



ZAMBIA

Joint Submission to the UN Universal Periodic Review 28th Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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And

Zambia Council for Social Development (ZCSD)

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1. (A) Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2** Established in 1974 Zambia Council for Social Development (hereafter ZCSD) is a national umbrella body of civil society organisations (CSOs) whose main goal is promoting a vibrant, independent and well-coordinated civil society sector in Zambia.
- 1.3** In this document, CIVICUS and ZCSD examine the Government of Zambia’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Zambia’s fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in 2012. Zambia is listed as ‘obstructed’ in the CIVICUS Monitor which evaluates protection of the freedoms of expression, association and peaceful assembly globally.¹ To this end, we assess Zambia’s implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.4** During the 2nd UPR cycle, the Government of Zambia received six (6) recommendations relating to civic space.²
- 1.5** During the 2nd UPR cycle, the Government of Zambia received six (6) recommendations relating to civic space. Of these recommendations, three (3) were accepted and three (3) were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Zambia has not implemented three of the four recommendations relating to civil society space. The government has partially implemented the recommendation to “Lobby for and implement access to information legislation to encourage greater transparency and government ability” by presenting the Access to Information Bill to Parliament though it is yet to be enacted. The other accepted recommendations; “Continue giving priorities to human rights education and awareness - raising in the Government’s plans, strategies and programmes, and to enhance the participation of civil society and private sector, as

¹ CIVICUS Monitor, <https://monitor.civicus.org/country/zambia/>

² UPR Info, Database of recommendations https://www.upr-info.org/database/?gclid=CP2f1s_m7tICFeYK0wodQMQLKQ

appropriate, as a complementary driving force in this regard” and “Ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling stating that these freedoms are fundamental” and “Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms to carry out their work independently and without fear of prosecution” have not been implemented as the existing legal frameworks that impede and restrict civic space such as the Public Order Act and the Non - Governmental Organisations Act No. 15 of 2009 among others, still remain in place and have not been amended or repealed since Zambia’s last UPR examination.

1.6 The other three recommendations that were ‘noted’ by government include; “Repeal any law limiting the right to free expression in the media” and “Make the necessary legislative changes, including restricting the scope of the Public Order Act, to ensure the fullest possible freedoms of association and expression; and to ensure the police enforce these and other laws in a proportionate manner, including in Western Province”, and “Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms to carry out their work independently without fear of prosecution”.

1.7 CIVICUS and ZCSD remain concerned by the continued delay in repealing the NGO Act No. 16 of 2009 which unduly restricts the participation of civil society through the punitive sanctions for non-compliance and excessive discretion of the State to dictate the activities of CSOs.

1.8 CIVICUS and ZCSD are further alarmed by the continued use of the Public Order Act to unwarrantedly limit the exercise of the freedoms of peaceful assembly and association.

- In Section B, CIVICUS and ZCSD examine Zambia’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C, CIVICUS and ZCSD examine Zambia’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders, civil society activists and journalists.
- In Section D, CIVICUS and ZCSD examine Zambia’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.

- In Section E, CIVICUS and ZCSD examine Zambia’s implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
- In Section F, CIVICUS and ZCSD make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1** During Zambia’s examination under the 2nd UPR cycle, the government received three (3) recommendations on the right to freedom of association and creating an enabling environment for CSOs. Among other recommendations, the government committed to ensuring that it would “Continue giving priorities to human rights education and awareness-raising in the Government’s plans, strategies and programmes, and to enhance the participation of civil society and private sector, as appropriate, as a complementary driving force in this regard” and “Ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling stating that these freedoms are fundamental”. Of the recommendations received, the government accepted two (2) and noted One (1). However, as evidenced below, the government has failed to take adequate measures to fully realise many of these recommendations. Of the three (3) recommendations on freedom of association, the government has only partially implemented one (1), while the other two (2) have not been implemented at all.
- 2.2** Article eleven (11) of the Zambian Constitution guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Zambia is a state party, also guarantees freedom of association. However, despite these commitments, the government has continued to use the Public Order Act to prevent independent civil society groups and members of the political opposition from exercising their right to associate.
- 2.3** In 2009 the government brought into effect the Non-Governmental Organisations Act No. 16. The Act, which requires all CSOs in the country to register with the NGO Registration Board, contains a number of debilitating and unduly restrictive provisions undermining the right to associate. Specifically, the Act endows the Ministry of Community Development and Social Welfare with excessive and overbroad powers to control the activities and operations of CSOs. Under the law’s Article 17 the Board has authority to de-register a CSO on broad and subjective grounds such as violation of the terms of the existing certificate, if the constitution of the NGO is in violation of other laws, if the Board recommends a certificate cancellation and failure to submit annual reports. Article 14 of the law further requires all CSOs to reregister every five years burdening CSOs with reregistration. Furthermore, the government dominated NGO Board has wide discretion under

Article 15 to deny registration to CSOs, including for example if the name of an NGO is found to be repugnant, or the activities are not in the “public interest”.³

In July 2014 a consortium of 10 civil society organisations sued the government to prevent it from continuing to enforce the 2009 NGO Act alleging that it violated Zambia’s constitutional guarantees to freedom of association. In response to the lawsuit, the government requested an out-of-court settlement, withdrew deregistration proceedings against several CSOs issued according to the Act, and initiated a multi-stakeholder consultation, including with CSOs, to identify provisions of the Act which contravene Zambia’s legal obligations to protect and promote the right to freedom of association .⁴

- 2.4** CSO critical of government have also frequently been subjected to threats of closure. For example on 15 July 2013, government issued 90 day notices for de-registration of CSOs that do not register as NGOs. On 15 August 2014, the Permanent Secretary in the Ministry of Community Development and Social Welfare wrote to foreign embassies in Lusaka urging them not to work with or fund NGOs that have not registered under the NGO Act. Also on 12 May 2014, the Registrar of NGOs wrote to 123 CSOs threatening them for not registering under the NGO Act.
- 2.5** We remain concerned by provisions of the Public Order Act which restrict freedom of association. Specifically, article 7 of the Act impedes civil society and political parties’ ability to gather without prior approval of the police.⁵ On several occasions, the authorities have invoked the Act to force CSOs to cancel public meetings. For example, on 8 March 2013 police stopped a public consultation on fighting inequality organised by a national CSO, the Civil Society Poverty Observatory Group in Chipata, Eastern Province citing non-approval of the meeting by the police.

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Zambia’s previous UPR examination, the government received three (3) recommendations on the protection of human rights defenders, journalists and civil society representatives. The government committed to several relevant recommendations including to “Repeal any law limiting the right to free expression in the media” and “Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms

³ Non Governmental Organisations Act 2009, http://www.mcdmch.gov.zm/sites/default/files/downloads/Non-governmental_Organisations_'Act%202009%20Zambia.pdf

⁴ Zambia Reports, NGOs petition court over controversial law, <https://zambiareports.com/2014/06/19/ngos-petition-court-controversial-law/>

⁵ Public Order Act, <http://www.parliament.gov.zm/sites/default/files/documents/acts/Public%20Order%20Act.pdf>

to carry out their work independently and without fear of prosecution”. Of these recommendations received, the Government of Zambia has accepted one (1) and noted two (2). However, as examined in this section, the government has failed to effectively operationalise these recommendations. Of the three recommendations on protection of HRDs, the government has not fully implemented all the three (3) recommendations.

- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection of human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, human rights defenders and civil society activists have been subject to verbal and physical attacks by the state security forces and members of the government.
- 3.3** Despite constitutional safeguards protecting and promoting the rights to freedom of association, assembly, and expression as well as the right to due process, the authorities have continued to invoke restrictive legislation to judicially persecute outspoken HRDs. Under Article 16 of the NGO Act No 16 of 2009, the government is empowered to deregister civil society organisations. Moreover, Chapter 113 of the Public Order Act limits free protest. Moreover, there are provisions criminalising defamation under the Penal Code, including Article 61 and 67⁶ which deal with the defamation of the President.
- 3.4** The former executive director of civil society organisation, Foundation for Democratic Process, McDonald Chipenzi was arrested in 2013 for writing a newspaper article in which he called for greater accountability and transparency in the allocation of funding for the police force. He was charged under Article 67 of the Penal Code, which prohibits publication of seditious articles.⁷

4. (D) Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received three (3) recommendations relating to freedom of expression and access to information. Among other recommendations, the government pledged to “Repeal any law limiting the right to free expression in the media” and “Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the

⁶ Zambia Penal Code,

<http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>

⁷ Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/chipenzi-v-the-people/>

necessary freedoms to carry out their work independently and without fear of prosecution". Of the recommendations received, the Government of Zambia accepted one (1) and noted two (2). Of the three (3) recommendations pertaining to these issues, the government has not implemented all the three (3) recommendations. The Access to Information and Freedom of Information Bill has still not yet been enacted into law. The work of the media and journalists is impeded by both legal and human interference. Journalists and media houses are threatened and suffer both physical assaults and psychological trauma.

- 4.2** Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 21 of the Constitution of Zambia also guarantees the right to freedom of expression. However, in policy and practice, the government and members of political parties continue to use verbal and physical attacks to persecute outspoken journalists. The authorities restricted the activities of independent media houses during the 2016 general elections.⁸
- 4.3** The Independent Broadcasting Authority Act 17 of 2002 regulates the private broadcasting sector in the country while the Zambia National Broadcasting Corporation Act regulates the state-owned broadcasting sector. The Printed Publications Act further regulates public and private print media. These laws, including the Penal Code, which criminalises possession or publication of seditious materials, official secrets and defamation of the president have been used to silence independent media outlets and journalists. Under Article 33 of the ZNBC Act, the minister has wide powers to grant or refuse broadcasting licenses.⁹
- 4.4** On August 22 2016, following the 2016 general election, the Independent Broadcasting Authority suspended the operating licences of three private broadcasting stations, MUVI TV, Komboni Radio and Itezithezi Radio. The Independent Broadcasting Authority withdrew their licences for perceived support for the political opposition.¹⁰
- 4.5** In June 2016 the police and the Zambia Revenue Authority raided the offices of the *Post newspaper* seizing equipment for alleged non-compliance with the tax code. The newspaper contends that the raid was politically motivated as it did not have outstanding tax obligations. The owner of the *Post newspaper* Fred M'mbembe has

⁸ CIVICUS, Worrying spate of attacks on independent media in Zambia, <http://www.civicus.org/index.php/media-resources/news/849-worrying-spate-of-attacks-on-independent-media-in-zambia>

⁹ Zambia National Broadcasting Corporation Act <http://www.parliament.gov.zm/sites/default/files/documents/acts/Zambia%20National%20Broadcasting%20Corporation%20Act.pdf>

¹⁰ Lusaka Times, IBA shuts MuviTV, Komboni Radio and Itezhi Tezhi Radio, <https://www.lusakatimes.com/2016/08/22/iba-shuts-muvi-tv-komboni-radio-itezhi-tezhi-radio/>

been also been subject to targeted judicial harassment and persecution, including raids and searches on his private home by the police.¹¹

- 4.6** Attacks of journalists by the police and members of political party members remain a common occurrence in the country and were further exacerbated during the 2016 general election period.¹² On 3 August 2016, New Vision Newspaper reporter, Elijah Mumba, was attacked by an opposition United Party for National Development supporter in Chainda while reporting in the field in Chainda compound, a highly populated settlement within Lusaka.¹³ On 8 July 2016, The Post photo journalist David Kashiki was arrested by police at the United Party for National Development Secretariat when he went to cover an event which was disrupted by police.¹⁴
- 4.7** The government failure to pass the progressive Access to Information and the Freedom of Information Bills which were tabled years ago serves as an onerous barrier to securing vital public information critical for the general public to hold the state to account. On 10 May, President Lungu told the Post newspaper that the Access to Information and the Freedom of Information Bills will not be enacted until the media “starts to behave properly”.

5. (E) Freedom of peaceful assembly

- 5.1** During Zambia’s examination under the 2nd UPR cycle, the government received one (1) recommendation on the right to freedom of assembly. The government, accepted the recommendation to “Ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling stating that these freedoms are fundamental”. As evidenced below, the government has not fully implemented this recommendation.
- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. Article 26 of the Zambian Constitution also guarantees the right to freedom of peaceful assembly. However, in practice and policy, the authorities continue to undermine the exercise of freedom of peaceful assembly.
- 5.3** The Public Order Act is the primary law governing the freedom of assembly in Zambia. In line with international best practice, the law requires simple notification to relevant authorities to hold an assembly. However, the police frequently and wilfully misinterpret the notification procedure stipulated by the Public Order Act by

¹¹ CIVICUS, Zambia: Closure of Post Newspaper a worry for freedom of expression, <http://www.civicus.org/index.php/media-resources/news/866-closure-of-zambia-s-post-newspaper-a-worry-for-freedom-of-expression>

¹² CIVICUS, Zambia’s media under siege, <http://www.civicus.org/index.php/media-resources/news/interviews/2759-zambia-s-media-under-siege>

¹³ Media Institute of Southern Africa Zambia Chapter, MISA condemns attack on a journalist, <http://ukzambians.co.uk/home/2016/08/05/misa-condemns-attack-on-a-journalist-by-a-upnd-cadre/>

¹⁴ Media Institute of Southern Africa Zambia Chapter, MISA condemns attack on a journalist, <http://ukzambians.co.uk/home/2016/08/05/misa-condemns-attack-on-a-journalist-by-a-upnd-cadre/>

requiring explicit approval to hold a demonstration or assembly. Such measures are used to prevent members of opposition political parties and CSOs from holding public assemblies.

- 5.4** During the August 2016 general election period, the Electoral Commission of Zambia, using the Electoral Act banned political rallies, protests, door-to-door campaigns, meetings and processions in the capital, Lusaka for 10 days after some violent disputes broken out between political supporters of the ruling party and the opposition. Moreover, during this period, CSOs were not permitted to assemble by the police who spuriously claimed that they lacked the requisite human resources to effectively monitor the planned public assemblies.¹⁵ Such blanket bans are excessive and contravenes best practices set out by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association that “Individuals do not cease to enjoy the right to peaceful assembly as a result of sporadic violence.”¹⁶
- 5.5** Since Zambia’s previous UPR examination, civil society groups have documented numerous cases of use of excessive force by the police to disperse legitimate protests. For example, in August 2016 the police unjustifiably dispersed a peaceful march and arrested 133 protesters opposing the re-election of President Edgar Lungu.¹⁷
- 5.6** The authorities have further sought to delegitimise public protests organised by independent groups, by issuing critical statements in advance of public protests. For example, in 2013, Zambia police spokesperson, Charity Chanda, in the media threatened the Zambia Congress of Trade Unions over its plans to hold a country-wide demonstration without agreeing to a date with the police which she falsely claimed would contravene the Public Order Act. In addition, Charity Chanda made partisan and inflammatory claims about the planned protests including stating that across the country, police were ready to meet the labour movement on the “battlefield”.¹⁸

6. (F) Recommendations to the Government of Zambia

CIVICUS and ZCSD call on the Government of Zambia to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with

¹⁵ CIVICUS, Zambia: Closure of Post Newspaper a worry for freedom of expression, <http://www.civicus.org/index.php/media-resources/news/866-closure-of-zambia-s-post-newspaper-a-worry-for-freedom-of-expression>

¹⁶ <http://freeassembly.net/wp-content/uploads/2014/11/Freedom-of-Assembly-best-practices-factsheet.pdf>

¹⁷ Zambia arrests 133 protestors, <http://www.aljazeera.com/news/2016/08/zambia-arrests-133-protesters-contested-election-160816080236912.html>

¹⁸ Zambia Daily Nation, Police warn ZCTU against demonstrations, <https://zambiadailynation.com/2013/10/29/police-warn-zctu-against-demonstrations/>

the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing legal and policy measures, which unwarrantedly limit the right to association.
- All civil society organisations which have been arbitrarily and unduly sanctioned or deregistered should be immediately reinstated.
- Unwarranted raids on civil society groups and unjustifiable disruptions to legitimate, conferences, meetings, seminars and other activities organized by CSOs should be stopped.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, and instead promote meaningful political dialogue that allows and embraces diverging views, including those of human rights defenders, CSOs, journalists, political activists and others.
- Specifically, the Non-Governmental Organisations Act (NGO Act No. 16 of 2009) should be suitably amended to guarantee that undue restrictions on freedom of association are removed to bring their provisions into compliance with article 21 and 22 of ICCPR.
- The government must depoliticise and promote fair administration of the Public Order Act by the state police and strengthen oversight mechanisms and institutions such as the Police Complaint Authority.

6.2 Regarding the protection of human rights defenders

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks,

harassment, and intimidation against them and bring perpetrators of such offences to justice.

- Ensure that human rights defenders are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Amend the Penal Code, particularly defamation provisions in line with international best practices to ensure the effective realisation of all due process rights enshrined in the ICCPR.
- Outstanding cases against all human rights defenders including, journalists with for exercising their fundamental rights to freedom of expression, association, assembly should be reviewed.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.
- The Government should apply systematically legal provisions that promote and protect human rights and establish mechanisms that protect human rights defenders by adopting a specific law on the protection of human rights defenders in accordance with Council resolution 27.31 of the Human Rights Council

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by all bringing national legislation in line with international standards.
- Specifically, the Access to Information and Freedom of Information Bill should be urgently enacted in order to bring it in line with the ICCPR and the UN Declaration on Human Rights Defenders.
- Review and repeal the Zambia National Broadcasting Act and depoliticise the operations of state owned media in order to make it truly non-partisan and accessible regardless of political affiliation.
- All media outlets unwarrantedly closed should be reinstated.
- Reform defamation legislation in conformity with article 19 of the International Covenant on Civil and Political Rights (ICCPR). In this regard, amend the Penal Code particularly on defamation of the President.

- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may find sensitive.
- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.

6.4 Regarding freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which calls for simple notification rather than explicit permission to assemble. The Public Order Act Chapter 113 of the laws of Zambia should be amended in order to fully guarantee the right to freedom of assembly.
- The police and other state actors must be trained on interpretation of the Public Order Act to ensure that the notification clause is not misinterpreted as an authorisation regime or used to deny the right peaceful assembly.
- Review and update existing human rights training for police and security forces with the assistance of independent non-governmental organisations to foster more consistent application of international human rights standards, including the UN Basic Principles on the use of force and firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government should prioritize official visits with the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special

Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights to privacy and; 7) Working Group on Arbitrary Detention.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organisations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include civil society organisations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society stakeholders.
- Incorporate the results of this UPR into its action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.