



HUMAN RIGHTS COMMISSION

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**NHRI SUBMISSION FOR ZAMBIA'S THIRD UNIVERSAL PERIODIC REVIEW
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1.0 Introduction

Zambia Human Rights Commission (ZHRC) is a National Human Rights Institution (NHRI) established under the Constitution of Zambia (Amendment) Act No. 2 of 2016 to promote and protect human rights. Its broad mandate is provided for under Article 230 (2) and (3) of the Constitution and Section 9 of the Human Rights Commission Act Chapter 48 of the laws of Zambia.

This submission for the 3rd Universal Periodic Review (UPR) mainly focusses on the views of the Commission based on its monitoring of status of implementation of the 2nd UPR recommendations and the human rights situation in the country. It also includes views gathered through stakeholders' consultations conducted during the period under review.

2.0 Background

During Zambia's last UPR, the ZHRC's submission raised important human rights issues that were reflected in the 125 recommendations to Zambia, out of which 70 enjoyed Government's support. However, the country did not support recommendations that sought to encourage midterm reporting on implementation of recommendations and did not develop an implementation plan for recommendations after the review. This weakened the country's implementation of recommendations including the monitoring regime which would have extraordinarily benefitted from the plan. Nevertheless, a consultative monitoring framework was developed by the ZHRC and used in the monitoring of the State's implementation of the recommendations.

3.0 Implementation of Voluntary Pledges and Recommendations from Last Review

In 2012, the Government of the Republic of Zambia made voluntary pledges among others to table the Freedom of Information Bill before Parliament for enactment into law and further pledged to ratify and domesticate all human rights instruments she is party to. The Government had also pledged to extend a standing invitation to special mandate holders on human rights. Since the last review, ten special mandate holders made requests to visit Zambia. However, only two requests were accepted namely Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the right to food. The rest still await State's decision.

The ZHRC noted progressive efforts made by the State towards implementation of the recommendations made during the last review, especially the steps taken to amend the Constitution and expand the Bill of Rights through a referendum even though the process was not successful. At the same time, concerns remain regarding absence of strong inter-ministerial and stakeholder UPR coordination mechanisms and an implementation plan. The Ministry of Justice, which is the focal point Government institution on UPR and related matters, has not provided specific resources for the focal point person to effectively coordinate efforts across the line Ministries, Government Departments and Agencies responsible for implementation of recommendations and reporting.

Recommendations: (i) *Develop an implementation and monitoring plan immediately after the review and create an implementation coordination mechanism for effective implementation of recommendations, and* (ii) *accept speedily requests by all special rapporteurs to visit Zambia.*

4.0 Ratification and Domestication of International and Regional Human Rights Instruments

The ZHRC noted that Government ratified most of the core international and regional human rights instruments and continued to show commitment to ratify others. Further, the ZHRC noted that Government continued to take steps to domesticate ratified instruments, but was concerned with the slow pace of domestication. The enactment of the Gender Equity and Equality Act No. 22 of 2015 and the Persons with Disability Act No. 6 of 2012 were commendable efforts in domestication of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (UNCRPD). The Refugee Bill (which seeks to among other things domesticate

the United Nations Convention relating to Status of Refugees, 1951, and its Protocol of 1967, and the Organisation of African Unity Convention Governing the Specific Aspects of Refugees in Africa 1969) and the Immigration and Deportation (Amendment) Bill are currently being debated in Parliament to address issues raised during the last review aimed at enhancing the rights of refugees and migrants. Further, the ZHRC noted progressive constitutional developments including enactment of the Constitution of Zambia (Amendment) Act No. 2 of 2016 and the Ratification of International Agreements Act No. 34 of 2016 which will have substantial impact on the advancement of human rights in the country.

The ZHRC noted that the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty has not yet been ratified. A de facto moratorium on death penalty has been maintained since 1997. Although the sentences of all prisoners awaiting execution were in 2015 commuted to life imprisonment, the number of death-row inmates at Mukobeko Maximum Security Correctional Facility in Kabwe has been rising sharply and stood at 157 as of 10th February, 2017. Further, Zambia lagged behind in ratifying the Optional Protocols to the United Nations Convention on the Rights of the Child (UNCRC) and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPRMW) in order to ensure increased protection of children.

Apart from prohibiting torture and like treatment in the Constitution, Zambia has not yet taken measures to fully domesticate the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT). The ZHRC's campaign against torture launched in 2015 gave birth to a Draft Anti-Torture Bill which will need the Government's support to be passed into law criminalising torture. Further, the ZHRC noted that Zambia's commitment to protecting victims of human trafficking as demonstrated through the enactment of the Anti-Human Trafficking Act No. 11 of 2008 needed to be strengthened by reviewing retrogressive aspects of the law that provide for a victim of human trafficking to be prosecuted.

Recommendations: (i) Ratify the second Optional Protocol to the ICCPR and abolish the death penalty¹; (ii) ratify three Optional Protocols to the UN CRC and the Convention on the Protection of All Migrant Workers and Members of Their Families, (iii) ensure full domestication of the UNCAT; and (iv) amend the Anti-Human Trafficking Act to stop prosecuting victims of human trafficking.

5.0 The Bill of Rights and the Failed Referendum

The Bill of Rights remains limited in scope as economic, social and cultural rights have not been made justiciable rights and remain under Directive Principles of State Policy. The national referendum held in 2016 was an unsuccessful attempt at expanding the Bill of Rights to include economic, social, cultural and further and special rights for women, children, persons with disabilities, youths, young persons and older members of society. Government has indicated intentions of revisiting the referendum on the proposed expanded Bill of Rights in the near future.

Recommendation: Establish and disseminate a clear roadmap to guide the process of enacting a new Bill of Rights as well as to engage civil society, Political Parties and other stakeholders for a new referendum to succeed.

6.0 Sexual Reproductive Health and Rights

The ZHRC has noted efforts by Government to regularly review policies and develop strategies aimed at enhancing fulfilment of sexual reproductive health and rights in the country. However, concerns remain on a number of issues. For example, findings from a national assessment of the status of sexual reproductive health and rights (SRH&R) in Zambia, commissioned by the Human Rights Commission in collaboration with the United Nations Population Fund (UNFPA), Population Council and Women and

¹ ZHRC takes recognisance of the challenges the Government is facing in abolishing the death penalty. The matter was subjected to a Constitutional Review Process and regrettably, the majority of the petitioners voted in favour of maintaining the death penalty in the Constitution

Law in Southern Africa (WLSA), identified key unfulfilled SRH&R especially among excluded and marginalized women and young people. These include high unmet need for contraception (21%); persistent barriers in access and availability of quality and affordable health care for pregnant women and mothers thus resulting in high maternal deaths (398 per 100,000 live births); persistently high sexual and gender based violence (48%); persistent barriers in access to adolescent friendly health services thus resulting in high teenage pregnancy rates (29%), high HIV rates among young adults aged 20-24 (9% females and 2% males), and high child marriage rates (31%); as well as constrained legal provisions for safe abortion services.

Recommendation: *(i) Develop a plan of action to address existing gaps highlighted in the SRHR assessment report (ii) secure resources to catalyze multi-sectoral actions in this regard; and (iii) establish a robust monitoring framework to monitor progressive fulfilment of SRH&R.*

7.0 Business and Human Rights

Zambia is predominantly an extractive industry- driven economy and in the last few years, the extractive sector attracted tremendous foreign direct investments (FDI) while small scale mining and other locally owned companies remained largely informal. The ZHRC noted Government efforts to ensure laws, policies and other administrative measures were enacted to protect human rights from business impacts. However, the domestication of international law and standards has been very slow and poorly coordinated resulting in heightened negative human rights impacts by businesses.

In 2015, the ZHRC with technical assistance from the Danish Institute for Human Rights conducted a baseline assessment of Business and Human Rights in Zambia. Subsequently, Government through Ministry of Commerce, Trade and Industry (MCTI) committed itself to developing a National Action Plan (NAP) to implement findings from the baseline assessment. Further, the ZHRC together with MCTI held several stakeholder engagement meetings to share and discuss baseline assessment findings and ways to further domesticate the UN Guiding Principles on Business and Human Rights in order to enhance protection, remediation and respect for human rights in business operations.

Recommendations: *(i) Designate a Government focal point institution to spearhead implementation of UN Guiding Principles on business and human rights, and (ii) Develop and implement a National Action Plan on business and human rights in Zambia based on the baseline assessment report.*

8.0 Conditions of Detention

Zambia remained committed to meeting the UN Minimum Standards Rules for treatment of persons in detention through adoption of various legislative, policy and administrative measures. Following the enactment of the Constitution (Amendment) Act No. 2 of 2016, the Prisons Service was transformed into a Correctional Service and law reforms commenced to shift from penal treatment of prisoners to correctional focusing on rehabilitation and/or reformation. Efforts are currently under way to rehabilitate existing facilities and to build new correctional facilities, such as Mwembeshi Maximum, Luwingu, Mbala, Mwense and Kalabo Correctional Facilities. The Zambia Correctional Service was empowered by law to offer remission of sentences and parole while the Republican President continued to exercise the Prerogative of Mercy by pardoning deserving prisoners and/or commuting sentences in an effort to decongest prisons.

The ZHRC, however, noted with concern that, despite the positive measures taken, detention facilities continued to be characterised by problems of overcrowding, poor sanitation, lack of meaningful separation of juveniles from adults, impoverished holding facilities for women, poor health and medical care, poor welfare services for circumstantial children, and poor pre-natal and post-natal services, among other things.

Recommendations: *(i) adequately fund the Zambia Correctional Service to enable it implement programmes and activities aimed at transforming the Prison Service into a Correctional Service including*

retraining Zambia Correction Service officers (ii) amend laws on bail/bond to reduce incidences of prolonged pretrial detention in order to address the problem of overcrowding, and (iii) build additional correctional facilities compliant to minimum standards whilst rehabilitating existing ones.

9.0 Freedom of Assembly and Expression

9.1 Legal Constraints

The fundamental rights and freedoms are guaranteed under the Bill of Rights², including freedom of assembly and expression. However, the manner of application of laws tends to negate the spirit of the constitutional provisions on freedom of assembly and expression. During the period under review, the ZHRC noted with concern incidences of brutality, alleged corruption³ and selective application of the Public Order Act by the Police infringing on the rights of individuals believed to, or actually holding divergent views from the government, opposition political parties and or groups believed to be critical of government contrary to the law.⁴ ZHRC has noted the presidential directive to Ministry of Justice to consider reviewing and amending the Public Order Act in order to align it with the Bill of Rights.

Recommendation: *(i) Ensure a transparent and broad-based consultative process to review and amend the Public Order Act. (ii) Ensure necessary reforms are undertaken to enhance professionalism and accountability among Police Officers and curb brutality, corruption and other vices that affect enjoyment of rights.*

9.2 Emerging Culture of Political Intolerance and Violence

The country experienced unprecedented levels of political intolerance and violence before, during and immediately after the 11th August 2016 general elections. The ZHRC expressed its grave concerns over violent actions of political party cadres and police officers which left several people injured, caused loss of life and property, curtailed freedom of assembly and expression and bred a culture of fear among the electorate and political players. ZHRC also noted with concern unprecedented number of party cadres being charged with unbailable offences such as aggravated robbery in relation to the political violence before, during and after the 2016 general elections. The ZHRC commend steps taken by Government to appoint a Commission of Inquiry on election violence in order to address the problem.

Recommendation: *Make public findings of Commission of Inquiry on election violence and fully implement its recommendations.*

9.3 Freedom of the media

The infringement on media freedom posed a direct threat to freedom of assembly and expression as well as political campaigns in relation to imparting opinions and ideas to the public and the right of the electorate to political information in order to make informed and democratic choices. Incidences of attacks on journalists and media houses by party cadres and the police were observed by the ZHRC, including closure or threats of closure of media houses by regulatory authorities.⁵ The lack of protection of journalists; lack of access to information law and weak regulatory mechanisms remained daunting challenges to the media operating environment.

² Part III of the Constitution of Zambia provides for protection freedom of expression in Article 20(1) and freedom of assembly and association in Article 21(1).

³ The Zambia Bribe Payers Index has always ranked Zambia Police Service among top three most corrupt institutions in Zambia.

⁴ ZHRC continued monitoring implementation of the Public Order Act, conducted training for police officers and held country-wide public discussions and sensitisation meetings engaging the Police and various stakeholders, including political parties, civil society organisations and students, in dialogue over the Public Order Act implementation before, during and after the 2016 general elections. This took into account the Supreme Court decisions in the case of Law Association of Zambia Vs the Attorney General No. 8 of 2014; The case of Resident Doctors Association of Zambia and 51 Others Vs the Attorney General; and the case of Mulundika and Others Vs the Attorney General No. 25 of 1995

⁵ For example, in 2016, Radio Mano staff were attacked by ruling party official and cadres; Komboni Radio Director Lesa Nyirenda was beaten by Police, Independent Broadcasting Authority closed MUVI TV, Komboni Radio and Itezhi Tezhi Radio for “unprofessional conduct”; in 2015, Breeze FM, Radio Mano, Icengelo Radio, Petauke Explorer Radio were attacked by suspected party cadres; in 2014, journalists from Post Newspaper; Radio Mano, Isoka Radio, Kasempa Radio, and HOT FM were attacked and harassed by party cadres.

Recommendation: *Strengthen enforcement of laws that protect journalists, speed up the enactment of access to information legislation, and review other laws that hinder smooth operation of the media.*

10.0 Rights of Persons with Disability

The Government took a positive step in domesticating the UN Convention on the Rights of Persons with Disabilities (UNCPRD) by repealing the Persons with Disabilities Act of 1996 through the enactment the Persons with Disabilities Act No 6 of 2012, which comprehensively addresses the protection of the rights of persons of disabilities. However, a number of laws that do not conform to the principles and human rights standards set out in the UNCPRD and the spirit of the Constitution are yet to be reviewed. These include the Mental Disorders Act, the Penal Code Act, the Criminal Procedure Code Act, the Prisons Act, the Citizens of Zambia Act and the Electoral Commission Act, among others, which have legal provisions violating fundamental rights and freedoms of persons with disabilities.

While ZHRC noted progressive efforts towards formulation of a new Mental Health legislation, there is need for Government to pay particular attention and provide adequate support to such legal reforms and the efforts aimed at addressing challenges in the implementation of the Persons with Disability Act and policy measures that will ensure persons with disabilities have effective protection and promotion of their rights and freedoms and live a dignified life.

Recommendation: *Implement fully the Persons with Disabilities Act, review and amend other laws that do not conform to the principles and standards provided in the UNCPRD.*

11.0 Independence and Funding of HRC

The Constitution of Zambia provides for the establishment of the ZHRC under Article 230, with a broad mandate set out in line with the Paris Principles. The powers, functions and the procedure of appointment of Commissioners of the ZHRC are clearly stipulated by the law. Although funded by Government, ZHRC operates independently in discharging its mandate. However, insufficient resources allocated to the ZHRC continued to undermine its capacity to conduct human rights promotion and protection activities throughout the country. From 2015, Government funding to the ZHRC has steadily dropped affecting progressive expansion of its establishment, implementation of its core mandate activities, and decentralisation of the ZHEC's operations in accordance with the constitutional provisions.⁶

Recommendation: *Increase financial, human and other support to the ZHRC to enable it effectively implement its mandate in accordance with provisions of the Constitution and Paris Principles.*

12.0 Right to Health

HRC welcomes efforts that the government has made in improving access to integrated health care services through increased number of health facilities being constructed, improved supply of essential drugs and other requisites and the continued recruitment of health personnel despite a general public recruitment freeze in effect. However, concerns still remain that most health facilities have inadequate qualified health personnel especially in rural areas. Further, the distance to health facilities in rural areas remained the biggest obstacle impeding access to much needed health care service especially specialised health care such as ART, HIV prevention, Maternal, Child and Adolescent health, and others. Additionally, Zambia is currently experiencing a major increase in the burden of non-communicable diseases (NCDs), including cardiovascular diseases, diabetes, cancers, and chronic respiratory diseases, among others.

Recommendation: *(i) Increase funding to the health sector to levels committed in the Abuja Declaration to facilitate building of health facilities and recruitment of medical staff to fill up existing vacancies (specialised) such as Maternal, New born, Child, Adolescent health and HIV/AIDS (ii) Increase support*

⁶ In 2014, Government funding to the HRC was equivalent of USD 1,641,681.13; USD 1,608,425.96 in 2015 and USD 1,201,392.59 in 2016.

towards interventions for the prevention and early detection of NCDs, including development and implementation of an NCD policy; operational research; and monitoring and evaluation.

13.0 Right to Education

The Commission has noted some significant progress made by government in fulfilling the right to education in most parts of the country. New schools have been constructed with some old schools being rehabilitated. Many tertiary institutions have also been built with parallel organisation reforms being implemented to enhance quality of education. In addition, the Zambian school curriculum has included Comprehensive Sexuality Education, which fulfils the right to access information on reproductive health among others. Although government provides education support in form of bursaries and educational loans HRC noted with concern that high costs of tertiary education remain prohibitive for children from poor families. While remarkable progress has been made in urban areas, school going children in rural areas still cover long distances to access education; teacher pupil ratio remains a major problem; progression rate to secondary and tertiary levels especially among girls remained poor due to teenage pregnancy and child marriage resulting from limited access to adolescent friendly services; rural school infrastructure remained poor; and inadequacy and sometimes lack of essential learning materials (especially in rural areas) has persisted.

Recommendation: *(i) Pursue further reforms in the education sector to improve availability, accessibility, affordability and quality of education. (ii) Identify and address barriers limiting effective implementation of the school re-entry policy for adolescent mothers, in order to drive substantial increase in educational attainment among this group.*

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