the opportunity for economic independence—all fundamental to prevention and, therefore, hope. . . . There is strong evidence that education is itself protective against HIV. Data for the late 1980s and early 1990s, when the HIV/AIDS pandemic was just emerging, mostly showed a positive correlation between level of education and rates of infection. . . . A study in Zambia, for example, found a marked decline in HIV prevalence rates in 15-19 year old boys and girls with medium to higher level

¹²⁶ National AIDS Council, p. 9. Official estimates of adult literacy are 77.2 percent of total population, which breaks down to 84.6 percent for men and 70.2 percent for women. See *summary of 1999 United Nations statistics in Zambia* Country Profile, United Nations Integrated Regional Information Networks (IRIN) at: <http://www.irinnews.org/AIDS/zambia.asp> (retrieved October 9, 2002).

education, and an increase among those with lower educational levels.¹²⁷

The report goes on to note that education—girls' education in particular—can slow or reduce the spread of HIV/AIDS by “contributing to poverty reduction, gender equality, female empowerment, and awareness of human rights.”¹²⁸ This analysis supports the vital importance of girls having access to education as a way to inform and protect themselves against HIV infection. The trend, however, goes in the opposite direction, with girls being far more likely to drop out or to be pulled out of school to care for sick family members or to provide financial support for their families.

In May 2002, President Mwanawasa announced that the government was abolishing school fees for primary education.¹²⁹ This was an important and welcome initiative, but it was unclear in the early days of the new policy how long its implementation would take. It is essential to ensure that this new commitment from the government is enforced and that the education budget adequately provides for the increased demand for resources so schools can compensate for the loss of school fees.

Several observers told Human Rights Watch that when a family has limited resources and has to choose between educating the boy or the girl, most choose the boy; the girl drops out. “They drop out of school because the family has to shift resources. As a girl, they usually take care of the parents and the woman takes care of her husband—so the girl takes the role of mother and cares for the home,” explained Brenda Yamba of SCOPE-OVC. “They become adults at that point. Our culture expects girls to do chores, cook, take care of kids. The boy will continue at school. When the family must choose, they usually pick the boys.”¹³⁰

The bias against educating girls is exacerbated when one or both parents fall sick, since it usually falls on the girls to take care of the ailing parents and to assume responsibility for the other siblings. When schools are located far away, the mere time required to get there and back makes it unlikely that the girl will continue. The economic pressures on the family, especially if the breadwinner becomes sick or loses his or her job, compels the girls to seek ways to bring in money, frequently in risky relationships or as sex workers.

¹²⁷ The World Bank, “Education and HIV/AIDS: A Window of Hope,” 2002, p. 4.

¹²⁸ *Ibid.*, p. 5.

¹²⁹ Bivan Saluseki, “HIV/AIDS has continued to Rob Lusaka of its People – Levy,” *The Post*, May 10, 2002.

¹³⁰ Human Rights Watch interview, May 18, 2002.

The number of places in primary and secondary schools in Zambia is limited. There is gender parity in school enrolment in grades one through four, but after grade four, the rate of school drop-out is much higher among girls, becoming quite prominent in secondary school, due partly to early marriages and pregnancies.¹³¹ The government acknowledges that girls' enrollment declines after grade four, and that "[t]hese gender disproportions are more obvious in rural areas."¹³²

The pregnancy issue is an indication of discriminatory treatment against girls. The government announced a new re-entry policy in 1997 whereby girls would be allowed back into school one time after having been pregnant but not a second time. There are no sanctions mandated against a boy student who may have impregnated her, although some school administrations suspend the boy temporarily.¹³³ The circular was an improvement over the previous policy, which did not allow girls to return to school at all after becoming pregnant. "The schools turn a blind eye to the boy, especially with the re-entry policy," said Daphne Chimuka of the Forum for African Women Educationalists Zambia National Chapter (FAWEZA). "The policy works more in favor of boys." Chimuka also noted that some schools easily ignore the new policy and keep expelling girls, just as some schools are still resisting the policy on free primary education.

According to the report of a FAWEZA workshop on the re-entry policy, "there were still serious gaps in practices in the implementation at the school level as well as family and community problems that have continued to hinder teen mothers from reclaiming their school places after delivery."¹³⁴ The report provided an analysis of constraints faced by teen mothers, including resistance by school heads to comply with the policy, hostile school environments, lack of guidelines and information about the policy, negative attitudes of parents and guardians, traditional practices requiring marriage for pregnancy, and lack of a social safety net to support teen mothers.¹³⁵

The issue of limited school places is likely to become more acute as the teaching profession itself is being ravaged by HIV/AIDS, to the extent that almost as many teachers are dying than are being trained. Even where the

¹³¹ Human Rights Watch interview, May 31, 2002.

¹³² Initial and First Periodic [CRC] Report, p. 68.

¹³³ Human Rights Watch interview with Chimuka, May 31, 2002.

¹³⁴ Forum for African Women Educationalists of Zambia (FAWEZA), "Report on Workshop for Developing Guidelines and a Tracking and Monitoring System for the Re-Entry Policy," Lusaka, February 2002, p. 1.

¹³⁵ FAWEZA, p. 2.

teachers have not died, many are sick, and significant absenteeism also results from attending funerals.¹³⁶ The Zambian National Union of Teachers (ZNUT) describes HIV/AIDS as a major threat to the population of teachers. The director for research of ZNUT was quoted as saying that of the required 52,000 teachers, Zambia has only 41,000; only 1,500 are graduating from colleges annually, and 1,000 are dying annually.¹³⁷

Although exact figures are impossible to gather, conservative estimates indicate that Zambia will continue to lose at least 1.7 percent of its teachers annually for the foreseeable future, assuming that teacher mortality from AIDS generally tracks adult mortality.¹³⁸ In fact, it appears likely that HIV prevalence rates for teachers are higher due to their higher socio-economic status, enabling them to purchase sexual services or influence local girls with gifts and status, and greater mobility, and that assignments away from their home areas may lead to more sexual contacts and greater risk of infection.¹³⁹ The government is seeking ways to cut down the training time for teachers in order to fill the void. The shortage of teachers imposes a particular burden on rural areas, since many teachers are reluctant to accept positions far from urban health care facilities.¹⁴⁰

Absence of Appropriate HIV/AIDS Education

The lack of an appropriate HIV/AIDS curriculum in the schools is another part of the problem. Despite attempts to integrate an AIDS component into the curriculum in recent years, nothing has materialized, and most information about AIDS is provided by independent, nongovernmental organizations. Ofosu-Barko of UNAIDS was told by the Ministry of Education's curriculum development center that the curriculum is too full to add AIDS: "Can you believe that a country with 20 percent prevalence rates has no HIV/AIDS program in the formal education system?"¹⁴¹ According to the World Bank's ACTafrica:

An urgent need exists to continue to incorporate HIV/AIDS education into the curriculum at all levels so that students are increasingly aware of how HIV is spread, the fatal consequences of the disease, and ways to prevent infection.

¹³⁶ Education and HIV/AIDS, p. 11.

¹³⁷ Charles Mangwato, "AIDS wiping out teachers, bemoans official," *Zambia Daily Mail*, May 25, 2002.

¹³⁸ ACTafrica, p. 20.

¹³⁹ Education and HIV/AIDS, p. 10.

¹⁴⁰ Education and HIV/AIDS, p. 12.

¹⁴¹ Human Rights Watch interview, May 17, 2002.

There is also increasing concern with life-skills education that helps students learn how and why to avoid high-risk sexual behavior and how to cope with social or peer pressure that encourages risky behavior. And many children, because of the epidemic, will never complete their schooling. Many will have to depart to care for sick family members or to replace lost family income. Others will be orphaned and will have to leave school to care for themselves and others. Increasingly, the Zambian school curriculum will be called upon to provide skills and training to help these young people survive on their own.¹⁴²

Sexual Abuse Risks for Girls at School

FAWEZA has focused considerable attention on the issue of girls' safety and security on their way to and from school. The length of the girls' commute to school is an important factor here, since their risk of sexual abuse by minibuses drivers or conductors, if they take transportation, or abuse by others along the road, if they walk, can be significant. In some cases, the long distance to school—often two hours walk or more—makes some girls stay in insecure, unsafe structures nearer to school during the week, which then exposes them to abuses by men who can walk in at will. "It is more urgent now to direct efforts to prevent more girls from getting infected [with HIV/AIDS], so we are focusing now on girls safety and security based on research that girls are more vulnerable than boys," said Chimuka.¹⁴³

Even school environments are not always safe, with sexual abuse or exploitation all too frequent. Teachers themselves may prey on vulnerable girls, exchanging answers to the tests or higher grades for sex. Most abuses by teachers are not reported, and few teachers are penalized. "The laws are strict, but there's no real attempt to find out what goes on," said Cosmas Musamali of ZIHP.¹⁴⁴ The more likely outcome is that a teacher would be cautioned and possibly transferred. In some cases, the parents negotiate for the teacher to marry the girl. Constance Lewanika of WILDAF noted that abuse by teachers at

¹⁴² ACTafrica, op. cit., pp. 24-25.

¹⁴³ Human Rights Watch interview with Daphne Chimuka, National Coordinator of the Forum for African Women Educationalists Zambia National Chapter (FAWEZA), Lusaka, May 31, 2002.

¹⁴⁴ Human Rights Watch interview with Musumali, May 16, 2002.

school is “a crime that is emerging. It’s not a new crime, it just has come to light and is now being reported.”¹⁴⁵

Part of the problem in punishing teachers for such conduct lies with the schools, and part lies with the families. Advocates for girls’ education have been trying to get stiffer penalties against teachers who abuse students, and to ensure that those found responsible are dismissed. However, the onus is on the girl’s parents, not the school, to report the case to the police so that criminal charges can be brought. School administrators sometimes interfere with the process by transferring the teacher elsewhere, which makes it extremely difficult for the case to proceed. In addition, the process of lodging a formal complaint or filing charges is not always clear. “Where do parents go to complain?” said Elizabeth Mataka of Family Health Trust. “Often there’s no police within miles, and the Ministry of Education is at the provincial level, so the headmaster is the ultimate authority. . . . Teachers escape ethical sanctions.”¹⁴⁶

¹⁴⁵ Human Rights Watch interview with Lewanika, May 21, 2002.

¹⁴⁶ Human Rights Watch interview with Elizabeth Mataka, Family Health Trust, Lusaka, Zambia, May 20, 2002.

VI. SHORTCOMINGS AND RISK FACTORS WITHIN THE LEGAL FRAMEWORK

International Law

Zambia is a party to many major U.N. human rights treaties¹⁴⁷ as well as the African Charter on Human and People's Rights. Zambia signed the African Charter on the Rights and Welfare of the Child in 1992, but has not ratified it.¹⁴⁸ By ratifying these international human rights instruments, Zambia has committed itself to protecting a broad range of civil, political, economic and social rights that if enforced would protect the rights of persons directly or indirectly affected by AIDS.

In 1985, Zambia ratified CEDAW, which calls upon public authorities and institutions to "pursue a policy of eliminating [sex] discrimination."¹⁴⁹ Zambia in 1997 signed the Gender and Development Declaration of the Southern African Development Community (SADC), in which the government pledged to "take urgent measures to prevent and deal with the increasing levels of violence against women and children."¹⁵⁰ Still, most efforts to address gender violence emanate not from the government but from NGOs and other civil society groups. Although the government has made progress in reforming statutory law by removing overtly discriminatory laws, discrimination against women continues under customary law in particular, legitimized by statutory law in the Local Courts Act (see below).

The Convention on the Rights of the Child contains provisions to protect children from abuse and exploitation. Article 2 requires states to take all appropriate measures to ensure that children are protected from discrimination.

¹⁴⁷ Convention on the Rights of the Child (CRC), entered into force in January 1992; Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW), entered into force in July 1985; International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force in July 1984; International Covenant on Civil and Political Rights (ICCPR), entered into force in July 1984; Convention Against Torture, and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT), entered into force in November 1998.

¹⁴⁸ U.N. Common Country Assessment, p. 80.

¹⁴⁹ CEDAW, art. 2. In addition, article 1 of CEDAW defines discrimination to include unintentional and intentional sex discrimination. Article 2(f) calls on governments to abolish laws, customs and practices that constitute discrimination against women, and article 5(a) echoes this, urging states to take "appropriate measures" to eliminate prejudices and customary practices based on the subordination of women and girls. Article 10 enjoins states to eliminate gender discrimination in education.

¹⁵⁰ Southern African Development Community, "Gender and Development: A Declaration by Heads of State or Government of the Southern African Development Community," par. H(ix), September 8, 1997.

Article 19 requires state parties to take all appropriate measures to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 24 recognizes the right of children to enjoy “the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Article 32 recognizes the right of children “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Article 34 requires states to undertake to protect children “from all forms of sexual exploitation and sexual abuse,” and in particular take all appropriate measures to prevent “(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices.”¹⁵¹

International human rights law does not address HIV/AIDS directly, but protections against abuses associated with HIV/AIDS are included in numerous international conventions. In 1998, the Office of the U.N. High Commissioner for Human Rights and UNAIDS issued “HIV/AIDS and Human Rights: International Guidelines,” which provide a roadmap for governments seeking to incorporate human rights protections related to HIV/AIDS into national law. The guidelines cover a range of issues, including the need for legislation to address public health issues related to HIV/AIDS, reviewing and reforming criminal laws to ensure they are consistent with international obligations and do not target vulnerable groups, protection against discrimination, and eliminating violence against women, including harmful traditional practices, sexual abuse and exploitation.¹⁵² In June 2001, the U.N. General Assembly Special Session (UNGASS) on HIV/AIDS resulted in a Declaration of Commitment on HIV/AIDS that included strong language on the need to integrate the rights of women and girls into the global struggle against HIV/AIDS.¹⁵³

¹⁵¹ Convention on the Rights of the Child, G.A. res. 44/25, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

¹⁵² Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, “HIV/AIDS and Human Rights: International Guidelines” (from the second international consultation on HIV/AIDS and human rights, 23-25 September 1996, Geneva), U.N. Doc. HR/PUB/98/1, Geneva, 1998.

¹⁵³ “HIV/AIDS and Human Rights: International Guidelines”: 59. By 2005, bearing in mind the context and character of the epidemic and that globally women and girls are disproportionately affected by HIV/AIDS, develop and accelerate the implementation of national strategies that: promote the advancement of women and women’s full enjoyment

According to the Committee on Economic, Social and Cultural Rights, the independent panel of experts that monitors rights under the ICESCR, the right to the enjoyment of the highest attainable standard of health includes the right to information and education concerning prevailing health problems, their prevention and their control.¹⁵⁴ The CRC specifically requires states parties “[t]o ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health.”¹⁵⁵ The Committee on Economic, Social and Cultural Rights, recognizing the importance of access to information, interprets the right to health to include the “right to seek, receive and impart information concerning health issues.”¹⁵⁶ In addition, the committee advises that states have a legal obligation to refrain from “censoring, withholding or intentionally misrepresenting health-related information, including sexual education information.”¹⁵⁷

National Law

The Zambian Constitution guarantees a wide range of rights, including prohibiting discrimination on the basis of sex.¹⁵⁸ The Penal Code prohibits

of all human rights; promote shared responsibility of men and women to ensure safe sex; empower women to have control over and decide freely and responsibly on matters related to their sexuality to increase their ability to protect themselves from HIV infection; 60. By 2005, implement measures to increase capacities of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and health services, including sexual and reproductive health, and through prevention education that promotes gender equality within a culturally and gender sensitive framework; 61. By 2005, ensure development and accelerated implementation of national strategies for women’s empowerment, promotion and protection of women’s full enjoyment of all human rights and reduction of their vulnerability to HIV/AIDS through the elimination of all forms of discrimination, as well as all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls.

¹⁵⁴ *General Comment 14. The Right to the Highest Attainable Standard of Health*, Committee on Economic, Social and Cultural Rights, 22nd sess., 2000, paras. 12(b), 16 and note 8.

¹⁵⁵ CRC, art. 24(2)(e).

¹⁵⁶ *General Comment 14. The Right to the Highest Attainable Standard of Health*, Committee on Economic, Social and Cultural Rights, para. 12(b) and note 8.

¹⁵⁷ *Ibid.*, para. 34.

¹⁵⁸ Constitution of Zambia, paragraph 23 (3), 1991.

virtually all the abuses associated with sexual violence, coercion, and discrimination documented in this report. The reality of enforcement, however, is entirely different: bias against the victims, endemic problems of the criminal justice system, and discrimination and other shortcomings in the customary law. These problems often lead to a failure to investigate, prosecute and punish these offenses. As a result, the victims have little recourse to the justice system, while the perpetrators face little disincentive to abuse again.

The Zambian Penal Code prohibits rape, incest, and “defilement”—sex with a girl under age sixteen—as well as neglect or desertion of children by a parent or guardian.¹⁵⁹ It also outlaws offenses endangering life or health, unlawful compulsory labor, and assaults causing bodily harm.¹⁶⁰ In addition, the Juvenile Act of 1956 provides for care and protection of children;¹⁶¹ Section 46 also prohibits cruelty to children by parents or guardians.

Statutory and Customary Law

Before independence from the United Kingdom in 1964, Zambia had two distinct legal systems, one applying only to Africans and the other to Africans

¹⁵⁹ Chapter XV, Section 132 defines rape as follows: “[a]ny person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed ‘rape.’” Section 133 states “[a]ny person who commits the offense of rape is liable to imprisonment for life.” Section 134 states that “[a]ny person who attempts to commit rape is guilty of a felony and is liable to imprisonment for life.” Section 138 (1): “[a]ny person who unlawfully and carnally knows any girls under the age of sixteen years is guilty of a felony and is liable to imprisonment for life.” Incest is covered under Section 159: [a]ny male person who has carnal knowledge of a female person, who is to his knowledge his granddaughter, daughter, sister, or mother, is guilty of a felony and is liable to imprisonment for five years.” Section 159 (2) further stipulates that “it is immaterial if the carnal knowledge was had with the consent of the female person.” Chapter XVI, Section 168, makes desertion of children under the age of sixteen by a parent or guardian a misdemeanor. Section 169 makes neglecting to provide food, clothes and other necessities for a child by a parent or guardian a misdemeanor.

¹⁶⁰ Chapter XXII Offenses Endangering Life or Health, Section 229 “Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years.” Chapter XXV Section 263 “Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanor. Chapter XXIV, Section 248 “Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years.”

¹⁶¹ Juvenile Act of 1956 (with numerous amendments), Chapter 53 of the Laws of Zambia.

and Europeans. Zambian law now integrates the two legal systems: customary law, based on pre-colonial legal systems as interpreted by the colonial “native courts,” known as local courts today; and statutory law, much of it still inherited from the pre-independence era, but modified and extended by legislation adopted by the Zambian parliament since 1964. In general, customary law grants significantly fewer rights to women and girls than statutory law.

The Zambian court system is separated into several levels—local courts, magistrates courts, the High Court, and the Supreme Court. Disputes or prosecutions under statutory law are heard in the magistrates courts (if less important) or the High Court, with appeal to the Supreme Court. Disputes under customary law are usually heard in local courts, the lowest level in the judicial hierarchy, governed by the 1934 Subordinate Courts Act and the 1966 Local Courts Act, and can also be appealed through the rest of the court system. The jurisdiction of the local courts includes, among other things, determining the rights of people not married in a civil ceremony governed by the Marriage Act in respect of property, inheritance, marriage and divorce.¹⁶² While some urban Zambians are married in civil rites governed by the Marriage Act, which sets out nondiscriminatory rules for property division and inheritance, most rural (and urban) Zambians are still married under customary law.¹⁶³ The local courts thus determine many of their core legal rights. In addition, according to the Local Courts Act, section 12(2): “Any offence under African customary law, where such law is not repugnant to natural justice or morality, may be dealt with by a local court as an offence under such law notwithstanding that a similar offence may be constituted by the Penal Code or by any other written law.”¹⁶⁴ The local courts do not, however, have jurisdiction to try more serious offenses, including murder and rape, which must be heard in the magistrates court or High Court.¹⁶⁵

¹⁶²Inter-African Network for Human Rights and Development, “The Dilemma of Local Courts in Zambia: A Question of Colonial Legal Continuity or Deliberate Customary Law Marginalisation?” (Afronet Report on the Judicial Sector Administering Customary Law), Afronet (Lusaka), 1998.

¹⁶³ Email communication from Constance Lewanika, WILDAF, to Human Rights Watch, October 9, 2002. Lewanika also noted that in practice the nondiscriminatory protections contained in the Marriage Act are rarely implemented.

¹⁶⁴ Local Courts Act of 1966.

¹⁶⁵ Battery, rape, defilement, and murder of women in domestic incidents are criminal matters covered by the Zambia Penal Code that are not meant to be heard in the local courts. According to Constance Lewanika, these matters are nonetheless sometimes taken up by local courts, and WILDAF and other organizations frequently protest their handling in those venues. *See* Lewanika, October 9, 2002.

Problems may arise when the laws under the two legal systems conflict, even though the Local Courts Act makes it clear that in such instances statutory law should take precedence.¹⁶⁶ When customary law takes precedence, according to Constance Lewanika of WILDAF, it often happens that “the worst victims are women and girls, stemming from social and cultural factors which degrade the position of women and girls.”¹⁶⁷

For example, the Marriage Act says that the legal age of marriage is sixteen, and that anyone under twenty-one who is not a widow or widower needs written consent from the father (or mother or guardian, if the father is dead or of unsound mind). If the father refuses consent, the child can apply to a High Court judge to provide consent. In addition, the penal code makes sex with a girl under sixteen a crime punishable by up to life in prison. However, the Marriage Act does not apply to marriages under customary law, where the age of marriage is considered to be maturity. Maturity is not defined and there is no minimum age set: in some cases, maturity can mean thirteen years old or the onset of menses. In practice, especially in the rural areas, it is commonplace for girls to be married or expected to have sexual relations under the age of sixteen, and virtually unheard of for prosecutions under the penal code to result.

Despite the guarantees for nondiscrimination in the Zambian Constitution, customary law and practice place women in subordinate positions. These discriminatory practices increase women’s and girls’ vulnerability to HIV, as the U.N. *Common Country Assessment for 2000* noted: “In Zambia, some of the factors contributing to [the spread of AIDS] are imbedded in Customary laws and practices, especially in relation to divorce, adultery, child marriages and defilement.”¹⁶⁸ The WLSA report on gender violence noted that the practice of paying *lobola* under customary law restricts a woman’s ability to leave an abusive marriage (once the *lobola* has been paid, traditional says that the bride essentially becomes the property of the man and his family), and has been a contributing factor to early marriages for girls. The report states:

The *lobola* system in which marriage payments are made to the family of the bride also serves to enhance the woman’s vulnerability to violence at the hands of her future

¹⁶⁶ Ibid.

¹⁶⁷ Human Rights Watch interview with Lewanika, May 21, 2002.

¹⁶⁸ United Nations, “Common Country Assessment: Zambia 2000,” December 2000, p. 17.

husband. . . . Thus the commercialization of *lobola* has led to the commodification of girls.¹⁶⁹

Inheritance

Nowhere has the conflict between customary and statutory law been as evident as in the question of inheritance. This conflict is compounded by HIV/AIDS, since families often seek to disinherit children orphaned by AIDS and women widowed by AIDS. Inheritance has been governed by both customary and statutory law and is further complicated by diverse traditions among Zambia's seventy-three ethnic groups. Still, tradition in most ethnic groups in Zambia and in the region dictates that the deceased man's family retains all inheritance rights. Girls face particular risk of being disinherited following the death of either a father or a husband (since girls are often married to older men, they can be widowed when they are still children).

In Zambia, the 1989 Intestate Succession Act, which covers those who die without leaving a will, seeks to protect the dependents of the deceased; it is designed to provide for the surviving spouse, children, and other dependents and to protect against the unlawful appropriation of property by relatives. The act recognizes children born out of wedlock for purposes of inheritance, and a 1996 reform of the act allows inheritance rights for other wives. It states that when someone dies intestate, the deceased's spouse, children and other dependents (which could include parents and others who were cared for by the deceased) would receive the following percentages of his estate: 20 percent to the spouse, 20 percent for the father and mother (10 percent each), 50 percent to be shared among all children, and 10 percent to be shared among other secondary dependents. The 1989 Wills and Administration of Testate Estates Act does not apply to land held under customary law, but allows adults of sound mind to write a will to determine how their property will be handled after their death. If the will does not provide for adequate maintenance of a dependent, the court can alter its contents.¹⁷⁰

The problems arise not because of the law on succession itself but rather the way it is put into practice. As noted by Zambian legal scholar Muna Ndulo, "Initially, it was a problem of law, but now the struggle is to make the law

¹⁶⁹ Women and Law in Southern Africa, "Gender Violence: The invisible struggle; Responses of the Justice Delivery System in Zambia," p. 8.

¹⁷⁰ Women and Law in Southern Africa Research Project, "Inheritance in Zambia: Law and Practice," pp. 78-79.

work.”¹⁷¹ WLSA made these observations in a publication that analyzed inheritance practices in Zambia as well as the impact of the new law:

On paper, the new law of inheritance has been a wonderful breakthrough for women’s rights. In practice, though, the five years since the enactment of the Act have witnessed a very different picture. The earlier resentment at the passing of a law which usurps customary rights has blossomed into a blatant disregard of statutory law and a perpetuation of the distorted and evil practice of “property grabbing.” . . . The law is weakened first and foremost by the lack of conviction among women themselves that they have a legal right to their deceased husband’s property, and secondly, by their fear of reprisals should they invoke the law. Furthermore, even the lawyers and the law enforcement agencies such as the police and Local Courts may have failed to give the new law the respect it deserves and encourage its use.¹⁷²

“Property-grabbing”—unlawful appropriation of property by relatives or others—is the main abuse associated with inheritance rights. This practice has potentially dire implications for the widow and children, who may be left destitute, with girls being propelled, in order to survive, into risky professions with the risk of contracting HIV/AIDS. Notwithstanding the enactment of the law on succession, widows may be stripped of all the matrimonial property and sometimes even of their children upon the death of their husband. The practice stems from a manipulation of customary laws, which assumes a husband’s sole ownership of matrimonial property and passes such ownership to a male relative of the deceased who is then supposed to assume responsibility for the widow and children (“widow inheritance”). In the past, this was a way of protecting and caring for the widow and her children: the family of the deceased husband would provide a husband for the widow; if practicable, she would be “inherited” by a brother of the deceased. Taking care of the widow and children was seen as a responsibility for the new husband, not a benefit. In cases of “property grabbing,” acceptance of responsibility by the family has been abandoned but not the claim to property.¹⁷³ “Over time, people started relinquishing the responsibility over the children and just seeking to inherit the property. They then discard the widow and children,” explained Lewanika.¹⁷⁴

¹⁷¹ Human Rights Watch interview, July 16, 2002.

¹⁷² “Inheritance in Zambia: Law and Practice,” *op. cit.*, p. 83.

¹⁷³ NGO Commentary, p. 22.

¹⁷⁴ Human Rights Watch interview, May 21, 2002.

The United Nations *Common Country Assessment* accurately described the continuing problems related to inheritance in Zambia:

In practice, “property grabbing” by relatives of the deceased man continues to be rampant, particularly when local customary courts have jurisdiction. These courts often use the Local Courts Act to distribute inheritances without reference to the percentages mandated by the Intestate Succession Act, and the fines mandated by the latter for property grabbing are extraordinarily low. As a result, many widows receive little or nothing from the estate.¹⁷⁵

Patty B., sixteen years old, described to Human Rights Watch what happened after her father died. “The relatives grabbed all our property, even my clothes. I didn’t even get a single spoon. This was my father’s relatives.” When her mother died in 2000, she ended up living with an uncle, who abused her, and who is feared by the family to be HIV-positive.¹⁷⁶

Matilda S. was pulled out of school at seventeen, after her father died. The family’s property was grabbed by the grandparents. “They took chairs, the bed, license plates, and cabinets.” She said that after the property is grabbed, girls often start prostitution to make ends meet.¹⁷⁷ Peggy R., who became a sex worker, told Human Rights Watch: “After my father died, everything was taken by my father’s family. I was six years old. The sister of my father took everything. It doesn’t matter if you take it to court.”¹⁷⁸

Custody of the children raises other thorny issues. When the *lobola*, or bride price, has been paid, the man’s relatives often demand custody of the children. As one HIV-positive woman whose husband had died of AIDS told Human Rights Watch: “My in-laws said I bewitched my husband. They took my six children from me. They scare my children from me. They don’t allow my children to live with me.”¹⁷⁹ The risks to girls in such situations of separation from a parent and being in the care of members of the extended family are obvious from the testimonies featured earlier in this report (see Part IV).

¹⁷⁵ U.N., “Common Country Assessment: Zambia 2000,” p. 16.

¹⁷⁶ Human Rights Watch interview at Umoya, Lusaka, May 22, 2002.

¹⁷⁷ Human Rights Watch interview at Umoya, Lusaka, May 22, 2002.

¹⁷⁸ Human Rights Watch interview with MAPODE, Lusaka, May 20, 2002.

¹⁷⁹ Human Rights Watch interview with members of PALS, Lusaka, May 23, 2002.

When widow inheritance is not abused in the ways described above, HIV/AIDS risks still arise, especially given the continued practice of polygamy in Zambia. If the husband died of AIDS-related causes, HIV is likely to be spread from the widow to the new husband and to his other wife or wives. The consequences for HIV transmission are obvious, especially since studies suggest that condom use among married persons is low.¹⁸⁰ Although the practice of widow inheritance is not supported by Zambian law, addressing it requires a more vigorous response from the government.

Constraints to Effective Prosecution in Sexual Abuse Cases

In addition to the conflict with customary law in respect of child marriage versus defilement, described above, constraints to prosecution include the attitude of the legal and law enforcement agencies toward girl victims, the inadequate training and resources for investigation (see below, VSU), the difficulties of using a child's testimony in court, and the lack of trained prosecutors to pursue cases of child and gender violence. In addition, the widespread reluctance by families themselves to seek criminal penalties for abuses against girls, as described above, remains an underlying impediment to prosecution.

There is a requirement in Chapter 88 of the Criminal Procedure Code that a child's testimony has to be corroborated to be admissible as evidence, a feature of the law not unique to Zambia. Even the government acknowledges that this presents obstacles to prosecuting perpetrators of child abuse. The judge can use his or her discretion to determine whether the child is competent and therefore whether his or her evidence is admissible.¹⁸¹ Although evaluating the competency of a child witness is a standard part of common law doctrine, it tends to work to the disadvantage of the child when he, or especially she, is the victim. The courts often do not take her case seriously and, in the case of an older girl with a complaint of sexual abuse, the case may hinge on whether or

¹⁸⁰ The nationwide Demographic and Health Survey of Zambia in 1996 reported that 28 percent of men reported having ever used a condom, and experts suggest that regular use is much lower, partly due to the fact that until the mid-1990s condoms were hardly available. A few projects have reported increased condom use among Zambian young people who have been exposed to promotional campaigns on the subject. See Government of Zambia, Central Statistics Office and Ministry of Health, and Macro International, Inc., *Demographic and Health Survey 1996: Zambia* (Calverton, MD: Macro International, 1997), p. 46; and Population Services International, "Zambia Social Marketing Project Has Maximum Impact on War Against AIDS," at <http://www.psi.org/resources/pubs/zambia.html> (retrieved August 29, 2002).

¹⁸¹ CRC report, pp. 19 and 23.

not the judge believes she “asked for it.” This problem underscores the need for effective child protection units that could investigate cases of abuse and provide corroboration.¹⁸²

Some women’s groups have called for an expanded definition of rape, stressing the need to restructure the law to provide for circumstances of aggravated rape, which should lead to stiffer penalties. In addition, the law should recognize marital rape, which may be an important vehicle for HIV transmission and which does not exist currently as an offense in Zambian law. They have also called for stiffer, mandatory minimum sentences as a way of addressing the lenient sentences.¹⁸³ Similarly, the groups have criticized the application of the law on “defilement” as being “grossly inadequate and irrelevant considering the gravity of sexually abusing a young girl.”¹⁸⁴

The lower courts in the Zambian system—the local and magistrates courts—are subject to restrictions on their jurisdiction to mete out sentences. Local courts cannot impose prison sentences exceeding two years. Zambian women’s groups have stressed the importance of stopping lower courts from trying offenses for which they do not have jurisdiction to impose “deterrent sentences” and from applying customary civil law to criminal offenses, including “defilement,” incest, rape, and assault, which should be heard in the magistrates courts.¹⁸⁵ Lewanika of WILDAF reported that families occasionally bring such cases to the lower courts, though they are not designated in the law for that purpose, when they are seeking financial compensation rather than criminal penalties.¹⁸⁶ Local courts can send a matter to a magistrates court, such as when the prosecution seeks stiffer penalties than those the lower courts can impose, or a case can be appealed to a magistrates court. Depending on the severity of the case, it could then go to the High Court and ultimately to the Supreme Court. Magistrates courts, however, are also restricted in their authority to impose sentences (depending on the class of court and the type of magistrate, to five or to ten years’ imprisonment). As with the local courts, this can cause problems. WLSA produced a report on gender violence and the

¹⁸² Human Rights Watch interview with Prof. Muna Ndulo, Cornell University School of Law, July 15, 2002.

¹⁸³ Women and Law in Southern Africa Trust - Zambia, “Gender Violence: The invisible struggle,” (Lusaka: 2001), p. 25.

¹⁸⁴ *Ibid.*, p. 27.

¹⁸⁵ NGO Commentary, p. 19.

¹⁸⁶ Email communication from Constance Lewanika to Human Rights Watch, October 9, 2002.

justice system in Zambia, which analyzes how the justice system responds to such cases. It stated that:

[A]nother frustration for the victims once they go to court is that these offenses attract light sentences, not because the provisions of law are inadequate, but due to having magistrates that do not have the requisite jurisdiction. There is a gap between the maximum sentences provided by legislation and the jurisdiction of the courts. . . . Thus the message given to the perpetrators of these crimes is that these are not serious issues, and so violence is then perpetrated for the victim at another level as well. . . . This affirms the offender and says that as the state, violence is tolerated.¹⁸⁷

In 2002, a group of Zambian women's organizations published an NGO commentary on the government's official report to the U.N. on the implementation of CEDAW. The NGO report underscores the vulnerability of girls to violence and HIV, and the state's failure to protect them:

The media carries almost daily reports of children being raped or defiled by adults often within the home because of mythical hopes of getting cured of AIDS or avoiding HIV infection by having sex with virgins. The following illustrate: 'Man 23 in court for defiling girl 7', 'HIV+ man gets 30 months for defiling girl 13', 'Grandfather 64 gets 2 years for defiling girl 5'. The result is that children are getting infected and dying and the courts are passing light sentences on the perpetrators.¹⁸⁸

The NGO commentary further condemns the light sentences meted out to offenders:

Law enforcement officers and courts do not accord the same level of seriousness to these offences as they do to other crimes. Under the Penal Code, the offences fall under the title

¹⁸⁷ WLSA Gender Violence, p. 98.

¹⁸⁸ Women in Law and Development in Africa (WILDAF)-Zambia, "NGO Commentary on the Government of Zambia Combined Third and Fourth Report on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," Lusaka, May 2002, p. 16.

“offences against morality” rather than injuries against the person. Thus, the focus of the provisions is the moral wrong done to society as a whole, to the detriment of the individual victim of violence.¹⁸⁹

Not unique to the matter of sexual assault cases in the justice system, delays and inefficiencies, which are hallmarks of the system, impede the pursuit of cases. According to Professor Muna Ndulo, an expert on Zambian law, these result partly from lack of training for prosecutors and police to prepare cases efficiently.¹⁹⁰ The relatively low level of training and education of the police force complicates both the quality of investigations and the preparation of dockets, and these problems are particularly acute in cases of sexual abuse, Ndulo observed.

¹⁸⁹ NGO Commentary, p. 16.

¹⁹⁰ Human Rights Watch interview with Professor Muna Ndulo, September 9, 2002.

VII. STATE RESPONSE

The impact [of the AIDS epidemic] is devastating, and there hasn't been much progress in identifying those affected, especially girls, or getting assistance from the government.

—Judge Lombe Chibesakunda, chair of the National Human Rights Commission, Lusaka, May 30, 2002

The Zambian government has not backed up its rhetoric on protection of the rights of girls. While frequently acknowledging the particular vulnerabilities of girls in Zambia, especially regarding risk of HIV/AIDS, the government has not taken adequate steps to implement a policy to protect them.

On paper, the Zambian government has been forthright in its assessment of the situation and professed a commitment to safeguarding basic rights. On HIV/AIDS, the National AIDS Council described the populations vulnerable to HIV infection as children, youth, women and certain mobile populations. It further acknowledged that young girls are particularly vulnerable to HIV due to practices including incest and coerced sex and that they have little legal recourse.¹⁹¹

The government acknowledges widespread gender bias in the country. The National Gender Policy, published in March 2000, states that the government is fully committed to gender equality. It recognizes the problem of gender violence, and the particular problems of incest and defilement of girls. Although the government notes that legal provisions in the penal code are designed to protect women from abuse, it concedes that “enforcement has not been vigorous enough to protect women and girl-children from violence, sexual harassment and abuse, as well as property grabbing which are still common.”¹⁹²

On children's rights, the government claims to have instituted national policies to improve the welfare and quality of life for Zambian children, to support activities to combat discriminatory practices arising from gender bias, and to eliminate violence against women and children.¹⁹³ Since child protection is considered to be a cross-cutting issue, several government ministries have child protection components. Nevertheless, the government also acknowledges that mechanisms to protect children are weak, and that HIV/AIDS presents particular challenges for vulnerable children.¹⁹⁴ None of the ministries have designed programs to combat sexual abuse against girls.

¹⁹¹ National AIDS Council, p. 9.

¹⁹² Republic of Zambia, “National Gender Policy,” (Lusaka: March 2000), p. 42.

¹⁹³ CRC report, p. 1.

¹⁹⁴ CRC report, pp. 12-13 and 108.

National HIV Policy and National AIDS Council

Since the mid-1980s, the Zambian government has supported a range of programs to prevent the spread of HIV/AIDS. According to the government, these programs began with a focus on AIDS education and blood screening, and later expanded to include counseling, STD/Clinical Care, epidemiology and research, home-based care, information/education campaigns, and condom promotion. In subsequent years, it also sought to involve NGOs, churches, and the private sector.¹⁹⁵ The government concedes, however, that the initial responses to HIV/AIDS were “inadequate to contain a problem that was more than just medical in nature.”¹⁹⁶

Although a number of observers expressed cautious optimism about President Mwanawasa’s commitment to combating HIV/AIDS and respecting human rights, many said this critical component of political commitment and leadership by the government has been sorely lacking. Under the presidency of Frederick Chiluba (1991-2001), the government resisted implementing effective HIV/AIDS programs and vigorous public awareness campaigns. As Stella Goings, the UNICEF representative in Zambia, put it:

For ten years, Zambia had a head of state who was himself an obstacle. He thought AIDS was God’s punishment. . . . No AIDS awareness messages were allowed. When groups tried to put out public messages, Chiluba called them personally and said that they were corrupting the morals of Zambia’s youth.¹⁹⁷

An example of Zambian government interference with AIDS messages targeted at girls was inadvertently raised at a USAID press conference at the International AIDS meeting in Barcelona in July 2002. Holo Hachonda, the youth communications coordinator for the Youth Action Organization in Lusaka, was featured at the press conference to describe the youth leadership and participation in designing and implementing USAID’s HEART (Helping Each Other Act Responsibly Together) campaign in Zambia. (HEART uses mass media to inform young people about HIV/AIDS, including messages on sexual abstinence.) But in what Hachonda described as “a hiccup,” a televised public information message they designed to show girls talking about negotiating condom use in their relationships was pulled in December 2000 after

¹⁹⁵ HIV/AIDS in Zambia, pp. 61-62.

¹⁹⁶ National AIDS Council, p. 15.

¹⁹⁷ Human Rights Watch interview with Stella Goings, UNICEF, May 31, 2002.

two weeks on the air. When queried by a journalist about what had happened, Hachanda explained:

Because young women are not necessarily seen as people, as people who are—I think society, our society, has not yet prepared itself for young women talking openly about sex. And the message was, if my boyfriend says he wants to have sex with me, I say ‘no condom, no sex.’ . . . What happened is that, at the time, one of the political leaders mentioned unofficially that he did not believe in condoms. The media took that speech and blew it up. And after two weeks of seeing the media debate about whether or not it was right for us to be advertising messages on condom use among young people. The campaign itself did suffer, in the sense that even messages on abstinence were banned. It has taken us twenty months, roughly, to get back on the air.¹⁹⁸

He continued by describing his group’s lengthy negotiations with representatives of the government and religious organizations to make the campaign acceptable to them.

First Lady Maureen Mwanawasa also participated in the press conference and added her perspective on how the ad being pulled reflected broader bias against girls:

[W]e did have an ad that was talking about condom use by boys, and it didn’t create any problems. Everybody seems to have accepted this. But because it was now girls who were talking about using condoms, I think it’s that denial, it’s not accepting the fact that, where girls do get to a point where they can negotiate safer sex. . . . [W]e think that older men who are, in fact, having sex with younger women would not like to see an empowered younger woman.

Despite its rhetoric about respecting human rights of all persons and establishing vulnerable group and geographic priorities, the government has not addressed the vulnerabilities of girls related to sexual violence. In fact, two government reports—a 1999 report by the Ministry of Health and the Central

¹⁹⁸ USAID Press Conference: “ABCs of Preventing HIV and AIDS Among Youth,” July 11, 2002.

Board of Health and the October 2000 Strategic Framework for the National AIDS Council—listed priority groups, but did not include the high-prevalence group of fifteen- to nineteen-year-old girls as a distinct category. The Ministry of Health/Central Board of Health report did not mention the problems of sexual violence when describing the human rights aspects of their policy, focusing on issues of stigma, testing and confidentiality, employment, and information. These issues are extremely important, but the list of human rights problems associated with the epidemic is incomplete without a focus on gender-related violence. The report placed advocacy for vulnerable groups, including young women and orphaned children subject to sexual exploitation and abuse, under the category of what NGOs should do rather than what the government itself should do.¹⁹⁹

Gordon Bolla, the director of the National AIDS Council (NAC), told Human Rights Watch that now the government intends to focus more on women and children:

We'll try to put more emphasis on how to protect those who can't protect themselves; there's a bias to protect children and women. But we have to see how to protect children. If we don't protect them, we'll lose the next generation. So let's protect the girl, which will protect the family, which will protect the clan.²⁰⁰

The NAC is not a funding organization but will receive proposals for support from all over the country. Bolla said that most of the proposals are coming from Lusaka, and many are from women's groups, with some programs focusing on persons in the fifteen- to twenty-four-year range. The current thinking at the National AIDS Council seems to be toward focusing on youth overall, without any particular priority to girls.

The government has created a new institution—the National AIDS Council, guided by a committee of cabinet ministers—to coordinate the actions of the various actors in government and civil society to combat the epidemic. At this writing, a proposed bill on national AIDS policy has been sent to the cabinet and will be debated by Parliament shortly. At the moment, however, there is no legislation dealing specifically with HIV/AIDS. The bill is expected to contain provisions for care and support of orphans and vulnerable children, but is not expected to include a focused program on sexual violence against girls. Bolla

¹⁹⁹ HIV/AIDS in Zambia, p. 67, and Strategic Framework, p. 40.

²⁰⁰ Human Rights Watch interview with Bolla, May 30, 2002.

also noted the necessity of changes in the legal system: “The laws haven’t been changed to fit this situation. We need to do a lot. HIV/AIDS is bringing a lot of things to the fore.”²⁰¹

Victim Support Unit (VSU) of the Police Force

The main government mechanism tasked with providing legal protection for girls subjected to sexual violence and abuse is the Victim Support Unit of the police department. The idea for a VSU dates to 1994 with a police reform program initiated by women’s NGOs. The VSU began its work in 1997 and now has officers at virtually every police station in the country. The unit is tasked with handling cases of physical or sexual abuse, including child abuse, violence against women, property grabbing, and victimization of the elderly. Although the VSU has intervened effectively in some cases, the potential impact of the VSU has been undermined by a fundamental shortage of resources, equipment, and training. For example, the VSU has only two vehicles for the whole country, which they received from the Danish Embassy in 2000, although the unit is trying to secure transportation for all provinces.²⁰² There are currently 100 women officers in the VSU, and one woman officer is supposed to be assigned to each police post. The VSU contends that this is difficult to fulfill because many women refuse to be assigned to police stations in remote areas.²⁰³

According to the VSU in Lusaka, ninety-seven cases were reported to them in 1997; 1,954 in 1998; 2,232 in 1999; 3,845 in 2000; and 7,815 in 2001. Increasingly, counselors, social workers, peer educators and others are telling girls to report cases of abuse to the VSU or are themselves reporting cases of abuse. The VSU staff has increased from twelve officers in 1996 to 230 in 2002, with sixty more expected by the end of the year.

Although this increase in the reporting of cases may reflect growing confidence in the VSU over and above the apparent increase in the prevalence of abuse cases described in Part V., the record of the VSU is still disappointing. It is possible that many more people would turn to the VSU were it not for a fundamental mistrust of the police by the population. Eugene Sibote, a spokesperson for the VSU, described the establishment of a school liaison unit within the VSU as a way “to target children and let them know about their rights and about the work of the police. Because they mistrust the police, they fail to seek police assistance.”²⁰⁴ Others, such as Karen Doll Manda of the NGO

²⁰¹ Ibid.

²⁰² Human Rights Watch interview with Eugene Sibote, May 22, 2002.

²⁰³ Human Rights Watch interview with Jayne Kunda Mwila, Kalingalinga Health Centre, May 30, 2002.

²⁰⁴ Human Rights Watch interview with Eugene Sibote, May 22, 2002.

Family Health International, put the realities more starkly: “The concept of the VSU is a step—but you need a whole overhaul of the police system before people will have faith in the VSU. People go there out of desperation.”²⁰⁵ Girls often express fears that they will not be believed. In other cases the basic logistics—distance to the police station and medical clinics, and the cost of the police report—dissuaded people from reporting.

Moreover, when faced with a complaint, the VSU all too frequently fails to respond or is ineffective. Juliet Chilengi, who directs the New Horizons orphanage for girls, lamented this lack of follow through:

The laws are there, but no one enforces them. Most cases of abuse here have gone through the VSU—but they don’t follow up or do anything about it. I can’t sit on the phone and remind them. If you don’t take action, you’re out of sight, out of mind. When there’s a docket, I don’t know who closes it.²⁰⁶

In one case reported to Human Rights Watch, a girl was allegedly raped by an army officer and her family reported the case to the VSU. Although the VSU expressed support for the family, they were unable or unwilling to deliver the summonses to the parties involved. Therefore, the girl’s father had to track down each party and deliver a summons. When none of the parties appeared, the VSU did nothing.²⁰⁷ The case of Tina B., thirteen, who lived with her grandmother and then in an orphanage after the death of her parents, is another of the numerous cases reported to Human Rights Watch where the police failed to respond:

My grandmother couldn’t look after me, so I worked as a maid for a [man]. . . . He beat me and threatened that he’d kill me before sunset. I told grandmother about the beatings, and she reported it to the police. They didn’t do anything.²⁰⁸

Priscilla Chileshe of WLSA described the varying attitudes and underlying problems:

Some of the VSU work very well, some not. Some police feel threatened by the VSU—some senior officers feel threatened

²⁰⁵ Human Rights Watch interview with Karen Doll Manda, May 21, 2002.

²⁰⁶ Human Rights Watch interview at New Horizons orphanage, Lusaka, June 1, 2002.

²⁰⁷ Human Rights Watch interview at YWCA, May 22, 2002.

²⁰⁸ Human Rights Watch interview at Jesus Cares Ministries, Lusaka, May 24, 2002.

if, for example, they are wife batterers themselves, or they are used to thinking in a certain way. Some of them say the VSU is illegal. The VSU is also without adequate tools—they have no proper offices, they lack resources, equipment.²⁰⁹

VSU officials acknowledge the lack of sufficient training and resources. They need specialized training in investigating crimes of gender violence and child abuse and in dealing with the victims. They need basic legal training in child protection and human rights, as well as the Convention on the Rights of the Child. They need transportation, since the VSU is unlikely to respond to a case that is some distance away. They lack the equipment to conduct scientific tests on blood, hair, and semen. In one high-profile case in 1999 involving the rape and murder of three girls, blood and semen samples were taken to South Africa for testing, but only after women's groups accused the police of failing to investigate or to respond adequately. The level of attention brought to the case by the women's groups, which included a public protest in which thirty-nine women were arrested, pressured the police to conduct a more thorough investigation, and they finally arrested those believed to be responsible.²¹⁰

The VSU is limited in its options to deal with abuses against girls. At the moment, it can remove a girl from her family or from the street, but there are few safe places to send her. The VSU lacks child-friendly resources that aim to address the needs of abused girls. As Alick Nyirenda of the Copperbelt Health Education Project (CHEP) put it: "The child goes through the regular police station; the environment is not appropriate."²¹¹

As already alluded to in the comments of Priscilla Chileshe, there are also problems of the VSU's standing within the police department itself. "Some police officers are in weak positions," explained Eugene Sibote. "They may be frustrated or intimidated locally."²¹² Sibote said he has told all VSU officers to report to him if they experience any interference by local authorities and offered to handle the case from Lusaka.

Some experts have judged the Zambian police to have a poor record overall on human rights. The U.S. State Department's human rights report on Zambia for 2001 noted the problem of corruption in the police force and described the police as follows:

²⁰⁹ Human Rights Watch interview, May 29, 2002.

²¹⁰ Human Rights Watch interview, May 31, 2002.

²¹¹ Human Rights Watch interview, May 25, 2002.

²¹² Human Rights Watch interview, May 22, 2002.

Police officers reportedly committed several extrajudicial killings and frequently beat and otherwise abused criminal suspects and detainees. Police officers who commit such abuses often do so with impunity; however, some officers remained in detention pending trial. The lack of professionalism, investigatory skill, and discipline in the police force remained serious problems. Prison conditions were harsh and life threatening.²¹³

When describing the VSU, the U.S. State Department report stated:

Although the police have a Victim Support Unit (VSU) to attend to the problems of domestic assault, wife beating, mistreatment of widows by the deceased husband's relatives, and "property grabbing," in practice police often are reluctant to pursue reports of domestic violence, preferring instead to encourage a reconciliation.²¹⁴

When asked about the effectiveness of the police and the VSU, Peggy R., a former sex worker described to Human Rights Watch the problems sex workers have with the police and the limitations of the VSU:

What do the police do? They rape you. The VSU has no transportation, no phone—so how can you report to police? They really try, but they can't. If you don't have money, and transportation, the police can't investigate. They also won't help if you want to investigate a teacher or a policeman. But they might help if you want to investigate someone in the family.²¹⁵

Given all these negative factors, it is still relatively rare that these cases are investigated or come before a court. The responsibility for failure to follow up in abuse cases does not exclusively reside with the VSU, however. Sometimes, the failure to follow up is due to corruption, where court officials as well as

²¹³ U.S. Department of State, "Country Reports on Human Rights Practices – 2001," available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8410.htm> (retrieved July 10, 2002).

²¹⁴ Ibid.

²¹⁵ Human Rights Watch interview in Lusaka, Zambia, May 20, 2002.

police may be paid off by perpetrators.²¹⁶ In some cases the family may not want to press charges. Judge Lombe Chibesakunda, who chairs the government's National Human Rights Commission, observed, "The chances of coming to court are almost nil; it's an embarrassment to the family, to the girl. They try to hide it under the carpet."²¹⁷

According to Elizabeth Mataka of Family Health Trust:

With domestic violence, women are often seen as possessions of the man so they have no recourse to laws against battering. Now we tell women to get a medical report, and the VSU will prosecute the batterer. The problem is that the women withdraw the cases, because her family doesn't recognize her rights. It's the social and economic dimension. What will you eat if breadwinner in jail? What's more, we need to lobby against the financial requirement for the police report.²¹⁸

Moreover, in some instances when a case of rape or defilement is dismissed by a lower court, the verdict is overturned on appeal, with the VSU playing a proactive role in this outcome. Eugene Sibote, a spokesperson for the VSU, described such a case in Semanza in Western Province, involving a five-year-old girl who was raped by a thirty-one-year-old man. The case file included medical records indicating that the girl had vaginal warts, and that she had identified the perpetrator. The case was dismissed, and the man was released in October 2000. The girl's mother wrote to the VSU in Lusaka explaining the case and asking for assistance. The VSU decided to take the case

²¹⁶ Human Rights Watch interview with Sibote, May 22, 2002.

²¹⁷ Human Rights Watch interview with Judge Lombe Chibesakunda, chair of National Human Rights Commission, Lusaka, Zambia, May 30, 2002.

²¹⁸ Human Rights Watch interview, May 20, 2002.

and appeal it, and the man was sentenced to seven years of imprisonment in 2001.²¹⁹

²¹⁹ Human Rights Watch interview with Sibote, May 22, 2002.

VIII. INTERNATIONAL RESPONSE

With the growing HIV/AIDS crisis in Zambia, significant bilateral and multilateral donor attention has been directed at HIV/AIDS programs there. However, there is very little focus among donors on abuses against girls as part of their HIV/AIDS programs. A notable exception is the plan of the European Commission (E.C.), announced in September 2002, to provide U.S.\$22 million to Zambia for HIV/AIDS programs. The E.C. said it hoped activities funded by this grant would improve care and treatment for persons already infected but also noted that it would entertain projects addressing the needs of young women vulnerable to infection.²²⁰

Global AIDS Fund Grant to Zambia

In May 2002, the Global Fund for HIV/AIDS, Tuberculosis and Malaria²²¹ dispersed its first round of grants totaling U.S.\$1.6 billion over five years for forty countries. Zambia received the second largest grant, after South Africa, a total of U.S.\$92,847,000 over five years (only the first two years being assured), with U.S.\$19,858,000 for HIV/AIDS the first year.²²² The proposal describes the disproportionate impact of HIV/AIDS on women and girls.²²³ It also notes the problems of orphans and vulnerable children—including the rise in child-headed households, child labor, child abuse and inability to access education—but does not single out specific ways in which girls who are orphaned are at particular risk. Gender is identified as a cross-cutting issue, and eliminating sexual violence against women and children and promoting equal rights for men and women is discussed, but no particular interventions to address this problem are noted. With respect to education, funds will be targeted to community and “girl-friendly” schools, especially with the aim of retaining orphans and vulnerable children in school and developing income-generating activities for their families. Further activities to support community-based programs,

²²⁰ United Nations PLUSNEWS, “Zambia: EC increases funding to fight AIDS,” September 25, 2002.

²²¹ The Global Fund to Fight AIDS, Tuberculosis and Malaria was formed at the initiative of the U.N. secretary-general and began its work in January 2002. It is a multilateral body with NGO and private sector representation that is meant to attract and disburse public and private resources with the aim of reducing infection, illness and death, and mitigating the impact of the three diseases. At this writing, the Fund has received about U.S.\$2 billion in pledges from governments and private contributions.

²²² The Global Fund to Fight AIDS, Tuberculosis and Malaria: http://www.globalfundatm.org/files/Proposalslist_40.doc (retrieved July 10, 2002).

²²³ The Global Fund to Fight AIDS, Tuberculosis and Malaria Interim Secretariat, Zambia’s Proposal to GFATM (GFATM/B1/6A), March 7, 2002.

including protecting and enforcing children's rights, are expected but not outlined.

Other Donors

In July 2002, Zambia's bilateral and multilateral donors met formally and pledged U.S.\$1.3 billion in budgetary and project support over the next two years. This support was based on donor satisfaction with the country's economic programs, but donors linked continued support with a continued commitment to fight corruption. The World Bank country director for Zambia and Zimbabwe, Yaw Ansu, explained that the donor community was satisfied with the current government's reforms, especially on corruption and HIV/AIDS.²²⁴

Zambia has an external debt of approximately U.S.\$6.5 billion. The government hopes to qualify by 2003 for significant debt relief under the program for so-called Highly Indebted Poor Countries (HIPC) of the Bretton Woods institutions. In order to do so, the government has to meet benchmarks such as implementing a Poverty Reduction Strategy, making progress in fighting the HIV/AIDS pandemic, increasing primary school enrolment, and making continued progress on increasing privatization and decreasing corruption. The Bank also urged the Zambian Parliament to approve the National Strategic Framework for HIV/AIDS.²²⁵ The Zambian government has cited HIV/AIDS programs among priority areas for consideration for use of funds that may result from debt reduction.²²⁶

United States

USAID is a leading donor for HIV/AIDS programs in Zambia, providing U.S.\$18.5 million in 2002, up from U.S.\$12.9 million in fiscal year 2001 and U.S.\$9.1 million in fiscal year 2000.²²⁷ The main projects from this assistance include support for the Zambian Integrated Health Program (ZIHP); voluntary counseling and testing (VCT); a youth mass media campaign, the HEART (Helping Each Other to Act Responsibly Together) youth mass media campaign; a program targeting truck drivers and sex workers at several border sites; the

²²⁴ ZNBC Radio 2, Lusaka, July 11, 2002.

²²⁵ "World Bank Calls on Govt to Reduce Fiscal Deficit," *The Post/All Africa Global Media*, July 10, 2002.

²²⁶ See, e.g., National AIDS Council Strategic Framework, p. iii.

²²⁷ Human Rights Watch interview with Robert Blair, regional advisor for Africa and the Western Hemisphere to the Deputy Assistant Secretary of State for Health and Science, Office of International Health Affairs,, U.S. Department of State, July 17, 2002.

SCOPE/orphans and vulnerable children program; a workplace initiative for work sites in Lusaka and the Copperbelt; and social marketing of condoms.

Given its efforts on HIV/AIDS, orphans and vulnerable children, mother-to-child transmission (MTCT), and additional programs being developed on education for girls, the U.S. could be a more effective player by integrating the issues of abuses against girls that underlie these other programs and make girls more vulnerable to HIV transmission. Part of that could include a more active effort to highlight publicly the intersection between human rights abuses against girls and their vulnerability to HIV/AIDS, and part could involve a more active engagement with the Zambian government to implement its own commitments to provide protection for girls. The U.S. should consider funding training for justice system officials in the handling of cases of sexual assault of girls. The U.S. should use every opportunity to stress that the urgency of HIV/AIDS and the demands of the rule of law should compel a stronger response from the Zambian government.

United Kingdom

The U.K.'s Department for International Development (DFID) is currently designing a five-year, U.S.\$30 million program for HIV/AIDS in Zambia. The program has four components: strengthening the National AIDS Council; supporting two key social sector investments, health and education, with the bulk of the new money going toward education; supporting private sector efforts to address AIDS in the workplace; and funding capacity building programs within civil society, with a focus on stigma and discrimination.²²⁸ There is no specific focus on girls, other than supporting proposals from the National AIDS Council or the civil society groups. However, DFID expects that some of the civil society groups will propose programs on promoting and protecting girls' rights. Given the U.K.'s extensive involvement in the country, it should add a focus on these human rights issues to its programs in Zambia and its dialogue with the Zambian government. DFID programs do not currently support capacity building in the police force or justice systems related to sexual assault cases.

World Bank

In Zambia, the World Bank has been slow to integrate AIDS and gender issues into its programs. In May 2002, the World Bank pledged U.S.\$42 million

²²⁸ Human Rights Watch interview with Sam Gibson, Social Development Advisor, DFID, Lusaka, May 30, 2002.

to Zambia's AIDS program.²²⁹ This assistance would be 60 percent grant and 40 percent loan, and the loan would have to be repaid but at concessionary terms, essentially without interest. The project has been in the works for some time and is predicated on the passage of legislation, an HIV/AIDS bill (see above). At this writing, the bill has not been passed.

It is planned that the project funded by this credit will have several components, focusing on capacity building and support to the National AIDS Council. The largest part will comprise U.S.\$21.3 million in support of several ministries. The Ministry of Health is expected to get about one third of that money to purchase antiretroviral drugs for mother-to-child transmission (MTCT) programs. Support for community response to HIV/AIDS will comprise U.S.\$14.7 million, including home-based care and voluntary counseling and testing. The idea is that community groups will be able to apply for funding, although the mechanisms as to how and to whom they would apply have not been fully worked out. The Bank intends to work largely through district AIDS task forces under the Ministry of Health, as well as local government and district development coordinating committees responsible for development activities.²³⁰ Support for the National AIDS Council will be approximately U.S.\$2.5 million. Although the Project Appraisal Document states that "it will mainstream gender considerations into all its components" and that "reducing the HIV prevalence in the teenage girls population will receive high priority,"²³¹ it remains to be seen if any programs by the line ministries, the National AIDS Council, or the community-based organizations will include a focus on protecting girls.

United Nations

The UNICEF program in Zambia is focused on water, sanitation, and hygiene education; health, including MTCT and education for new mothers; child protection, legal reform, and upgrading child care; the Program for the Advancement of Girls' Education (PAGE), which includes an AIDS component; and advocacy and communication.²³²

The UNICEF representative in Zambia told Human Rights Watch that there is a new focus on HIV/AIDS in UNICEF.²³³ UNICEF programs relating to

²²⁹ IRIN, "Zambia: World Bank to support HIV/AIDS programme," May 3, 2002.

²³⁰ Human Rights Watch interview with Helen Mbao, Social Development Specialist, World Bank, Lusaka, May 29, 2002.

²³¹ World Bank, "Project Appraisal Document: Zambia National Response to HIV/AIDS," April 30, 2002.

²³² Human Rights Watch interview with Stella Goings, May 31, 2002.

²³³ Ibid.

HIV/AIDS target health, education, and child protection, and more broadly UNICEF supports Zambian NGOs that include a focus on HIV/AIDS issues.²³⁴ UNICEF supports youth-friendly health services in six districts that promote young people's access to health care and also supports an STD/HIV/AIDS component to the mother-to-child transmission programs. With respect to education, UNICEF supports NGOs involved in advocacy and community outreach, including a group of teachers against HIV/AIDS that focuses on awareness among teachers and in the communities. UNICEF also supports a "life skills" program that it hopes to make part of the primary school curriculum. Finally, the child protection component of the country program supports NGOs targeting orphans and vulnerable children, many of whom are in difficult circumstances because of HIV/AIDS. In the near future, UNICEF expects to be assisting with the establishment of child rights clubs throughout the country, which will include an HIV/AIDS component. There are currently no UNICEF programs that focus specifically on girls' vulnerability to abuses and HIV/AIDS.

²³⁴ Human Rights Watch telephone interview with Gabriel Fernandez, Child Protection Officer, UNICEF-Lusaka, July 31, 2002.

APPENDIX I: CONVENTION ON THE RIGHTS OF THE CHILD

G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in

the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I**Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in

the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances

personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual

and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in

view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the

same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information

concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of

need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to

contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with

other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human

person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an

environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope

of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

APPENDIX II: EXCERPTS FROM THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields "

INTRODUCTION

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any

distinction, exclusion or restriction made on the basis of sex . . . in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"(article 3).

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions, therefore, are restated in article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity "shall be deemed null and void". Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The

preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4). "The Convention also affirms women's right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (article 10.h) and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (article 5). And Article 10.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention

provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals "of high moral standing and competence in the field covered by the Convention".

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of man and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4. 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5. States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6. States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

PART III

Article 10. States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13. States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

PART IV

Article 15. 1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

**APPENDIX III: DECLARATION OF COMMITMENT OF THE
U.N. GENERAL ASSEMBLY SPECIAL SESSION ON HIV/AIDS,
JUNE 2001**

1. We, heads of State and Government and representatives of States and Governments, assembled at the United Nations, from 25 to 27 June 2001, for the twenty-sixth special session of the General Assembly, convened in accordance with resolution 55/13 of 3 November 2000, as a matter of urgency, to review and address the problem of HIV/AIDS in all its aspects, as well as to secure a global commitment to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner;

2. Deeply concerned that the global HIV/AIDS epidemic, through its devastating scale and impact, constitutes a global emergency and one of the most formidable challenges to human life and dignity, as well as to the effective enjoyment of human rights, which undermines social and economic development throughout the world and affects all levels of society – national, community, family and individual; . . .

4. Noting with grave concern that all people, rich and poor, without distinction as to age, gender or race, are affected by the HIV/AIDS epidemic, further noting that people in developing countries are the most affected and that women, young adults and children, in particular girls, are the most vulnerable; . . .

8. Noting with grave concern that Africa, in particular sub-Saharan Africa, is currently the worst-affected region, where HIV/AIDS is considered a state of emergency which threatens development, social cohesion, political stability, food security and life expectancy and imposes a devastating economic burden, and that the dramatic situation on the continent needs urgent and exceptional national, regional and international action; . . .

11. Recognizing that poverty, underdevelopment and illiteracy are among the principal contributing factors to the spread of HIV/AIDS, and noting with grave concern that HIV/AIDS is compounding poverty and is now reversing or impeding development in many countries and should therefore be addressed in an integrated manner; . . .

13. Noting further that stigma, silence, discrimination and denial, as well as a lack of confidentiality, undermine prevention, care and treatment efforts and increase the impact of the epidemic on individuals, families, communities and nations and must also be addressed;

14. Stressing that gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS;

15. Recognizing that access to medication in the context of pandemics such as HIV/AIDS is one of the fundamental elements to achieve progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

16. Recognizing that the full realization of human rights and fundamental freedoms for all is an essential element in a global response to the HIV/AIDS pandemic, including in the areas of prevention, care, support and treatment, and that it reduces vulnerability to HIV/AIDS and prevents stigma and related discrimination against people living with or at risk of HIV/AIDS; . . .

36. Solemnly declare our commitment to address the HIV/AIDS crisis by taking action as follows, taking into account the diverse situations and circumstances in different regions and countries throughout the world; [and undertake the following]

37. By 2003, ensure the development and implementation of multisectoral national strategies and financing plans for combating HIV/AIDS that address the epidemic in forthright terms; confront stigma, silence and denial; address gender and age-based dimensions of the epidemic; eliminate discrimination and marginalization; involve partnerships with civil society and the business sector and the full participation of people living with HIV/AIDS, those in vulnerable groups and people mostly at risk, particularly women and young people; are resourced to the extent possible from national budgets without excluding other sources, inter alia, international cooperation; fully promote and protect all human rights and fundamental freedoms, including the right to the highest attainable standard of physical and mental health; integrate a gender perspective; address risk, vulnerability, prevention, care, treatment and support and reduction of the impact of the epidemic; and strengthen health, education and legal system capacity; . . .

47. By 2003, establish time-bound national targets to achieve the internationally agreed global prevention goal to reduce by 2005 HIV prevalence among young men and women aged 15 to 24 in the most affected countries by 25 per cent and by 25 per cent globally by 2010, and intensify efforts to achieve these targets as

well as to challenge gender stereotypes and attitudes, and gender inequalities in relation to HIV/AIDS, encouraging the active involvement of men and boys;

48. By 2003, establish national prevention targets, recognizing and addressing factors leading to the spread of the epidemic and increasing people's vulnerability, to reduce HIV incidence for those identifiable groups, within particular local contexts, which currently have high or increasing rates of HIV infection, or which available public health information indicates are at the highest risk of new infection; . . .

53. By 2005, ensure that at least 90 per cent, and by 2010 at least 95 per cent of young men and women aged 15 to 24 have access to the information, education, including peer education and youth-specific HIV education, and services necessary to develop the life skills required to reduce their vulnerability to HIV infection, in full partnership with young persons, parents, families, educators and health-care providers; . . .

HIV/AIDS and human rights

Realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS

Respect for the rights of people living with HIV/AIDS drives an effective response

58. By 2003, enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic;

59. By 2005, bearing in mind the context and character of the epidemic and that, globally, women and girls are disproportionately affected by HIV/AIDS, develop and accelerate the implementation of national strategies that promote the advancement of women and women's full enjoyment of all human rights; promote shared responsibility of men and women to ensure safe sex; and empower women to have control over and decide freely and responsibly on

matters related to their sexuality to increase their ability to protect themselves from HIV infection;

60. By 2005, implement measures to increase capacities of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and health services, including for sexual and reproductive health, and through prevention education that promotes gender equality within a culturally and gender-sensitive framework;

61. By 2005, ensure development and accelerated implementation of national strategies for women's empowerment, the promotion and protection of women's full enjoyment of all human rights and reduction of their vulnerability to HIV/AIDS through the elimination of all forms of discrimination, as well as all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls

Reducing vulnerability

The vulnerable must be given priority in the response

Empowering women is essential for reducing vulnerability

62. By 2003, in order to complement prevention programmes that address activities which place individuals at risk of HIV infection, such as risky and unsafe sexual behaviour and injecting drug use, have in place in all countries strategies, policies and programmes that identify and begin to address those factors that make individuals particularly vulnerable to HIV infection, including underdevelopment, economic insecurity, poverty, lack of empowerment of women, lack of education, social exclusion, illiteracy, discrimination, lack of information and/or commodities for self-protection, and all types of sexual exploitation of women, girls and boys, including for commercial reasons. Such strategies, policies and programmes should address the gender dimension of the epidemic, specify the action that will be taken to address vulnerability and set targets for achievement;

63. By 2003, develop and/or strengthen strategies, policies and programmes which recognize the importance of the family in reducing vulnerability, inter alia, in educating and guiding children and take account of cultural, religious and ethical factors, to reduce the vulnerability of children and young people by

ensuring access of both girls and boys to primary and secondary education, including HIV/AIDS in curricula for adolescents; ensuring safe and secure environments, especially for young girls; expanding good-quality, youth-friendly information and sexual health education and counselling services; strengthening reproductive and sexual health programmes; and involving families and young people in planning, implementing and evaluating HIV/AIDS prevention and care programmes, to the extent possible;

64. By 2003, develop and/or strengthen national strategies, policies and programmes, supported by regional and international initiatives, as appropriate, through a participatory approach, to promote and protect the health of those identifiable groups which currently have high or increasing rates of HIV infection or which public health information indicates are at greatest risk of and most vulnerable to new infection as indicated by such factors as the local history of the epidemic, poverty, sexual practices, drug-using behaviour, livelihood, institutional location, disrupted social structures and population movements, forced or otherwise;

Children orphaned and made vulnerable by HIV/AIDS

Children orphaned and affected by HIV/AIDS need special assistance

65. By 2003, develop and by 2005 implement national policies and strategies to build and strengthen governmental, family and community capacities to provide a supportive environment for orphans and girls and boys infected and affected by HIV/AIDS, including by providing appropriate counselling and psychosocial support, ensuring their enrolment in school and access to shelter, good nutrition and health and social services on an equal basis with other children; and protect orphans and vulnerable children from all forms of abuse, violence, exploitation, discrimination, trafficking and loss of inheritance;

66. Ensure non-discrimination and full and equal enjoyment of all human rights through the promotion of an active and visible policy of de-stigmatization of children orphaned and made vulnerable by HIV/AIDS;

67. Urge the international community, particularly donor countries, civil society, as well as the private sector, to complement effectively national programmes to support programmes for children orphaned or made vulnerable by HIV/AIDS in affected regions and in countries at high risk and to direct special assistance to sub-Saharan Africa; . . .

