



Advancing Sexual and Reproductive Health and Rights in Zambia through the Universal Periodic Review

SuR: Zambia

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Written submission by
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**: The Swedish Association for Sexuality Education (RFSU), an organisation holding consultative status before ECOSOC since 1999, works for sexual and reproductive health and rights (SRHR) since 1933. Through education, advocacy and international cooperation, RFSU aims to improve everyone's possibility to "be, choose and enjoy". Based in Sweden, RFSU actively works at the national and international level, running international programmes in different countries and participating in global processes.*

I. Summary

1. Zambia has endorsed international commitments towards ensuring everyone's right to sexual and reproductive health, as well as adopted several legislative and administrative measures to implement such commitments. In this vein, Zambia has collaborated with international organisations and civil society around punctual policies, and such be commended for its efforts and results concerning comprehensive sexuality education (CSE). However, further legal reform is still required and effective policy implementation should be regarded as the major challenge for an improved human rights performance, in particular in the field of Sexual and Reproductive Health and Rights (SRHR).
2. The persistence of officially endorsed entrenched social, traditional and religious conceptions and practices around gender and sexuality has proven to curb the potential impact of needed policies on sexual and reproductive health, and acts as a political deterrent for the adoption of new and more comprehensive policies on this regard.
3. In most cases, this policy deficit concentrates its effects on already vulnerable groups, namely women and girls, people living in poverty, in rural areas and those belonging to minorities, in particular LGBT-persons.

Key words: *Abortion, Comprehensive Sexuality Education, Sexual Orientation and Gender Identity, Violence and Discrimination Against Women, Harmful Traditional Practices, Sexual and Reproductive Health and Rights.*

II. International commitments and previous reviews

5. Zambia has ratified all major international human rights conventions, except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and some Optional Protocols to other International Conventions. Despite having a good ratification record, Zambia's reporting status can be improved. Also, alignment of national law and policies with treaty bodies' developments can be further developed, particularly in the area of economic, social and cultural rights.
6. Zambia has also expressed commitment to the Programme of Action of the International Conference on Population and Development (ICPD), the Beijing Platform for Action and the Sustainable Development Goals (SDG), highlighting the link between poverty, education and health as key for economic development¹. However, Zambia could have a more active role during the Universal Periodic Review cycles by, for instance, formulating more recommendations to other states. Also, the country still faces major challenges in implementing international commitments related to Sexual and Reproductive Health and Rights (SRHR), particularly concerning women and girls, young people and those belonging to vulnerable groups, such as people living with HIV/AIDS and LGBT-persons.

¹ Statement by Zambia. United Nations Fourth World Conference on Women. Beijing. 1995.

7. At its previous UPR, Zambia has named education and health care services as “key national priorities”, as well as highlighted its work against HIV/AIDS as part of its “international human rights obligations”.

8. Relevant Governmental efforts should be noted and commended, but in general terms it can be concluded that, concerning Sexual and Reproductive Health and Rights, most of recommendations from the previous UPR, but also from previous reviews by Treaty Bodies and from Special Procedures are still relevant for Zambia. In particular, for complying with its international human rights commitments, Zambia is urged to take resolute political action to overcoming the persistence of harmful customary conceptions, practices and stereotypes about gender orientation and roles, sexuality and women.

III. Violence, discrimination and harmful traditional practices

9. During its latest UPR, Zambia received around 20 recommendations calling for more resolute action against sexual, domestic and gender-based violence, against discrimination against women, and towards eradication of harmful traditional practices (including child marriage and *sexual cleansing*). Treaty Monitoring Bodies² and Special Procedures³ have also assessed Zambia’s performance in this regard.

10. Zambian domestic law criminalises sexual, domestic and gender-based violence through different instruments, and some National Action Plans, administrative bodies and instruments have also been adopted⁴. However, current legislation and policies can still be improved to cover specific topics left aside, such as spousal rape⁵. Also, legislation and policies already in place have proven be insufficient⁶, due to the persistence of discrimination, rape, sexual harassment at school, the workplace and the public sphere, early and forced marriages, domestic violence and harmful practices such as *sexual cleansing*⁷. Impunity in this regard is also one of the major challenges to overcome, together with unwillingness to report and prosecute these cases⁸.

11. Recommendation:

- Zambia must continue to improve the content and ensure the effective implementation of national legislation aimed to eradicate all forms of violence and discrimination against women, by encouraging the population to report such

² See, CEDAW. Concluding observations of the Committee on the Elimination of Discrimination against Women. Zambia. CEDAW/C/ZMB/CO/5-6. 2011, para. 19; CESCR. Concluding observations of the Committee on Economic, Social and Cultural Rights. Zambia. E/C.12/1/Add.106. 2005, para. 10, 23; CRC. Concluding observations on the combined second to fourth periodic reports of Zambia. CRC/C/ZMB/CO/2-4, para. 23, 24, 25, 29, 39, 53.b;

³ Special Rapporteur on Violence against Women, its causes and consequences. Report, Mission to Zambia. A/HRC/17/26/Add.4

⁴ Zambia. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. A/HRC/WG.6/14/ZMB/1. 2012. Para. 12, 23, 29, 30, 40, i.a.

⁵ CRC. Cit., para. 38.

⁶ CEDAW. Cit. Para. 13, 14, 19, 20, 22, i.a.; CRC. Cit.

⁷ CEDAW. Cit.; CRC. Cit.; United States Department of State. Country Reports on Human Rights Practices for 2016. Zambia 2016 Human Rights Report, pag. 20-24.

⁸ Zambia Demographic and Health Survey. 2013-2014. Chapters 16, 17; United Nations. The World’s Women 2015: Trends and Statistics. New York. UN Department of Economic and Social Affairs. Statistics Division. Sales No. E.15.XVII.8., pag. 155, Figure 6.11.; CRC. Cit., para. 35; CEDAW. Cit., para. 21.

crimes, by fighting impunity in reported cases, as well as by strengthening knowledge and resources and promoting attitudinal change among judges, prosecutors, lawyers, police, health care providers and social service institutions, religious and traditional leaders and communities.

- Zambia must ensure that victims of any kind of harmful practices, discrimination or violence against women, despite their location, marital status or socioeconomic conditions, are entrusted to report any violation of her rights to the authorities by, inter alia, granting them full access to justice and integral reparation, including medical and legal assistance, economic and psychological support, shelter as required, counselling and rehabilitation, etc.

IV. Access to safe abortion

12. While Zambian constitution states that human life begins at conception⁹ and abortion on demand is criminalised¹⁰, Zambian domestic law allows pregnancy termination to save or preserve the life or health of the woman, in case of rape, incest or foetal impairment, as well as on economic or social reasons¹¹. However, cumbersome legal requirements, lack of availability of medical practitioners and health-care facilities, together with socioeconomic obstacles makes access to safe and legal abortion almost impossible in practice for the majority of women in Zambia¹².

13. In addition, lack of access to information, family planning and to appropriate services, together with social stigma and religious reproach play a major role in women's reluctance to seek abortion and post-abortion care¹³, particularly among young women¹⁴. This lack of access to safe abortion does not only curtail women's human rights and developmental possibilities, but also constitutes a systematic discrimination against women, particularly women in vulnerable situations, namely the young, the poor and those living in rural areas, as appointed by Treaty Bodies and Special Procedures¹⁵.

14. Recommendation:

- Zambia's Government, in association with relevant state and non-state stakeholders, must continue fighting maternal mortality and morbidity by institutionalising and implementing programmes aimed to enhance access to comprehensive and safe abortion, with special focus on the root causes leading to unsafe abortion, and taking special consideration of the most vulnerable groups and locations, as already recommended by international human rights bodies.
- Zambia's Government must take all necessary legislative and administrative steps in order to provide effective physical and legal access to safe abortion by, inter alia, decriminalising abortion on demand, simplifying legal requirements to

⁹ Zambian Constitution, art. 15.2

¹⁰ Zambia Criminal Code, art. 151-154.

¹¹ Guttmacher Institute. Unsafe abortion in Zambia. In Brief. 2009 Series, No. 3; CEDAW. Cit., para 33; CRC. Cit., para. 49.

¹² Ibid.

¹³ Zambia Demographic and Health Survey. 2013-2014, pag. 247; United States Department of State. Country Reports on Human Rights Practices for 2016. Zambia 2016 Human Rights Report, pag. 22.

¹⁴ Zambia Demographic and Health Survey. Cit.; CRC. Cit., para. 49.

¹⁵ CRC. Cit., para. 48(f); Special Rapporteur on Violence against Women, its causes and consequences. Report, Mission to Zambia. Cit.; CEDAW. Cit., para. 33.

access safe abortion, fighting discrimination and stigma, and increasing awareness and availability of family planning, abortion and post-abortion information and service among public servants, health-care providers and potential users, as previously recommended by international human rights bodies.

V. Comprehensive Sexuality Education

15. Since long ago, Zambia has underlined that education, in particular education of girls, is a priority for the country and for state development¹⁶. During its previous UPR, Zambia received and accepted 7 recommendations urging the country to improve the content, coverage and comprehensiveness of education¹⁷. In addition, Zambia has also endorsed the Eastern and Southern African Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people¹⁸, as well as has supported the promotion of comprehensive sexuality education at the Human Rights Council¹⁹. Finally, the Committee on the Rights of the Child recently recommended Zambia to ensure that “sexual and reproductive health education is part of the mandatory school curriculum”²⁰.

16. In this vein, Zambia has engaged with state and non-state stakeholders, such as UNESCO and UNAIDS, the European Union and several of its member states, as well as other international organisations in order to implement the ESA Commitment on comprehensive sexuality education. While remarkable progress is observed²¹, there still are some identified challenges related to the availability of comprehensive sexuality education at local level and *out-of-school* adolescents, as well as to the quality of the CSE curriculum currently implemented²². In general terms, the quality and comprehensiveness of sexuality education programmes in Zambia usually decreases when related to topics challenging dominant traditional and religious conceptions and attitudes on gender and sexuality²³.

17. Available data on Zambia confirms a direct correlation between level of education and persistence of gender-based discrimination, violence and harmful practices²⁴. Thus,

¹⁶ Statement by Zambia. United Nations Fourth World Conference on Women. Cit.; Statement by Zambia. Eight session of the open working group on sustainable development goals. 2014; Constitution of Zambia, art. 38.

¹⁷ United Nations. Report of the Working Group on the Universal Periodic Review. Zambia. A/HRC/22/13. 2012.

¹⁸ Available at, Unesco: <http://www.unesco.org/new/en/hiv-and-aids/our-priorities-in-hiv/sexuality-education/east-and-southern-africa-commitment/>, Annex B.

¹⁹ See, Resolution HRC 32/19, para. 9, 14.c; HRC Secretariat. Final List of Original and Additional Co-Sponsors 32nd regular session, record on L.28/Rev.1 orally revised.

²⁰ CRC. Cit., para. 50(e).

²¹ UNESCO. Fulfilling our promise to young people today. 2013-2015 Progress Review. The Eastern and Southern African Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people. 2016, pag. 93.

²² Unesco. Fulfilling our promise... Cit., pag. 34, 35, 40, 93.

²³ Ibid.

²⁴ Zambia Demographic and Health Survey. Cit., Chapters 4, 6, 8, 13, 16, 17. In particular, see pag. 247 and 277; United Nations. The World's Women 2015: Trends and Statistics. New York. UN Department of Economic and Social Affairs. Statistics Division, pag. x-xii; United States Department of State. Country Reports on Human Rights Practices for 2016. Zambia 2016 Human Rights Report. Cit., pag. 18, 22, 23.

Zambia must continue implementing and make efforts to improve its domestic policies for providing young people with the necessary knowledge, skills and services for enjoying their human rights and for overcoming the serious challenges preventing them from reaching their full developmental potential, as enshrined in the 2030 Agenda for Sustainable Development.

18. Recommendation:

- Zambia must continue taking all legislative, political, administrative and financial steps for integrating comprehensive sexuality education, in accordance with UNESCO’s technical guidance and the ESA Commitment, aiming to achieve full coverage of primary and secondary schools.
- The Government must take all necessary measures for ensuring that sufficient and timely comprehensive sexuality education reaches also *out-of-school* adolescents, as well as adults and other relevant stakeholders.
- The Government must continue engaging with all relevant stakeholders, including traditional and religious leadership at the local level, to promote positive, non-judgmental and evidence-based attitudes towards gender and sexuality, as a crucial step for combatting harmful traditional practices and reducing impunity concerning such practices.
- The Government must continue taking all necessary action in order to ensure that adolescents and young people have access to youth friendly sexual and reproductive health information and services, in accordance with the ESA Commitment.

VI. Sexual Orientation and Gender Identity

19. Zambian domestic law criminalises “any person who has carnal knowledge of any person against the order of nature”²⁵, which has widely been interpreted as the legal basis for criminalising same-sex relations in the country. On the other hand, Zambian conventional human rights obligations, which have been endorsed by the national Constitution²⁶, entitle everyone the right to not being discriminated against, the right to equality before the law and the right to privacy. This ambivalence and the lack of a sound policy against discrimination based on sexual orientation and gender identity has led to the systematic denial of LGBT-persons’ human rights²⁷, as reflected during the Zambian previous UPR. In that occasion, Zambia did not accept 7 recommendations related to decriminalise same sex relations, but accepted one recommendation related to fighting violence and discrimination based on sexual orientation and gender identity²⁸.

20. As a matter of fact, Zambia’s official report mentioned HIV/AIDS as a challenge to be addressed²⁹, and accepted all recommendations related to combatting HIV/AIDS, with the remarkable exception of the only recommendation that urged Zambia to include

²⁵ Zambia Penal Code. Art. 155.

²⁶ Constitution of Zambia, art. 19, 30.

²⁷ Human Rights Committee. Cit. Para 43, 44.

²⁸ United Nations. Report of the Working Group on the Universal Periodic Review. Zambia. Cit. 2012.

²⁹ Zambia. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. A/HRC/WG.6/14/ZMB/1. 2012, para. 30, 42.

men having sex with other men within the national HIV/AIDS policies³⁰. Furthermore, national reports on the situation of HIV/AIDS in the country can improve their references³¹ and address the issue of same-sex activity, sexual orientation or gender identity in a more open manner³². Despite official denial, same sex activity has proven to be relevant, at least as the right to health is concerned. For instance, even when prevalence of HIV among prisoners is almost twice as high as among the general population, “authorities denied prisoners access to condoms because the law criminalizes sodomy”³³.

21. As seen, widely spread social stigma and religious prejudice are officially endorsed by the Government, and constitute two major causes behind systematic violence and discrimination against LGBT-persons³⁴. Given the persistence of the challenges on this important topic, the 3rd UPR cycle presents a new opportunity for Zambia to take effective action towards respect, protection and fulfilment of human rights of LGBT-persons.

22. *Recommendation*

- Zambia’s Government must take all legislative and administrative measures in order to decriminalise same-sex relations between consenting individuals.
- Zambia’s Government must adopt a comprehensive policy for fighting social stigma, harassment, violence, impunity and discrimination based on sexual orientation and gender identity. Such policy should include awareness raising and attitudinal change among public servants, private stakeholders, such as media figures, politicians, religious and traditional leaders and communities.

³⁰ United Nations. Report of the Working Group on the Universal Periodic Review. Zambia. 2012.

³¹ Republic of Zambia. Zambia Country Report. Monitoring the Declaration of Commitment on HIV and AIDS and the Universal Access. 2015.

³² Republic of Zambia. HIV testing and counselling (HTC) implementation plan (2014-2016)

³³ United States Department of State. Country Reports on Human Rights Practices for 2016. Zambia 2016 Human Rights Report. Cit., pag. 4-5.

³⁴ Human Rights Committee. Concluding observations of the Human Rights Committee. Zambia. 2007. CCPR/C/ZMB/CO/3, para. 24; United States Department of State. Country Reports on Human Rights Practices for 2016. Zambia 2016 Human Rights Report. Cit., pag. 26-27.