



## **SACCORD SUBMISSION**

**Universal Periodic Review**

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Submission on civil and political rights made by the Southern African Centre for the Constructive Resolution of Disputes (SACCORD)

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## **SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW**

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### **Executive Summary**

This submission is being made by the Southern African Centre for the Constructive Resolution of Disputes (SACCORD) who extensively consulted with various organisations nationally and in the districts of Zambia, and these include Transparency International Zambia, Anti-Voter Apathy, Young Women Christian Association, Foundation for Democratic Processes, Youth Development Foundation, Planned Parenthood Association of Zambia, CCSDP, OVO, CHIPZ-TC, PAHRFD, NYCA, BIC-CCDP, FAWEZA, SWAAG, Youth Alliance for Development, OHYO, DEGHA, Legal Resource Foundation, Zambia National Women's Lobby, Zambia Civic Association Education, CARITAS and Youth Development Organisation among others. SACCORD is submitting this report after extensive gathering of information through provincial deliberations to get the situation on the ground in terms of human rights.

Today Zambia is among the countries that still faces a number of challenges in human rights. These include torture, official impunity, life-threatening prison conditions, arbitrary arrests and prolonged pre-trial detention, long trial delays, restrictions on freedom of speech, assembly, and association, violence and discrimination against women, child abuse, trafficking in persons, discrimination based on sexual orientation and against persons with disabilities, restrictions on labor rights, forced labor and child labor. This is despite the country being a signatory to a number of international human rights instruments which seek to ensure that human rights as reflected under the universal declaration for human rights are fully realized and guaranteed for every human being. These conventions include Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) among others. Being a signatory to the following international conventions, the State of Zambia has assumed obligations to promote respect and fulfill the human rights related to Civil and political rights.

## **1. Prison Conditions**

Prison conditions have continued to be very poor and life threatening in all the prisons of Zambia. The country's prisons, which were built to hold 7,500 inmates, are holding nearly 15,500 prisoners and detainees.

### **Reference points**

- The Lusaka Central Prison, which was designed to accommodate 200 prisoners, held more than 1,500 in 2011. By law the police can detain suspects up to 24 hours in holding cells before transferring them to a remand prison. Remand prisons are supposed to house detainees prior to conviction exclusively but, in practice, they are also used to hold convicted prisoners which should not be the case.
- Prison conditions in remand prisons do not generally differ from those in other prisons. They are characterized by poor sanitation, dilapidated infrastructure, inadequate and deficient medical facilities, meager food supplies, and lack of portable water. This has resulted in serious outbreaks of dysentery, cholera, and tuberculosis, which the overcrowding exacerbated.
- Prisons generally have inadequate provision for ventilation, temperature, lighting, and basic and emergency medical care. Prisoners routinely complain that authorities deny them access to medical care as provided by law.
- Illnesses such as tuberculosis are quiet rampant and they rate at about 5 percent, more than 10 times the rate outside of prisons. In 2008, the Human Rights Commission estimated that that the HIV/AIDS prevalence rate in prisons was 27 percent.
- SACCORD established during its consultative meetings with various NGOs and government departments on the Universal Periodic Review that Juveniles often were not held separately from adults in the prisons and these comprised 10 percent of all prisoners. They also suffered sexual assault from the older inmates in those prisons.

### **Recommendations**

- The government needs to actively investigate or monitor prison and detention center conditions. Prisoners and detainees generally cannot submit complaints to judicial authorities or request investigation of credible allegations of inhumane conditions in the current scenario. Authorities do not investigate these allegations or document the results of such investigations in a publicly accessible manner.

- Furthermore, the country needs to have ombudsmen who could serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate inhumane overcrowding and address the status and circumstances of confinement of juvenile offenders; improving pretrial detention, bail, and recordkeeping procedures to ensure prisoners do not serve beyond the maximum sentence for the charged offense.
- Government must urgently construct and rehabilitate Prisons infrastructure to meet the increasing number of Prisoners
- Reform the Prison system to serve as a Correctional Facility to create a conducive environment that will assist rehabilitate prisoners to become better and productive citizens after serving sentence.
- Following high prevalence rates of HIV/AIDs and poor malnutrition which makes prisoners vulnerable to opportunistic infections there is need for government to establish a health post at every Prison so that prisoners access health care services..

## **2. Death Penalty**

The Zambian Constitution allows the death penalty in Part III on the Protection of Fundamental Rights and Freedom of the Individual. The Zambian Penal Code, section 43, foresees that the death penalty be enforced in cases regarding high treason, murder and armed robbery. However, Zambia's continued use of the death penalty as punishment for offenders found guilty when charged for treason, murder or armed robbery is a clear violation of human rights and failure for the State to uphold its promise to keep its commitment towards human rights treaties it has signed.

### **Reference points**

By 27<sup>th</sup> December 2011, there were 279 prisoners on death row in Zambian prisons with a good number still awaiting sentencing. Commissioner of Prisons Mr. Percy Chato stated that the number was too high in relation to the holding cells that were available for the condemned section of the prison where death row inmates are held<sup>1</sup>.

### **Recommendations**

- Zambia should abolish the death penalty as it has not served as a deterrent to serious crime apart from violating the right to life of those who are sentenced to death. The conditions under which those awaiting execution are kept are deplorable too and they need to be improved so that they can live in a health and conducive environment.

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<sup>1</sup> <http://allafrica.com/stories/201112270958.html>

### **3. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The Zambian constitution prohibits torture and other degrading treatment however the police has continued to use excessive force including torture when interrogating, and detaining suspects to extract confessions.

#### **Reference points**

- On March 14, 2011 two Mazabuka police officers reportedly assaulted Christopher Perkins Liwoyo after he photographed them while acting as a freelance photographer.
- On September 8, 2011 a magistrate awarded Shadreck Nkhuwa and Isaac Chilombo 10 million kwacha (\$2,000) each after police detained and tortured them in Mumbwa for two days in 2004.
- On September 21, 2011 Ndola police reportedly shot and wounded 24-year-old Conrad Mutale while he participated in a protest.
- There are also reports that police occasionally demanded sex from female detainees as a condition for their release.
- There were further reports that police officers raped women and young girls while they were in custody. Authorities also detained, interrogated, and physically abused family members or associates of criminal suspects in attempts to identify or locate the suspects.
- On November 12, 2011 residents of the Garden Compound, Lusaka, rioted and burned a police station and six vehicles following reports that police tortured a man who later died in police custody.

#### **Recommendations**

- Government needs to provide for compensation to victims of torture. Officers who torture, beat, or otherwise abuse suspects generally should be disciplined or arrested for such acts. More stern measures need to be taken to ensure that torture cases are promptly and decisively dealt with.
- There is also need to increase channels through which torture cases can be reported without the bureaucracy and threats to the victims. Furthermore government should deal with these cases in a more expedient manner so that the torture victims are not traumatized. There should also be measures to rehabilitate the torture victims.

#### **4. Arrest Procedures and Treatment While in Detention**

The Zambian constitution and law provide that authorities must obtain a warrant before arresting a person for some offenses; other offenses have no such requirement. Furthermore, the law provides for prompt judicial determination of the legality of charges against a detainee; however, authorities often do not inform detainees promptly of charges against them. Arbitrary arrest and detention remained problems. Approximately one-third of persons incarcerated in remand prisons and other prisons have not been convicted of a crime or received a trial date.

##### **Reference points**

- A Siavonga resident Norbert Chisanga who was convicted by the Siavonga Magistrate's Court and imprisoned in 2006 for defiling three girls was by end of 2011 still awaiting final sentencing by the Lusaka High Court.
- Lusaka resident, Mumba was convicted by the Lusaka Magistrate's Court and imprisoned in 2005 for heroin possession and by end of 2011, he still awaited final sentencing by the Lusaka High Court.
- Zacheous Sakala had been held in pretrial detention since 2002 without conviction.

##### **Recommendations**

- Government needs to support initiatives that will ensure that cases are disposed in an expedient manner and justice is administered without delay. As they say, “justice delayed is justice denied”
- Government needs to expedite the process of introducing fast track courts which will ensure that overflow cases are dealt with by the fast track courts in an expedient manner. This would also reduce congestion in remand prisons.

#### **5. Freedom of Expression**

The constitution and law provide for freedom of speech and of the press; however, the government restricted these rights in practice. The law includes provisions that may be interpreted broadly to restrict these freedoms. The government has been interfering with the freedom of expression of the people in many ways and there are cases that indicate that

##### **Reference points**

- The government exercised considerable influence over the ZNBC, Times of Zambia and Daily mail, including reviewing articles prior to airing and publication and censoring individuals responsible for published articles that criticized the government. Opposition political parties and civil society groups complained that government control of the two newspapers and ZNBC limited their access to mass communication. Journalists in the government-controlled media generally practiced self-censorship.
- While denying a platform to other political parties to put messages on ZNBC, the government through the MMD sponsored Chanda Chimba III who defamed the Patriotic Front and its President. Those who were being attacked were not afforded the opportunity to respond to the allegations on the same platform that was used to accuse them. Furthermore, the programme attacked NGOs and the post newspaper in a manner that undermined their character. In essence, the government abused the public media and through the MMD government used it to campaign for the party.
- Government officials and ruling MMD party supporters repeatedly targeted the leading independent newspaper, The Post, with criticisms, and threats for publishing information critical of the government. Government was not happy with that and found a number of cases against the post newspaper
- On July 31, 2011, MMD supporters in Ndola reportedly harassed and threatened with violence, The Post newspaper reporter Abigail Chaponda for alleged bias against their party.
- On November 11, 2011, MMD Lusaka Province Youth Chairman Chris Chalwe was sentenced to one year with hard labor for a July 2009 assault on journalists Chibaula Silwamba and Anthony Mulowa.
- On June 18, 2011, Ministry of Information and Broadcasting Public Relations Officer Betniko Kayaya threatened to revoke Radio Sky FM's license for broadcasting programs the ministry considered a threat to peace and security.
- On November 20, 2011, Ministry of Information and Broadcasting Permanent Secretary Sam Phiri reportedly threatened to revoke Radio Lyambai's license for hosting a program to discuss the Barotse Agreement.

## **Recommendations**

- As a matter of urgency and importance, Government should consider enacting the Freedom of Information bill into law which was withdrawn from parliament 10 years ago.
- The Zambian Government should consider revising the Official Secrecy Act to be in line with the Access to information laws.

## **6. Freedom of Assembly**

The Zambian constitution clearly provides for freedom of assembly, however, the government has continuously restricted this right in practice. Although the law does not require a permit to hold a rally, it requires organizers to notify police seven days in advance. Police are empowered to decide when and where rallies are held and who may address participants. The government on occasion used the law's broad mandate to stifle and arbitrarily change the time and date of rallies, particularly of opposition political parties and NGOs, and did so during the year, including during by-election campaigns in the year 2011.

### **Reference points**

- On March 12, 2011, Kitwe police arrested and detained Catholic priest Frank Bwalya for three days for reportedly distributing red cards at a Youth Day event in Kitwe. Bwalya co-organized the "Red Card Campaign" to encourage the public to flash red cards to protest the government's economic and governance failures.
- On August 3, 2011, Ndola police arrested and detained a woman and her 13-year-old son for allegedly flashing a red card at President Banda's motorcade. Both were charged with conduct likely to cause breach of peace and released the same day after admitting guilt and paying a 50,000 kwacha (\$10) fine.

### **Recommendations**

- There is need for government to consider reforming the public order act and conform it to democratic values so that it is not applied in an arbitrary manner or at the discretion of those with the whims of powers

## **NGO act and rights to association**

Government enacted a law to regulate NGOs in August 2009. Many NGOs have continued to express concern that government officials will use the new law to punish or disband NGOs for publicly expressing critical views on human rights and governance issues.

### **Reference points**

- On March 18, Lameck Mangani then minister of home affairs announced that eight NGOs were under investigation for alleged money laundering and other illegal activities, and the Registrar of Societies was scrutinizing some NGOs' mandates. The timing of his



announcement coincided with vocal opposition to government proposals for statutory media regulation by the independent media and some NGOs.

- SACCORD was arbitrarily deregistered by the minister of home affairs, Ronnie Shikapwasha in 2004. To date that deregistration is still in the courts of laws.

### **Recommendations**

- Government needs to consider removing the NGO act because it was enacted to stifle critical NGOs. Instead, there is need to repeal the societies act which currently regulates operations of NGOs so that the unfettered powers it grants to the minister can be reduced. That way the societies act will no longer be susceptible to abuse.
- There is need for government to consider engaging NGOs and discussing the NGO act further if they don't intend to do away with it. This will make way for reformulating it and making it more favorable to both government and NGOs thereby striking a healthy balance which would be in conformity with the democratic values.

### **7. Extra judicial killings**

There have been a number of cases of extra judicial killings reported in Zambia. Police officers have continued to use their weapons when apprehending suspects, despite a government directive that restricted the use of firearms by police officers.

### **Reference points**

- In 2011, September 3, three police officers in Chipata were arrested in connection with the killing of three suspects. The officers reportedly shot the suspects when they attempted to flee while leading police to a place where the suspects had hidden carcasses of cattle they had stolen.
- On October 23, 2011 two people were reportedly killed in Mongu during a protest by the Barotse Freedom Movement.

### **Recommendations**

- There is need for government to take more stern steps to address these extra judicial killings that have been perpetually committed by the police year in year out. The punishment for police officers who commit these crimes should be increased and as declared by government scale up training initiatives for the police in human rights.