

Submission for the Third Universal Periodic Review of Zambia before the United Nations Human Rights Council

National Child Rights Forum

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On behalf of

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Regional Psychosocial Support Initiative Zambia (REPSSI)
Children in Need Network (CHIN)
Advocacy for Child Justice (ACJ)
Media Network on Child Rights and Development (MNCRD)
Full Proof Mission (FPM)
Girl Guides Association of Zambia (GGAZ)
Society for Women and Aids in Zambia (SWAAZ),
Young Women in Action (YWA)
SOS Children's Village Zambia (SOS)
Bwafwano Integrated Services Organisation (BISO)
Women for Change (WfC)
Zambia Open Community Schools (ZOCS)
Zitukule SHG Consortium

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This report is specific to the rights of children in Zambia. It is based mainly on the analysis of the follow up implementation of child rights related recommendations that Zambia accepted in the second cycle of the Universal Periodic Review (UPR) and other reports on the situation of children. The report was compiled and is submitted by the NCRF a coalition of child focused nongovernmental organizations that collaborate to advocate for children's rights in Zambia.

The report addresses main concerns and priorities of the National Child Rights Forum (NCRF) that it would like the review of Zambia in the 28th session of the third cycle of the United Nations Human Rights Council to focus on. Zambia has a very young population with 54% of the population being children below the age of 18 years. Therefore, the NCRF considers children's rights issues as Zambia's issues. To that end, other children's rights issues not specifically addressed in this report, are still of concern to the NCRF. NCRF can be contacted through its Secretariat at: info@zamacivic.com.zm and judithm@zamacivic.com.zm

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I: Background and Legal Framework

International Obligations and Ratifications of Children's Rights

1. In the second cycle review 5 recommendations were made to Zambia to consider ratification of not only the 3 Optional Protocols to the CRC but also other human rights instruments it is not yet a state party to.
2. In its concluding observations and recommendations to Zambia's Second, Third and Fourth State party report, the Committee on the Rights of the Child also urged Zambia to ratify the CRC's 3 optional protocols and all the core human rights instruments it has not ratified in order to strengthen the fulfilment of children's rights.¹
3. As yet Zambia has not ratified any of them even though it accepted the recommendations.
4. A new legislation, the Ratification of International Agreements Act, No. 34 of 2016 may prove an impediment to Zambia's speedy ratification or accession to human rights instrument as the responsibility of initiating ratifications has been removed from the Ministry of Justice's Directorate of International Law and Agreements and placed on to, 'the Minister responsible for the subject matter of the international agreement shall, subject to subsection (2), consider whether it is in the best interests of the State to ratify the international agreement.'² Since children's rights are not only multi but inter-disciplinary in nature there are various Ministers responsible for different child rights subject matters. Secondly, the decision to ratify or not should be in the interest of the prospective rights holder rather than in the interest of the state which is the primary duty bearer.
5. Further concern on the new legislation is sub sections 4(b)(1)(2), 4(f), 4(g) and 4(h) requiring the Minister who initiates a ratification cabinet memo to take into consideration any constitutional implications including inconsistency of the international agreement with the Constitution and to further state policy considerations and financial implications. We believe that consideration should be whether the Constitution is consistent with the agreement and not the other way round. Considering that some rights are progressive in implementation financial implications should not be a basis for ratification.

6. Recommendations:

- Ratify all the 3 CRC optional protocols and the African Charter on the Rights and Welfare of the Child Optional Protocol on Individual Communication and all outstanding international human rights treaties. Review the Ratification of International Agreements Act of 2016 to make it more facilitative in Zambia's ratifications of human rights instruments than it currently is.

National Mechanisms for Reporting and Follow Up

7. Three recommendations were made and accepted by Zambia to strengthen its national coordination mechanisms for the implementation and follow up of concluding observations and recommendations from both treaty and charter based human rights

¹ CRC /C/ZMB/CO/2-4/22990/E

² Subsection 3(1) of the Ratification of International Agreements Act No. 34 of 2016

bodies. Specifically, for children, the Committee on the Rights of the Child during its 2016 review of Zambia recommended that the National Child Council be strengthened to coordinate all implementation of child rights in the country.

8. However, The National Coordinating Council for Children though constituted is yet to be functional.

9. **Recommendations:**

- Zambia needs to have in place a multi sectoral coordinating council for the implementation of human rights and with thematic sub councils such as the National Coordinating Council for Children if the human rights framework is to have any efficacy.
- Strengthen the National Coordinating Council for Children with a legal framework and with its specific budget allocation.
- Decentralize the National Coordinating Council to local levels through the structures of the Ministry of Community Welfare Assistance Committees.

Constitutional and Legislative Framework

10. The recommendations to Zambia to maintain its positive efforts in the process of reviewing its national laws to bring them in line with international human rights obligations and the holding of a transparent and inclusive constitutional reform processes has stalled with the failure of the August 2016 referendum held alongside the general elections.

11. If the referendum had succeeded, a comprehensive constitutional guarantee of special and further rights for children would have been included in the Zambian constitution based on principles and standards as contained in both the UN CRC and the ACRWC.

12. **Recommendation:** Zambia should re start the stalled process of the constitutional reforms based on broad consultations and building of consensus on the referendum which should be a stand-alone election.

13. Cooperation with Human Rights Mechanisms

14. Two recommendations were made and accepted by Zambia to strengthen its cooperation with the UN human rights mechanisms and financial institutions to meet its multiple challenges. However, as stated the new Ratification of International Agreement Act may inhibit the cooperation by the bureaucracy that the Act potentially creates.

15. Zambia has further not made any midterm reports on the follow – up of the recommendations of the UN Human Rights Council under the UPR mechanism and it consistently submits its State party reports to treaty bodies and particularly the Committee on the Rights of the Child having just submitted its second, third and fourth State party report prompting the Committee to recommend that it submits a combined 5th, 6th and 7th report in 2021.

16. **Recommendation:** Establish a high level committee preferably of directors of planning and representatives of civil society including youths to act as the nation’s team in providing leadership on strengthening international cooperation.

II Implementation of International Child Rights Obligations

1. Right to Social Security and to Adequate Standard of Living Social Security

17. Social security is not yet a legal guarantee in Zambia. About 60.5% of the population live in poverty. Consequently, 20,000 children in the poverty brackets and those deprived of family environment have been forced to live and work on the streets. The inadequate standard of living has resulted in stunting (47%) and underweight (15%) among children.³ Current social security measures such as social cash transfers, keeping girls in school and public welfare assistance scheme are discretionary.
18. **Recommendation:** Zambia needs to make social security a legal entitlement to ensure progressive adequate standard of living for children from vulnerable and viable households.

Budgetary Allocations to Children's Programmes

19. Five recommendations were made to Zambia to increase allocations to funding of social services such as education and health. In addition, the Committee on the Rights of the Child recommended to Zambia to not only allocate adequate budgetary resources for children to the maximum extent possible but to also define strategic budgetary lines for children in disadvantaged situations.
20. However, analysis of national budgets reveals inconsistencies and under spending on child related programmes. While allocations to child health and nutrition increased by an average of 258.7% between 2013 and 2015, it decreased by 2.9% between 2016 and 2017.⁴ Out of a total of ZMW46, 587,000 (USD4, 837,695) allocated to early childhood care and education in the 2015 budget, only ZMW4, 115,028 (USD427,313) or 8.8% was spent. Meanwhile an estimated 1,400,000 children needed access to at least 1 year of organized learning before starting primary school. Further Zambia has not yet attained voluntary human rights goals and other commitments such as funding allocation to the education sector as per the Cairo Agreement or the health sector as per the Abuja Declaration.
21. **Recommendation:** Zambia needs to adopt the Child Rights Committee General Comment number 19 of 2016 on Public Budgeting for Children's Rights and bring its allocations and expenditure in line with the guidelines provided therein into our national Planning and Budgeting Policy Bill.

Alternative Care

22. There is an estimated 1.3 million orphans in Zambia, 20,000 child led households and 20% of all children below the age of 18 years not living with either biological parents⁵. Out of the estimated 36% of Zambian households hosting orphaned or foster children, only 16% receive assistance to cope with the burden of raising additional children. There

³ UNICEF [HTTPS://WWW.UNICEF.ORG/ZAMBIA/5109-8455.HTML](https://www.unicef.org/zambia/5109-8455.html)

⁴ Estimates of Revenue and Expenditure Volumes 1 for the years 2015 to 2017

⁵ 2010 National Population and Housing Census Report

are no government alternative care institutions except for 3 juvenile detention centres. This puts the burden of alternative care on private institutions and individuals..

23. **Recommendation:** Zambia needs to progressively establish public alternative care institutions, popularize foster care and adoption, increase funding in the national budget to support foster care and reduce bureaucracy in accessing the funds.

Universal Birth Registration

24. Zambia has not yet attained universal birth registration even though it has made strides in decentralizing the registration at health facilities. However, as at 2015 birth registration was at 14%.⁶

25. **Recommendations:**

- Zambia needs to allocate specific resources for the attainment of universal (100%) child birth registration.
- Devolve not just registration but issuance, allocate resources to community birth registration and encourage village registers in rural areas for corroborative purposes.
- Embark on sensitization on the right to birth registration to combat myths on it especially in rural areas.

2. Child Protection

Child Labour

26. There were 2 recommendations to Zambia to implement appropriate measures to address child labour. Though Zambia has in place the Employment of Young Persons and Children's Act which defines the minimum age for employment and prohibits hazardous forms of child labour, the Act has gaps in classification of the worst forms of child labour such as domestic work. Child labour has remained high in the domestic household industries, agriculture and the informal sector. Because it is happening more in the private realm and because most child labour occurs in rural areas collection of up to date data has continued to be a challenge.

27. **Recommendation:** Zambia needs to review the Employment of Young Persons and Children's Act to include domestic labour and family based enterprises and improve its data collection mechanisms on the violation.

Child Marriages

28. Among major child protection issues that have emerged since the last cycle is the issue of child / early marriages. Zambia has been rated as having one of the highest prevalence of child marriages in the World with 31% of women aged 20 – 24 years married before the age of 18. Eastern Province at 60% has the highest rate in the country.⁷ One of reasons given for the high prevalence is poor education which leads to cycles of poverty.

⁶ UNICEF

⁷ girlsnotbrides.org.

- 29. Recommendation:** Zambia should as a matter of urgency set a minimum age for leaving school which will have a positive bearing not only on eliminating child marriages but also curbing child labour and advance child development.

Corporal Punishment

30. With the failure of the referendum violence against children and especially corporal punishment remains legal in some alternative care and in the family setting. Though corporal punishment was expressly banned in the Education Act of 2011 the practice remains in schools especially for the adolescents.
31. **Recommendation:** Zambia needs to review the Children's Code Bill and make a provision on the section on lawful punishment not to include any form of violence in order to attain full legal prohibition of corporal punishment as per the two accepted recommendations in the previous cycle. Furthermore, Zambia needs to intensify in-service teacher training in positive disciplining methods and to include PD in teacher training curriculum.

Gender Based Violence

32. Though there have been tremendous awareness raising on gender based violence and implementation of the Anti-Gender Based Violence Act through the establishment of fast track courts for victims of GBV, government has not yet built shelters as per the Act and has not yet established the GBV fund.
33. **Recommendation:** Zambia should establish shelters for victims of GBV and with international cooperation and private sector establish as a matter of urgency the GBV Fund.

Child Sexual Abuse (defilement)

34. Though there are stiff laws on child sexual abuse of minimum mandatory custodial sentences of 15 years upon conviction, the prevalence continues to be high. The Zambia Police Victim Support Unit reported 1,634 defilement cases as at September 2016. Though the penal code provides for punitive measures against perpetrators of defilement there is no attention paid to victims leaving them mentally scarred for life. For instance, the victim of the musician Clifford Dimba who was convicted, jailed and then pardoned by the President was left with no rehabilitation nor compensation from the state.
35. Consequently, according to her father, she attempted suicide and moved to 5 different schools before stopping altogether because of her trauma and the stigma she faced.
33. **Recommendation:** Zambia should consider enacting a Rehabilitation and Compensation Policy for child victims as per article 39 of the CRC.

Implementation of the Anti – Human Trafficking Act

36. Zambia is both a transit and destination point of human trafficking including children. There is also a prevalence of in-country trafficking of children especially girl children from rural areas to urban areas in the guise of education support. There were two recommendations made to Zambia to fully implement the Anti – Human Trafficking Act

and to ratify the CRC OP 1. Further recommendation was to adopt comprehensive measures to combat trafficking in human beings and to organize visits by the Special Rapporteurs in trafficking in persons and in sale of children, child prostitution and child pornography.

37. **Recommendation:** raise awareness on human trafficking especially children, prosecute traffickers and establish rehabilitation programmes for victims.

3. Administration of Juvenile Justice

Minimum age of criminal responsibility

38. Two recommendations were made; to increase the age of criminal responsibility from the current 8 years to the international norms and to review statutory and customary law that currently provide for different minimum ages in different sectors and harmonise these. The Committee on the Rights of the Child made similar recommendation in January 2016
39. **Recommendation:** Increase the minimum age of criminal responsibility to at least 14 years as recommended by the Committee on the Rights of the Child in its General Comment number 10.

Separation of Children from Adult Offenders

40. Zambia was requested to decongest prison overcrowding and separate children from adult prisoners. The CRC Committee made similar concluding observation and recommendation.
41. **Recommendation:** Build separate detention centres for juvenile offenders.

Deprivation of Liberty (pre & post trial)

42. A recommendation was made to make deprivation of liberty the last resort for children who come into conflict with the law.
43. Even though the CRC and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) provide for deprivation of liberty of juvenile offenders as the last resort, children who come into conflict with the law in Zambia are subjected to constant and usually protracted pre trial detentions especially if jointly charged with adults and post-trial detentions to obtain confirmation orders when found guilty of a crime. The custodial sentence is not deemed to have started until at the time of confirmation orders which sometime results in children serving double the custodial sentence.
44. **Recommendation:** Reduce the judicial process of administration of juvenile justice through strengthening diversionary measures legal framework and introducing fast track courts for juvenile offenders to cut back on prolonged pre and post trial detentions.

Children Incarcerated with their mothers (circumstantial children)

45. In Zambia the prevalence of young children circumstantially incarcerated with their convicted mothers is high contrary to article 30 of the ACRWC.
46. **Recommendation:** Prohibit by law incarceration of young children with their mothers and strengthen the foster care system to absorb potential circumstantial children.

4. Right to Education

Drop Out Rates

47. Though access to education at entry points for both primary and secondary schools has tremendously improved the dropout rates at completion points have correspondingly increased as well. In 2014 the gross enrolment rate for grades 1 to 9 was at 104% but at grades 10 to 12 it had dropped to 32.3%. The completion rate at grade 9 in the same year was 57.9% and at grade 12 it had dropped even further to 31.7%⁸. The high dropout rates are predominantly in rural areas such as in Western, Luapula, Northern and North Western Provinces.

48. Recommendations: Address the dropout rates by:

- Enacting a minimum age for leaving school;
- Reducing rural urban inequalities in access to education by building more school infrastructure in rural areas; and
- Developing a multi stakeholder civic education programme to remove traditional and social barriers that prevent girls completing school such as early / child marriages, teen pregnancies and gender based violence.

Low (quality) Education Achievement

49. Similarly the quality of education achievement is low as evidenced by lower learning outcomes in the region with literacy rates at 40% and numeracy rates 47% in primary schools.⁹

50. Recommendations:

- Increase teacher / learners contact hours to at least to 5 hours 40 minutes in primary school instead of the current 4 hours and 7 hours 40 minutes in secondary school from the current 6 hours.
- Reduce pupil / teacher ratio by employing and deploying more teachers to rural areas
- Provide more learning and teaching materials by reverting to the decentralized system of procurement than the current centralized system which has proved inefficient and ineffective

Early Childhood Care Development and Education (ECCDE)

51. This sector was moved to the Ministry of General Education in 2011. Since then the ECCDE Policy has not been enacted. Allocation of funding to the sector has been reducing by an average of 0.5% since 2014. As at the end of 2016 there were only 2,166 ECE centres with only 1085 ECE teachers catering for 138, 000 children in government ECE centres across the country. Despite the establishment of 200 more centres and the construction of 20 ‘model’ centres being budgeted for in 2015.¹⁰ None of these have been done since then. The result has been low access by children from vulnerable households

⁸ Gender Status Report – Zambia 2012 - 2014, GRZ,

⁹ Ministry of General Education, Education Statistics Bulletin 2014 and 2015

¹⁰ Estimates of Revenue and Expenditure Volume 1 for years 2015, 2016 and 2017

who are unable to afford private ECE education services. Only 24.5% of children who entered grade 1 in 2016 had access to ECE in Zambia.

52. Recommendations:

- Increase budgetary allocation and utilization to the sector.
- Progressively construct more ECE centres as annexes to existing primary schools especially in the rural areas
- Enact the ECCDE Policy and the Implementation framework urgently

5. Right to Health

Budgetary Allocation

53. Zambia received and accepted to implement 15 recommendations to improve the right to health among which were to increase the budgetary allocation to at least bring it in line with the Abuja Declaration, improve local resource mobilization for the treatment and care of those infected by HIV and AIDS and improve access to health care services by children with disabilities and those with mental illnesses.

54. Recommendations:

- Zambia needs to progressively implement with clear benchmarks its UPR second cycle accepted recommendations.
- Allocate adequate resources in the budget to ensure that its health facilities meet the Ministry of Health guidelines and requirements with regard to equipment and services.

Adolescent Health

55. Despite the high numbers of teenage pregnancies, unsafe abortions and HIV infections among adolescent girls, there is societal resistance especially from religious sectors to Adolescents Reproductive Health Education in Zambia with parents and guardians believing the education will be a passport to rampant unrestrained sexual relations by adolescents. Consequently, the Adolescent Reproductive Health Strategic Plan has not been implemented.

56. Recommendation: Develop a multi stakeholder awareness raising on the importance of access to reproductive health information and confidential counseling for adolescents.

Healthcare for Children with Disabilities

57. Because there is a lack of disaggregated data on children with disabilities healthcare provision for such children remains insufficient to meet their needs. There is need to collect comprehensive data on children with disabilities in order to effectively plan and implement health cares for them.

58. Recommendation: Collect disaggregated comprehensive data on children with disabilities to inform planning for their healthcare including budgeting for it.

Funding for HIV and Aids

59. Currently access to and coverage of ARV therapy and the prophylaxis for HIV – infected pregnant women to reduce mother to child transmission is funded by the USA President’s

Emergency Plan for AIDS Relief (PEPFAR) which with the change of government in that country leaves the many infected people in Zambia in a vulnerable situation to get treatment.

60. **Recommendation:** Zambia should consider mobilizing resources for the management of HIV / AIDS Programmes locally by replacing other taxes such as the newly introduced Skills Development Levy with that of an HIV / AIDS levy.