



Commonwealth Human Rights Initiative (CHRI)¹ stakeholder submission for the
Universal Periodic Review of Zambia (2012)

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1. This UPR stakeholder submission for Zambia includes information on the right to information, the criminalisation of same-sex sexual conduct, torture, prison conditions and corruption.
2. **The Right to Information**
3. Article 20 of the Zambian Constitution includes the freedom to receive, impart and communicate ideas and information without interference as part of the right to freedom of expression.² Zambia accepted a recommendation from Norway during its first Universal Periodic Review in 2008 asking that the Freedom of Information Bill be swiftly adopted.³ As of the completion of this submission, Zambia had not yet adopted a Bill operationalising the Freedom of Information. In March 2012, it was reported that the Zambian President stated that “it is immature for government to introduce and enact the Freedom of Information Bill (FoIB) because more people in rural areas are not sensitiaed on the matter”. The Zambian Rainbow Coalition called these statements “another...non-fulfillment of promise”.⁴ A few days later, the permanent secretary of the Ministry of Information, Broadcasting and Labour said that the FoIB would be law by “July or August”, presumably of 2012.⁵
4. The Bill must exhibit the following characteristics: It must cover all public authorities and all information (with minimal, narrow exemptions), and all other laws must be subject to it. The procedure for citizens to access information must be timely, inexpensive and simple. The Bill must put in place an independent adjudicator to handle disputes over access and to monitor the implementation of the law. When the law is violated, the officer responsible must be promptly sanctioned. The Bill must place an obligation on every public authority to regularly publish basic information about its structure, organisation, functions, powers, responsibilities, budgets and expenditures and obligate the government to proactively educate and train citizens and relevant government officials about the Bill.
5. **Recommendation**

¹ Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights across the Commonwealth. CHRI was founded in 1987 by Commonwealth professional associations. It is headquartered in New Delhi, India and has offices in Accra, Ghana and London, UK. Full information can be found at: www.humanrightsinitiative.org.

² Constitution of Zambia, Article 20, accessed at: <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004847.pdf>.

³ Report of the Working Group on the Universal Periodic Review: Zambia, 4 June 2008, A/HRC/8/43.

⁴ Zambia Rainbow Coalition (March 2012) “Press release: Reversal by government on Freedom of Information Bill”, accessed at: <http://www.ukzambians.co.uk/home/2012/03/24/zambia-rainbow-coalition-government-on-freedom-of-information-bill/>.

⁵ Lusaka Times (March 2012) “Zambia: Freedom of Information to be law in August”, accessed at: <http://www.lusakatimes.com/2012/03/26/freedom-information-law-august-state/>.

6. The Government of Zambia should:

a. Pass the Freedom of Information Bill without delay.

7. The criminalization of same-sex sexual conduct

8. At its 2008 UPR, Zambia rejected recommendations that it decriminalise same-sex activity between consenting adults and respond to the HIV/AIDS-related needs of sexually active gay men.⁶
9. Zambia's Penal Code Act of 1995 criminalises "carnal knowledge" (section 155), with a penalty of up to fourteen years in prison, and "gross indecency" (section 158) between consenting men.⁷ An amendment in 2005 significantly strengthened s155 by raising the penalty (and adding life imprisonment if committed with a child) and amending the crime of "gross indecency" to include female same-sex conduct.⁸
10. As a state party to the ICCPR, Zambia has an obligation under Article 17 to protect individuals against "arbitrary or unlawful interference" with their "privacy, family, home or correspondence" and this renders the above sections incompatible with this obligation.⁹ The criminalisation of same-sex conduct is also incompatible with Zambia's obligation under Article 26 of the ICCPR, which requires Zambia to treat individuals equally before the law.¹⁰ In 2007, the Human Rights Committee recommended that Zambia repeal its laws criminalising same-sex conduct.¹¹
11. Statements have also been made by politicians and church officials that are at odds with the State's international obligations. Vice President George Kunda stated in 2009 that the government could prosecute known homosexuals using the legislation amended in 2005.¹² In 2010, The National Constitutional Conference (NCC) produced a draft constitution that failed to decriminalise homosexuality. The draft constitution also explicitly deprived lesbian, gay, bisexual, transgender and intersex (LGBTI) people of their rights by omitting sexual orientation as a ground for discrimination and adopting a clause expressly forbidding same-sex marriage.¹³ The run up to the 2011 elections also produced strong views, with politicians using the issue to incite segments of Zambian society and to combat commitments made by the opposition (*Patriotic Front*) to decriminalise if elected.¹⁴
12. Zambia also has an obligation under Article 12 of the ICESCR to promote the highest standard of health, which is impeded by the criminalisation of same-sex conduct.¹⁵ Criminalisation fosters discrimination and stigma, and thereby creates barriers to services, particularly access to health.
13. There have been limited reports of prosecutions for same-sex sexual activity in Zambia. In April 2011, the Lusaka magistrates' court sentenced two boys to reformatory school for engaging in

⁶ Report of the Working Group on the Universal Periodic Review: Zambia, 4 June 2008, A/HRC/8/43.

⁷ Chapter 87, The Penal Code Act [Zambia] S.155, S.156 and S.158 accessed at:

<http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004895.pdf>.

⁸ Zambia Penal Code (Amendment) Act no15 of 2005 at para 7 and 8: accessed at:

<http://webapps01.un.org/vawdatabase/uploads/Zambia%20-%20Act%20No.%2015%20of%202005.pdf>.

⁹ The Human Rights Committee in *Toonen v Australia* held that the criminalisation of same sex conduct was incompatible with a state party's obligations under Article 17.

¹⁰ Human Rights Committee, Concluding observations of the Human Rights Committee Barbados, U.N. Doc. CCPR/C/BRB/CO/3, 11 May 2007, para. 13.

¹¹ Human Rights Committee, Concluding observations of the Human Rights Committee, Zambia, CCPR/C/ZMB/CO/3, accessed at: http://www.bayefsky.com/pdf/zambia_t4_ccpr_90.pdf

¹² Freedom House (2010) *Zambia Rights and Liberties Report*, accessed at: <http://www.africa.com/zambia/report>.

¹³ Pambazuka News (August 2010) "Zambia: Sexual Equality and the NCC Draft Constitution", accessed at: <http://allafrica.com/stories/201008120993.html>.

¹⁴ Globalvoicesonline (March 2011) "Zambia: Politician risks political neck over gays", accessed at: <http://globalvoicesonline.org/2011/03/21/zambia-opposition-leader-risks-his-political-neck-over-gays/>.

¹⁵ CESCR, General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2000/4, 11 August 2000, para. 18.

“indecent acts”. The boys were sentenced to undergo 12 months of imprisonment at a reformatory school in order to grow up as “law-abiding citizens”.¹⁶ While there have been few convictions, the impact of the penal provisions on the LGBTI community has been a fear of arbitrary detention, discrimination, harassment and extortion. Equally, LGBTI activists that have sought to fight against discrimination based on sexual orientation have also been silenced. A 2007 report by the International Gay and Lesbians Human Rights Commission stated that LGBTI rights groups in Zambia have in the past been prohibited from registering by the Ministry of Home Affairs Registrar of Societies.¹⁷

14. In February 2012, there was a sustained backlash following statements made by the UN Secretary-General that Zambia should take advantage of constitutional reform to implement stronger protection against discrimination on the basis of sexual orientation. Newspapers such as *The Southern Times* termed it his “gay crusade”¹⁸ and pressure was put on the government to clarify its position on gay rights. The response from government ministers was that the “government will not entertain the amendment of the law prohibiting homosexuality”¹⁹ and the political opposition stated that reform would be “abrogating values”.²⁰ Organisations, including the Zambia Episcopal Conference (ZEC) and the Evangelical Fellowship of Zambia (EFZ), applauded the government’s stance in “show[ing] the international convergence that Zambia has her own culture which should be respected”.²¹ The Law Association of Zambia equally stated that “gay rights in Zambia was (sic) impossible because homosexuality was a criminal offence under the current laws.”²²

15. Recommendations

16. The Government of Zambia should:

- a. Repeal section 155 and section 158 of the Penal Code and immediately cease arrests and prosecutions under these provisions.
- b. Use the current process of constitutional reform to extend the equality provisions in the constitution to include sexual orientation and gender identity.
- c. Facilitate constructive dialogue on LGBTI rights with stakeholders, including government ministries, civil society actors, religious leaders and the Zambian Human Rights Commission.

17. Torture²³

18. At Zambia’s 2008 UPR, it accepted Denmark’s recommendation that “all possible measures be taken to eliminate torture and other inhuman or degrading treatment or punishment”.²⁴ However, unlawful killing and torture by the Zambian police and official authorities reportedly continued. An NGO report alleged that, “[t]he Zambian police routinely engage in cruel, inhuman and degrading treatment to extract confessions”, and “[h]anging suspects from the ceiling and beating them to

¹⁶ Zambian Watchdog (April 2011) “Three Zambian school boys found guilty of practicing homosexuality”, accessed at: <http://www.zambianwatchdog.com/?p=12115>.

¹⁷ International Gay and Lesbian Human Rights Commission (2007) *Zambia: Shadow report on the status of lesbian, gay, bisexual and transgendered individuals*, accessed at: <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/437.html>.

¹⁸ The Southern Times (March 2012) “Ban Ki-moon’s gay crusade”, accessed at:

http://www.southerntimesafrica.com/news_article.php?id=6806&title=Ban%20Ki-moon%E2%80%99s%20gay%20crusade&type=83.

¹⁹ Zambia Daily Mail (March 2012) “Gay what? It’s criminal in Zambia – Shamenda”, accessed at:

http://smsmedia.co.zm/index.php?option=com_content&view=article&id=1248:gay-what-its-criminal-in-zambia-shamenda&catid=1:latest-news&Itemid=117.

²⁰ The Southern Times (March 2012) “Ban Ki-moon’s gay crusade”, accessed at:

http://www.southerntimesafrica.com/news_article.php?id=6806&title=Ban%20Ki-moon%E2%80%99s%20gay%20crusade&type=83.

²¹ Zimbabwe Telegraph (March 2012) “Church hails state over gay issue”, accessed at:

http://www.zimtelegraph.com/?p=34528&utm_source=rss&utm_medium=rss&utm_campaign=church-hails-state-over-gay-issue.

²² Times of Zambia (March 2012) “Zambia Can’t Respect Gay Rights”, accessed at: <http://www.times.co.zm/?p=31>.

²³ The information in this paragraph is entirely from secondary sources and was compiled for CHRI’s upcoming 2012 publication of *Easier Said Than Done* (2011). All information was valid to the end of June 2011.

²⁴ Report of the Working Group on the Universal Periodic Review: Zambia, 4 June 2008, A/HRC/8/43.

coerce confessions is routine practice in Zambia.”²⁵ Despite a 2006 government directive that restricted the use of fire-arms by police officers, and a government pledge that restricted the use of force by officials, allegations were made since Zambia’s last UPR that the police and government officials encouraged the use of weapons when detaining suspects, and rarely punished perpetrators of extra-judicial violence.²⁶ The Zambian government completely denied these allegations, and insisted that it was doing everything in its capacity to ensure that the rights of its citizens were respected and protected.²⁷ Police officials were urged by an international human rights organisation to cease brutal methods of detention and investigation, and were requested to institute special training sessions on non-coercive methods of interrogation.²⁸

19. Prison conditions²⁹

20. Zambia also accepted recommendations from Algeria and Ireland in 2008 that the living conditions of detainees should improve.³⁰ Zambia’s negligence of its prisons and prisoners has been repeatedly condemned by regional and international organisations. An inefficient judiciary and delayed court proceedings have contributed to pre-trial detainees being held in prison for prolonged periods along with convicted prisoners. There were reportedly no separate facilities for juvenile prisoners. Legal Resources Foundation (LRF) found a juvenile prisoner at Lusaka Central Prison in August 2010, awaiting trial since June 2007.³¹ According to a report, overcrowded prisons, which were sometimes four and five times over capacity, were under-staffed “death traps”, beset by malnutrition and rampant disease.³² For example, Mukobeko Maximum Security Prison, which had a capacity of 400, held 1,731 inmates, and Lusaka Central Prison, built for 200, contained 1,145 people. Prisoners told investigators that their bodies “were packed like pigs”, “squeezed like logs in a pile”, or “like fish in a refrigerator”.³³ Tuberculosis and HIV/AIDS thrived in Zambia’s prisons. Though condom distribution in prisons had been a subject of constant debate, moral and cultural concerns prevented the government from taking action, leading to continuing increases in the spread of HIV.³⁴ According to the sole doctor for prisons in Zambia, the prison service is endeavoring to change prison conditions; however, he said, “it does not have the muscle, the stamina, to accomplish this without help from the government budget allocations, and from donors to come help.”³⁵

21. Corruption

22. At its 2008 UPR, Zambia also accepted a recommendation from South Africa to finalise the national anti-corruption policy and mechanisms for monitoring its implementation.³⁶ While the Government did launch a National Anti-Corruption Policy in 2009, corruption continued to affect human rights in the country. The Global Fund to Fight AIDS, Tuberculosis and Malaria suspended

²⁵ Human Rights Watch (September 2010) *Zambia: Police brutality, torture rife*, accessed at: <http://www.hrw.org/news/2010/09/03/zambia-police-brutality-torture-rife>.

²⁶ allAfrica.com (June 2011) “Zambia: US report accuses Government of human rights violations”, accessed at: <http://allafrica.com/stories/201106061065.html>.

²⁷ Ibid.

²⁸ Human Rights Watch (September 2010) *Zambia: Police brutality, torture rife*, accessed at: <http://www.hrw.org/news/2010/09/03/zambia-police-brutality-torture-rife>.

²⁹ The information in this paragraph is from secondary sources and was compiled for CHRI’s 2011 publication of *Easier Said Than Done (2010)*. All information was valid to the end of May 2010.

³⁰ Report of the Working Group on the Universal Periodic Review: Zambia, 4 June 2008, A/HRC/8/43.

³¹ Legal Resources Foundation (2010) “Juveniles Await Trials at Lusaka Central Prison”, accessed at: http://www.lrf.org.zm/newsletters/index.php?option=com_content&view=article&id=242:juveniles-await-sentences-at-lusaka-central-prison&catid=11:newsletters-from-lrf&Itemid=1.

³² Human Rights Watch (2010) *Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons*, accessed at: <http://www.hrw.org/node/89819/section/4>.

³³ New York Times, (April 2010) “Report Calls Zambia’s Prisons ‘Death Traps’”, accessed at: <http://www.nytimes.com/2010/04/28/world/africa/28zambia.html>.

³⁴ BBC News (April 2010) “How to Stop HIV Spreading in Zambia’s Prisons”, accessed at: <http://news.bbc.co.uk/2/hi/africa/8647576.stm>.

³⁵ New York Times, (April 2010) “Report Calls Zambia’s Prisons ‘Death Traps’”, accessed at: <http://www.nytimes.com/2010/04/28/world/africa/28zambia.html>.

³⁶ Report of the Working Group on the Universal Periodic Review: Zambia, 4 June 2008, A/HRC/8/43.

the delivery of more than \$300m of funds to Zambia in August 2010 due to alleged corruption in the health sector of the country.³⁷ In 2009, Sweden and the Netherlands halted \$30m of direct aid to the Zambian health ministry.³⁸ Transparency International's Corruption Perceptions Index 2011 ranked Zambia at 91 (bordering on highly corrupt) out of 182 countries.³⁹

³⁷ The Lancet (August 2010) "Donors Lose Faith in Zambian Health Ministry", accessed at:

[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(10\)61205-6/fulltext#tbl1](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(10)61205-6/fulltext#tbl1).

³⁸ BBC News Africa (June 2010) "Global Fund Freezes Zambia Aid Over Corruption Concern", accessed at:

<http://www.bbc.co.uk/news/10331717>.

³⁹ Transparency International (2011) *Corruption Perceptions Index 2011*, accessed at:

http://www.transparency.org/publications/publications/other/corruption_perceptions_index_2011.