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**Submission to the Universal Periodic Review of Zambia by the Centre for Human Rights,  
Faculty of Law, University of Pretoria, 23 April 2012**

This report is prepared and submitted to Universal Periodic Review of Zambia by the Centre for Human Rights, Faculty of Law, University of Pretoria for consideration during the 14<sup>th</sup> UPR Session from 22 October to 5 November 2012.

The Centre for Human Rights was established in 1986 and is both an academic department and a non-governmental organisation with a specific focus on human rights law in Africa. It works towards human rights education in Africa, a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons or groups across the continent.



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### A. INTRODUCTION

1. This submission summarises the key concerns of the Centre for Human Rights (CHR) regarding gender-based violence, freedom of expression, gay rights, maternal mortality, prison conditions and the death penalty in the Republic of Zambia. After indicating the areas of concern the CHR outlines recommendations it urges the second UPR on Zambia to include.

### B. GENDER BASED VIOLENCE

2. Cases of gender based violence (GBV) are increasing in Zambia,<sup>1</sup> despite the passing of the Anti-GBV Act in 2011.<sup>2</sup> Due to deep-rooted Zambian tradition relegating women to a lesser role in society<sup>3</sup> the passage of the Act without the necessary steps to create public awareness on GBV is futile.

3. The reported number of GBV cases in the first quarter of 2011 was 2028, out of which 462 were cases of child defilement, 64 were cases of rape, 645 were spouse abuse cases and 12 were murder of female spouses.<sup>4</sup>

4. Although spousal abuse constitutes a large number of GBV in Zambia, there is no national law, including the Anti-GBV Act that criminalizes marital rape.<sup>5</sup>

5. Under the UPR in 2008,<sup>6</sup> Zambia was urged to take measures to improve the situation of women's rights and to include provisions in the Constitution on equality before the law and prohibiting any law, culture, or custom or tradition that undermine the dignity, welfare, interests or status of women.<sup>7</sup> The 1996 Constitution of Zambia retains article 23, ironically entitled 'Protection from Discrimination', which permits discriminatory laws and practices in the area of personal and customary laws. Such discriminatory customs include early marriage, payment of dowry (*lobola*), unequal inheritance rights, sexual cleansing, and polygamy.<sup>8</sup> The Anti-GBV Act makes the provisions of the Act subject to the Constitution.

### C. FREEDOM OF EXPRESSION

6. Article 20 of the Bill of Rights in the Zambian Constitution guarantees the right to freedom of expression and provides for the grounds of limitation. According to sections 53,

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<sup>1</sup> USAID 'USAID/ZAMBIA Gender-Based Violence Programming Evaluation' (August 2010) 14 available at [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/wid/pubs/Zambia\\_GBV\\_Programming\\_Evaluation\\_Aug-2010.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Zambia_GBV_Programming_Evaluation_Aug-2010.pdf) (accessed 6 February 2012).

<sup>2</sup> The Government passed the Anti-GBV Act 2010 in 2011. The Act among others provides for the protection of victims of GBV, constitutes the Anti-GBV Committee and establishes the Anti-GBV Fund.

<sup>3</sup> Bruce Chooma, Vice Chairperson of Gender and Media Southern Africa, quoted in 'GBV surges in Zambia' *Africa News* 23 November 2011 available at [http://www.africanews.com/site/Gender\\_based\\_violence\\_surges\\_in\\_Zambia/list\\_messages/40434](http://www.africanews.com/site/Gender_based_violence_surges_in_Zambia/list_messages/40434) 23 November 2011 (accessed 6 February 2012).

<sup>4</sup> 'Cases of GBV on the increase' *Lusaka Times* 16 January 2012 available at <http://www.lusakatimes.com/2012/01/16/cases-gender-based-violence-increase/> (accessed 21 February 2012).

<sup>5</sup> 'Delegation tells of legislative milestones as Women's Anti-Discrimination Committee considers Zambia's implementation of Convention' *UN News* 13 July 2011 available at <http://www.un.org/News/Press/docs/2011/wom1869.doc.htm> (accessed 2 March 2012).

<sup>6</sup> 'Report of the Working Group on the Universal Periodic Review: Zambia' A/HRC/8/43 (2 June 2008), para 59(2).

<sup>7</sup> As above.

<sup>8</sup> This was addressed in CEDAW 'Concluding observations of the Committee on the Elimination of Discrimination against Women' CEDAW/C/ZMB/CO/5-6, Forty-Ninth Session, 11 – 29 July 2011 (4).

54 and 55 of the Zambian Penal Code a publication or a series of publications that the President believes are contrary to public interest may, in his absolute discretion, be prohibited. This limitation does not go in line with acceptable limitations to the freedom of expression prescribed in international instruments.<sup>9</sup>

7. The amendment of the Defamation Act in the Penal Code to broaden space for exercising freedom of expression was one of the recommendations to Zambia under its 2008 UPR Review.<sup>10</sup> However, such revision has not been undertaken yet.

8. On 3 June 2010, *The Post* newspaper and its editor in chief, Fred M'membe<sup>11</sup> were found guilty of contempt of court, a charge arising from the publishing of an opinion article authored by an American-based Zambian Law Professor, Muna Ndulo regarding the pending case of *The Post* news editor Chansa Kabwela.<sup>12</sup> The Court used Section 116(1)(d) of the Zambian Penal Code on contempt of court<sup>13</sup> to convict Mr M'membe, who has been arrested on several occasions previously due to various newspaper articles on *The Post*. Chansa Kabwela, whose charges were ultimately dismissed, had been arrested in July 2009 for her role in the publication of an article on the deterioration of the healthcare system in the country and for having sent pictures of a woman giving birth on the street outside a hospital to the Minister of Health as well as other top government officials to draw attention to the inability of hospitals to cope with peoples' needs. The woman who gave birth was turned away by two hospitals before giving birth outside the third hospital she visited because most of the hospital staff were on strike due to low wages.<sup>14</sup>

9. The African Commission on Human and Peoples Rights' Special Rapporteur on Freedom of Expression and Access to Information in Africa condemned the prosecution of Mr Fred M'membe and held that Section 116(1)(d) of the Zambia Penal Code is incompatible with regional and international guarantees of freedom of expression.<sup>15</sup>

#### D. GAY RIGHTS

10. The life of gay persons in Zambia is precarious for various reasons including political and religious expediencies.<sup>16</sup> The following events are particularly of concern. The current President of Zambia is on record saying that the following laws must be enforced against gay persons to 'preserve the moral standards'<sup>17</sup> - (a) The Constitution of Zambia Chapter 1 of

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<sup>9</sup> See art 19 of the Universal Declaration of Human Rights (UDHR); art 19 of the International Covenant on Civil and Political Rights (ICCPR); General Comment 10 on the ICCPR, para 4 stresses that a state cannot limit freedom of expression if the restrictions are likely to jeopardise the right itself.

<sup>10</sup> A/HRC/8/43 (n 6 above) para 59(6).

<sup>11</sup> Fred M'membe was sentenced to four months of imprisonment and hard labor.

<sup>12</sup> Freedom House 'Freedom of the Press 2011 - Zambia' 27 October 2011, available at <http://old.freedomhouse.org/template.cfm?page=251&country=8166&year=2011> (accessed 28 February 2012).

<sup>13</sup> The charges on contempt of court related to a commentary which was published on the Post regarding the pending case.

<sup>14</sup> 'Zambian president challenged over violation of freedom of speech' *Mail and Guardian* 11 June 2010 available at <http://mg.co.za/article/2010-06-11-zambian-president-challenged-over-violation-of-freedom-speech> (accessed 28 February 2012).

<sup>15</sup> African Commission on Human and Peoples' Rights 'Activity Report of the Special Rapporteur on Freedom of Expression and Access to Information in Africa' 48<sup>th</sup> Ordinary Session 10 - 24 November 2010, para 31 available at <http://www.achpr.org/english/Commissioner%27s%20Activity/48th%20OS/Special%20Mechanism/FOE%20&%20ATI.pdf> (accessed 28 February 2012).

<sup>16</sup> 'Vice President George Kunda says Zambian laws do not allow the practice of homosexuality and lesbianism' *UKZAMBIA* 19 March 2011 available at <http://www.ukzambians.co.uk/home/2011/03/19/gay-lesbianism-criminal-laws-zambia-vice-president/> (accessed 17 February 2012).

<sup>17</sup> 'Sata explains his position on homosexuality' *The Post Online* 17 March 2011 available at [http://postzambia.com/post-read\\_article.php?articleId=19055](http://postzambia.com/post-read_article.php?articleId=19055) (accessed 9 February 2012).

the Laws of Zambia;<sup>18</sup> (b) The Marriage Act Chapter 50; (c) The Penal Code Chapter 87;<sup>19</sup> (d) The Criminal Procedure Code Chapter 88. In another context, photographs of gay persons were shown to the public by politicians during political campaigns, without due regard to the safety and welfare of the individuals involved and their families.<sup>20</sup> Religious leaders have demonstrated particularly strong homophobic views and have vowed to resist any attempt to turn Zambia into a secular state by promoting gay rights.<sup>21</sup> In one instance, a religious leader speaking in the media stated that granting of gay rights in the form of freedom of expression was 'sinking low'.<sup>22</sup>

11. Homophobic statements coming from both political and religious leaders impact negatively on the safety and welfare of gay persons in Zambia due to their strong influence on the populace. Concurrently, the fight against HIV/AIDS continues to be compromised.<sup>23</sup>

## E. MATERNAL MORTALITY

12. The government of Zambia has committed itself, under the fifth Millennium Development Goal, to reduce maternal mortality by three-quarters by 2015. However, as reports indicate, limited progress has been made towards achieving this commitment.<sup>24</sup> According to the Minister of Health of Zambia, every four hours one woman dies due to pregnancy complications, during and after childbirth.<sup>25</sup> In addition, there is severe shortage of qualified, skilled and competent nurses and mid-wives to attend to pregnant women at birth.<sup>26</sup> Limited access and unreliable transport especially in the rural areas make it difficult for pregnant women to deliver in health facilities.<sup>27</sup> Although Zambian law permits abortion in certain circumstances,<sup>28</sup> unsafe abortion is also estimated to be the cause of approximately 30% of maternal deaths and one of the top five causes of maternal mortality in Zambia.<sup>29</sup> The above challenges and others make it difficult for Zambia to achieve its 2015 target on maternal mortality.

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<sup>18</sup> The preamble to the Constitution declares the Zambian nation Christian.

<sup>19</sup> See sections 155, 156 and 158.

<sup>20</sup> 'In Zambia, has a campaign of gay slurs failed?' *LGBT Asylum News* 22 September 2011 available at <http://madikazemi.blogspot.com/2011/09/in-zambia-has-campaign-of-gay-slurs.html> (accessed 10 February 2012).

<sup>21</sup> 'Church, civil society against Sata's alleged gay rights, secular state crusade' *Lusaka Times* 9 October 2010 available at <http://www.lusakatimes.com/2010/10/09/church-civil-society-satas-alleged-gay-rights-secular-state-crusade/> (accessed 9 February 2012).

<sup>22</sup> 'Zambia gays hit back' *ILGA* 19 May 2010 available at <http://ilga.org/ilga/en/article/mqUvEiw17L> (accessed 9 February 2012).

<sup>23</sup> 'Zambia under fire for anti-gay sentiments' *Times Live* available at <http://www.timeslive.co.za/africa/article462482.ece/Zambia-under-fire-for-anti-gay-sentiment> (accessed 10 February 2012)

<sup>24</sup> The World Bank 'Reproductive health at a glance: Zambia' (May 2011) 1 available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/08/01/000356161\\_20110801014136/Rendered/PDF/629510BRIEF0Za0BOX0361514B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/08/01/000356161_20110801014136/Rendered/PDF/629510BRIEF0Za0BOX0361514B00PUBLIC0.pdf) (accessed 23 February 2012).

<sup>25</sup> 'Simbao bemoans high death rate of women during childbirth' *Times of Zambia* 29 April 2010 available at <http://allafrica.com/stories/201004290301.html> (accessed 16 February 2012).

<sup>26</sup> 'Addressing shortage of nurses and midwives imperative to achieving health MDGs in Zambia' United Nations Zambia 5 May 2011 available at [http://www.internationalmidwives.org/Portals/5/2011/IDM%202011/Press%20Release\\_UN\\_International%20Day%20of%20Nurses%20and%20Midwives.pdf](http://www.internationalmidwives.org/Portals/5/2011/IDM%202011/Press%20Release_UN_International%20Day%20of%20Nurses%20and%20Midwives.pdf) (accessed 28 February 2012).

<sup>27</sup> J Babinard & P Roberts 'Maternal and child development goals: What can the transport sector do?' The World Bank Group Transport Papers (2006) 15.

<sup>28</sup> Termination of Pregnancy Act of 1972, s 3(1)(a-b).

<sup>29</sup> 'Supplementary information on Zambia scheduled for review during the 49th session of the CEDAW Committee' 16 May 2011, 4 available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/FINAL%20Zambia%20CEDAW%20Shadow%20Letter%20VERSION%20\(May%202011\).pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/FINAL%20Zambia%20CEDAW%20Shadow%20Letter%20VERSION%20(May%202011).pdf) (accessed 2 March 2012).

## F. PRISONS

**13.** The Prisons Act of Zambia as amended in 2004 provides for the humane treatment of prisoners. Despite recommendations in the 2008 review of Zambia, that living conditions of detainees should be improved as a matter of priority,<sup>30</sup> the condition persists. It is noted with grave concern that the government has not fully remedied the situation by ensuring that inmates in the prisons are given adequate care.<sup>31</sup> Prisons intended to accommodate an estimate of 7 500 inmates hold over 15 000 inmates, according to the Zambian Commissioner of Prisons.<sup>32</sup> Children are kept in the same cells as adults; no adequate provision is made for women nursing children.<sup>33</sup> Due to congestion, inmates sleep in shifts and in very uncomfortable positions.<sup>34</sup> Basic nutritional necessities are not afforded to inmates and this has led to cases of malnutrition and poor health conditions of the inmates.<sup>35</sup> Inmates are denied basic sanitary installations and necessities such as soaps and clean water.<sup>36</sup> Health care facilities in prisons are highly inadequate.<sup>37</sup> According to a journalist that was detained at Chimbokaila prison for a period of time, the living conditions in the prison are worse than those of animals.<sup>38</sup> Due to the poor health condition, inmates are susceptible to illnesses such as drug-resistant tuberculosis and dysentery.<sup>39</sup> Although the opening of a Tuberculosis isolation clinic at the Lusaka Central prison by the Centre for Infectious Disease Research in Zambia is commendable, the government of Zambia is yet to take proactive steps in ensuring that inmates are given adequate care. Furthermore, the HIV prevalence rate in prisons has been closely linked to poor health care facilities and monitoring. It is reported that as at 2011, 27% of inmates were living with HIV compared to national rates of 14%.<sup>40</sup>

## G. DEATH PENALTY

**14.** Despite recommendations in Zambia's 2008 review to transform the de facto moratorium on death penalty into a de jure moratorium,<sup>41</sup> Zambian courts have continued to pronounce death sentences. Article 12 of the Constitution of Zambia upholds the death

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<sup>30</sup> A/HRC/8/43 (n 6 above) para 58(8).

<sup>31</sup> 'Zambia: prison service bemoans congestion' *UKZambians* 5 December 2011 available at <http://www.ukzambians.co.uk/home/2011/12/05/zambiaprison-service-bemoans-congestion/> (accessed 20 February 2012).

<sup>32</sup> 'Prisons have remained congested - Chato' *The Post online* 3 July 2011 available at [http://postzambia.com/post-read\\_article.php?articleId=21685](http://postzambia.com/post-read_article.php?articleId=21685) (accessed 9 February 2012).

<sup>33</sup> 'UKZambians exclusive interview with Samuel Kawilila, governor of Zambia prison fellowship' *UKZambians* 19 June 2010 available at <http://www.ukzambians.co.uk/home/2010/06/19/ukzambians-exclusive-interview-with-samuel-kawilila-governor-of-zambia-prison-fellowship/> (accessed 21 February 2012).

<sup>34</sup> 'Sleeping time-table of inmates at Lusaka central prisons raise concern' *UKZambians* 21 May 2011 available at <http://www.ukzambians.co.uk/home/2011/05/21/sleeping-timetable-inmates-lusaka-central-prison-raise-concern/> (accessed 21 February 2012).

<sup>35</sup> 'Report of disease and malnutrition in Zambian prisons' *Zimbio* 4 May 2010 available at [http://www.zimbio.com/Zambia/articles/PvQ0LUx1\\_V7/Reports+disease+malnutrition+Zambian+prisons](http://www.zimbio.com/Zambia/articles/PvQ0LUx1_V7/Reports+disease+malnutrition+Zambian+prisons) (accessed 21 February 2012).

<sup>36</sup> 'No water no life: Corruption in a Zambian prison November 2010' *Farm Radio International* [http://www.farmradio.org/english/radio-scripts/92-6script\\_en.asp](http://www.farmradio.org/english/radio-scripts/92-6script_en.asp) (accessed 21 February 2012).

<sup>37</sup> KW Todrys et al 'Imprisoned and imperilled: access to HIV and TB prevention and treatment and denial of human rights in Zambian prisons' (2011) available at <http://www.jiasociety.org/content/14/1/8> (accessed 20 February 2012).

<sup>38</sup> 'Dogs better than Zambian prisoners, says M'membe' *Zambian Watchdog* 7 June 2010 available at <http://www.zambianwatchdog.com/index.php/breaking-news/fred-mmembe-released/> (accessed as at 7 February 2012).

<sup>39</sup> 'CIDRZ Opens K70 million TB isolation clinic' *Times of Zambia* 23 January 2012 available at <http://allafrica.com/stories/201201230431.html> (accessed 20 February 2012).

<sup>40</sup> This is according to In But Free, a non governmental organisation working on prison conditions in Zambia, information available at <http://inbutfree.org/> (accessed 1 November 2011).

<sup>41</sup> A/HRC/8/43 (n 6 above) para 59(4).

penalty. On 24 January 2012, the Kitwe High Court sentenced two men to death.<sup>42</sup> In another case, on 7 February 2012, the Supreme Court sentenced two men to death because it believed that the High Court erred in law when it gave the men a 30-year jail sentence for an offence that should have carried a mandatory death penalty.<sup>43</sup> According to the Commissioner of Prisons of Zambia, in 2011 about 279 inmates were on death row in the Mukobeko Maximum Security Prisons.<sup>44</sup> During the 2008 UPR, Zambia's government representative affirmed that the National Constitutional Conference (NCC) set up in 2007 to consider Constitutional amendments would take into cognizance the issue of death penalty.<sup>45</sup> However in 2009, the NCC after its deliberation upheld the death penalty<sup>46</sup> justifying its inclusion into the Constitution.<sup>47</sup> Further, despite recommendations in the 2008 UPR, the government of Zambia has not ratified the Second Optional Protocol to the ICCPR towards the abolition of death penalty.

## H. RECOMMENDATIONS

The Government of Zambia should:

1. Amend the current Constitution to rectify the discriminatory provision of article 23(1) and (4) and unequivocally ensure women's equality in the new Constitution. Furthermore, the new Constitution should abolish the death penalty.
2. Create awareness on GBV, especially on domestic violence against spouses. Marital rape should be criminalized.
3. Encourage/support GBV victims to report their cases and redress complaints through the Anti-GBV Act.
4. Ratify the Optional Protocol to the CEDAW thus allowing GBV victims access to the complaint mechanisms in the Protocol.<sup>48</sup>
5. Repeal section 53 – 55 of the Penal Code providing for the powers of the President to ban publications and revise section 116 on contempt of court.
6. Review its Penal Code provisions that criminalize homosexuality; guarantee the safety and welfare of all gay persons living in the country and specifically those exposed in the media and put a stop to any further exposures.
7. Upscale programmes to reduce maternal mortality and specifically train mid-wives and improve the transport infrastructure in the rural areas.
8. Take proactive steps in tackling the issue of congestion in prisons.
9. Take concrete and immediate steps to provide health care for prisoners in compliance with international standards.

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<sup>42</sup> 'Two youths get death sentence' *Times of Zambia* 24 January 2012 available at [http://www.times.co.zm/index.php?option=com\\_content&view=article&id=4440:two-youths-get-death-sentence&catid=36:local-news&Itemid=27](http://www.times.co.zm/index.php?option=com_content&view=article&id=4440:two-youths-get-death-sentence&catid=36:local-news&Itemid=27) (accessed 20 February 2012).

<sup>43</sup> 'Two get death penalty in appeal case' *Times of Zambia* 8 February 2012 available at [http://www.times.co.zm/index.php?option=com\\_content&view=article&id=4795:-two-get-death-death-penalty-in-apeal-case&catid=37:business&Itemid=88](http://www.times.co.zm/index.php?option=com_content&view=article&id=4795:-two-get-death-death-penalty-in-apeal-case&catid=37:business&Itemid=88) <http://allafrica.com/stories/201202080286.html> (accessed 9 February 2012).

<sup>44</sup> 'Zambia: 279 inmates on death row' *Times of Zambia* 27 December 2011 available at <http://allafrica.com/stories/201112270958.html> (accessed 21 February 2012).

<sup>45</sup> A/HRC/8/43 (n 6 above) para 5.

<sup>46</sup> National Constitutional Conference 'Initial report of the National Constitutional Conference' 24 June 2010 available at <http://www.ncczambia.org/initial.pdf> (Accessed 9 February 2012).

<sup>47</sup> 'Zambia: NCC maintains death penalty' *Times of Zambia* 4 February 2010 available at <http://allafrica.com/stories/201002040938.html> (accessed 9 February 2012).

<sup>48</sup> Articles 2 and 8 of the Optional Protocol to CEDAW respectively provide for individual communications and an inquiry procedure allowing the Committee to initiate confidential investigation.

