

THE CARTER CENTER



Zambia

NGO Submission to the U.N. Human Rights Committee

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Reporting Organization

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

The Carter Center in Zambia

The Carter Center has observed the presidential and parliamentary elections in Zambia in 1991, 2001, and most recently in 2016. This submission builds on the data collected by The Carter Center's 2016 election observation mission to Zambia. It addresses gaps in the legal framework for elections in Zambia, as well as observed issues related to the implementation of elections during the 2016 general elections. This submission offers questions that the Committee may consider asking of the State Party, and also provides some key recommendations to ensure that various stages of the electoral process are implemented in accordance with Zambia's obligations under the ICCPR in the future. The Carter Center's Election Observation Report for the presidential and parliamentary election is available [here](#).

Issues and Suggested Questions for the Human Rights Committee

Article 3: Equality Between Men and Women

The Zambian Constitution guarantees equal rights of men and women, including in public and political life by reiterating the principle that "Protection from Discrimination (1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect. (2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. (3) In this Article the expression "discriminatory" means affording different treatment to different persons attributable, wholly or mainly, to their respective descriptions by race, tribe, sex." (Art. 23)

As mentioned in the most recent State Report, the State party is "mindful that gender inequalities still exist and, in this regard, has taken measures to ensure the equal role of women in society. . . It has enacted the Gender Equity and Equality Act which seeks to, among other things, establish the Gender Equity and Equality commission, prohibit harassment, victimization and harmful

social, cultural and religious practices and empower women to achieve gender equity and equality. Further, the gender Equity and Equality Act also seeks to:

- (i) Promote women’s economic empowerment by improving women’s access to land, credit, seeds, fertilizers and market information in rural areas to increase productivity and thus reduce poverty;
- (ii) Empower women to contribute to the health and productivity of the whole families and communities thereby improving the prospects of the next generation and reduce poverty especially among women in the rural and peri-urban areas;
- (iii) Accelerate the fight against gender-based violence;
- (iv) To open up opportunities for women’s participation in the development process;
- (v) Increase women’s representation in decision making; and
- (vi) Facilitate the attainment of gender equity and equality through provision of a legal framework.

While it is important that the Gender Equity and Equality Act has been adopted as well as the Anti-Gender Based Violence Act of 2011 which “encourages courts of law to ensure speedy and efficient trial in the cases of gender- based violence,” there are still questions and concerns in terms of Equality between Men and Women.

Questions for Consideration:

What specific steps will Zambia take to increase women’s representation in decision making as protected in the Gender Equity and Equality Act before the next election?

What specific steps will Zambia take to ensure that the protections of the Anti-Gender Based Violence Act include and extend to violence perpetuated against women in the electoral process before the next election?

What concrete actions have been taken to ensure implementation of the Gender Equity and Equality Act, including to establish the Gender Equity and Equality commission?

Articles 12 and 21 – Freedom of Movement and Freedom of Assembly

Having the freedom to move about a country and promote one’s political platform is crucial for aspiring political candidates. As was stated in the 2016 Final Report, “International standards protect individuals’ ability to assemble peacefully throughout the campaign period, without interference and with the ability to seek independent review in the event this right is denied. International treaties grant everyone the right to freedom of movement within the borders of each state, including candidates, voters, and other electoral actors who need to move about the territory.”

Unfortunately, there was not a level playing field during the 2016 elections. Campaign events of the opposition United Party National Development (UPND) were hindered by an unreasonable

interpretation and application of the Public Order Act (POA). In addition, flight clearances for opposition party aircraft were denied by the Zambian Air Force. Though the Human Rights Commission (HRC) gave a training to police officers as to how to go about applying the POA, they still misused their power and reported “they had been directed to implement the POA against the UPND in ways that the officers believed to be improper, but they could not refuse to follow orders.” These restrictions on freedom of movement and the freedom of assembly, directly violates Zambia's international commitments to freedom of assembly and movement.

Worrying trends were also evident with respect to Freedom of Assembly and of Association during the 2016 election cycle. During the campaign period, the Electoral Commission of Zambia (ECZ) suspended campaigns in two districts for 10 days on the grounds of rising political tensions by invoking Section 28(2) of the Electoral Process Act, which allows the Commission “amend the election timetable if it considers it necessary for a free and fair election.” The legalities of this measure have been questioned but unfortunately nothing was put in place to challenge that suspension making opposition parties question the impartiality of the ECZ. The ECZ also failed to prosecute authorities responsible for unfairly administering the Public Order Act in which opposition parties were stripped of their freedom of assembly.

The police failed to propose an alternative date for the rally at the earliest possible convenience, as prescribed by a Supreme Court ruling on the constitutionality of the law. After the cancellation, police chased a group of UPND supporters marching through Lusaka’s Kanyama and Chawama townships. Police shot dead a UPND supporter while four others were severely injured. Police used tear gas, rubber bullets, and live ammunition to disperse the crowd and arrested 22 people, including a journalist. The ECZ suspended the campaign in these districts July 9–18.

Questions for Consideration:

What measures have been put into place to ensure the fair administration of the Public Order Act, its’ consistent application for all political party campaigns and rallies for the duration of the electoral cycle?

What specific measures will be put into place in the future to hold the police accountable for misconduct in this regard?

What steps can and has the government taken to support and strengthen the ECZ ability to ensure a safe and secure electoral process, particularly campaign period, in full compliance with the Electoral Code of Conduct?

What is being done in terms of the unfair administration of the Public Order Act that violated freedom of assembly of opposition parties?

Article 19 – Freedom of Opinion and Expression

During an election the media plays a crucial role in educating the public on exercising their voting rights, facilitating campaigning, and providing space for the sharing of alternate views. Zambia

has consistently dropped on the Reporters Without Borders' World Press Freedom Index in recent years. While it ranked 72 of 180 countries in 2013, the 2020 Index ranks Zambia 120 of 180 countries.ⁱ “[T]he constitution guarantees freedom of expression, but the relevant language can be broadly interpreted. Journalists and media outlets face restrictions under criminal and civil defamation laws, sedition and obscenity laws, and provisions of the penal code such as the State Security Act. ... [G]overnment continued to demonstrate intolerance of critical media, exacting retribution through the courts as well as extrajudicial harassment.”

The burden this has on the electoral process is immense. During the 2016 election period, The Carter Center noted that the media environment favored the ruling Patriotic Front. This enormous challenge to other political parties created a climate of inequitable coverage that was shown in many different forms. An example from The Center's Final Report findings mentions that “two days before the election, the High Court directed Zambia National Broadcasting Corporation (ZNBC) to air a UPND documentary. ZNBC aired the documentary once late at night when, presumably, relatively few viewers were watching.” Other instances relate to the disruption of private media houses, both before and after election day. The Post, the private daily newspaper most favorable to UPND, faced legal action, ostensibly to satisfy accrued tax liabilities—though other public media houses had similar tax liabilities and no action was taken against them. The Post was subjected to seizure of its offices and equipment by the Zambia Revenue Authority (ZRA) and forced to continue its operations without an office, with limited print editions and online reporting. In addition, in the days following the announcement of the election results, the Independent Broadcasting Authority (IBA) suspended the broadcasting licenses of Muvi-TV, Komboni Radio, and ItezhiTezhi Radio on the grounds that these media houses had conducted themselves in an unprofessional manner in reporting on the election. Whatever the merits of the underlying allegation, the IBA failed to follow required procedures, which afford media houses an opportunity to correct improper practices before suspensions are meted out and to continue operating while appealing a suspension properly issued. For true freedom of opinion and expression, there needs to be at a minimum protection of the independence of media for all parties.

Questions for Consideration:

How will the Government of Zambia ensure a free media environment, that is conducive to the conduct of genuine elections?

Article 25 – Right to Participate in Public Affairs

In Zambia's most recent State Report, it was noted that “There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.” Unfortunately, there are still many barriers for women, youth, and people with disabilities when it comes to accessing the political system. Even though Zambia is a signatory of many international conventions and protocols (such as Protocol to the African Charter on Human and Peoples' Rights concerning the Rights of Women in Africa (May 2006) and the Convention on the Elimination of all Forms of Discrimination against Women (June 1985)) female representation in elected office has continually worsened. According to the United Nations

Development Program’s Gender Inequality Index, Zambia ranks 131 of 162 countriesⁱⁱ and has less than 18 percent of parliamentary seats held by women.ⁱⁱⁱ There are many different barriers that play into this such as elevated nomination fees or the academic requirement that candidates have at least a certificate from Grade 12. Youth face the same type of hurdles regarding education and fees. In fact, the Center’s Final Observation Report noted that “some candidates were disqualified at the district level after district electoral authorities refused to allow political parties to pay nomination fees in Lusaka on behalf of candidates contesting in provinces.” Persons with disabilities are also continually fighting through challenges such as logistical and cultural barriers in order to participate in the political system. There is a need for special measures to be put into place in order to attain equal access and representation for all.

Questions for Consideration:

What special measures will the Government of Zambia enact and implement to ensure equal participation of women and persons with disabilities and greater engagement among youth?

ⁱ Reporters Without Borders, World Press Freedom Index. Available at <https://rsf.org/en/zambia>

ⁱⁱ UNDP, Gender Inequality Index 2018. Available at http://hdr.undp.org/sites/default/files/hdro_statistical_data_table5.pdf

ⁱⁱⁱ National Assembly of Zambia, Members of Parliament by Gender. Available at <http://www.parliament.gov.zm/members/gender>