



# **UNIVERSAL PERIODIC REVIEW SUBMISSION FOR ZAMBIA**

NGO Submission

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## ABOUT HRF

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.

We focus our work on the founding ideals of the human rights movement, those which are most purely enshrined in the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Civil and Political Rights (ICCPR).

HRF's Center for Law and Democracy (HRF-CLD) is a program of HRF. HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

## INTRODUCTION

1. This submission was prepared by HRF, for the Universal Periodic Review (UPR) of Zambia. In this submission, HRF evaluates Zambia's implementation of recommendations made during its previous UPR, as it relates to the current human rights situation in the country, which is characterized by systematic, widespread, and gross violations of human rights, including: the ongoing arbitrary arrests, detentions, violations of due process, and limitations on the freedoms of assembly, association, and expression.

## FOLLOW-UP ON THE PREVIOUS REVIEW

2. The most recent UPR of Zambia by the United Nations (UN) Human Rights

Council took place on November 13, 2017.<sup>1</sup> The Human Rights Council considered and adopted the outcome of the country's review during its 28<sup>th</sup> session, on March 19, 2018.<sup>2</sup> A total of 204 recommendations were made to Zambia, with the government accepting 184 recommendations and noting 20.<sup>3</sup>

3. Although Zambia accepted the vast majority of recommendations which covered a range of issues, it has not made significant progress in implementing these recommendations. One of the most common recommendations by UN Member States was that Zambia should ratify particular international conventions and remove reservations to core human rights instruments. Despite the number of States that made these recommendations, critically, Zambia has yet to:
  - a. ratify the Optional Protocol of the Convention against Torture;
  - b. ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which aims to abolish the death penalty;
  - c. ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
4. As a member state of the UN, Zambia has committed to protecting, promoting, and respecting the individual rights and fundamental freedoms laid out in the Universal Declaration of Human Rights (UDHR). Zambia has also ratified the ICCPR and African Charter on Human and Peoples' Rights.
5. The 1991 Constitution of the Republic of Zambia (Constitution) formally guarantees the protection of several human rights (*see infra Zambia's National Framework for Protecting Human Rights*). However, despite these constitutional guarantees, in practice, individuals in Zambia are routinely subjected to human rights violations, not least by the very existence of laws that criminalize and impinge on their fundamental freedoms.

## ZAMBIA'S NATIONAL FRAMEWORK FOR

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<sup>1</sup> U.N. Human Rights Council, Working Grp. on the Universal Periodic Review of the Twenty-Eighth Session, *Report on the Working Group on the Universal Periodic Review: Zambia*, U.N. Doc. A/HRC/WG.6/28/GAB/1 (Nov. 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/328/38/PDF/G1732838.pdf?OpenElement> [https://www.upr-info.org/sites/default/files/documents/2017-11/a\\_hrc\\_wg.6\\_28\\_zmb\\_1\\_e.pdf](https://www.upr-info.org/sites/default/files/documents/2017-11/a_hrc_wg.6_28_zmb_1_e.pdf).

<sup>2</sup> *Zambia: Responses to Recommendations — Third Review, Session 28*, UPR-INFO (Nov. 2017), [https://www.upr-info.org/sites/default/files/documents/2018-05/responses\\_to\\_recommendations\\_upr28\\_zambia.pdf](https://www.upr-info.org/sites/default/files/documents/2018-05/responses_to_recommendations_upr28_zambia.pdf).

<sup>3</sup> *Id.*

# PROTECTING HUMAN RIGHTS

6. Zambia's Constitution<sup>4</sup> contains several key provisions relating to the protection of the fundamental rights and freedoms of its citizens.

7. In relation to the equal protection of individuals under the law, Zambia's Constitution states in *Article 11*:

*It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status...*

8. In relation to arbitrary detention, Zambia's Constitution states in *Article 13*:

*(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases...*

*(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.*

*(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.*

9. In relation to the respect for human dignity and protection from inhuman treatment, Zambia's Constitution states in *Article 8*:

*The national values and principles are...*

*(d) human dignity, equity, social justice, equality and non-discrimination...*

10. In relation to the freedom of expression, Zambia's Constitution states in *Article 20*:

*(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and*

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<sup>4</sup> *Zambia Constitution*, 2011, Const. Project (2016), [https://constituteproject.org/constitution/Zambia\\_2016.pdf?lang=en](https://constituteproject.org/constitution/Zambia_2016.pdf?lang=en).

- communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.*
- (2) *Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.*

11. In relation to the freedoms of assembly and association, Zambia's Constitution states in Article 21:

- (1) *Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.*

## POLITICAL BACKGROUND

12. Zambia, previously known as Northern Rhodesia, gained independence from Great Britain in 1964.<sup>5</sup> The first president of the newly formed Republic of Zambia, President Kaunda, ruled for 27 years and established the United National Independence Party that turned Zambia into a one-party State until 1991.<sup>6</sup>

13. Frederick Chiluba of the Movement for Multiparty Democracy (MMD) won Zambia's first multi-party election, in 1991,<sup>7</sup> and again in 1996, defeating Kenneth Kaunda after a constitutional change that effectively barred Kaunda from future elections.<sup>8</sup> Kaunda was later charged<sup>9</sup> with backing the attempted coup of October 28, 1997.<sup>10</sup>

14. In 2002, Levy Mwanawasa, the former MMD Vice-President, was sworn in as

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<sup>5</sup> *Zambia Gains its Independence from the U.K.*, African American Registry (Oct. 24, 1964), <https://aaregistry.org/story/zambia-gains-independence/>.

<sup>6</sup> *Zambia: Ruling by Fear and Repression*, Amnesty Int'l (June 28, 2021), pg. 6, <https://www.amnesty.org/en/documents/afr63/4057/2021/en/>.

<sup>7</sup> *Zambia: Country Profile*, BBC (Aug. 18, 2021), <https://www.bbc.com/news/world-africa-14112449>.

<sup>8</sup> *Id.*

<sup>9</sup> *Zambia Formally Charges Ex-President in Coup Charge*, Chicago Tribune (Jan. 11, 1998), <https://www.chicagotribune.com/news/ct-xpm-1998-01-11-9801110142-story.html>.

<sup>10</sup> *World Report 1999: Zambia*, Human Rights Watch (1999), <https://www.hrw.org/legacy/worldreport99/africa/zambia.html>.

President amid the opposition's criticism over alleged election fraud.<sup>11</sup> The following year, Chiluba was arrested and charged with corruption, and 44 soldiers were sentenced to death for their role in the 1997 coup.<sup>12</sup> In 2004, many charges against Chiluba were dropped, but within hours, he was re-arrested on six new charges.<sup>13</sup>

15. Following Mwanawasa's death in 2008,<sup>14</sup> Vice-President Rupiah Banda was sworn in as President, after narrowly winning over Michael Sata, leader of the main opposition party, the Patriotic Front (PF).<sup>15</sup> Sata later won the September 2011 general election<sup>16</sup> and ruled until his death in October 2014.<sup>17</sup>

16. In August 2021, opposition leader of the United Party for National Development (UPND), Hakainde Hichilema, won a landslide victory over the incumbent president, Edgar Lungu, ending the PF's 10-year rule.<sup>18</sup> The road to Hichilema's victory was violent; the Zambian government under Lungu had ensured that Hichilema's campaign would be blocked, and that the elections would neither be free nor fair.<sup>19</sup>

17. President Hichilema faces several human rights challenges, especially those that dominated during Lungu's six years in power, such as arbitrary arrests and detention of opposition leaders and activists, police crackdowns on peaceful protesters, and vast limitations imposed on media outlets.<sup>20</sup> Whether President Hichilema will live up to his promises and commitment to freedom, good governance, and the rule of law will be closely observed, as the freedoms of expression, assembly, and association continue to be violated, especially in

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<sup>11</sup> BBC, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Amnesty Int'l, *supra* note 6.

<sup>17</sup> *Zambia: Killings and Brutal Crackdown against Dissent set the tone for August Election*, Amnesty Int'l (June 28, 2021), <https://www.amnesty.org/en/latest/news/2021/06/zambia-killings-and-brutal-crackdown-against-dissent-set-the-tone-for-august-election/>.

<sup>18</sup> Chris Mfula, *Zambia Opposition Leader Hichilema wins Landslide in Presidential Election*, Reuters (Aug. 16, 2021), <https://www.reuters.com/world/africa/zambian-opposition-leader-hichilema-heads-closer-victory-presidential-vote-2021-08-15/>.

<sup>19</sup> *Id.*

<sup>20</sup> Dewa Mavhinga, *Zambia's Peaceful Transition 'a New Dawn?'*, Human Rights Watch (Aug. 24, 2021), <https://www.hrw.org/news/2021/08/24/zambias-peaceful-transition-new-dawn>.

relation to suppressing the human rights of political opponents. Furthermore, journalists and media continue to be attacked when reporting on and accommodating political opponents.

## ARBITRARY ARRESTS, DETENTIONS, AND VIOLATIONS OF DUE PROCESS OF THE LAW

18. Zambia supported recommendations from the 2017 UPR to either amend or repeal its Penal Code to live up to the highest standards of international law,<sup>21</sup> as it only partially fulfills the human rights obligations delineated in the ICCPR. In particular, Zambia supported recommendations to improve conditions of detention, and to reform the Public Order Act to ensure that law enforcement agencies are specifically instructed to uphold the Act free from political bias.<sup>22</sup>
19. The Zambian Constitution, Criminal Procedure Code, and Zambian Police Act are the main governing documents that regulate criminal processes and the activity of law enforcement officers.<sup>23</sup> The Zambian Penal Code has limited guidelines on arrest without a warrant,<sup>24</sup> resulting in a lack of due process regulations, ultimately leading to arbitrary arrests and detentions.<sup>25</sup> Established in 2016, the Zambia Police Public Complaint Commission<sup>26</sup> is a civilian oversight institution<sup>27</sup> that serves to investigate complaints against police actions which result in serious injury or death.<sup>28</sup> However, it can only provide recommendations and cannot impose penalties.<sup>29</sup>
20. Excessive use of force by law enforcement was exacerbated by the COVID-19

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<sup>21</sup> U.N. Human Rights Council, *supra* note 1.

<sup>22</sup> *Id.*

<sup>23</sup> *Arrest Without Warrant in Zambia*, Africa Criminal Justice Reform (Feb. 2020), pg. 22, <https://acjr.org.za/resource-centre/fact-sheet-22-arrest-without-warrant-zambia.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *The Police-Public Commission Complaints Act* (2016),

<https://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Police%20Public%20Complaints%20Act%20No.%2018%2C%202016.pdf>.

<sup>27</sup> *Law on Police Use of Force Worldwide: Zambia*, Policing Law Info (2021),

<https://www.policinglaw.info/country/zambia>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



pandemic. In April 2020, a government minister allegedly stated that “when it comes to fighting COVID-19, human rights are suspended.”<sup>30</sup> In an attempt to enforce successful ‘Stay Home’ night operations, Zambian police arrested and physically assaulted people who did not abide by the directives.<sup>31</sup>

21. In May 2021, the press aid to opposition leader Hichilema, Mibuta Nawa, was arrested and detained without charge for two weeks, after posting a video on Facebook in which he interviewed someone who used irreverent language toward President Lungu.<sup>32</sup> The following month, in June 2021, former police officer Jeyson Chipepo was violently arrested by police for staging a lone protest against police brutality and partisanship outside of the police headquarters in Lusaka.<sup>33</sup>

## FREEDOMS OF ASSEMBLY, ASSOCIATION, AND EXPRESSION

22. The rights to freedom of expression, assembly, and association are enshrined in the UDHR, ICCPR, as well as Article 9, 10, and 11 of the Banjul Charter,<sup>34</sup> and Articles 20 and 21 of the Zambian Constitution.<sup>35</sup> Despite these provisions, the Zambian government continues to criminalize peaceful dissent through the offenses of defamation, incitement of public disorder, and sedition.<sup>36</sup> A main objective of the libel and defamation laws is to instill fear and discourage people from speaking out against or criticizing the government.<sup>37</sup>

23. In August 2017, opposition leader and President of the United Progressive Party

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<sup>30</sup> Sishuwa Sishuwa, *In Zambia, Covid-19 has claimed Democracy, not Human Life*, Mail & Guardian (Jun 15, 2020), <https://mg.co.za/africa/2020-06-15-in-zambia-covid-19-has-claimed-democracy-not-human-life/>.

<sup>31</sup> *Zambia*, Centre for Human Rights (Apr. 12, 2021), <https://www.chr.up.ac.za/covid19-database/zambia>.

<sup>32</sup> *Pre-Election Human Rights Situation in Zambia*, American Bar Association (Aug. 2021), pg. 12, <https://www.americanbar.org/content/dam/aba/directories/roli/zambia/ROLI-CHR-Zambia-Report-2021.pdf>.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter") (June 27, 1981), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 9, <https://www.refworld.org/docid/3ae6b3630.html>.

<sup>35</sup> *Zambia Constitution*, *supra* note 4.

<sup>36</sup> Amnesty Int'l, *supra* note 16.

<sup>37</sup> *Id.* at 15.

(UPP), Saviour Chishimba, was arrested on a charge of criminal libel after criticizing President Lungu's decision to invoke a state of emergency.<sup>38</sup> Opposition members viewed this move as an effort to tighten Lungu's grip on power.<sup>39</sup>

24. In October 2018, University of Zambia lecturer Dr. Austin Mbozi was arrested for insulting President Lungu after writing an article that criticized Lungu and his government's dealing with the police killing of Vesper Shumuzhlia, a student who attended the university.<sup>40</sup> In April 2021, PF supporters publicly called for the arrest of Sishuwa Sishuwa, a University of Zambia academic, on sedition charges, for publishing an article that suggested political unrest would occur during the elections.<sup>41</sup>
25. In March 2019, leader of the opposition group Patriots for Economic Progress (PEP), Sean Tembo, was arrested on a charge of defamation for questioning President Lungu's mental state after he purchased a \$400 million Gulfstream jet for presidential use at a time when Zambia was facing an economic crisis.<sup>42</sup>
26. In March 2020, a 15-year old boy was arrested and charged with three counts of criminal libel for allegedly criticizing Lungu on Facebook.<sup>43</sup> Subsequently, in November 2020, police arrested youth activist Lawrence Kasonde on allegations of insulting the President in a live Facebook video, in which he asked his fellow citizens to vote out the current government.<sup>44</sup> Six months later, in May 2021, the police arrested and detained Chilufy Tayali, an opposition politician and social media commentator, for a social media post where he urged Lungu not to support hooliganism.<sup>45</sup> Both men were charged with defaming the president.<sup>46</sup>
27. The Zambian government has continuously cracked down on protests and civil society meetings. In October 2018, the police arrested and detained a group of

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<sup>38</sup> *Zambian Opposition Leader Saviour Chishimba Arrested*, Africa News (Aug. 3, 2017), <https://www.africanews.com/2017/08/03/zambian-opposition-leader-saviour-chishimba-arrested/>.

<sup>39</sup> *Id.*

<sup>40</sup> Amnesty Int'l, *supra* note 6.

<sup>41</sup> *Zambia 2021*, Amnesty Int'l (2022), <https://www.amnesty.org/en/location/africa/southern-africa/zambia/report-zambia/>.

<sup>42</sup> Amnesty Int'l, *supra* note 6.

<sup>43</sup> Amnesty Int'l, *supra* note 17.

<sup>44</sup> American Bar Association, *supra* note 32, pg. 10.

<sup>45</sup> *Id.* at 13.

<sup>46</sup> *Id.* at 11, 13.

pastors who were meeting to discuss the national budget as a way of holding the government accountable.<sup>47</sup> In December 2019, hip-hop artist, Fumba Chamba (Pilato) was charged and arrested with unlawful assembly for organizing a civil society meeting to raise awareness of government accountability.<sup>48</sup> In March 2020, activists Laura Miti and Bornwell Mwewa, were arrested under charges of assaulting a police officer and disorderly conduct, for taking a stand against Pilato's arrest.<sup>49</sup> In May 2021, the government deployed police officers to break up a peaceful protest of medical doctors who were demanding payment of their salaries and other obligations.<sup>50</sup>

28. In April 2020, the Zambian government revoked the broadcasting license of Prime Television, one of the leading private stations, without legitimate reason,<sup>51</sup> stating that the withdrawal was based on "public interest."<sup>52</sup> This curb on freedom of expression came after Prime Television declined a government request to broadcast COVID-19 advertisements for free.<sup>53</sup> Prime Television was a critical source of news for Zambians and platforms for civil society, political opposition, and the promotion of human rights.<sup>54</sup> The station's license was re-granted in August 2021.<sup>55</sup>
29. In the lead-up to the August 2021 election, numerous political opponents were silenced. For example, in July 2020, PF supporters stormed Mafken Radio Station, which was hosting opposition leader Hichilema and ordered the program to stop or the station would be burned down.<sup>56</sup>
30. In March 2021, President Lungu enacted the Cyber Security and Cyber Crimes Act,<sup>57</sup> which was widely criticized for containing provisions that would target government critics, suppressing freedom of expression and policing

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<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.*

<sup>49</sup> *Zambia: Activists in Court on Escalating Crackdowns*, Amnesty Int'l (Mar. 11, 2020), <https://www.amnesty.org/en/latest/news/2020/03/zambia-activists-in-court-on-escalating-crackdown-on-human-rights/>.

<sup>50</sup> American Bar Association, *supra* note 32, pg. 14.

<sup>51</sup> Amnesty Int'l, *supra* note 6.

<sup>52</sup> Amnesty Int'l, *supra* note 41.

<sup>53</sup> Centre for Human Rights, *supra* note 31.

<sup>54</sup> Amnesty Int'l, *supra* note 6.

<sup>55</sup> Amnesty Int'l, *supra* note 41.

<sup>56</sup> American Bar Association, *supra* note 32, pg. 11.

<sup>57</sup> The Cyber Security and Crimes Act (2021), <https://www.parliament.gov.zm/node/8832>.

<sup>58</sup> Amnesty Int'l, *supra* note 41.

cyberspace.<sup>58</sup> In April 2021, five civil society organizations petitioned the Constitutional Court arguing that the act violated human rights that are guaranteed under the Constitution; to date, there is no update on the case.<sup>59</sup>

31. The Zambian government escalated its crackdown on human rights in anticipation of the August 2021 elections. In 2020, the government selectively used the Public Order Act to restrict opposition rallies and events.<sup>60</sup> And on election day, there was a partial internet shutdown and social media platforms, such as Twitter, Facebook, Instagram, and WhatsApp were disrupted.<sup>61</sup> Civil society organizations successfully challenged the shutdown and the high court ordered the restoration of internet services the following day.

## RECOMMENDATIONS

32. HRF calls on Zambia's government to:

- a. Protect, respect, and promote, without reservation, the rights of all individuals to freedoms of expression and association, and ensure that activists, journalists, and opposition groups can operate peacefully and safely within Zambia, without fear of retribution in the form of censorship, harassment, arbitrary arrest and detention, torture, ill-treatment, extrajudicial killings, and enforced disappearances, among other types of punishment;
- b. Commit to ratifying critical international human rights instruments, including but not limited to: the Optional Convention against Torture; the Second Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the Protection of the Rights of All Migrant Workers and of Their Families;
- c. Protect the due process rights of every accused person to a fair, speedy, and public trial;

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<sup>58</sup> Amnesty Int'l, *supra* note 41.

<sup>59</sup> *Id.*

<sup>60</sup> *Freedom in the World: Zambia Country Report 2021*, Freedom House (2021), <https://freedomhouse.org/country/zambia/freedom-world/2021>.

<sup>61</sup> Amnesty Int'l, *supra* note 41.

- d. Ensure that, absent compelling evidence of criminal conduct, individuals who have been arbitrarily detained, in violation of their rights to freedom of expression and association, are released, and that those in detention receive humane treatment;
- e. Allow the African Commission on Human and People's Rights and Special Rapporteurs on extrajudicial killings, freedom of expression, and access to information, to conduct unannounced and unobstructed site visits;
- f. Harmonize the state's internal legislation to fully comply with all international human rights instruments it has signed or ratified;
- g. Cooperate with regional and international human rights mechanisms by allowing the special procedure mandate holders to carry out an independent assessment of the human rights situation in Zambia and advise the government accordingly;
- h. Ensure that elections are free and fair. The Zambian government must guarantee the independence of the electoral body, allow international and independent observers to participate in future electoral processes, and cease all forms of harassment and intimidation against political opponents, journalists, and members of civil society; and
- i. Engage in sincere and constructive national dialogue with all political, social, and religious groups — particularly opposition groups — in Zambia in order to generate a sustainable solution to ensuring peace and protection of human rights within the country.