



## **CIVIL SOCIETY REPORT ON THE UPR OF ZAMBIA - JANUARY 2023 -**

**Civil society report on the implementation of the  
International Covenant on Civil and Political  
Rights in**

**Zambia**   
Centre for Civil and Political Rights

**4<sup>th</sup> Cycle - 29<sup>th</sup> session of the Universal Periodic Review**

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## INTRODUCTION / BACKGROUND

Zambia Council for Social Development (ZCSD) is an umbrella organisation bringing together CSOs, FBOs and CBOs mostly of women and youths oriented organisations. ZCSD has an active membership base of more than 100 members situated in all provinces of Zambia. ZCSD believes that development work should not only be concentrated in [the urban communities](#), but reach and involve all corners of Zambia especially rural areas.

This is a joint report on the situation of civil and political rights in Zambia. It has been prepared by ZCSD with input from other organisations through a participatory process as indicated in the methodology.

## METHODOLOGY

To arrive at these responses, ZCSD and other organisations participated in a series of virtual and physical meetings. A hybrid consultation was held with the CSOs based in Lusaka while those in other provinces participated virtually, where the Centre for Civil and Political Rights (CCPR) provided information on civil and political rights and the UPR process. The submission also draws from the List of Issues that Zambian CSOs contributed to under the ICCPR in 2020. The same training was used to collect responses to some of the issues. In addition, follow up interviews were held to get input in the process from a wider CSOs perspective involving both our members and non members.

The two day workshop mentioned above with support from the CCPR was very key as it generated the initial set of responses to some of the issues contained here. The Human Rights Officer from CCPR took the workshop participants through the process of understanding the UPR process and how CSOs can develop a joint report.

During the period under review, ZCSD, also had a project seeking to identify the bottlenecks that impede women and youths participation in decision making with particular interest in the political arena. A key aspect of this initiative was deliberate interaction and information seeking from the interested females and youths for political to submit their experiences and therefore these also form part of this submission gathered from 108 respondents to a needs assessment form that collected bio data, experiences, political affiliation and demographic trends. The respondents were drawn from 5 districts in which the project was being implemented. The gender audit conducted in 2020 also informed these submissions.

## KEY RECOMMENDATIONS

### 1. Gender equality

The CSOs are concerned that in Zambia today, there is no gender machinery (Commission in Parliament, or a Ministry). This now falls under the President's office. In as much as the Office of the President is the highest office in the administration of government and the state, it is not clear how this office will influence the attainment of gender equity. CSOs further note that this is in abrogation of Zambia's constitution provision in Article

Representation of women in Parliament dropped from 18% to 12% in the latest elections and this works against the passing of policies and laws that will translate in promoting the gender equity that CSOs aspire to see. The advent of the COVID-19 partial lock down experienced meant that more time was spent in homes by both men and women and this had an impact on the levels of GBV affecting mostly women.

#### **We recommend that Zambia should:**

- Strengthen the main streaming of gender programmes in schools and attempt to change the mindset of the general population by implementing gender in the education curriculum;
- Guarantee 50% representation of women in all levels of governance (National, constituency, ward) by amending the Political Party Act;
- Government must fully implement Article 231 of its Constitution and operationalize the Gender Equity and Equality Commission and ensure that it is fully resourced.

## 2. Violence against women

CSOs have noted that according to the study conducted by Southern Africa Institute for Policy and Research conducted in 2019, it is estimated that 47% of Zambian women have experienced GBV at least once in their lifetimes, and 10% of reported GBV cases are sexual in nature.

According to the GBV Baseline Study conducted in 2015, 50.4% of respondents said that GBV is common in their communities. One-third reported that they witnessed an incident of GBV in the previous six months, and 35.5% of community members said they feel that the prevalence of GBV is increasing.

Around 75% of all GBV incidents are reported to have occurred in private homes, and 67% of victims were married to the perpetrator at the time of the incident. While acts of GBV can be committed by anyone, 80% of perpetrators were found to be male. Only 69% of respondents reported that survivors of GBV seek help, and 51.5% believe that other survivors report their incidents to the police.

There are a number of impediments that contributes to the high levels of violence against women. Some of these are: Lack of full implementation of the progressive legislation such the Anti-Gender Based Violence Act of 2009 due to lack of resources by Government. E.g., Establishment of the Gender Commission stipulated in the Gender Equity and Equality Act No 22 of 2015 has still not been done. Maintenance of Article 23 (4) d, e and f in the Constitution, which allows customary law to override statutory law in matters of personal law, which often deals with issues of marriage. Dual legal system - Zambia has a dual legal system consisting of the civil law and customary law. Many Zambians, subscribe to the customary law observed by particular tribal groupings to resolve disputes. We note that during the UPR of Zambia in the 3<sup>rd</sup> Cycle, Italy recommend that Zambia should address the issue of gender equality and women empowerment. We observe that much still needs to be done to achieve this.

### **We recommend that Zambia should:**

- Review the Penal Code in order to stiffen the punishment of Gender Based Violence offenders.
- Establish sufficiently and well resourced safe shelters in all provinces of the country to ensure that those that are not safe to return to their various communities and families for fear of re-occurrences of abuse are kept in a safe spaces.
- Allocate more resources to relevant institutions to ensure full implementation of all the progressive legislation on gender.
- Review legislation that impedes full realization of women's rights in Zambia e.g. Article 23 (4) d, e and f in the Constitution.
- Harmonize the law so that harmful customary practices are not promoted under the guise of practising Customary Law.
- Ratify the Optional Protocols to the Convention on the Elimination of all forms of Discrimination against Women and further strengthen efforts on gender issues

## 3. Death Penalty

The courts of Zambia continue to pass and confirm the death penalty, following a 2016 constitutional review in which the majority of voters expressed support for the existing laws on hanging. Presidents have periodically commuted large batches of death row prisoners. The most recent mass commuting of death penalty sentences occurred early 2021, when President Edgar Lungu moved 225 men and 21 women off death row, ostensibly to reduce overcrowding and create better conditions to protect them against Covid-19. On a progressive note, CSOs, welcome the current new government direction through the highest office of the president to abolish the death penalty. [https://fb.watch/ed9f4\\_ulf6/](https://fb.watch/ed9f4_ulf6/) But since then, many more convicted people have been added to the numbers on death row in Zambia. There have been no executions since 1997, but Zambia has no official moratorium in place. While the death penalty is still prescribed as maximum punishment under the laws of Zambia, it is not applied as Presidents have successively not signed the death warrants. The pronouncements made by the UPND administration

that they will look into this legislative matter has provided hope to the Zambian people that this commitment will be addressed.

**We recommend that Zambia should:**

- Abolish the death penalty as it is an irreversible, degrading, inhuman punishment, and ratify the second Optional Protocol to the ICCPR
- To replace de facto moratorium on death penalty with a de jure moratorium to commute death penalty sentences to life sentence without parole

**4. Right to life and excessive use of force.2**

The CSOs are concerned of the use of excessive force by the police, which has been fatal in some cases. Police brutality continued with excessive use of force especially against those with dissenting views. Zambia also witnessed the killing of a student at the University Of Zambia Lusaka Campus, a prosecutor, 11 year old pupil at a local school and UPND member on separate dates. All these incidences point to excessive use of force by the police service.

In July 2019 while visiting Kabwata Police cells where some female suspects complained about police brutality at the station, the Former President Edgar Lungu condemned police brutality against suspects and said that this should come to an end in Zambia. He said the Zambia Police Service should be carrying out their duties professionally without torturing or beating up suspects to get to extract information. This is the scenario country wide where police in most cases use excessive force on unarmed suspects in their discharge of duty. There have been many instances where suspects are beaten in order to get information from them, a practice that violates the constitutional rights of citizens at the hands of the same officers that are meant to protect them.

The CSOs are concerned that people living with albinism continue to be attacked. According to Centre Statistics Office, the number of persons with albinism in Zambia is at 30,000 and there have been reports of attacks. Zambia has 23 attacks reported. [Click here](#). We note that the attacks compromises their full enjoyment of the right to life. In the 3<sup>rd</sup> Cycle of Zambia's UPR 28<sup>th</sup> session, raised progressive recommendations calling on Zambia to attend to this situation to which support was given and yet little has been done to actualise this.

**We recommend that Zambia should:**

- Bring to justice anyone suspected to be responsible for human rights violations in the course of discharging their duties. For instance prosecute Police Officers involved in excessive use of force, abuse of suspects and extra-judicial killings.
- Make sure the Police Complaints Mechanism has sufficient resources and is strengthened and is strengthened to carry out its mandate in an impartial manner.
- Implement programs aimed at retraining Police Officers in human rights and Policing (Using training centers in Lilayi and Kanfinsa).
- Address the situation of persons living with albinism, assuring them protection against and killings.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**5. Prohibition of torture**

We note that the prohibition of torture and other ill-treatment of persons deprived of their liberty is not being adhered to by the law enforcers. The Torture Bill has not been enacted and the police's use of torture to get confessions of the suspects has continued. While serving as President since 2015, Edgar Lungu released over 10,000 inmates and commuted sentences of death row convicts. The current president has also used this constitutional provision to release deserving inmates. [www.times.co.zm/?p=117907](http://www.times.co.zm/?p=117907)

**We recommend that Zambia should:**

- Retrain the Police Service and emphasize the International Standards that law enforcement they should comply to.
- Raise awareness about the existence of the Police Complaints Authority so that members of the community can start to use it.
- Abolish the use of penal blocks or confinement in separate cells in correctional facilities as form of punishment.
- Abolish the use of mechanical restraint as a form of punishment.

## **6. Overcrowding in detention centres**

The Penal Code provides that a person shall be not held held in custody without being charged for , shall have access to legal representation or a judge within 24 hours of being detained. This however is not applied effectively as there are reported cases of detainees being held for weeks, months, and even years. These detainees can often be found innocent later on once their case reaches trial. Paul Swala, Chair of Prisons Fellowship, was serving as an army officer in 1979-99 and was accused of planning a coup. He was arrested and spent two years in prison before his case reached trial, where he was proved to be innocent. After his trial and being acquitted he was still denied his job back.

According to sources, the conditions for those held pre-trial are just as bad, if not worse, than prison itself. This means that every year, thousands of people who may be innocent are subjected to prison-like conditions and treatment. In Zambia's Correctional System, 6,000 individuals, or about one-third, are currently being held pre-trial. "On our visit to Lusaka Central Prison, we discovered that 362 out of about 1,000 prisoners are pre-trial detainees". (Geoffrey Mayamba, the Director of Prisoner's Future Foundation).

Until November 2019 when the Zambian government opened Mwembeshi Maximum Correctional Facility, the country has had only one facility with 400 person capacity (Mukobeko Maximum Correctional Facility). The country has now 2 Maximum Correctional facilities. Detention facilities continued to be characterised by overcrowding, poor sanitation, lack of meaningful separation of juveniles from adults, impoverished holding facilities for women, poor health and medical care, poor welfare services for circumstantial children, and poor pre-natal and post-natal services. This development is commendable as it has de-congested Mukobeko Maximum Correctional facility which had 2,180 at the time of transferring 500 inmates to the new facility. ZCSD visit to the female maximum facility revealed that a facility that was initially meant to accommodate 3 inmates on capital murder and 25 inmates in the general cell had 7 inmates on death-row and an average of 50 to 60 inmates in each of the two general cells.

### **We recommend that Zambia should:**

- Zambia Correctional Services to facilitate the immediate conveyance of juveniles to the appropriate juvenile facilities.
- Department of Social welfare to quicken submission of juvenile reports, courts to speed up confirmation orders,
- Create a formal mechanism for prisoners' to report abuse and inhuman conditions
- Review the parole service and identify areas for strengthening in order to improve its use.
- Build modern correctional facilities with good sanitation and other services in correctional facilities.
- Take into consideration prisoners with children, the terminally ill and people with disability for presidential pardons.
- Construct Correctional facilities designed to respond to the needs of juveniles be in each province of Zambia to de-congest the current Juvenile Reformatory facilities.

## **7. Freedom Of Movement and Peaceful Assembly**

CSOs observe that in the run up to the General Elections held in 2021, some opposition party leaders were denied access to some parts of Zambia, in some instances by police officers and the then ruling party cadres, which was a violation of the constitutional rights. There was an over application of enforcement powers on this by Zambia Police as in many instances, the then popular opposition party was denied access

to certain places by the police who allegedly worked under instructions of the then ruling party, the Patriotic Front.

Regarding the legal framework regulating freedom of assembly, and on measures taken to protect participants in assemblies from violence, the CSOs are concerned that Freedom of assembly is only guaranteed for the President and the vice-President.

Before the 2021 general elections, the Opposition did not have the same freedom to assemble peacefully which the PF government enjoyed. The past regime used Covid-19 and the Public Order Act to disadvantage the opposition. In the past administration, police repeatedly arrested activists and opposition party supporters on charges of unlawful assembly in 2020. In July 2021, for example, a group of UPND [United Party for National Development] members were arrested while conducting intra-party elections on a farm. We note that in the 3<sup>rd</sup> Cycle of Zambia's UPR 28<sup>th</sup> Session, Paraguay and United States of America made a key recommendation for Zambia that once addressed, can guarantee peaceful assembly for the general population of Zambia.

**We recommend that Zambia should:**

- Review the provisions of the Public Order Act of 1955 and ensure that it is in line with International human rights standards and best practices.
- Retrain the Law Enforcement staff to ensure that they mainstream best practices in their work.
- Reprimand and hold accountable those that break the laws in the manner they discharge their duties.
- Ensure that the Public Order Act is amended to address the various concerns raised by stakeholders regarding the administration of the Act and the promotion and protection of the fundamental right to freedom of assembly.
- The prolonged lack of concrete progress in amending the Public Order Act might diminish public confidence in Government's noble intentions to institute public order reforms aimed at enhancing inclusive democratic governance and respect for human rights in the country.
- Make efforts to ensure access to information of public interest to citizens and guarantee the rights of freedom of assembly.
- Ensure that freedom of association and the right to peaceful assembly are respected and protected, to include promoting better implementation of the Public Order Act

**8. Administration of Justice**

Regarding the legislative framework ensuring the independence, impartiality and transparency of the judiciary and effective access to the judicial system, CSOs are concerned that the rule of Law and separation of powers is currently compromised as the President appoints the Chief Justice who is head of the Justice system in Zambia.

CSOs also note that courts take too long to dispose cases in their jurisdiction. At the moment, every district has a functional Magistrate Court that provides judicial services while high courts are found in the Provincial Centres and the supreme court is only situated in the Capital City. It is also a fact that the cost of representation of offenders during the hearing of cases in the High Courts and the supreme courts is high. The effect of this is that cases that require representation by lawyers are delayed due to inadequate provision of this service through the current establishment of the National Legal Aid Board

**We recommend that the state party should:**

- Review the Constitution regarding the appointment of the Attorney General and Chief Justice so as to guarantee the independence of the judiciary.
- Improve on the Courts' Infrastructure (especially for the high courts) country wide in order to take the Judicial services closer to the people.
- Finance the Judicial Department adequately so that there is adequate representation in courts of law for those that cannot afford the services of law firms.



- Allocate sufficient resources in order to guarantee legal aid for those who cannot afford legal fees for representation.

## **9. Excessive and extended use of pre-trial detention**

Regarding reports of excessive and extended use of pretrial detention in the State party and reports on any measures taken to reduce the use of pretrial detention and adopt non-custodial alternatives, such as bail, including in the case of adolescents in conflict with the law, the CSOs are concerned to note that there exists a number of districts that have no correctional facilities, such as Kapiri Mposhi, and this means that the suspects are held in Police holding Cells when they are ordered to appear in Court.

We are further concerned that the Legal Aid Board services continue to be accessed mainly in Provincial Centres which makes it difficult for the members of the public to access these services.

### **We recommend that Zambia should:**

- Operationalize the Legal Aid Policy and Act. Number 1 of 2021
- Build Correctional Facilities in districts where there exists Police Service and judicial facilities

## **10. Right to Privacy**

Zambia enacted a controversial digital security law in 2021 aimed at tackling digital crime, the Cyber Security and Cyber Crimes Act 2021, which has extra-territorial reach where the conduct has an effect in Zambia. Leading to and post enactment, various quarters of society have expressed fear that the Act could be used to muzzle the freedom of expression, the freedom of the press and the right to privacy.

On the other hand, the government maintains that the Act will help combat cyber-crime, coordinate cyber security matters, develop relevant skills and help promote the responsible use of social media platforms.

### **We recommend that Zambia should:**

- Repeal and Replace the Cyber-security and Cyber Crimes Act by a law that will be formulated through a multi stakeholder consultative process.
- Ensure that Zambia Correctional Services officers desist from searching inmates during routine search where inmates are asked to undress naked in the presence of both young and elderly prisoners and searched by young officers.

## **11. Treatment of aliens, including migrants, refugees and asylum seekers**

Zambia has held on to opening up of its doors to host refugees through refugee-friendly policies amid a rising number of arrivals. After attaining its independence in 1964, Zambia played a major role in seeing Southern African countries get independent through providing safe haven for refugees. This best practice has continued to-date. The Zambian government put in place the Refugees Act Number 1 of 2017. Related to this is the fact that Zambia is party to the international migration and human trafficking laws that the country must observe. Similarly, the country has been recipient of such children who are often in transit running away from wars or for better economic prospects who find themselves apprehended in-transit and are forced to stay in prison awaiting repatriation. In the 3<sup>rd</sup> Cycle UPR, Zambia noted to attend to rights to education and health of refugee and asylum seekers.

### **We recommend that Zambia should:**

- Implement the provisions of the Refugees Act Number 1 of 2017.
- Provide refugee children with access to social services such health and education

## **12. Freedom of expression and association**

The CSOs are concerned that freedom of expression was seriously curtailed under the Patriotic Front government. Instances such as; Lusaka youths Bush Protest that was staged by the youths because the Police couldn't allow it; the continued delay to put in place Access to information law which every government has pledged to enact since 2002 and the closure of the Post Newspaper and also the Muvi TV that were politically motivated are examples of blatant denial of the freedoms .

CSOs have noted that the application of sections 67 and 69 of the Penal Code Act, which criminalize defamation of the President and the publication of false news has been abused against Human Rights Defenders. In 2021, as an example, a 15-year-old boy of Kapiri Mposhi was arrested for allegedly defaming the country's president in a Facebook posts. An outspoken hip-hop musician and activist, has also previously been arrested over anti-government protests.

**CSOs recommend that Zambia should:**

- Should enact the Access to Information law in 2022 as this will further guarantee the Citizens to enjoy their fundamental right to receive or share information.
- Repeal and replace the controversial NGO Act Number 16 of 2009 as it is containing provisions that are unconstitutional.
- Repeal the law on criminal defamation in 2022, so that these remain civil cases.
- Review the Public Order Act to bring it to speed with international best practices and compliant with international human rights standards.

**13. Rights of the Child**

Child marriage is one of the challenges which Zambia is currently grappling with. The country has one of the highest rates of child marriage in the Sub-Saharan region. Currently, 42% of girls under the age of 18 are married, meaning that two in five girls in Zambia are child brides. Of the 42%, 9% are married under 15 years of age and Zambia is amongst the 20 hotspots in the world as regards the incidence of child marriage (Plan International).

Gender Justice, an organisation operating in Monze, indicate that through the One Stop Center Para legal Desks has continued to record one average 4-5 child abuse cases on a daily basis in Monze district. The minimum age for marriage under civil law (the existing Marriage Act of 1918) is set at 21 years<sup>1</sup>, but with parental consent, children can validly conclude a marriage at 16 years, and under customary law (which is unwritten), there is no minimum age because children can marry from the age of puberty, which for girls can be as low as 12 years of age. Without legislative reform, the inconsistent use of age in various statutes and the tolerance of child marriage cannot be addressed. Currently, official birth registration is still low in terms of numbers of people who possess birth registrations and this has become a recipe for child marriages. CSOs herein note that Norway during the UPR of Zambia 3<sup>rd</sup> Cycle -28<sup>th</sup> session, Georgia and Norway provided fundamental recommendations that Zambia should consider to implement to enhance the enjoyment of rights by children

**We recommend that Zambia should:**

- Enact and implement marriage laws (like the Marriage Bill 2015) which will see that all marriages (customary, civil and religious) are placed on an equal footing.
- Enact and implement child related legislation like the Children's Code Bill (2014) which will domesticate international treaties.
- Increase investment in education for girls and strengthen social protection programmes.
- Create a fund for taking back girls removed from marriages to school.
- Increase birth registration rates as it is one of the most effective means to prevent and detect early marriage.
- Make proof of age a requirement for all types of marriage, either by sworn statement or affidavit or production of a birth certificate.

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1 <https://www.unicef.org/esa/media/8941/file/Zambia-Case-Study-Child-Marriage-2021.pdf>

- Continue with the enforcement of by-laws on ending child marriage in all Chiefdoms.
- Strengthen the operation of the Child Protection Committees at district level country wide.
- Further strengthen the policies to protect children's rights
- Enhance protection of the rights of the child, including by abolishing child labour, combating malnutrition and shielding child perpetrators during detention

#### **14. Access To Public Facilities by Persons with Disability**

It was noted that regardless of the fact that an Act to promote the rights of people with disabilities is in place in Zambia, its implementation has been problematic. Examples for this was that most of the infrastructure being put in place do not provide Persons with disabilities access to the services being offered in such public places as provided for in the Persons With Disability Act 6 of 2012 under Article 40, 1, a.

##### **We recommend that Zambia should:**

- Implement the provisions of the Persons with Disabilities Act No. 6 of 2012.
- Make it mandatory that all public facilities have structural provisions that make such buildings easily accessible to persons with disabilities.

#### **15 Participation in Governance and Leadership**

Zambia continues to lag behind on its national, regional and international gender equality obligations. This is despite the positive and progressive policy achievements that Zambia has adopted starting from a national constitution that acknowledges the need for gender equality through its provision to establish the Gender and Equity and Equality Commission as provided for in Article 231. At the regional space, Zambia is party to the SADC Gender protocol that calls for 50/50 women representation in decision making process. Under the African Union and United Nations, treaties such as the International Covenant of Civil and Political Rights (ICCPR), and the African Charter on People and Human Rights call for equal participation of women and men in leadership. Sadly, this is not attained to date.

In a study conducted by ZCSD in 2020, it is reviewed that women are still facing challenges to participate fully in politics at ward, constituency and national levels due as they face gender-based violence, cyber bullying, intimidation is widely used by those opposing women participation in politics. In the run up to the 2021 general elections, for example, a female ward councilor candidate in Mansa was threatened that her house was going to be set on fire if she continued to campaign. She reported the matter to the police who had to commence patrolling the residential area in order to protect life and property at the residence of the female candidate. This story is among the many instances that female suffer intimidation and threats. It is sad to note that results of the 2021 general elections reflects low numbers of women participating in governance. Out of 164 Members of Parliament, only 22 are women.

For the local government, out of 1,858 councillors country wide, only 132 are female. Unfair competition with male politicians is still rife as the female lack resources to effectively participate in the highly monetised adoption processes which is also compounded with intra-party corruption especially in structures handling adoptions of candidates. In the 3<sup>rd</sup> Cycle of the UPR of Zambia, Ukraine made very vital recommendations which if implemented, Zambia can address the current inequalities affecting women, girls and strengthen non-discrimination and equality.

##### **We recommend that Zambia should:**

- Apply the SADC 50/50 gender representation requirement as prerequisite to establishment and operationalisation of every political party in Zambia.
- Introduce electoral education in schools in order to encourage girls to develop interest in politics at an early age.
- Enact the Political Parties Bill to help in guiding the gender composition of political parties, The Political Party Bill should clearly provide gender representation percentages for election candidates from

adoption stage.

- Political Party Legislation should provide interventions to deal with intra party corruption to ensure that women and men compete on levelled platform for adoption and election.
  - Intensify efforts on the development of a legal framework aimed at the elimination of discrimination based on sex, race, disability, status or any other ground.
-