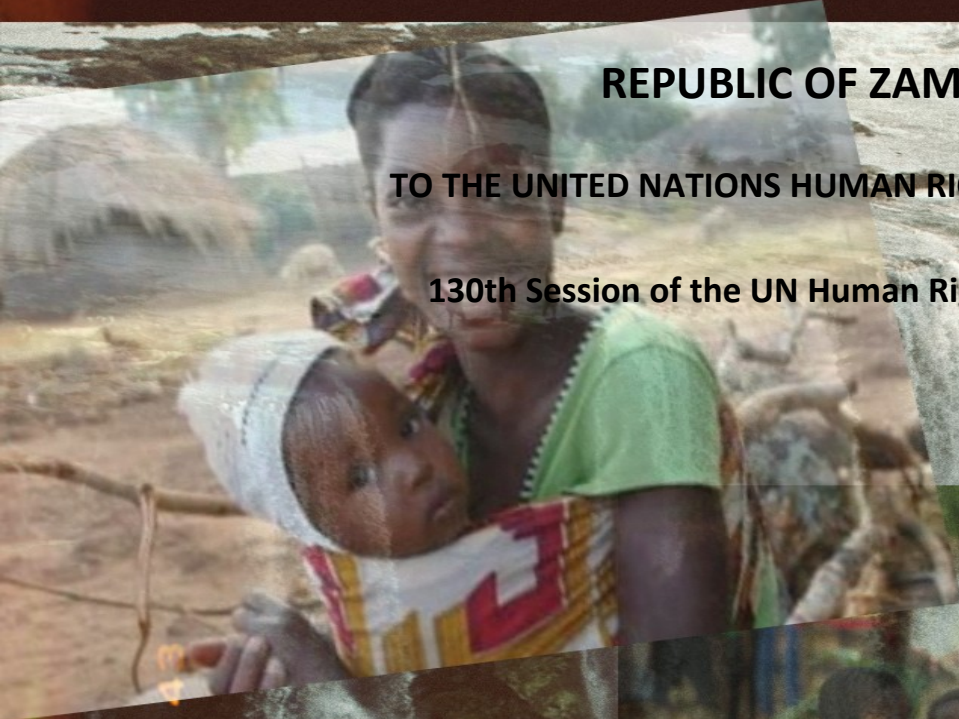


REPUBLIC OF ZAMBIA

TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

130th Session of the UN Human Rights Committee



**CIVIL SOCIETY ORGANISATIONS (CSOs) SUBMISSION FOR THE PREPARATION BY
THE UN HUMAN RIGHTS COMMITTEE OF A LIST OF ISSUES FOR THE
EXAMINATION OF FIFTH PERIODIC REPORT OF THE REPUBLIC OF ZAMBIA UNDER
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Submitting organisations:

Zambia Council for Social Development (ZCSD), Zambia National Education Coalition (ZANEC), Prisoners Future Foundation, Zambian National Women's Lobby (ZNWL), Action for Development (AfD), GEARS, ZAFOD, AAZ and Non-Governmental Gender Organisations Coordinating Council (NGOCC), Advocacy on Human Development, Action for Development, DEGHA, Kitwe District Land Alliance, Bloggers of Zambia and Panos Institute of Southern Africa.

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Plot 19057 Off Akashambatwa Road, Olympia Park Ext., Lusaka

Tel: +260 – 0978 839 279 E-mail: admin@zcsdev.org.zm and leahmitaba@gmail.com

ZAMBIA'S CIVIL SOCIETY ORGANISATIONS' ALTERNATIVE REPORT FOR THE LIST OF ISSUES FOR THE EXAMINATION OF THE REPUBLIC OF ZAMBIA'S 5TH PERIODIC REPORT BY THE HUMAN RIGHTS COMMITTEE UNDER THE ICCPR

1. ZAMBIA SITUATIONAL OVERVIEW

Zambia is a State Party to the ICCPR following its ratification of the ICCPR on 10th April, 1984. To further ensure that these rights under the ICCPR are binding on our national courts, Zambia has gone ahead to domesticate a huge portion of the rights under the ICCPR. For instance, the Zambian Bill of Rights, although saddled with limitations, encapsulates the provisions of the ICCPR. Notwithstanding, the implementation of the rights in the ICCPR remains a huge challenge in Zambia.

While many other factors can be fronted to account for the lukewarm implementation of the rights under the ICCPR and many other treaties to which Zambia is a party, lack of political will has been Zambia's Achilles heel. Zambia zeal and zest to ratify treaties has been severely dwarfed by its lack of genuine commitment to comply with the obligations set out in these human rights instruments. To demonstrate Zambia's laxity towards clear and robust reforms that may help in yielding compliance, one only needs to look at the long standing issues that the Human Rights Committee continues to raise for Zambia to address. In Zambia's Third Periodic Report in 2007 the Human Rights Committee raised a plethora of issues inter alia, the need for the repeal of Article 23 of the Constitution that feeds discrimination against women in many spheres of society, the need to address the death penalty, maternal health, particularly addressing the termination of pregnancy, which remains criminalized under the Zambian legislation unless stringent conditions are met under the Termination of Pregnancy Act, Chapter 304 of the Laws of Zambia. The Human Rights Committee also recommended that Zambia investigates and punishes acts of torture whenever reported. However, this is not possible today in Zambia because there is no legislation that criminalises torture. Therefore, punishment of the perpetrators of torture in Zambia remains elusive. Now, these thorny issues highlighted above, among many other, continue to scar Zambia's commitment to the ICCPR as nothing tangible has been done by the Zambian Government to address these pertinent issues raised by

the Human Rights Committee as far back as 2006. As a matter of fact, these issues still formed Zambia's Fourth Periodic Report, and are still being raised ahead of Zambia's Fifth Periodic Report. The hope of the Zambia Civil Society Organisations is that Zambia retreats from the seemingly picture of treating these periodic reports as 'business as usual' or indeed as mere public visibility exercise on the international plane, but begins to demonstrate concrete steps undertaken to remedy and implement the Human Rights Committee recommendations and observations under the ICCPR.

Committed to ensuring that Zambia upholds its commitment under the ICCPR, Zambia's Civil Society Organisations came together and brought to the fore their respective concerns on Zambia's performance and compliance with ICCPR obligations. The following are the primary areas of concerns and the questions that CSOs in Zambia recommend to the Human Rights Committee that Zambia should respond to as it presents its Fifth Periodic Report in October, 2020.

2. **POLITICAL PARTICIPATION**

Article 3 of the ICCPR mandates State Parties to the present Covenant to ensure the **equal right of men and women** to the enjoyment of all civil and political rights set forth in the present Covenant. Zambia, in this regard, being a State Party to the ICCPR has assumed an immediate and absolute obligation to ensure that all men and women enjoy in equal measure all the rights guaranteed under the ICCPR. Further, Articles 19, 21 and 22 of the ICCPR guarantee the freedom of expression, association and assembly, respectively. In consonance with the ICCPR, the Zambian Constitution under Articles 20 and 21 guarantees the freedom of expression, association and assembly.

The implementation of these rights, however, has not been without difficulties in Zambia. Statistics show Zambia being ranked the 4th lowest performing in the SADC region with, for example, a paltry 9 percent women representation in the local government and 18% in Parliament as at the August 2016 General Elections.¹

¹ Ministry of Gender, Gender Statistics on Women's Representation in Local Government: The Case of Zambia: p3

This same is the case with **youths and Persons with disabilities** in as far as low numbers are concerned in governance structures.² Lack of cutting edge legislative reforms and political will seem to account for this low representation of women, youths and persons with disabilities in elective offices as well as key government positions to foster participation from the disadvantaged groups in society. The electoral laws have not been crafted to incentivize women and youth participation in political life. Political parties are not guided by any law to ensure equal representation from women, youths and other vulnerable groups in their adoption processes. Pertinent legislative interventions to introduce quota systems for women, youth and persons with disabilities would be a huge leap forward in increasing of minority representation from the disadvantaged groups.

Another troubling aspect in the area of political participation is the continued biased application of the **Public Order Act** by the Police Service which has had greater chilling effect on the enjoyment of the rights guaranteed under Articles 20 and 21 of the Zambian Constitution. This law requires that the police be notified 7days before any assembly or procession is conducted.³ However, more often than not, opposition political parties and other civil society organisations perceived to be critics of government are hardly granted a go ahead. The converse is the case when it is the ruling party and civil societies organisations considered 'friendly' to government. The difficulties facing opposition political parties as well as civil society organisations have been further compounded by the advent of the Covid-19 pandemic. The need to avoid crowding, observation of social distancing have been used as a smoke screen to prevent opposition political parties from effectively engaging and sharing ideas with citizens. The institutionalized denial of political space to political parties has debilitating effect on availability of alternative voices on the political market given that the country is headed towards the 2021 general elections.

Further, the **militarisation of political party wings** in Zambia is another grave concern that poses a huge challenge to peace and security in the country. These acts are drivers of political

2 Banda Kims, "Electoral Participation of Persons with Disabilities In Zambia: Towards a Human Rights Based Approach," (Master's thesis., Mc Gill University, 2018). also see ndi.org/Zambia-youth.dialogue

3 Section 4 of the Public Order Act, Chapter 113 of the Laws of Zambia

violence that have resulted in loss of lives in some instances.⁴ Nothing or very little has been done to demilitarize political party wings as the surest way of curbing violence in political activities. Arming political cadres has severe consequences to not only endanger the lives of political party cadres but also innocent citizens. If the political climate becomes a battle field for cadres, citizens, especially women, will shun any form of political engagement resulting in political apathy.

In view of the above, Civil Society Organisations recommend that the following questions be addressed by the Zambian government:

- (a) Zambia became a State Party to the ICCPR over four decades ago, however, its efforts in fostering equal and active participation of women, youths and persons with disabilities in public life at all levels have been regrettably meagre. What continues to hamper the Zambian government to give full effect to the commitments above?
- (b) Noting that the chilling effects of the Public Order Act on political participation is not entirely a consequence of the mischief intrinsic in the law itself, but much more a question of administration of this piece of legislation, what steps is the government taking to avert the lopsided administration of the Public Order Act among political players?
- (c) The advent of Corona Virus has been tragic globally and has disrupted the 'business as usual' pattern of doing things. Given that Zambia is heading towards the 2021 general elections, what steps has the Zambian government taken, through relevant institutions such as the Electoral Commission of Zambia, to engage opposition political parties and civil society organisations on the modus of carrying out campaigns and other programmes amid the new normal in a manner that avails to all players an even ground?
- (d) How does the government intend to delimitarise political parties and do away completely with the notion of youth security wings that seem to be the furnace of political violence in Zambia?

⁴ <https://www.lusakatimes.com/2019/05/03/human-right-commission-calls-for-arrest-of-all-suspects-in-connection-with-death-of-an-ndc-member/>

(e) Are there any plans by the Zambian government to amend electoral laws to expect participating political parties and players to mainstream gender and youth participation within their structures?

3. GOVERNANCE AND ACCOUNTABILITY

The Zambian government Auditor General's Reports continue to reveal increasing levels of misappropriation and abuse of public resources by public officers every other year.⁵ Acquisition of public goods and services is marred with irregularities ranging from the flouting of tender procedures to inflation of costs of procurement. It has also been noted that many of these questionable resource abuses and corruption related cases are not being effectively followed through for prosecution by the courts of law. A number of examples exist, including the inability by the Zambian law enforcement wings to provide sufficient information to the public on the eventual ownership of the forty-eight (48) houses built in Lusaka, reportedly with resources suspected to have been obtained through corrupt means. "These houses have simply been forfeited to the state as property reasonably suspected to be proceeds of crime following the failure of the Anti-Corruption Commission to track the ownership of the houses"⁶. -Further, the Financial Intelligence Centre revealed suspicious transactions totaling 6.1 Billion Kwacha involving politically Exposed Persons (Peps)⁷.

Another area of great concern in Zambia's governance is **debt contraction**. Public and publicly guaranteed debt did nearly quadruple from 20.5 in 2011 to 78.1% of GDP in 2018 driven by accumulation of both external and domestic debts. The 2018 World Bank and International Monetary Fund debt sustainability analysis concluded that Zambia's risk of overall and external debt distress remained very high and that public debt under the current policies was on an unsustainable path.⁸ The problem of debt is seriously compounded by mismanagement of public resources to a large extent. In 2018, the UK Government froze aid funding to Zambia

⁵ https://www.ago.gov.zm/?wpfb_dl=202

⁶ <https://diggers.news/local/2019/07/30/weve-failed-to-find-the-owner-of-seized-48-houses-so-we-cant-go-to-court-acc/https://diggers.news/opinion/2019/08/01/acc-is-lying-they-know-the-owner-of-the-48-houses/>

⁷ Financial Intelligence Centre: The 5th Money Laundering and Terrorist Financing Trends Report, 2018

⁸ The World Bank, 'the World Bank in Zambia: Overview.'
<https://www.worldbank.org/en/country/zambia/overview>

after the Zambian Government admitted that 3.3 Million Pounds meant for poor people under the Social Cash Transfer Programme had ‘mysteriously’ gone missing⁹. According to the Zambia Tax Platform, a network of Zambian CSOs brought together with a common agenda to promote sustained advocacy on good economic governance, fiscal justice and economic reform, Zambia’s current debt position is unsustainable, will continue to crowd social sector spending and hinder government’s ability to respond effectively to economic development if not properly and urgently managed.

The **Kwacha** had also been on an upward surge depreciation against major currencies. As a consequence, debt servicing has continued to be more costly than programmed. The negative effects of economic mismanagement further resulted in substantial delays by government in the payment of public service workers’ salaries thereby generating industrial disharmony in the labour market.¹⁰

It is, however, interesting to note that the Constitution of Zambia (Amendment) Act of 2016 provided for **parliamentary approval** before debt before it is contracted.¹¹ The Government currently has, however, overlooked this provision and proceeded to contract debt without parliamentary oversight thereby avoiding accountability. In fact, the Constitution Amendment (Bill 10) which is before the floor of the House (Parliament) presently proposes to repeal provision in the constitution relating to parliamentary approval with regards to debt contraction.

In this regard, Civil Society Organisations recommend that the following questions be addressed by the Zambian government.

(a) What concrete measures is the Zambian Government taking in the fight against corruption in the public sector?

9 BBC News Services, ‘Zambia aid: UK suspends funding over corruption fears.’ (2018)
<https://www.bbc.com/news/world-africa-45560404>

10 Nicholas N, ‘Zambia’ President Struggles to Pay Civil Servants’ The Africa Report
<https://www.theafricareport.com/12831/zambias-president-lungu-struggles-to-pay-civil-servants/>

11 Article 63 (2) (d) provides that the National Assembly shall oversee the performance of the executive functions by approving debt before it is contracted.

- (b) To what extent does Zambia attribute its failure to establish ownership of the 48 houses, to act on the Zambia Financial Intelligence Report, and the Auditor General's Reports?
- (c) Why does it appear that the Government of Zambia is averse to parliamentary oversight in debt contraction as exhibited by (a) its failure to abide by the constitution which clearly provides for debt approval by parliament (b) the proposal in the constitutional amendment (Bill 10) to repeal the provision providing for parliamentary oversight on debt contraction?

4. HUMAN RIGHTS AND RULE OF LAW

It is a trite principle of international as well as national law that the primary duty bearer to ensure promotion and protection of human rights is the state. Human rights are, as such, a claim as against the state. What is, nevertheless, worrying is the lean nature of **Zambia's Bill of rights**, guaranteeing only civil and political rights. There have been calls in the past to expand the Bill of Rights, however, the National Referendum of 2016 failed hence the Bill of Rights has still remained as limited as it was.¹² The government has not come up with any road map regarding the possibility of holding a separate referendum to ensure that the Bill of Rights is enhanced. It cannot be over-emphasized that an enhanced Bill of Rights galvanizes and further entrenches human dignity, and in our case, the expansion of the Bill of Rights will make economic, social and cultural rights justiciable.

Prisoners' rights are one critical category of rights that has come under serious threat with the advent of Covid-19. The issue of overcrowding in Zambia's prisons due to inadequate infrastructure is too trite to require new debate. It is gratifying to note that Zambia is on a path to bring to reality the issue of Prison Voting through a consultative process that the Electoral Commission of Zambia has embarked upon prior to the 2021 General Elections.

On the other hand, it is a **given** fact that many of Zambia's prisons infrastructure were built in the early post-independence era. According to the Minister of Home Affairs, Honourable Stephen Kampyongo, M.P., prisons which were only designed to house 12000 offenders were now housing over 22000¹³. This infrastructure is not only inadequate but many are also dilapidated. Further, this old infrastructure, did not take into account the peculiar needs of female prisoners. These issues are urgent and pressing and require prioritization by Government in line with the tenets of human rights. Civil society organisations are also aware that similar issues have been raised by the Committee and have not received adequate redress.

In this regard, Civil Society Organisations recommend that the following questions be addressed by the Zambian government.

¹² <http://www.parliament.gov.zm/acts-of-parliament>

¹³ <https://lusaka.sites.unicnetwork.org/2019/04/18/unodc-hands-over-two-prisoner-rehabilitation-facilities-in-zambia/>

- (1) Following the failure of the National Referendum in 2016, what road map has the Zambian Government put in place to ensure that the expansion of the Bill of Rights becomes a reality in Zambia in line with Constitution Articles 8 and 9?
- (2) What lessons has the government drawn from the failure of the 2016 National Referendum that may help in securing its passage when it is later held, especially the decision to hold a Referendum run side by side with the General Elections?
- (3) In view of the Covid-19 pandemic, what urgent and immediate measures is the Government of Zambia putting in place to safeguard the lives of prisoners from this unprecedented health crisis?

5. WOMEN AND GENDER

The promotion of gender equality and the empowerment of women remains a priority focus for Zambia's sustainable development. Zambia has in the recent years embarked on advancing its policy and legal framework on gender and women's empowerment. Specifically, the enactment of the comprehensive Anti-Gender Based Violence Act of 2012, the Revised National Gender Policy of 2014 as well as the enactment of the Gender Equity and Equality Act of 2015 were all focused on addressing the many challenges impacting on the advancement of women's rights.

Despite the above policies and legislative framework, implementation has not been coupled with adequate resources, while a number of impediments continue to hinder the effective participation of women at various levels of development. For a very long time, women have largely been excluded from participating in a number of social, economic and political activities and hence perpetuating their vulnerability and marginalisation. Specifically, Article 23 of the Zambian Constitution¹⁴ remains a problematic provision which appears to provide a blanket approval of **discrimination** and negate the fundamental principles of equality and the rule of law in the constitution.¹⁵ The protection of fundamental rights and the guarantee of non-

14. Zambian Constitution Article 23. (1) Subject to clauses (4), (5) and (7), a law shall not make any provision that is discriminatory either of itself or in its effect. Clause 4 provides:

Clause (1) shall not apply to any law so far as that law makes provision-

- (a) for the appropriation of the general revenues of the Republic;
- (b) with respect to persons who are not citizens of Zambia;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; (emphasis placed)
- (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons;
or
- (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justifiable in a democratic society.

15 Margaret Munalula, *Women, Gender Discrimination Law: Cases and Material*-, Lusaka: University of Zambia Press, 2005)

discrimination are all subject to personal and customary laws regardless of whether the same are discriminatory or not. When one looks at the provisions that allow discrimination under Clause 4 of Article 23, it would be easily concluded that most of the victims of these provisions are potentially women. We note sadly, that this is in contradiction with the national values and principles provision in Article 8 (d) human dignity, equity, social justice, equality and non-discrimination, of the Constitution of Zambia (Amendment) No. 2 of 2016.

In addition, we also note that although Zambia enacted the Gender Equity and Equality Act of 2015, the same remains unimplemented including the failure by the Zambian Government to set up the Gender Equity and Equality Commission. One of the main functions of the Commission would be to provide oversight over the process of gender mainstreaming efforts at public, private sector and civil society levels. Unfortunately, this is yet to be actualised while gender inequalities at national level continue to remain high at 0.6364¹⁶

It is also noted that the 'non-discrimination' provision is also reflected in the **Industrial and Labour Relations Act**, section 108¹⁷ which is specific to employment matters. The issue of discrimination based on sex in employment under section 108 of the Industrial and Labour Relations has tested judicial pronouncement in a number of cases, including the case of *Post and Telecommunications Corporation Limited v. Phiri*.¹⁸ The Supreme Court in this case took the view that for one to succeed in a legal challenge based on discrimination founded on sex, there must be a member of the opposite sex being afforded differential treatment. This case is an enduring example of a worrying precedent and undesirable barrier in the fight towards equality between men and women.

Further, the **Minimum Wages and Conditions of Employment (Domestic Workers) Order** Paragraph 10 (5) enacted that a domestic worker shall not be entitled to receive a salary during

16 World Economic Forum: The Global Gender Gap Index Report 2014

17 No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of the employee.

18[1995] SCZ

the time that the domestic worker was on maternity leave. The reason for this provision at the time was difficult to conceive given its discriminatory nature which created conditions that were less favourable to domestic workers as compared to other classes of workers covered under other legislation. This injustice was, however, partially redressed through the Minimum Wages and Conditions of Employment (Domestic Workers) (Amendment), Order 2018, that now provides for a domestic worker to receive half pay during maternity leave¹⁹. We however note that, although the 2018 amendment was a positive move, this **amendment** does not completely resolve the injustice or the discriminatory nature of this law. We still contend that reproductive functions in any society are a sacred duty of nature, and as such the performance of this biological function of giving birth should not attract the imposition of conditions that are penal in effect.

Given the above state of affairs, Civil Society Organisations recommend that the following questions be addressed to the Zambian government:

- (a) What effective curative measures is the government taking in reversing discrimination against women in many sectors of societies that does not only end at legislative intervention but also address societal perception and attitudinal change towards women?
- (b) To what extent is government committed to accelerating gender equality outcomes and gender mainstreaming interventions through the oversight role of the Gender Equity and Equality Commission?
- (c) As the government strives to legislatively address the issue of discrimination based on sex and gender, are there other specific measures aimed at equipping the judiciary to administer justice with a gender lens in order to promote judicial activism towards equality?

¹⁹ Paragraph 6 Subparagraph 5 of the Minimum Wages and Conditions of Employment (Domestic Workers) (Amendment) Order, 2018 provides that a domestic worker shall receive half pay during maternity leave

**CSO JOINT MEETING ON THE DEVELOPMENT OF THE LIST OF ISSUES PAPER –
ICCPR**

11th August 2020

Participants List

Nr	Name	Organisation
1	Ms Engwase Mwale	Non Governmental Gender Organisations Coordinating Council (NGOCC)
2	Mr Luchembe Chilufya	AAZ
3	Mr Bubala Muyovwe	ZAFOD
4	Mr Gideon Musonda	GEARS
5	Mr Mwiba Mwenda	Zambia Law Development Commission (ZLDC)
6	Mr Zebbies Mumba	Action for Development (AfD)
8	Ms Juliet Chibuta	Zambian National Women's Lobby (ZNWL)
9	Mr Vusumuzi Sifile	Panos Institute of Southern Africa
10	Mr Mayamba Geoffrey	Prisoners Future Foundation
11	Mr Ivy Mutwale	Zambia National Education Coalition (ZANEC)
12	Mr James Kayula	UNZA Law Lecturer
13	Mr Nicholas Bwalya	Zambia Council for Social Development (ZCSD)
14	Ms Leah Mitaba	Zambia Council for Social Development (ZCSD)
15	Mr Bruno Mtonga	Zambia Council for Social Development (ZCSD)
16	Mr Richard Mulonga	Bloggers of Zambia
17	Mr Chimanya Doen	Zambia Council for Social Development (ZCSD)