



**Human Rights Commission
Zambia**

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A Submission by the Human Rights Commission of Zambia to the Working Group on the Universal Periodic Review (UPR), in Preparation for Zambia's 4th Review, 2023.

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The Human Rights Commission of Zambia (HRC) is an "A" status accredited National Human Rights Institution (NHRI) with the Global Alliance of National Human Rights Institutions (GANHRI) and is a member of the Network of African National Human Rights Institutions (NANHRI). It is established pursuant to Article 230 (1) of the Constitution of Zambia (Amendment) Act No. 2 of 2016. Its mandate is provided for under Article 230 (2) and (3) of the Constitution and Section 9 and 10 of the Human Rights Commission Act No. 39 of 1996. The core mandate of the Commission is to ensure that the Bill of Rights is protected and upheld.

This submission for the 4th UPR is based on the views of HRC founded on its monitoring of status of implementation of the 3rd UPR recommendations and the general human rights situation in Zambia. It also includes views gathered through stakeholders' consultations and engagements conducted during the period under review.

Implementation of Voluntary Pledges and Recommendations from Last Review

1. During the 3rd UPR cycle Zambia accepted among others the recommendation (129.18) to establish or strengthen the existing national mechanism for coordination, implementation, reporting and follow-up, in line with good practices identified in the 2016 OHCHR guide on national mechanisms for reporting and follow-up.ⁱ HRC acknowledges positive efforts made by the State towards establishing the National Mechanism for Implementation, Reporting and Follow ups (NMIRF) through a consultative process that resulted into a draft structure, composition, and terms of reference.
2. However, despite establishment of the mechanism, it is yet to be operationalised, thereby negatively impacting the implementation of recommendations from human rights mechanisms, tracking and reporting on progress made.
3. *Recommendation:*
Implement accepted recommendations to establish a national coordination mechanism for implementation, reporting and follow-up including developing an action plan to implement all recommendations from human rights mechanisms.

Ratification and Domestication of International and Regional Human Rights Instruments

4. Zambia has ratified 8 out of the 9 core human rights instruments. Only the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families is yet to be acceded to. While this is highly commendable, a number of optional protocols, individual complaints and inquiry procedures are yet to be acceded to or accepted. In the last cycle, Zambia accepted recommendations to accede to the convention and to accede to most of the remaining optional protocols.
5. HRC has noted some improvements in the submission of state party reports to various human rights mechanisms, however, a backlog remains and most domestic laws remain inconsistent with international and regional human rights standards. It has also been noted with concern the plight of older persons who are increasingly facing insecurity as they are constantly being attacked and, in some cases, killed on allegations of practicing witchcraft, hence the need to enforce the UN Principles for Older Persons.
6. *Recommendations:*
 - (i) *Accelerate the domestication of international human rights instruments to which it is a party.*
 - (ii) *Implement all accepted recommendations to ratify or accede to remaining core human rights treaty and optional protocols.*
 - (iii) *Amend the Ratification of International Agreements Act No. 34 of 2016 to establish a National Mechanism for Implementation, Reporting and Follow Up (NMIRF).*

The Constitutional Review Process

7. In the previous cycle, Zambia accepted the recommendation to continue its efforts to widen the scope of the Bill of Rights to include economic, social and cultural rights.ⁱⁱ HRC

welcomes statements by the State indicating commitment to timely review and amend the Constitution.

However, there are concerns that there is no clear road map, awareness raising programmes and guidelines on how the consultative process will be undertaken including how historically marginalised groups will participate.

8. *Recommendation:*

Develop a clear, inclusive and consultative Constitutional review roadmap with a view inter alia to include economic, social, cultural and group rights in the Bill of Rights.

Secure Protection of the Law

10. Zambia has revised and adopted a Legal Aid Board Policy, which has broadened the scope of the provision of Legal Aid including recognition of paralegals offering legal services to underprivileged persons. A pro bono Legal Aid framework has been developed. The judiciary is also being further decentralized to promote access to justice. The above measures are commendable.

11. However, detention and correctional facilities remain limited and dilapidated, resulting in crowding of more than 300% and poor conditions for inmates.ⁱⁱⁱ The positive measure of constantly exercising the Prerogative of Mercy by the President where inmates are pardoned or sentences commuted, has not helped in addressing the situation.

12. Further, whereas positive strides have been made in the determination of civil matters through the amendments to the High Court Act, HRC notes the need to extend legal reforms to provide for timeframes in the determination of criminal matters to enhance the Right to Secure Protection of the Law as espoused in the Constitution of Zambia.

13. *Recommendations:*

(i) Amend the Criminal Procedure Code to provide for timely determination of criminal matters;

(ii) take measures to further enhance access to justice through promotion of Alternative Dispute Resolution (ADR) mechanisms; and

(iii) Implement all commitments including recommendations from last cycle, to improve conditions in detention facilities.

Abolition of the Death Penalty

14. The death penalty is still provided for by law in Zambia. The Constitution provides for the deprivation of life in execution of a sentence of a court. The Penal Code^{iv} provides for the death penalty when a person is convicted for murder, aggravated robbery or treason. However, Zambia has maintained a de facto moratorium since 1997 and no death row inmate has been executed since.

15. HRC is concerned that Zambia is comfortable in the de facto moratorium. The abstention in 2020 to the UN moratorium on death penalty demonstrates this. However, the pledge recently made by the Republican President, Mr. Hakainde Hichilema to start the process to amend the Penal Code and remove provisions relating to punishment by death for capital offences, should be supported and is supported.

16. *Recommendations:*

- (i) Implement the pledge by the President to abolish the death penalty; and*
- (ii) Ratify the 2nd Optional Protocol to the International Covenant on Civil and Political Rights.*

Criminalisation of Torture

17. Zambia is a party to the Convention against Torture (CAT) and torture is prohibited under Article 15 of the Constitution of Zambia, however there is no legislation that criminalises acts of torture. During the last review, Zambia accepted recommendations to enact legislation criminalising acts of torture including ratification of the protocol.

18. HRC has noted with concern that the Anti-Torture Bill of 2016 has not been tabled before parliament for enactment. As a result, cases of torture have continued unabated and/or unpunished.

19. *Recommendations:*

- (i) enact the Anti-Torture Bill into law, domesticating in full the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and*
- (ii) ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).*

Freedom of Assembly, Association and Expression

20. Notwithstanding the constitutional guarantee of the fundamental rights to freedom of assembly, association and expression as provided for under Articles 20 and 21, of the Constitution, the civic space has been shrinking during the period under review. The HRC has noted with concern that subsidiary legislation, such as the Public Order^v, Penal Code^{vi}, and the Cyber Security and Cyber Crimes Act^{vii}, impose unjustifiable restrictions on the enjoyment of freedom of assembly and expression. Despite public pronouncements by the State to review and amend the Public Order Act in order to enhance the enjoyment of freedom of assembly, association and expression, the process has stalled with no clear road map for the next steps in the legal reform process.

21. Defamation of the President remains a criminal offence under the Penal Code Act and has been used by the State to clamp down on freedom of expression which is an essential element of any democratic society. The HRC remains concerned with the State's intrusion on individuals' right to privacy, restriction of freedom of expression online and the countrywide internet black-out experienced during the August 2021 general elections.

22. *Recommendations:*

- (i) Implement commitments to review and amend all laws stifling the enjoyment of fundamental rights to freedom of assembly, association and expression; and*
- (ii) Develop capacity of the police to enforce law objectively, professionally and in a manner that is consistent with human rights standards.*

Business and Human Rights

23. Zambia has committed to develop a National Action Plan (NAP) on Business and Human Rights.^{viii} Awareness and capacity building programmes for both State and non-State

actors have been implemented as part of the process leading to development and implementation of NAP. However, the absence of a comprehensive legal framework requiring businesses to conduct a human rights due diligence and publicly report on the impact of their business activities on human rights as well as measures taken to mitigate such risks and adverse impacts, has resulted in the continued violation of human rights.

24. *Recommendations:*

- (i) Implement the commitment to develop and implement a NAP on Business and Human Rights; and*
- (ii) Enact legislation compelling businesses to conduct human rights due diligence and publicly disclose their human rights performance in annual reports.*

Rights of Persons with Disabilities

25. Zambia has domesticated the UN Convention on the Rights of Persons with Disabilities (UNCPRD) through the enactment of the Persons with Disabilities Act (PWD Act).^{ix} Further, the Mental Disorders Act was repealed and replaced by the Mental Health Act.^x The Zambia Correctional Service Act^{xi} was enacted to repeal and replace the Prisons Act to comply with international and regional human rights standards. The Penal Code Act and the Criminal Procedure Code Act are in the process of review and amendment.

26. However, HRC has noted the need to further review other laws to conform with the principles and human rights standards set out in the UNCPRD and the Constitution, such as the Citizens of Zambia Act and the Electoral Commission Act. In addition, it has been observed that the limited capacity of responsible State institutions to fully enforce the PWD Act has negatively affected efforts to fully implement it. HRC further notes the need to review and strengthen the Disability Policy to address gaps affecting implementation of the PWD Act.

27. HRC is also concerned that persons with albinism continue to experience physical attacks and mutilations, killings, discrimination and limited access to health care and education. This is despite Zambia committing to protect and promote their rights as provided in the Constitution and the Convention.^{xii}

28. *Recommendations:*

- (i) Implement the recommendation by the Special Rapporteur on the Rights of Persons with Disabilities to Designate or create an independent monitoring mechanism to monitor the implementation of the Convention in accordance with article 33 (2) thereof; and*
- (ii) Develop and implement a national policy to protect and promote the rights of persons with albinism^{xiii}.*

Independence and Funding of HRC

29. HRC is established under Article 230 of the Constitution of Zambia, (Amendment) Act No.2 of 2016 and is an A status accredited NHRI with GANHRI and a member of NANHRI as aforesaid. A process is underway to repeal and replace the HRC Act to enhance compliance with the Paris Principles.

30. In the two and half decades of existence, HRC has not grown to levels matching the service needs of the people. Budgetary allocations have marginally improved recently in nominal terms. Although variances between allocations and disbursements have been addressed in recent months, the budget remains insufficient to enable effective implementations of programmes including the Constitutional obligation to decentralise to all provinces and gradually to districts. The HRC suffers from inadequate human and other resources necessary to effectively discharge its constitutional mandate.
31. *Recommendations:*
- (i) *Implement the commitment to increase human and financial resources support to HRC to enable it decentralise to all the Provinces, districts and effectively implement its mandate; and*
 - (ii) *Enact the Human Rights Commission Bill into law.*

Right to Health

32. Zambia is signatory to the Abuja Declaration, requiring nations to commit not less than 15% of their annual national budget to the health sector. The State has been implementing measures to attain universal health coverage through the implementation of a national Health Insurance by the National health Insurance Management authority (NHIMA) and HRC acknowledges positive strides made, however the coverage in peri-urban and rural population remains poor. A number of health facilities have been built and upgraded to offer more specialized services. Other measures include recruitment of 11,276 health workers and regular inspection of health provision to ensure quality.
33. Despite efforts made, the health sector continues to experience challenges including distances to facilities in rural and peri-urban areas, limited specialised health care services, laboratory services, high maternal mortality rates, Sexual Reproductive Health Rights (SRHR) commodities, and including poor pandemic preparedness. The COVID 19 pandemic brought about additional burden and complications to already strained health system. HRC has noted with concern the poor supply and distribution of quality essential drugs and other requisites in recent years, which is negatively impacting access to quality health care.
34. *Recommendations:*
- (i) *Assess NHIMA recruitment initiatives for disadvantaged, peri-urban and rural households to address constraints and hasten the attainment of universal health care coverage; and*
 - (ii) *Develop a pandemic preparedness blueprint including reserving matching resources.*

Right to Education

35. Zambia has committed to broaden access to education in accordance with the revised National Policy on Education. The country also committed to increase allocation of funding to the sector. HRC has noted that the State is implementing a free education policy from primary to secondary school level, resulting in disadvantaged out of school children going back to school. New schools are constructed including at tertiary level. The bursary scheme has been expanded to include public institutions that were previously excluded. The amount and scope of use of Constituency Development Fund (CDF) has been expanded to cover support to disadvantaged learners and construction of new

school infrastructure. Additionally, the State is in the process of recruiting 30,000 teachers to reduce the pupil-teacher ratio.

36. However, significant hurdles remain including the need to build additional infrastructure to cater for increased enrollments and other measures to further reduce the pupil - teacher ratio. HRC further notes the need to intervene to support learners who are unable to pay examination fees, to fully realise the vision of education for all.

37. *Recommendation:*

Assess the impact of the current free education policy and ensure among others the resultant over enrollment does not compromise the quality of education in public schools.

Rights of the Child

38. HRC has noted progressive steps taken to improve the rights of the child among others the enactment of the Employment Code^{xiv} which regulates the employment of children under 15, the development of the National Standards and Guidelines for services and programmes for orphans and vulnerable children in 2016, the strengthening of the National Child Justice Forum and the development of the National Child Justice Strategy 2021-2025, and other institutional and policy measures.^{xv} Further, the acceptance of a number of recommendations relating to the rights of the child including ratification of the first and second optional protocols to the UNCRC, has demonstrated commitment to improve the rights of children.^{xvi}

39. However, HRC has in recent years noted with concern the increasing potential for exposure of children to inappropriate internet content with increasing national access to internet and the need to protect and safeguard the rights of children in the digital space from abuse and exploitation. HRC notes the need to put in place measures to safeguard children's rights in sports, schools and to review and strengthen the National Child Policy.

40. *Recommendations:*

- (i) implement all accepted recommendations relating to enhancement of the rights of the child; and*
- (ii) develop and implement measures to safeguard and provide safe spaces for children in sports and schools.*

signed
Mudford Z. Mwandenga
CHAIRPERSON
12th July, 2022

END NOTES

ⁱ 50 recommendations were accepted relating to ratification/accesion and implementation of remaining core human rights treaty and optional protocols. Particularly, recommendation number 129.18, urging consideration for the establishment of a, or strengthen the existing national mechanism for coordination, implementation, reporting and follow-up, in line with elements arising from good practices identified in the 2016 OHCHR guide on national mechanisms for reporting and follow-up. <https://upr-info-database.uwazi.io/en/library/>

ⁱⁱ Recommendation no. 129.5 - Continue the efforts to widen the scope of the 1996 Bill of Rights to include economic, social and cultural rights (Republic of Korea);

ⁱⁱⁱ The State of Human Rights Report in Zambia, 2017-18.

^{iv} Chapter 87 of the laws of Zambia

^v Act Chapter 113 of the Laws of Zambia

^{vi} Chapter 87 of the Laws of Zambia

^{vii} No. 2 of 2021

^{viii} See 3rd cycle recommendation no. 131.44 - Develop a national action plan on business and human rights and implement it together with the Guiding Principles on Business and Human Rights (Kenya).

^{ix} No. 6 of 2012

^x No. 6 of 2019

^{xi} No. 37 of 2021

^{xii} See 3rd Cycle recommendations no. 129.38, 129.39 and 129.40

- 129.38 -Address the situation of persons with albinism, assuring them protection against attacks and killings (Portugal);
- 129.39 -Take vigorous measures to protect people suffering from albinism against the different forms of violence of which they are victims (Central African Republic);
- 129.40 -Strengthen national policies to ensure that persons with albinism are fully protected from attacks and implement awareness-raising programmes which also promote their social integration in rural areas (Sierra Leone);

^{xiii} See recommendations from [Report of the Special Rapporteur on the Rights of Persons with Disabilities on her visit to Zambia : \(un.org\)](#), particularly paragraph 18 (i) -Designate or create an independent monitoring mechanism compliant with the Paris Principles, such as the Human Rights Commission, to monitor the implementation of the Convention in accordance with article 33 (2).

^{xiv} Act No. 4 of 2019

^{xv} Paragraph 3 of Concluding observations on the combined fifth to seventh reports of Zambia, 2022.