

BRIEFING PAPER

Universal Periodic Review

JULY 2022

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN ZAMBIA

Contacts

Adélaïde Etong Kame
International Service for Human Rights
a.etong@ishr.ch

Arthur Mudunya
Southern African Centre for the Constructive Resolution of
Disputes (SACCORD)
muyundaarthur@yahoo.com



In November 2017, Zambia was reviewed by the Universal Periodic Review (UPR). Out of the 203 recommendations made by State parties, Zambia accepted 183. None of those recommendations were specifically focused on human rights defenders (HRDs). However, Zambia accepted 11 recommendations referring to the rights to freedom of opinion, of expression, and of association and peaceful assembly with four of them calling on Zambia to reform the Public Order Act, a law that has infringed on the rights of HRDs in Zambia.

RISKS FACING HUMAN RIGHTS DEFENDERS

1. In Zambia, HRDs face discrimination, unlawful charges, chronic insecurity, violence that can even go as far as unlawful killing, and impunity. Law enforcement officials in Zambia often fail to protect or provide justice to victims. There are cases where top executives from the ruling party are hired and given police uniforms to harass, threaten, and physically and verbally attack HRDs and journalistsⁱ. HRDs also face the risk of being arrested and jailed for a long period of time, using outdated laws such as the Public Order Act, for actions such as defamation of the president or contempt of court.
2. Other risks faced by Zambian HRDs include being co-opted or intimidated into silence partly because of the everchanging political dynamics that create an environment where politicians are in a constant search for political alliesⁱⁱ.
3. Indeed, Fred Manyaa and Steven Phiri, were sentenced to prison with hard labour in April 2020 for insulting President Lungu.ⁱⁱⁱ The Lungu administration has used slander and libel laws to retaliate against its critics. Those kinds of laws are harmful to the work of HRDs because they force them to stay silent in the face of human rights violations for fear of the consequences. This is a direct attack on their freedom of expression.^{iv}
4. Following the adoption on 13 March 2018 of the judgement in the case of *Savenda Management Services v Stanbic Bank Zambia Limited* by the Supreme Court of Zambia, Mr Gregory Chifire, a defender and anti-corruption activist, wrote a letter to the Chief Justice pointing to its potential to inhibit justice and the undue influence exerted on judges. Chifire subsequently filed a complaint with the judicial service commission to prompt the judiciary to investigate his claims. On 23 November 2018, the Supreme Court of Zambia, sitting as a court of first instance, found Chifire guilty of contempt of court on four grounds and sentenced him to 6 years of imprisonment with hard labour^v.
5. Later the same year, on 20 December 2018, the Supreme Court of Zambia, once again sentenced for contempt a veteran journalist, blogger and defender, Derick Sinjela for his remarks over the *Savenda v Stanbic* case in which corruption and irregularity were alleged. Sinjela was sentenced to 18 months. This case, as well as Gregory Chifire's case, caused

a great stir among Zambians.

6. In September 2017, the Zambia Police arrested six people who included human rights defender Laura Miti and musician called Chama Fumba or Pilato by stage name and four others. The six were arrested for staging demonstrations outside Parliament over the procurement of fire trucks. The police cited the Public Order Act as the law authorising their arrested. The police reported that the six contravened the Act by demonstrating at Parliament and that they did not have any police permit^{vi}.

OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

7. The Public Order Act is an act of parliament enforced by Zambia Police Service. It affects human rights defenders as it is used to regulate assemblies. This Act has been abused by the police to restrict HRDs from enjoying their rights of association, expression, protest and assembly.^{vii} For example, in December 2019, Zambian musician and activist Chama "Pilato" Fumba was arrested for addressing an 'unauthorised' meeting in Livingstone – Southern Province. The police stated that Chama Fumba was having a meeting with members of the public without notifying the police which is against the Public Order Act. If convicted, he would face up to five years in jail.^{viii}
8. The Penal Code Act^{ix} criminalises offences including defamation of the President. For example, in its article 69 it states that: 'any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years'. This article has been used by the police against HRDs whenever they criticise certain unpopular decisions by the President and his government.
9. The State Security Act^x criminalises the communication of classified information. Indeed, even if some of the provisions are necessary for security purposes, others are incompatible with an open society and democracy, particularly sections 4 and 5 which are unconstitutional and violate various international standards.^{xi} It is seen as hindering the Government from enacting progressive laws such as the Access to Information bill.

10. In 2021, against public outcry and without consultations, the Government enacted the Cyber Security and Cyber Crimes Act^{xii} which has been criticized for limiting freedom of expression, assembly and the right to privacy on digital platforms. This act has been used against HRDs documenting human rights abuses online. A number of Zambians HRDs have been arrested using this law. Indeed, by using this law the Government is trying to force any person who is a WhatsApp group administrator to register with Zambia Information and Communications Authority (ZICTA). This is a clear infringement of their rights to privacy.
11. In 2009, the Zambian Government enacted the Non-Governmental Organizations (NGO) Act which was amended in 2020^{xiii}. The Act created the NGO Board, mainly composed of Government workers, which is mandated to approve NGOs registration. The Act requires all NGOs formed after 2009 to register and those formed before to apply for a certificate of registration. The Act gives broad discretion to the government to deny registration to NGOs, dictate NGOs' thematic and geographical areas of work and imposes mandatory re-registration every five years, The NGO Act contravenes both good practice and international standards as argued by HRDs, academics and NGOs. The Act is clearly intended to curtail the freedom of NGOs in Zambia to operate independently and effectively.^{xiv}

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

12. Women HRDs are often more at risk of being attacked using traditional patriarchal norms. They are frequently portrayed as immoral, negligent mothers, corrupting society.^{xv} The attacks they have to face, including their family and children, include threats, and gender-based or sexual slanders. Indeed, Nalucha Ngandga Ziba, Executive Director of ActionAid Zambia, reported having to personally face such threats and smear campaigns by male officials.^{xvi} Laura Miti, Executive Director of Alliance for Community Action, also faced attacks and threats when her NGO published information that called into question the way the government uses public finances. As a WHRD, she is often singled out for intense targeting that aims to smear her reputation as a female leader in a very traditional society. False information was published about her on tabloids and she and her children received threats on multiple occasions.^{xvii}
13. Journalists and radio broadcasters trying to expose human rights violations are attacked and harassed by the authorities. Two radio stations, Liberty Radio and Radio Luswepo, were disrupted by Patriotic Front (PF) cadres from programming Harry Kalaba, the leader of the Democratic Party, in their show in February 2021. In the same vein, two journalists, Francis Mwiinga and Nancy Malwele, were attacked, injured and their equipment stolen by PF supporters for trying to cover a factional dispute within the party.^{xviii}
14. In Zambia, people can face from 15 years to life

- imprisonment for consensual same-sex sexual activities. According to President Lungu, LGBTIQ people's rights "cannot be replicated in Zambia because they are a taboo to local culture".^{xix} HRDs working on LGBTIQ issues do so underground and are in constant fear of being targeted. They face all sort of societal struggles such as unemployment, discrimination for access to housing, health care and education.^{xx}
15. In 2019, Multi-choice Zambia was ordered by the national broadcasting regulator (Independent Broadcasting Authority-IBA) to suspend the transmission of a show because "it promoted homosexuality". The primary hosts were displaying, according to the Minister of National Guidance and Religious Affairs Godfridah Sumaili 'characteristics typically associated with the LGBTI community'.^{xxi}
16. In June 2021, Partner Siabutuba and Nicholas Phiri, organised a press briefing where they condemned the Zambia police and Government for the terror they were unleashing on innocent citizens.^{xxii} Following this event, Siabutuba was arrested and detained for almost a month without being given police bond, taken to court or even officially charged.
17. The same month, in fear for his life, Nicholas Phiri, with the support of the Zambian Network for Human Rights Defenders and SACCORD, managed to flee the country to South Africa. Indeed, the police was looking for him without officially summoning him.^{xxiii} Moreover, the top executives of the ruling party have issued serious threats on his life should they find him.

THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

18. Zambia accepted a recommendation to consider the establishment or strengthening of national mechanisms for coordination, implementation, reporting and follow-up. These mechanisms should be in line with elements arising from good practices identified in the 2016 OHCHR Guide on National Mechanisms for reporting and follow-up.^{xxiv} Zambia is yet to implement it.
19. Zambia accepted the recommendation to issue a standing invitation to United Nations Special Rapporteurs, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to visit Zambia. In response, the Government did not invite the said rapporteurs, failing to act to the promises it made.
20. Zambia accepted a recommendation to finalize an action plan to guide the implementation of all Universal Periodic Review recommendations, strengthen coordination and follow-up to the implementation of the Universal Periodic Review recommendations, and engage civil society, activists, non-governmental organisations and the media in dialogue to seek common ground on the draft plan, the Access to Information bill and

governance issues, such as corruption. After the review in 2018, the government, through the Ministry of Justice and the Zambia Human Rights Commission, invited CSOs to only share the UPR recommendations and highlighted which ones were supported and which ones were noted. The government indicated that most of the noted ones were to do with LGBT rights and needed wider consultation. They went further to announce the desire to conduct reforms in all the legal frameworks which were cited in the recommendation in order to help advance the work of HRDs. Among the promised laws to be enacted, reviewed or repealed were;

- a. The Public Order Act;
- b. The Access to Information Law;
- c. The Penal Code;
- d. The NGO Act;

However, the government backtracked on repealing or amending the said laws which were and are still shrinking the space for HRDs. By introducing a Cyber Security and Cyber Crimes law which has targeted HRDs who are using the cyber space to denounce human rights abuses perpetrated by government, the government is shrinking civic space even further.

RECOMMENDATIONS TO THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA:

- Amend the Public Order Act through public consultation to ensure it doesn't impede fundamental rights and freedoms, such as freedom of expression, assembly and association;
- Amend the Penal Code, particularly chapter 68, also known as the Defamation Act, to prevent charges of treason against those who criticise the President;
- Repeal the Cyber Security and Cyber Crimes Act and ensure that legislation in this area is consistent with international human rights standards and principles;
- Support CSO efforts and ensure they are included in every step of the process towards the enactment a law for the promotion and protection of human rights defenders;
- Stop criminalising defenders for their legitimate work and free all defenders who were arrested by the previous regime for doing their work and allow those that have gone into exile due to political persecution to return to Zambia and work freely and safely;
- Extend a standing invitation to United Nations special rapporteurs, including accepting the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to visit Zambia;
- Ensure that the application of national legislation designed to guarantee public safety and public order during the pandemic does not discriminate against WHRDs;
- Ensure LGBTI and WHRDs can work in a safe and enabling environment, free from harassment and stigma and can enjoy the rights provided to every Zambian citizen.

ABOUT THIS BRIEFING PAPER

ISHR and SACCORD encourage States to consult UPR submissions by local activists and make recommendations to Zambia regarding the protections of HRDs. This paper is a result of compiling public information and direct contact and experience in the protection of HRDs. Readers should consult sources provided for additional

- ⁱ Zambia:PF Cadres Get Police Uniforms to help Rig Mangango, <https://allafrica.com/stories/201408181265.html>
- ⁱⁱ Creeping Towards Authoritarianism? IMPACT ON HUMAN RIGHTS DEFENDERS & CIVIL SOCIETY IN ZAMBIA; <https://www.frontlinedefenders.org>
- ⁱⁱⁱ Amnesty International Report 2021/22, The state of the world's Human Rights, Zambia, p.411
- ^{iv} 2021 Country Reports on Human Rights Practices: Zambia, U.S. Department of State <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/zambia/>
- ^v Southern Africa Litigation Centre; <https://www.southernafricalitigationcentre.org/2018/11/23/zambia-defending-activist-on-contempt-of-court-charges/&ved>
- ^{vi} Lusaka times News Paper; <https://www.bing.com/search?q=laura+mit+and+five+others+arrested&q&n&form=QBRE&sp=-1&pg=laura+mit+and+five+others+arrested&sc=0-34&sk=&cid=A594191BE9EC42B5822E0AC149FB66CB&ntref=1#:~:text=in%20police%20custody-,https%3A/www.lusakatimes.com/2017/09/29/laura%2Dmiti,->
- ^{vii} Chapter 113 of the Laws of Zambia; <https://www.parliament.gov.zm/acts-of-parliament>
- ^{viii} <http://news.yahoo.com/zambian-musician-activist-pilato-arrested-rally-210848448.html>
- ^{ix} Chapter 87 of the laws of Zambia; <https://www.parliament.gov.zm/acts-of-parliament>
- ^x Chapter 111 of the laws of Zambia; <https://www.parliament.gov.zm/acts-of-parliament>
- ^{xi} Chanda, Alfred W. The State Security Act vs open society: does a democracy need secrets?, Zambia Law Journal, <https://www.africabib.org/rec.php?RID=175159939>
- ^{xii} Cyber Security and Cyber Crimes Act No. 2 of 2021; <https://www.parliament.gov.zm/acts-of-parliament>
- ^{xiii} Non-Governmental Organisations Act no. 2 of 2020; <https://www.parliament.gov.zm/acts-of-parliament>
- ^{xiv} Article by professor Muna Ndulo:- *Professor of Law and Director of Cornell's Institute for African Development. He is also Honorary Professor, Faculty of Law University of Cape Town and Extra Ordinary Professor of Law, Faculty of Law Free State University in South Africa*; <http://saipar.org/wp-content/uploads/2013/09/the-ngo-law.pdf>
- ^{xv} Creeping Towards Authoritarianism ?, Impacts on Human Rights Defenders & Civil Society In Zambia, Front Line Defenders https://www.frontlinedefenders.org/sites/default/files/zambia_report_digital.pdf
- ^{xvi} Creeping Towards Authoritarianism ?, Impacts on Human Rights Defenders & Civil Society In Zambia, Front Line Defenders, p.22 https://www.frontlinedefenders.org/sites/default/files/zambia_report_digital.pdf
- ^{xvii} Creeping Towards Authoritarianism ?, Impacts on Human Rights Defenders & Civil Society In Zambia, Front Line Defenders https://www.frontlinedefenders.org/sites/default/files/zambia_report_digital.pdf
- ^{xviii} Amnesty International Report 2021/22, The state of the world's Human Rights, Zambia, p.411
- ^{xix} Zambia 2020 Human Rights Report, p.23 <https://www.state.gov/wp-content/uploads/2021/03/ZAMBIA-2020-HUMAN-RIGHTS-REPORT.pdf>
- ^{xx} Op cite.
- ^{xxi} Acts of violence, discrimination, and other abuses based on sexual orientation and gender identity, 2019 Country Reports on Human Rights Practices : Zambia, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/zambia/>
- ^{xxii} Statement on the unlawful detention of the action aid Zambia board chairperson Mr Partner Siabutuba, ActionAid, <https://zambia.actionaid.org/publications/2021/statement-unlawful-detention-actionaid-zambia-board-chairperson-mr-partner>
- ^{xxiii} HRDs Testimonies : Nick Phiri, Southern Defenders, <https://youtu.be/88VIRhitxLE>
- ^{xxiv} National Mechanisms for Reporting and Follow-up, OHCHR, https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_1_NMRF_Study.pdf