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**Human Rights Commission**

**Zambia**

**A submission by the Human Rights Commission as contribution to the development of list of civil and political rights issues in Zambia prior to review by the Human Rights Committee**

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1. **Introduction**

This submission by Human Rights Commission of Zambia (the Commission) is intended to contribute to preparation of list of issues prior to Zambia’s review by the Human Rights Committee (the Committee). It highlights the Commission’s perspective on the state of civil and political rights in Zambia and some selected pertinent issues that the country needs to address to improve the enjoyment of fundamental rights as provided under the International Covenant on Civil and Political Rights (the Covenant). The list of issues highlighted is based on the Commission’s continuous human rights monitoring, received complaints and previous review and recommendations by the Committee, State response in reports to human rights mechanisms including the Universal Periodic Review (UPR). The list is not in any way an exhaustive prioritization of human rights issues, rather it’s a summary of selected and relevant issues which if addressed would significantly improve the civil and political rights landscape in Zambia.

1. **Harmonisation of Domestic Law with the Covenant**

The Commission has noted measures taken by the State to review and harmonise domestic laws in line with the requirements of the Covenant as highlighted in para. 4 -7 of State Report.[[1]](#footnote-1) Particularly, the steps taken by the State through the Zambia Law Development Commission (ZLDC) to consultatively audit and review critical pieces of legislation to ensure harmony and consistency with the Constitution and with Zambia’s international obligations.

However, issues identified for inclusion in the proposed amendments in some pieces of legislation require further attention. For example:

1. **Gender Equity and Equality Act No.22 of 2015**; some important parts of the Act including establishment of the Commission, have not been implemented since enactment in 2015;
2. **Persons with Disabilities Act No 6 of 2012**: The Criminal Procedure Code Act, Chapter 88 of the Laws of Zambia: The Act needs to be aligned with the Convention on the Rights of Persons with Disabilities, the Persons with Disabilities Act No. 6 of 2012 and the Mental Health Act No. 6 of 2019 insofar as respecting the personal dignity of persons with disabilities who are for instance referred to as persons of ‘unsound mind’ under sections 160 and 166;
3. **Juveniles Act, Chapter 53 of the Laws of Zambia**: In addition to proposed amendments by the State, the Act requires further alignment to international human rights law by providing for reduced age of criminal responsibility as committed during the third UPR review. It also needs to provide for measures to deal with continued delayed confirmation of orders, social welfare reports and conveyancing to places of rehabilitation;
4. **Ratification of International Agreements Act No 43 of 2016**: The Act needs amendment to provide for establishment of National Mechanisms for Implementation, Reporting and Follow up (NMRF) to bring about strengthened coordination on reporting and follow up to human rights mechanisms review outcomes in line with best international practice. This will enable the State effectively report to international and regional human rights mechanisms and reduce the backlog. It will also assist in successful implementation of recommendations no. 129.13, 131.37, 131.38, 129.17, and 131.40 of the UPR;
5. **Public Order Act, Cap 113 of the Laws of Zambia**: The Act requires urgent amendment to make it part of human rights protection measures rather than a human rights curtailing measure, which it currently does. The Act and its implementation remains a significant source of political conflicts. As long as there was no amendment to the law and improvements in the fair implementation of the Act, there will never be space that will provide for free and fair elections in Zambia.

The State is invited to explain steps being taken to ensure the ongoing review of laws by the ZLDC go further to address harmonisation of these laws with the Covenant.

1. **Funding to the Human Rights Commission**

Funding to the Commission has continued declining over the years. Unfortunately even the support from Cooperating Partners has followed the same pattern. The decline in funding has resulted in stagnation of efforts to further decentralise services of the Commission to Provinces and Districts. It has also affected effective implementation of its mandate. See table below illustrating decline of actual disbursements (non-personal emoluments) to the Commission between 2014 and 2017.

**Government Actual Disbursements (NPE) to the Commission, 2014 - 2017.[[2]](#footnote-2)**

The Commission reiterates the Committee’s recommendation in paragraph 10 of its concluding observations that the State party should make all possible efforts to increase the budgetary resources to the Commission targeted at enhanced programming, further decentralisation as provided in the Constitution including expansion of its staff compliment, to permit it to discharge its mandate effectively. The State party should further be urged to ensure that the Commission is able to seek and receive funds directly from international and regional institutions or any other source as it deems appropriate and expeditiously repeal and replace the Human Rights Commission Act to enhance the powers and compliance with Paris Principles.

1. **Review of Article 23 of the Constitution**

Article 23 of the Constitution remained unchanged with claw back clauses contrary to Articles 2, 3 and 26 of the Covenant.

The Commission reiterates the Committee’s recommendation in paragraph 12 of its concluding observations that the State party should review article 23 of the Constitution in order to bring it in line with articles 2, 3 and 26 of the Covenant. The State needs to indicate steps being taken to hold another referendum to enhance and expand the bill of rights in accordance with Article 79 of the Constitution.

1. **Compliance of Customary Laws and Practices with the Covenant**

Customary laws and practices remained non-compliant with provisions in the Covenant, and the State has not taken concrete measures including amending Article 23 of the Constitution to allow for legal and policy measures that discourage the persistence of customary practices which are highly detrimental to women’s rights.

The Commission reiterates the Committee’s recommendation in paragraph 13 of its concluding observations that the State party should strengthen its efforts to ensure compliance of customary laws and practices with the rights provided for in the Covenant, and consider this issue as a high priority. It should pay particular attention to ensuring the full participation of women in the ongoing review and codification process of customary laws and practices. It should adopt immediate and concrete steps to discourage the persistence of customary practices that are highly detrimental to women’s rights.

Customary laws and practices have largely remained non-compliant with provisions in the Covenant, and the measures taken as outlined in state report do address the core problem intended in the recommendation. The State needs to take concrete steps including amending Article 23 of the Constitution to allow for legal and policy measures that discourage the persistence of customary practices which are highly detrimental to women’s rights.

1. **Death Penalty**

Zambia still maintains the death penalty in its statutes when most countries are moving away from the practice. The Penal Code provides for the death penalty when convicted for murder (Section 201 of the Penal Code), aggravated robbery (Section 294 of the Penal Code) and treason (Section 43 of the Penal Code). However, no person on death row has been executed since 1997and this has been touted by Government as “pro-abolitionist stance”. Recently, pro-abolition campaigners’ expectation for Zambia to sign the UN moratorium on death penalty was dashed when the country abstained from the vote.

The Commission has noted that the proposed amendments to the Penal Code do not include measures addressing Committee’s recommendations in paragraph 17 of its concluding observations. The State is invited to explain steps being taken to sign the UN moratorium on the death penalty including ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights to publicly signify its commitment to its “de-facto abolitionist stance “and cement the shift away from the death penalty.

1. **Reducing Maternal Mortality and Relaxing Abortion Law**

Despite measures outlined in State Report particularly paragraph 42, the maternal mortality ratio (MMR) has remained significantly high at 398 deaths per 100,000 live births in 2014. 36% of women still deliver outside health facilities and 33.3% of health facilities provided post abortion care (PAC), yet only 5% actually performed termination of pregnancy.[[3]](#footnote-3) The Termination of pregnancy Act remains discriminatory in practice requiring consent of 3 medical practitioners for a pregnancy to be terminated which practically mostly unattainable especially rural and peri-urban areas.[[4]](#footnote-4) The law requires further review and amendment to address the inherent discrimination in practice.

The State is invited to further explain by elaborating measures being implemented to adhere to the commitment under the Abuja Declaration, targeting allocation of at least 15% of annual budget to improve the health sector and to primary health care programmes especially. This will enable implementation of outlined strategies and initiatives benefiting disadvantaged people especially those in rural areas.

1. **Efforts to Combat Gender Based Violence**

Despite measures taken by the State as outlined in paragraph 49 to 51, Gender Based Violence (GBV) remains a serious issue requiring added urgent measures by the State. Reported cases of GBV have over time exponentially increased from 11, 773 in 2014 to 22,073 in 2018 and on average only 23% of the cases are investigated and prosecuted in Court.[[5]](#footnote-5) Sexual violence against women and girls is still rampant.

The State is invited to explain additional measures being contemplated considering that measures taken as outlined in State Report have not yielded intended results as evident in national statistics on GBV and sexual violence against women and girls. It should also explain measures being taken/ considered to reduce number of cases being withdrawn by victims while increasing rate of successful prosecutions.

1. **Access to Justice and humane treatment of Prisoners**

Access to justice especially for persons deprived of liberty remained inundated with numerous challenges. The study carried out by the Commission found that persons deprived of liberty experienced significant delays in justice delivery process. For example 32.5% reported delays in their cases being cause listed for more than two years and 23.5% (average) reported delays during trial extending more than two years. 75% of prisoners interviewed had no legal representation during trial.[[6]](#footnote-6) The Prisons were overcrowded by as much as 300% and conditions remained poor and not consistent with the Mandela Rules.

The State is invited to outline measures being taken to improve issuance of bond and bail to accused persons in order reduce number of remanded persons in detention facilities and other practical steps being taken to reduce reported delays in justice delivery including provision of legal aid to persons deprived of liberty, in order to uphold presumption of innocence, reduce congestion in detention facilities and improve justice delivery.

1. **Investigation, Prosecution and Punishment for Cases of Torture or Ill Treatment**

The State of human rights study by the Commission for the period 2017 to 2018 found that more than 50% of people who interacted with Law Enforcement Officers (LEOs) in the process of investigations, arrest and being taken before courts, reported being tortured or being subjected to cruel, inhuman or degrading treatment or punishment.[[7]](#footnote-7) Most of these cases were not reported to appropriate authorities for appropriate redress. The draft Anti-torture bill has not been taken to parliament for enactment into law.

The State is invited to elaborate steps being taken to expedite enactment of the Anti-torture Bill into law and ensure perpetrators of torture including LEOs, were investigated prosecuted and/or punished. The State should further elaborate other measures being taken to discourage LEOs from carrying out acts of torture or subjecting suspects and/or inmates to cruel, inhuman or degrading treatment or punishment including measures to provide professional counselling and rehabilitation to victims where necessary.

1. **Rights of the Child**

Juveniles who have come in conflict with the law sometimes were kept in the same areas with adults in Prisons. In the period 2017 to 2018, 91 juveniles found in Prisons reported delays in conveying them to reformatory institutions while 110 of them were still waiting for confirmation of orders.[[8]](#footnote-8) The age of criminal responsibility remained at 8 despite commitment by the State to raise it to 14 as recommended during the 2017 UPR. However, a child older than eight but younger than 12 is not criminally responsible for an offence unless it is proved that “at the time of doing the act or making the omission he or she had the capacity to do the act or make the omission”.

The State is invited to clearly outline measures being taken to alleviate delays in confirmation of orders, social welfare reports and conveying juveniles to respective reformatory schools and steps being taken to revise upwards the age of criminal responsibility to align it with international best practices.

1. **Shrinking Democratic Space**

In recent years, the freedoms of assembly, association and expression have been severely restricted under the guise of implementing the Public Order Act. The Commission has noted numerous instances where opposition political parties were denied the right to assemble on unreasonable grounds and without providing alternative dates as provided in law. One of the most common reasons was Police inability to adequately police political events. However, where organisers proceeded with the event, Police were able to quickly find Officers to ensure “unauthorised” meetings never took place. There were many instances where authorised opposition political parties’ events were disrupted by cadres from the ruling party without Police taking action to protect their right to assemble.[[9]](#footnote-9) Some political parties were denied registration on flimsy grounds at the instigation of the ruling party and later denied right to assemble on grounds that they were not registered.[[10]](#footnote-10)

The State is invited to elaborate practical measures being put in place to ensure the Public Order Act was fairly implemented by Zambia Police and those who lawfully exercised their right to assemble were provided adequate protection to enjoy their right.

1. **Protection of Freedom of Expression and the Press**

A free and vibrant press is essential for a properly functioning and vibrant democracy. However, the Commission has noted numerous reports of opposition political parties being denied access to public media even when they were willing to pay for the services. Private television and Radio stations that provided services to opposition were threatened with deregistration through the Independent Broadcasting Authority (IBA) on flimsy grounds.[[11]](#footnote-11)On many occasions private radio stations were forced to abandon broadcasting programmes featuring opposition political leaders by violent cadres from the ruling party. There has been no concrete action from the State to protect the freedom of expression and press as provided under Article 19 of the Convention.

The State is invited to explain measures being taken to ensure the media generally and private media in particular remained free from unnecessary interference by political cadres and access to public media including fair coverage of opposition political parties and people with divergent views was guaranteed and protected. The State further needs to elaborate measures being taken to reform the law protecting public media such as the public broadcaster from being held accountable for unfair coverage, irresponsible and unethical conduct by the IBA.

1. **Protection of Freedom of Movement**

Opposition party leaders have continued being denied access to some parts of the country with no due regard to the law in some instances by Police Officers and violent ruling party cadres.[[12]](#footnote-12)Declaration of “no go areas” for opposition leaders by ruling party cadres[[13]](#footnote-13) and Police blocking opposition leaders from entering some towns, without the State intervening to protect their right of movement is a matter of grave concern.[[14]](#footnote-14)

The State is invited to explain measures being taken to hold people declaring no go areas for opposition political leaders accountable and guarantee those who feel threatened, of State protection of their freedom of movement.

1. **Police Brutality**

The primary obligation of Police is to guarantee every person of their fundamental rights and freedoms and provide timely redress of human rights violations and abuses. However, the reality is far different. The brutality of LEOs and particularly the Zambia Police is well known and documented. Every year there are numerous cases of arbitrary deprivation of life in Police custody or during peaceful protests.[[15]](#footnote-15) Unwarranted and indiscriminate use of live fire, tear gas and dehumanising severe beatings are a common feature and systemic.[[16]](#footnote-16) The Police system has not only exhibited unwillingness to investigate and prosecute those involved in their ranks and file but in many incidences have provided them protection.[[17]](#footnote-17) The accountability systems have failed to address the problem and the political system is understandably disinterested because of derived benefits.[[18]](#footnote-18)

The state is invited to elaborate measures being implemented including capacity building to LEOs to curtail brutality and inherent impunity. The State further needs to explain steps being taken to strengthen accountability systems such as addressing internal controls, structural encumbrances and funding to the Police Public Complaints Commission (PPCC), to ensure timely, quality investigations and prosecution of cases of abuse of Police powers including brutality.

1. **Political and Electoral Violence**

In recent years Zambia has been rocked by unacceptably high levels of political violence perpetrated against those expressing views contrary to those held by those in the ruling party. Opposition leaders, their supporters and those perceived to hold contrary views to Government are attacked, assaulted, their meetings disrupted while Police looks on.[[19]](#footnote-19) Perpetrators of the violence openly carry weapons (including pangas) and state publicly sometimes in the presence of the police their intent to harm their opponents.[[20]](#footnote-20)

The State is invited to elaborate practical measures being put in place to curtail escalating political and electoral violence in view of forth coming general elections in 2021. The State further needs to elaborate measures being taken to discourage Politicians from sponsoring and or encouraging youths to participate in violent activities.

1. **Actualising Inmates’ Right to Vote**

Following the landmark Judgment in the case of Godfrey Malembeka Vs Attorney General and Electoral Commission of Zambia[[21]](#footnote-21); inmates are entitled to vote. Despite this milestone, no framework exists to provide for the manner in which the right to vote may be exercised by inmates and how political parties will be campaigning within the places of detention or imprisonment.

The State is encouraged to explain steps being taken to put in place a legal and policy framework to provide for the manner in which the right to vote may be exercised by inmates, including the right to access information to enable them make informed electoral decisions.

1. See page 2 & 3 of State Report to the Committee. [↑](#footnote-ref-1)
2. See page 5 of State Report to the Committee. [↑](#footnote-ref-2)
3. Policy Brief on Contraception and Family Planning, Preventing Unsafe Abortion and Accessing Post abortion Care, and Maternal Health in Zambia, Population Council June 2017 [↑](#footnote-ref-3)
4. . ibid [↑](#footnote-ref-4)
5. See State of human rights report, 2017-18 at <http://www.hrc.org.zm/index.php/publications/state-of-human-rights/file/268-2017-2018-state-of-human-rights-report> [↑](#footnote-ref-5)
6. Ibid [↑](#footnote-ref-6)
7. ibid [↑](#footnote-ref-7)
8. See Human Rights Commission Prisons monitoring reports at [www.org.zm](http://www.org.zm) [↑](#footnote-ref-8)
9. Human Rights Commission monitoring reports. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. A good example is Prime television whose broadcasting licence was revoked for providing a platform to opposition to be heard. Radio stations like Itezhi-tezhi, Komboni Radio and many others were threatened with closure on flimsy grounds for broadcasting messages sympathetic to opposition. See State of the media reports by MISA Zambia. [↑](#footnote-ref-11)
12. See report in Lusaka times at [www.lusakatimes.com/2019/09/25/police-in-riot-gear-deployed-to-kafue-to-block-hh-from-touring-soloboni-township/](http://www.lusakatimes.com/2019/09/25/police-in-riot-gear-deployed-to-kafue-to-block-hh-from-touring-soloboni-township/)

    See Daily Nation report at [www.zambiadailynation.com/2015/11/25/copperbelt-no-go-area-for-hh-pf/](http://www.zambiadailynation.com/2015/11/25/copperbelt-no-go-area-for-hh-pf/)

    See News Diggers report at <https://diggers.news/local/2020/07/07/hh-president-of-s-province-we-wont-allow-him-to-mobilise-anywhere-else-bowman/> [↑](#footnote-ref-12)
13. See report by [www.lusakatimes.com/2020/07/08/zambian-government-to-use-evil-for-evil-stratagem-to-deal-with-the-opposition/](http://www.lusakatimes.com/2020/07/08/zambian-government-to-use-evil-for-evil-stratagem-to-deal-with-the-opposition/) [↑](#footnote-ref-13)
14. See report by Lusaka times at <https://www.lusakatimes.com/2019/09/25/police-in-riot-gear-deployed-to-kafue-to-block-hh-from-touring-soloboni-township/> [↑](#footnote-ref-14)
15. See State of human rights reports by the Human Rights Commission at [www.hrc.org.zm](http://www.hrc.org.zm) [↑](#footnote-ref-15)
16. See <https://www.zambiawatchdog.com/police-brutality-and-decay-of-zambia-police-force/> [↑](#footnote-ref-16)
17. See <https://www.themastonline.com/2019/10/07/police-brutality-impunity-in-zambia-and-possible-remedies-during-the-next-elections-and-beyond/> [↑](#footnote-ref-17)
18. See <http://www.ilabour.eu/political-oppression-abuse-human-rights-zambia/> [↑](#footnote-ref-18)
19. See Muna Ndulo <http://saipar.org/wp-content/uploads/2013/09/Ndulo_Political-Violence-in-Zambia-and-State-Responsibility.pdf> [↑](#footnote-ref-19)
20. Ibid [↑](#footnote-ref-20)
21. See judgement No 34 of 2017 - Godfrey Malembeka vs the Attorney General and Electoral Commission of Zambia at <https://zambialii.org/sites/all/libraries/Malembeka-vs-The-Attorney-General-and-The-Electoral-Commission-of-Zambia.pdf> [↑](#footnote-ref-21)