Zambia Council for Social Development

Promoting NGO vibrancy & Independence

Civil society report on the implementation of the International Covenant on Civil and Political Rights in

Zambia

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I. Introduction

a. Joining organisations

This joint report is prepared by Zambia Council for Social Development (ZCSD) which is an umbrella organisation bringing together Civil Society Organisations (CSOs), mostly of women and youths oriented organisations. ZCSD has an active membership base of more than 100 members situated in all provinces of Zambia. ZCSD believes that development work should not only be concentrated in the urban communities, but reach and involve all corners of Zambia especially rural areas. With support from the Centre for Civil and Political Rights (CCPR) based in Geneva and The Carter Center (TCC) Zambia country office based in Lusaka and with close collaboration with the NGOCC and Young Women In Action, ZCSD coordinated the civil society to jointly make the recommendations contained in this report.

This is a joint report on the situation of civil and political rights in Zambia. It has been prepared by ZCSD with input from other organisations through a participatory process as indicated in the methodology which included holding a hybrid Capacity Building and Coordination Workshop, and also using a google document to collect input. The full list of participating NGOs is available below.

b. Methodology

A two day Workshop was held at Taj Pamodzi Hotel on 17th and 18th January 2023 where 35 CSO convened physically while 8 participated virtually. The workshop was designed to prepare the upcoming fourth periodic review of Zambia by the United Nations Human Rights Committee to be held during the 137th Session of the Committee on 27 February to 24 March 2023 in Geneva. The workshop informed the CSOs representatives on the role they can play in the UN Human Rights Committee review process.

The second aspect in the methodology implored for this process was the collection of responses to the List of Issues (LOI) which was done by having the workshop attendees work in groups to prepare responses to the LOI. In order to ensure that CSOs provided these responses accurately and also in a more transparent way, a google template was circulated to all the CSOs present and those participating online to submit their contributions in real time to ZCSD which was taking a lead in consolidating the report.

c. Contact details

Find below, is table of organisations that participated in this process described above:

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II. Replies of Civil Society to the List of Issues (CCPR/C/ZMB/Q/4)

d. Constitutional and legal framework within which the Covenant is implemented (art. 2)

Issue 1: *In light of the information provided in the State party's periodic report (CCPR/C/ZMB/4, paras. 3–7), please update the Committee on any significant developments in the process of harmonizing domestic laws with the requirements of the Covenant, as recommended by the Committee in its previous concluding observations (CCPR/C/ZMB/CO/3, para. 9). Please include information on: (a) the extent to which provisions of the Covenant have been applied by domestic courts; (b) measures adopted to disseminate the Covenant among judges, lawyers, parliamentarians, prosecutors and other government officials; and (c) the status of the harmonization of all sources of law in the country in line with the provisions of the Covenant.*

Comments from Civil Society

The state party has adopted domestic laws in line with the requirements of the Covenant as observed by the Committee. However, it has not raised any awareness on the said laws despite some CSOs with mandate doing so on a small scale as most work is concentrated along the line rail leaving the majority of citizens who live in rural areas uninformed. Zambia Law Development Commission has conducted an audit of some domestic laws, but unfortunately it has not made the audit report public - apart from the few stakeholders that participated in the audit.

Some of the laws covered by the Audit are:

- **The Gender Equity and Equality Act No. 22 of 2015** has been enacted though it remains non-operational. This is despite the fact that the Gender Equity and Equality Commission are established by the Republican Constitution in Article 231.
- **Persons with Disabilities Act No. 6 of 2012 and the Mental Disorders Act** have been fully domesticated, and all the discriminatory provisions repealed. However, the implementation of these laws is what remains to be seen.
- The **Juveniles Act Cap 53** has been harmonised under the Children's Code Act with Diversion becoming a priority**. The Education Act No. 23** abolished corporal punishment only for children in school but those out of school are still not protected.
- **The Ratification of International Agreements Act No. 43 of 2016** is not known to the public; the government is not held accountable to these international agreements by the majority citizens. No effort has been made to raise awareness by the duty bearers making it impossible for the state party citizens to engage in meaningful dialogue.
- **The public order Act** Public Order Act is undergoing repeal and replacement process. The Cabinet approved in principle to review the law. Zambia Law Development Commission received submissions from stakeholders and developed a "Public Gathering Bill" and a project report to Ministry of Home Affairs and Internal Security and Ministry of Justice to undergo legislative processes. However, the bill has not been subjected to public scrutiny despite the stakeholder's call to release the bill in order to appreciate its full content.
- **Prison Act Cap 97** has been amended from prison to correctional facilities and a lot of transformation is being undertaken under the correctional facilities. Beddings are being provided for and a high number of inmates being pardoned leading to reduced populations in correctional facilities.
- **The Children's Code Bill** has been ascended into law after over 22 years of its advocacy. Despite a few areas that need to be fine-tuned, it is very progressive.

Recommendations:

The State Party should:

- Engage CSOs in raising awareness on important domestic laws to the general public.
- Release the audit report of the ZLDC to the public.
- Appoint the Commission under the Gender Equity and Equality Act to fully operationalize and monitor its implementation.

Issue 2: *In light of the Committee's previous recommendations (paras. 13–14) and the State party's report (paras. 17–22), please provide information on the customary law system in force in the State party and on its interaction with statutory law. Please provide updated information on the research carried out by the Zambia Law Development Commission and indicate whether the State party intends to review additional laws to eliminate incompatibilities between customary law and the Covenant provisions, ensuring that the latter take precedence. Please provide information on measures taken to raise awareness of the precedence of statutory law over customary laws and practices and on the availability of effective remedies before statutory courts.*

Comments from Civil Society

CSOs observe that the Dual legal system that Zambia has, consists of the Civil Law and Customary Law. It has been noted that many Zambians subscribe to the customary law observed by particular tribal groupings to resolve disputes.

CSOs have observed that limited efforts have been made to raise awareness of the provision for precedence of statutory law over customary laws despite its provisions in the Part I of the 2016 amended constitution. The same constitution still has several clauses that need to be amended as its current form is full of inconsistencies. Additionally, most local court justices do not understand this provision.

CSOs note that the State Party has made strides in enacting Anti-Gender Based Violence (GBV) Act No. 1 of 2011. The law abolishes all forms of violence perpetrated against human beings regardless of their gender, but no mention of penalties to offenders are provided for under this Act. The state party has also enacted the Gender Equity and Equality Act No. 22 of 2015 which champions equity and equality of both men and women. These laws are aimed at eliminating harmful customary laws. However, very little has been done to raise awareness by the state party of these state laws.

Recommendations:

The State Party should:

- Amend the Anti-GBV Act No. 1 of 2011 to provide for penalties to the offenders of the law
- Engage the House of Chiefs on the statutory laws for authority of these laws to be fully made aware and implemented by traditional and customs holders
- Amend the 2016 amended constitution to address some identified inconsistencies and consider building the capacities of local court justices on the provision of precedence
- Harmonize the law so that harmful customary practices are not promoted under the guise of practising Customary Law

Issue 3: *In view of the Committee's previous concluding observations (para. 10) and the State party's periodic report (paras. 8–11), please report whether the current budget and human resources of the Zambian Human Rights Commission are sufficient to enable it to effectively fulfil its mandate. Considering the requirement that the Commission should receive express approval from the President to be able to receive financial support from international institutions, please explain how the State party ensures the Commission's financial independence. Please also provide updated information on the complaints received by the Commission and the number of complaints relating to the provisions of the Covenant.*

Comments from Civil Society

CSOs observed that there has been a steady increase in the budgetary allocations to the Human Rights Commission (HRC) by the current government by 50% from 2021-2023 which is a positive move to meet the aspirations of the HRC as reflected in the 2023 National Budget. We however realise that the lack of resources has been hampering the HRC to do its work effectively in the country. The Commission has established Provincial Offices through which some awareness programs are being implemented in districts and communities. Unfortunately, the Commission has insufficient funds to carry out sensitisation and also carry out other the functions under its mandate.

Recommendations:

The State Party should:

- Establish offices of the National Human Rights Institution in all districts of the country, so as to increase the reach to the communities.
- Increase the resource allocation of funds provided to the NHRI to fully support its operations and human rights awareness activities.

e. Anti-corruption measures

Issue 4: Please provide information on measures taken to prevent and combat corruption. Please provide information on the results achieved by the use of such measures and data on any corruption-related prosecutions and convictions. Please respond to reports of widespread corruption in, among others, the judiciary and in the law enforcement, health and education sectors, which could undermine individuals' access to public services and enjoyment of their rights.

Comments from Civil Society

It was noted that the State party has through the Judiciary established specialised Courts dealing with corruption and financial crimes such as the Economic and Financial Crimes Division of the High Court for Zambia. Other measures taken include the following:

- Increased budget allocations to agencies spearheading the fight against corruption as evidenced by the budget allocation to the Anti-Corruption Commission in the 2023 national budget.

- Repealed and replaced legislation dealing with public procurements and funds, such as the Public Procurement Act and the Public Finance management Act, respectively to have more effective controls in place.

- Established integrity committees in the public sector which is commendable, however this has not been extended to the private sector.

CSOs also noted that Article 266 of the Constitution (Amendment) Act No. 2 of 2016, defines "public officers" to exclude State Officers such as Ministers, Judicial Officers, Judges, Councillors and Constitutional office holders. This is at variance with the definition of public officer in the Anti-Corruption Act No. 3 of 2012 which enacts against corruption in public office, and must therefore be amended to capture State Officers, Judicial officers, Judges, Councillors and Constitutional office holders.

Recommendations:

The State Party should:

- Promote the establishment of Integrity Committees in all public and private institutions with a view of increasing Anti-Corruption preventive measures.
- Increase anti-corruption education to instil a culture of integrity.
- Amend the Anti-Corruption Act No. 3 of 2012, to include State Officers, Judicial officers, Judges, Councillors and Constitutional office holders.

f. Non-discrimination (arts. 2-3 and 26)

Issue 6: *In light of the Committee's previous recommendations (para. 12) and the State party's report (paras. 15–16), please provide updated information on the measures taken to review article 23 of the Constitution related to protection from discrimination to bring it into line with articles 2, 3 and 26 of the Covenant. In particular, please provide information on the application of the provisions contained in article 23 (4) (c), which exclude adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law from the protection from discrimination afforded to women. Please provide information on measures taken to repeal those provisions. Noting that the constitutional referendum conducted in 2016 to amend the State party's Bill of Rights was unsuccessful, please provide information on measures envisaged in this regard. Furthermore, please provide information on bringing the provisions of the Constitution that address the rights of persons of "unsound mind" into conformity with the Covenant.*

Comments from Civil Society

CSOs observed that lack of full implementation of progressive legislation, such as the Anti-Gender Based Violence Act of 2009, due to lack of resources by Government has spurred the discrimination practices in relation to gender, as an example. It has also delayed the establishment of the Gender Commission stipulated in the Gender Equity and Equality Act No 22 of 2015 and the national Constitution of Zambia, which still remains not established. Another issue is the maintenance of Article 23 (4) d, e and f in the Constitution, which allows the applications of the statutory law in matters of personal law, which often deals with issues of marriage.

The implementation of the Persons with Disabilities Act to promote the rights of people with disabilities has been problematic. Examples for this was that most of the infrastructure being put in place do not provide persons with disabilities access to the services being offered in such public places as provided for in the Persons with Disability Act 6 of 2012 under Article 40, 1.

Under Part III 4 (2) of the adoption act of Zambia, an adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an

adoption order. The adoption act has a provision that stops a man from adopting a female child – this is discrimination against men, but the act does provide for exceptions for this adoption process.

It is worth noting that the state can be applauded following the enactment of the Mental Health Act, No. 6 of 2019. However, very little has been done to sufficiently provide for the promotion and protection of the rights of persons with mental illness and the improvement of mental health care. Implementation of this act is still lacking as finances channelled to mental health funds are very low and Zambia has not built any new infrastructure to support the growing needs of persons with mental health challenges. The state still relies heavily on Chainama mental hospital which has during the years been overtaken by the fast-growing needs of persons with mental health challenges.

Recommendations:

The State Party should:

- Review legislation that impedes the full realization of women's rights in Zambia e.g. Article 23 (4) d, e and f in the Constitution.
- Implement the provisions of the Persons with Disabilities Act No. 6 of 2012.
- Make it mandatory that all public facilities have structural provisions that make such buildings easily accessible to persons with disabilities.
- Ensure more work around implementing mental health act is done, provide modern facilities as well as ensure that sufficient funds are channelled to the mental health fund.

Issue 7: *Please respond to reports of discrimination resulting from the dual land tenure system in the State party, which leads to landholders on State land enjoying the full protection of the law in relation to their property, while those under customary tenure are considered to be occupants and users, without the same protection. Considering that 85 to 90 per cent of land is currently under customary tenure, please provide information on measures taken to address that discrimination.*

Comments from Civil Society

The CSOs observed that the law provides that land under customary law is administered by chiefs and headmen on behalf of its people. However, practically, this is not the case as people and chiefs are selling this land instead of being custodians on behalf of their people. It is also very easy for chiefs as custodians to lease pieces of land to the foreigners and the elite at the expense of the poor indigenous people once offered large amounts of money.

Recommendations:

The State Party should:

- Make more efforts to provide better security for customary tenure by introducing village registers for instance, bringing up survey diagrams showing which families own particular land and open land in the custody of the chief, with administrative programs being put in place.
- Bring policies in the chiefdoms safeguarding the process of conversion of land.
- Work closely with chiefs to consent to the government's efforts, thereby providing more security to owners of customary land.

Issue 8: *In light of the Committee's previous concluding observations (para. 24), please provide information on whether the State party intends to repeal the criminalization of consensual same-sex relationships between adults to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant. Please provide information on the number of people who have been arrested, detained and prosecuted for same-sex sexual relations in the past five years. Please respond to reports of discrimination, stigmatization, harassment and violence, including while in police custody, on the basis of sexual orientation or gender identity, and provide information on the measures taken to prevent and combat such acts.*

Comments from Civil Society

CSOs observed that in Zambia, same sex marriage has remained illegal and that courts have arrested those found wanting in this regard. In November 2019, two men were sentenced by the Lusaka High Court to 15 years imprisonment for engaging in same-sex sexual activities. However, in 2020, the two men were granted presidential pardons following a diplomatic row with the US Ambassador to Zambia over their sentencing.

In 2013, Paul Kasonkomona, a human rights activist was acquitted on charges of promoting homosexuality, in a ruling hailed as a boost for gay rights in Africa. Kasonkomona was charged with "soliciting for immoral purposes" after arguing for gay rights on a TV show in April 2013. Homosexuality is illegal in Zambia's deeply conservative society and there is no tangible conversation to change this law.

CSOs have noted that the state party considers same-sex relationships as violating its values, morals and beliefs as enshrined in the constitution. Currently in the new regime of government, the state has reiterated that it has no intention of repealing provisions on the law that pertain to the criminalization of consensual same-sex relationships.

In the same vein, the CSOs are concerned that Persons with albinism continued to be subjected to violent attacks and mutilation due to superstitious misconceptions about albinism. In June 2022, organized criminals posing as police officers attacked a home in the Senga district, mutilating a two-year-old child. In July 2022, a nine-year-old boy from Chasefu district had his finger chopped off by a relative and another man. One of the men fled and the other was arrested and detained awaiting trial.

Recommendations:

The State Party should:

- In respect of the Zambian Constitution, ensure that there is continued peace and non-discrimination, stigmatisation, harassment, and violence, including persons arrested by police, on the basis of sexual orientation or gender identity.
- Address the situation of persons living with albinism, assuring they are protected and their concerns addressed to enhance their security in the country.

g. Gender equality (arts. 3 and 26)

Issue 9: *Please provide information on the implementation of the revised National Gender Policy (2014) and the Gender Equity and Equality Act (2015) and comment on information received about the lack of adequate*

resources directed to their implementation. Please also provide information on the establishment of the Gender Equity and Equality Commission, which would ensure oversight of gender mainstreaming efforts in the public and private sectors and in civil society. Please comment on the provision contained in the Minimum Wages and Conditions of Employment (Amendment) Act according to which domestic workers receive half pay during maternity leave and explain how the provision is compatible with the Covenant. Please also comment on information received that, according to the customary practices of some communities, men have greater authority over land and women face obstacles in securing alternative land when they face displacement. Please also comment on the constitutional requirement that all candidates for public office have a high school education and the disproportionate effect this has on the ability of women to run for office.

Comments from Civil Society

CSO noted that advancing gender equality does not appear to be a priority of the government and that justification of the removal of the Ministry of Gender cannot be the lack of adequate resources to run the Ministry. In September 2021 the Ministry of Gender was transformed to a Gender division under the Office of the President. This has negative consequences, including that the Gender division does not have access to proper funding, independence, nor accountability. The lack of dedicated Ministry has also rendered ineffective the coordination of activities aimed at bringing about Gender equality.

Zambia continues to lag behind on its national, regional and international gender equality obligations. This is despite the positive and progressive policy achievements that Zambia has adopted starting from a national constitution that acknowledges the need for gender equality through its provision to establish the Gender and Equity and Equality Commission as provided for in Article 231. At the regional space, Zambia is party to the SADC Gender protocol that calls for 50/50 women representation in decision making process. Under the African Union and United Nations, treaties such as the ICCPR and the African Charter on People and Human Rights call for equal participation of women and men in leadership. Sadly, this is not attained to date.

Implementation of the National Gender Policy (2014) and Gender Equity and Equality Act (2015) are still outstanding. CSOs are concerned that the Gender Equity and Equality Commission has not been established yet, even though it is a creation of the Republican Constitution. Article 231 of the Constitution expressly creates the Gender Equity and Equality Commission. However, the Commission remains unoperationalised. CEDAW State report is also pending since 2015 and this creates a picture of lack of commitment on the part of government to advance Gender Equity and equality. Other concerns include that the National Mechanism for Reporting and Follow-up was established recently, but it is not operational yet. This institution should work on gender equality.

CSOs also noted the low participation of women in decision making positions particularly politics. While the constitution guarantees the right to political participation for all, women's participation in politics and decision making has remained law. This is largely because Zambia does not have a law to compel political parties as gatekeepers to adopt 50 – 50 of women and men at Parliamentary and local Government levels. The current electoral system of first past the post has not helped in ensuring women's participation in politics and decision making. There is need for a legal framework that will compel political parties to ensure that they adopt 50 – 50 women and men. The current provisions in the constitution, specifically Articles 259 and 45 are inadequate to ensure a 50–50 participation of women and men at all levels. Apart from the constitutional

provisions, it has been the proposition of CSOs that the Political Parties Bill should be reintroduced and have a specific provision that would compel the political parties to adopt women.

In a study conducted by ZCSD in 2020, it is reviewed that women are still facing challenges to participate fully in politics at ward, constituency and national levels due as they face gender-based violence, cyber bulling, intimidation is widely used by those opposing women participation in politics. In the run up to the 2021 general elections, for example, a female ward councillor candidate in Mansa was threatened that her house was going to be set on fire if she continued to campaign. She reported the matter to the police who had to commence patrolling the residential area in order to protect life and property at the residence of the female candidate. This story is among the many instances that women suffer intimidation and threats. It is sad to note that results of the 2021 general elections reflects low numbers of women participating in governance. Out of 164 Members of Parliament, only 22 are women.

Further, women who seek elective positions are highly challenged by the high cost of nomination fees, party contributions towards elections and cost of campaigns. Political competition has become highly commercial. Given the structural and historical discrimination of women and the entrenched patriarchy, women's access to economic resources remains a challenge to effectively compete in politics.

Another issue that remains a concern with regards to women's participation in politics is the political violence and the cyber bullying of women. In most cases, women suffer name calling, cyber bullying and physical attacks to discourage their pursuit of public elective positions. For instance, during the run up to the August 12 2021 elections then Minister of Information and Broadcasting Dora Siliya was a victim of cyber bullying. Similarly, the former running mate to the Patriotic Front (PF) candidate, Professor Nkandu Luo was on several occasions a victim of cyber bullying.

The law to curb violence against women in general remains inadequate given the fact the Anti Gender Based Violence Act of 2011 remains partially implemented. As part of the Anti GBV Act government is supposed to build some shelters and operationalise the Anti GBV Fund. Gender Based Violence remains prevalent against women and girls in Zambia.

The low numbers of women in Parliament and at local government levels evidence the absence of women in the Governance space. Women's representation in Parliament which has dropped from 18% in 2016 to about 15.2% in the current session. At local government, out of 1,858 councillors country wide, only 132 are female. Women are still facing challenges to participate fully in politics at ward, constituency and national levels due to the fact that they face gender-based violence manifesting through cyber bullying and intimidation perpetrated by those opposing women participation in politics.

Another area of concern is the corruption in the adoption processes. To be adopted at any of the levels within the political system, candidates have t bribe their way. As already alluded to because of the women's inability to access production or economic resources the corruption therefore disadvantages them for effectively participating in politics and to be adopted.

Recommendations:

The State Party should:

- Fully implement Article 231 of its Constitution and operationalize the Gender Equity and Equality Commission and ensure that it is fully resourced.
- Strengthen the mainstreaming of gender programmes in schools.
- Guarantee 50% representation of women at all levels by enacting the Political Party Bill to include a provision for 50 -50 adoption at all levels. The Bill should clearly provide gender representation percentages for election candidates from adoption stage.
- Carry out massive awareness and mindset change outreach activities to deconstruct the entrenched patriarchy in society.
- Adopt an electoral system that will guarantee the participation of women such as quota systems.
- Fully implement the Anti Gender Based Violence Act to ensure that all forms of violence against women are addressed.
- Strengthen laws against the cyber bullying of women that aspire for political leadership.
- Enhance the literacy learning for women who may have dropped out of school.
- Apply the SADC 50/50 gender representation requirement as prerequisite to for every political party in Zambia.
- Introduce electoral education in schools in order to encourage girls to develop interest in politics at an early age.
- Ensure that political parties provide interventions to deal with intra-party corruption to make sure that women and men compete on a levelled platform for adoption and election.
- Intensify efforts on the development of a legal framework aimed at the elimination of discrimination based on sex, race, disability, status or any other ground.

h. Violence against women, including domestic violence (arts. 2–3, 6–7, 24 and 26)

Issue 10: *In light of the Committee's previous recommendations (para. 19) and the State party's report (paras. 46–49), please provide information on the measures taken to combat violence against women, including the implementation of the Anti-Gender-Based Violence Act (2011). Please also provide information on the implementation, in the context of the COVID-19 pandemic, of the measures taken to combat violence against women, including sexual violence and domestic violence. Please provide information on: (a) the number of investigations conducted, prosecutions brought and convictions handed down under the AntiGender-Based Violence Act in the past five years, including against law enforcement officials; (b) the fast-track courts established to deal with cases of gender-based violence and whether they are able to cover the demand in the entire territory, including rural and remote areas; (c) the one-stop centres and whether they are provided with the necessary resources to perform their functions; (d) the number and location of functioning shelters and support centres for victims of domestic violence; (e) the effectiveness of the law enforcement response to violence against women, including sexual violence and domestic violence; (f) progress made in combating violence against young girls in the school environment; and (g) efforts to combat transactional sexual exploitation of young girls.*

Comments from Civil Society

The CSOs are concerned that Gender-Based Violence (GBV) continues to be high due to lack of full implementation of the progressive legislation such the Anti-Gender Based Violence Act of 2011. There is a lack of sufficient and well-resourced safe shelters in all provinces, and provisions in the

penal code to provide appropriate punitive penalties for the offenders, are inadequate. The Anti GBV Act does not provide for punishment for the various forms of GBV.

The advent of the COVID-19 partial lockdowns meant that more time was spent in homes by both men and women, and this had an impact on the levels of GBV affecting mostly women.

In the year 2021 for example, according to a report by the Zambia Police Service, there were 4,000 cases of GBV reported in the first half of the year, of which 804 were sexual offences. Of those, 590 were committed against girls and there were 576 cases of "defilement", 571 of which were against girls and five against boys.

For 2022, Zambia Police recorded an increase in the number of GBV cases countrywide for the first quarter of 2022 with more than 6,000 cases being reported. The police service states that of the GBV cases recorded, more than 1,000 of those cases have child victims. They also state that the province with the highest number of GBV cases is Lusaka province which stands at 23.4 percent of victims recorded, followed by Copperbelt Province which stands at 13 percent. You can read the report here.

Recommendations:

The State Party should:

- Revise the penal code in order to stiffen the punishment of Gender Based Violence offenders.
- Establish sufficiently and well-resourced safe shelters in all provinces of the country to ensure that those that are not safe to return to their various communities and families for fear of re-occurrences of abuse are kept in a safe space.
- Allocate more resources to relevant institutions to ensure full implementation of all the progressive legislation on gender.
- Ratify the Optional Protocols to the Convention on the Elimination of all forms of Discrimination against Women and further strengthen efforts on gender issues.
- Fully operationalize the Anti GBV Fund.
- Strengthen laws against cyber bullying against women.

i. Death penalty (art. 6)

Issue 11: *In light of the Committee's previous concluding observations (para. 17) and the State party's periodic report (paras. 29–36), please provide information on the obstacles preventing the State party from abolishing the death penalty and from ratifying the Second Optional Protocol to the Covenant. Please comment on the reported increase in the number of death sentences pronounced in 2019. Please also comment on measures taken to prevent wrongful imposition of the death penalty and the remedies available to those who are exonerated.*

Comments from Civil Society

The death penalty was embedded in the laws of Zambia in colonial Northern Rhodesia in 1931 as the punishment for anyone convicted of murder, treason or aggravated robbery. It was given effect by the Criminal Procedure Code (CPC) in 1933, backed by article 12 of the country's bill of rights which has remained unchanged since 1963. Since independence from Britain in 1964, Zambia has

executed 72 people. The country's first president, Kenneth Kaunda, sanctioned 64 executions, while his successor Frederick Chiluba approved eight executions.

On the positive side to the advocacy work by both local and international organisations calling for the abolition of the death penalty and indeed the personal commitment of the current president, on 23 December 2022 President Hakainde Hichilema assented to the bill which is intended to actualise the removal of the death penalty from the penal code. This positive step also makes Zambia compliant with the Second Optional Protocol to the ICCPR. This is commendable and CSOs commend the new dawn government for walking its talk on this and achieving this milestone.

Recommendations:

The State Party should:

- Amend Article 12 of the Constitution of Zambia to completely exclude the possibility of death penalty in the Zambian jurisdiction.
- Ratify the 2nd Optional Protocol to the International Covenant on Civil and Political Rights.

j. Termination of pregnancy and sexual and reproductive rights (arts. 6 and 17)

Issue 12: *In view of the Committee's previous concluding observations (para. 18) and the State party's periodic report (paras. 37–45), please provide updated information on measures taken to review the current legislation on abortion, particularly with respect to the requirement that three physicians must consent to an abortion. Please also state whether the current legislation ensures access to safe and legal abortion when carrying a pregnancy to term would cause the woman substantial suffering, particularly if the pregnancy is the result of rape or incest or is not viable. Please indicate the estimated number of clandestine abortions per year and state whether any women or medical personnel have been convicted of intentionally terminating a pregnancy and the penalties imposed. Please provide information on the measures taken to combat maternal mortality and the steps taken to ensure access to safe contraceptive methods and to education and information on sexual and reproductive health throughout the country.*

Comments from Civil Society.

Civil society commends the Termination of Pregnancy Act (TPA) (1972). Civil society is, however concerned that the TOP 1972 Chapter 304 of the Laws of Zambia is inaccessible to the common woman. The Termination of Pregnancy Act provides for regulations and conditions for the access to and performance of an abortion by registered medical personnel in a hospital or health centre. The conditions for a woman to access a safe abortion are provided under section 3 of the Termination of Pregnancy Act as follows; the risk to the life of the pregnant woman; risk of injury to the physical or mental health of the pregnant woman; risk of injury to the physical or mental health of any existing children of the pregnant woman; and that there is a substantial risk that if that child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. Therefore, any woman who does not satisfy any of the aforementioned conditions may not access a safe abortion.

The current legislation on abortion in Zambia entails that service delivery for a safe abortion is not on demand and can only be accessed when a woman satisfies the aforementioned conditions. In

addition, , it is worth noting that the Gender Equity and Equality Act[1] provides that subject to any written law, a woman has a right to choose whether or not to have a child. In light of this provision, any woman who desires to access abortion as a reproductive right will still be subjected to the conditions of the TOP.

Statistics on abortion are unfortunately not available.

Civil society remains concerned that the shortage of registered medical healthcare professionals limits the restrictive but legal termination of pregnancy access for women and girls because of the regulation to have at least the presence of three doctors' signatures.

Recommendations:

The State Party should:

- Amend the Termination of Pregnancy Act of 1972 to fit in the provision of having less than 3 medical practitioners to accommodate rural medical hospitals that have less than 3 medical practitioners.
- Take into consideration during the amendment of the Act, conditions under section 3 of the TOP to be more accommodative of other conditions to be stated before a termination is administered. The Act provides that a termination is recommended on the following grounds; the risk to the life of the pregnant woman; risk of injury to the physical or mental health of the pregnant woman; risk of injury to the physical or mental health of any existing children of the pregnant woman; and that there is a substantial risk that if that child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. Therefore, any woman who does not satisfy any of the aforementioned conditions may not access a safe abortion.
- Carry out sensitisation on the interpretation of the Act and availability of these services provided by the Act. This sensitization should be both in rural and urban areas so that women are made aware of the services provided at the health centres or hospital.
- Simplify, translate and the disseminate the TOP for the benefit of more people to know about it and hence begin to demand legal termination of pregnancies.

k. Right to life and excessive use of force (arts. 3 and 6–7)

Issue 13: *Please provide information regarding the legal standard applied in the State party for appropriate use of force and firearms by law enforcement officials and the source of that standard in domestic law. Please explain how the provision in the 1930 Penal Code Act allowing police officers to use deadly force with impunity to disperse an assembly (chap. IV, sect. 18) is in line with the Covenant, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020).*

Comments from Civil Society

With reference to a report released by Amnesty International, CSOs were concerned that since 2016, at least five people have been killed by the police during peaceful gatherings or protests. It was noted the Police have regularly used excessive force to break up peaceful assemblies especially

[1] Section 21 (2) of the Gender Equity and Equality Act

in the Patriotic Front administration. In 2021, before the general elections, the UPND were being denied to conduct campaigns.

On 22 December 2020, police officers shot dead two unarmed people at a gathering of opposition supporters. Several people had assembled to show their solidarity with President Haikainde Hichilema who was the leader of the main opposition United Party for National Development (UPND) at the time — after he was summoned for questioning at the police headquarters in Lusaka. State prosecutor Nsama Nsama, who was not part of the gathering, was shot dead while buying a meal at a nearby restaurant, while Joseph Kaunda, a UPND supporter, was shot by police as they dispersed the crowd.

Legislatures put in place a Police Public Complaints Commission through a Parliament (Act number 18 of 2016). This Act is meant to provide for the membership, functions, operations and financial management of the Police-Public Complaints Commission. The Commission is operational but not many people are aware about this very important institution. The Act lays out the procedure for the initiation and investigation of complaints against police actions. The commission also provides for matters connected with, or incidental to the foregoing.

Recommendations:

The State Party should:

- Train police officers on appropriate use of force and investigate all allegations of excessive use of force by law enforcement.
- Make sure that the police complaints mechanism has sufficient resources and is strengthened.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)

Issue 15: *In view of the Committee's previous concluding observations (para. 21) and the State party's periodic report (paras. 57–63), please provide updated information on the anti-torture bill and any legislative framework to prohibit, prevent and combat torture, including information on the definition of torture, the penalties stipulated in criminal legislation and the inadmissibility of confessions obtained by torture. Please indicate whether the current legislation provides for a definition of torture which covers acts of torture committed by all persons acting in their official capacity, outside their official capacity or in a private capacity, when the acts of torture are committed at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. Please provide further information on the Police Public Complaints Authority established under Act No. 18 of 2016, which provides for a mechanism whereby the investigation of complaints against police actions can be initiated. Please also provide data on the number of investigations, prosecutions, convictions or acquittals and punishments recorded in the past five years, as well as the nature of the sanctions imposed for the act of torture.*

Comments from Civil Society

CSOs are concerned that Police officers continue to use torture and other forms of ill-treatment, including to persons deprived of their liberty and/or to extract a confession. The use of confinement

in separate cells in correctional facilities as form of punishment is also exercised. Civil society notes that reports of the use of mechanical restraint as a form of punishment are still being published.

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. As a general rule, confessions that are not given voluntarily are not admissible in evidence in criminal trials, but there is no law that makes this explicit.

It is observed that the Anti-Torture Bill of 2016 has not been tabled before parliament for enactment. Members of the public have remained less informed on how the police complaints mechanism & justice system deals with torture or ill-treatment committed by police officers or if they remain unpunished.

Recommendations:

The State Party should:

- Enact the Anti-Torture Bill into law, domesticating in full the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- Include in the law in clear terms that involuntary confessions are not admissible.
- Ensure that the police force is independent and properly trained in international human rights law and standards.
- Raise awareness about the existence of the Police complaints mechanism.

Issue 16: *In view of the Committee's previous concluding observations (para. 23) and the State party's report (paras. 72–81), please provide additional information on measures taken to reduce overcrowding in prisons, and their effectiveness to date, including alternatives to detention, the use of bond and bail provisions and the release of prisoners. Please also provide information on measures taken in detention centres, including detention centres for migrants and asylum seekers, to improve sanitary conditions. Please comment on information received that prison conditions in the State party continue to be below the minimum standard, with overcrowding, poor ventilation, disease, poor hygiene and limited access to adequate health care, especially for female prisoners. Please provide information on the measures taken to separate juveniles from adults in all prison facilities countrywide and to ensure that female prisoners are guarded by female officials. Please also provide information on violence against prisoners and the mechanisms in place for prisoners to complain against such violence.*

Comments from Civil Society

CSOs are concerned that detention facilities continue to be characterized by 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.

Moreover, there is no formal mechanism in place for prisoners to report abuse and inhuman conditions.

Other concerns raised in the discussion on this subject include:

- The fact that high use of pre-trial detention exacerbates overcrowding of detention facilities.
- The fact that some districts do not have correctional facilities.

Recommendations:

The State Party should:

- Create a formal mechanism for prisoners to report abuse and inhuman conditions.
- Build modern correctional facilities with good sanitation and other services.
- Build Correctional Facilities in districts where there exists Police Service and judicial facilities.

Issue 17: *Please describe the measures taken to improve the conditions under which people on death row are kept. In this regard, please provide information on measures taken to reduce overcrowding for people under sentence of death, to prevent physical abuse by guards and to ensure that they have access to clean water and adequate medical care, bedding, food and sanitation.*

Comments from Civil Society

The CSOs noted that until November 2019, when the Zambian government opened Mwembeshi Maximum Correctional Facility, the country had only one facility with a capacity of 400 (Mukobeko Maximum Correctional Facility). The country has now 2 Maximum Correctional facilities. Detention facilities continue to be characterised by 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.

The development of 2019 is commendable as it has de-congested Mukobeko Maximum Correctional facility which detained 2,180 at the time of transferring 500 inmates to the new facility. During ZCSD's visit to Mukobeko Maximum Prison in Kabwe in 2021, ZCSD realised that the facility was overcrowded. Initially meant to accommodate 3 inmates on capital punishment, and 25 inmates in the general cell, the facility was holding d 7 inmates on death-row and an average of 50 to 60 inmates in each of the two general cells.

Recommendations:

The State Party should:

- Create a formal mechanism for prisoners on death row to report abuse and inhuman conditions
- Construct Correctional facilities designed to respond to the needs of juveniles be in each province of Zambia to de-congest the current Juvenile Reformatory facilities.
- Build modern correctional facilities with good sanitation and other services.
- Take into consideration prisoners with children, the terminally ill and people with disability for presidential pardons.

m. Administration of justice (art. 14)

Issue 19: *Please elaborate on the legislative framework ensuring the independence, impartiality and transparency of the judiciary and effective access to the judicial system. Please provide information on specific legislative measures taken to establish the separation of powers between the legislature, the executive branch and the judiciary, including by ensuring that the appointment and removal of judges is in line with the Basic Principles on the Independence of the Judiciary.*

Comments from Civil Society

CSOs are concerned about the fact that the President appoints the High offices, which is a breach of the separation of powers.

Cases take too long to be processed in the Zambian justice system, and access to justice is difficult: it is too costly and too far away for most people. Some services only exist at the Provincial level, for example. Representation is very costly in the high courts and supreme court. Courts themselves have limited resources.

Recommendations:

The State Party should:

- Establish coordination between judicial courts and police in the framework of investigations
- Adopt a more inclusive process to appoint the Attorney General and the Chief of Justice.

Issue 20: *Please respond to reports of excessive and extended use of pretrial detention in the State party and report on any measures taken to reduce the use of pretrial detention and adopt non-custodial alternatives, such as bail, including in the case of adolescents in conflict with the law. Please also provide information on the steps taken to ensure access to the courts for persons who cannot afford legal counsel or court fees and provide details on the number and types of cases in which legal aid has been sought, granted and denied in recent years.*

Comments from Civil Society

CSOs are concerned with reports of excessive and extended use of pretrial detention in the State party. The CSOs are also concerned to note that there exists a number of districts that have no correctional facilities, such as Kapiri Mposhi, and this means that suspects are held in Police holding Cells when they are ordered to appear in Court.

The other concern is that of the Legal Aid Board services, which continue to be accessed mainly in Provincial Centres. This makes it difficult for the members of the public in small rural districts to access these services.

Recommendations:

The State Party should:

- Allocate sufficient resources in order to guarantee legal aid for those who cannot afford legal counsel or court fees.
- Operationalize the Legal Aid Policy and Act. Number 1 of 2021.
- Build Correctional Facilities in districts where there exists Police Service and judicial facilities.
- Ensure that detainees are not to be held for more than 48 hours.

n. Right to privacy (art. 17)

Issue 21: *Please respond to reports of routine police interference with the home and house searches conducted without a warrant, despite the legal requirement that such documentation be provided. Please provide information on any measures taken to prevent such incidents and ensure that security forces do not arbitrarily or unlawfully interfere with persons' privacy, family, home or correspondence.*

Comments from Civil Society

Zambia enacted a controversial digital security law in 2021 aimed at tackling digital crime: the Cyber Security and Cyber Crimes Act 2021, which has extra-territorial reach where the conduct has an effect in Zambia. Leading to and post enactment, various quarters of society have expressed fear that the Act could be used to muzzle the freedom of expression, the freedom of the press and the right to privacy.

On the other hand, the government maintains that the Act will help combat cyber-crime, coordinate cyber security matters, develop relevant skills and help promote the responsible use of social media platforms.

In the first quarter of the year 2021, Media Institute for Southern Africa (MISA Zambia) released "The State of the Media Report" in which it indicated as quoted "Similarly, the legal environment was repressive, mainly owing to the enactment of the Cyber Security and Cyber Crimes Act No. 2 of 2021 which poses a threat to the freedom of expression and access to information based on some of its potentially suppressive clauses. The status of the legal environment was exacerbated by the lack of progress on the Access To Information (ATI) Bill as well as other provisions that could safeguard the role of the media".

From the quote, it is clear to deduce that the Cyber security Act has been contentious in Zambia. From the inception, the law lacked participation of the key stakeholders and was enacted without consultations with CSO, the Media fraternity.

Recommendations:

The State Party should:

- Repeal and replace the Cybersecurity and Cyber Crimes Act by a law that will be formulated through a multi stakeholder consultative process and that is compliant with the ICCPR.

o. Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7 and 13)

Issue 23: *Please report on the protection in place for non-citizens in the State party, including refugees, asylum seekers and migrants. Please include information about: (a) the implementation of the Refugees Act of 2017 and whether it provides for refugee status determination, including in cases of unaccompanied and separated children; (b) the measures taken to provide effective access to asylum procedures for all who intend to seek asylum in the State party; and (c) the guarantees in place to ensure that asylum applications are assessed within a reasonable time frame, on an individual basis and with full respect for due process. Please also comment on information received that an estimated 10,000 recognized refugees lived in urban areas without the required residence permit or access to services.*

Comments from Civil Society

Zambia has legislation guiding its work to take care of the refugees (The Refugees Act No. 1 of 2017) and through these guarantees the treatment of refugees and their children while in Zambia.

Many migrants and refugees from DRC, Rwanda and Burundi are now free to economically participate in business activities. The department of immigration has continued to carry out the arrest of these people trading within Zambia and this does not portray a better picture on our commitment to protect them.

Civil society also notes with concern the increase in cases of human trafficking.

Recommendations:

The State Party should:

- Carry out a baseline to ascertain how these refugees find themselves outside camps and also identify those that can contribute to the economy of this country to allow them to participate through issuance permits.
- Curb corruption in the camps where these people pay huge sums of dollars to be allowed to leave the camps and trade within communities.
- Consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Their Families.
- Expand trainings for police and immigration officers on human trafficking and investigations regarding human trafficking

p. Freedom of expression, peaceful assembly and association, and protection of journalists and human rights defenders (arts. 6–7, 9, 19, 21–22 and 25)

Issue 25: *In light of the Committee's previous concluding observations (para. 25), please report on efforts by the State party to fully uphold freedom of expression, especially for those critical of the Government and those with unpopular views, such as sexual minorities. Please provide information on measures taken to ensure that journalists and human rights defenders are effectively able to carry out their profession without constraints and provide information on measures taken to ensure that all rights violations perpetrated against journalists and human rights defenders are thoroughly investigated and those responsible are brought to justice. Please also respond to reports indicating that: opposition political parties have been denied access to public media; some private radio stations have reportedly been forced to abandon broadcasting programmes featuring opposition political leaders or suffered damage due to assault while broadcasting such programmes, and broadcasting licences of some television and radio stations have been suspended on occasion without the established procedures for licence suspension being followed.*

Comments from Civil Society

We acknowledge that the State has put in place Article 20 under the Part III[2] of the Constitution which speaks to freedom of expression, including media freedom. Additionally, the current

[2] Article 20 (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision -- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the

government has to some extent responded to the requirement that freedom of expression needs to be enhanced by eradicating the law that provides for criminal defamation of the president. However, it must be noted that there still exists a number of violations to journalists, Human Rights Defenders (HRDs) and whistle-blowers. Some of the notable examples are:

- There was an arrest of a KBN TV reporter who refused to reveal the identity of whistle-blowers that had provided information which exposed the unethical conduct of senior government officials on 18th January 2022. This was followed by the subsequent arrest of a leader of an opposition political party who is potentially facing a long custodial prison sentence for divulging information he received from whistle-blowers in connection to poor conditions of service for military personnel. Other similar arrests were witnessed with grass-root media personnel arrested for exposing information of the dissatisfaction by unpaid Zambian soldiers, which the government deemed to be very sensitive.

- Furthermore, taking into account the fact that the Zambian legal framework does not at all provide for the protection and recognition of the LGBTQI+, it is safe to submit LGBTQI+ are living their lives in closets, there is literally no freedom of expression for such groups of minorities.

- Moreover, even women do still face human rights violations such as discrimination, this is despite Zambia having ratified CEDAW. We have a very small number of women in decision making positions and in certain cases for them to get to higher positions they have faced countless harassment at adoption stage, as was the case of aspiring candidate for Munali Constituency under UPND who claimed to not have been adopted based on these grounds.

- Youths too are facing discrimination. In certain organisations and politics, it is difficult for youths to take up decision making positions.

The other issue is that human rights violations become even more extreme during the election period, where all sorts of human rights violations occur against citizens and political parties. We have had and still have cases where the National TV or radio stations are strictly for the political party in power and current government, and they cannot cover the opposition political parties.

CSOs are concerned with the fact that freedom of expression was seriously curtailed under the previous government. Access to information law has been on the shelf for enactment for the past 22 years with every government promising to facilitate its enactment since 2002. Human Rights Defenders had in the previous administration resorted to “Bush Protest” and broadcasted such peaceful protest through social media in order to deliver their message to the leaders.

When the State responded that there is the Access to Information (ATI) law in process of being enacted, the issue of journalists and HRDs being protected in that regard is not guaranteed; this is because the ATI bill does not expressly provide any protection mechanism for journalists.

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private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or (c) that imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

The Non-Governmental Organizations' Act, No. 16 of 2009 of Zambia, according to its preamble, provides for the co-ordination and registration of non-governmental organizations; the establishment of the Non-Governmental Organization's Board and the Zambia Congress of Non-Governmental Organizations; the constitution of the Council of Non-Governmental Organizations; and the provision for matters connected with or incidental to the foregoing. The implementation of this law has a significant impact on the enjoyment of the freedom of association by individuals who seek to establish nongovernmental organizations for the promotion and protection of their interest in the country. Thus the provisions of the law must be carefully matched against the enjoyment of the freedom to as it unjustifiably interferes with the freedom of association.

In our view the NGO Act violates International human rights norms relating to the freedom of expression. It completely fails to see NGOs as partners in the good governance project. The attempt by the Act in its introduction to justify and legitimize the obstacles it is placing for NGO operations, as necessary to enhance accountability and transparency of NGOs, to harmonize or coordinate the NGOs' activities and to meet national interest are mere rationalizations for repression and are violations of international laws and conventions to which Zambia is a signatory. Government must strive to promote freedom of association and a robust civil society, independent of state control or government involvement, since it is a necessary and important ingredient in a functioning democracy. It must give NGOs an enabling environment for them to operate effectively. Where it is necessary to restrict the rights of citizens, the interference must be made in accordance with the constitution, must pursue a legitimate aim necessary in a democratic society and the measures taken must be proportional to the legitimate aims sought to be achieved. The NGO Act of 2009 is clearly riddled with provisions that are designed to facilitate interference with the enjoyment of the freedom of expression and association. In its current form it has no place in a democratic society. The Government should immediately repeal the law due to its lack of compliance with the Zambian constitution, international human rights treaties and best practices.

Recommendations:

The State Party should:

- Immediately enact a law that aims to protect journalists and HRDs.
- Immediately put in place protection mechanisms to ensure that the environment is safe for journalists and HRDs as they perform their duties.
- Give special consideration to ensure the protection of the rights of the marginalised such as the women, youth and LGBTQI+.
- Enact the access to Information law.
- Repeal the NGO Act of 2009 as it is unconstitutional and does not ensure freedom of expression and association.

Issue 26: *Please provide information on the application of sections 67 and 69 of the Penal Code Act, which criminalize defamation of the President and the publication of false news, and indicate whether the State party intends to repeal those provisions. Please respond to allegations that the authorities have increased the use of criminal defamation laws to silence critics of the President or the judiciary.*

Comments from Civil Society

We are grateful that those sections have now been eradicated and we now do not have such a crime. In the past year, a total of 12 critics and opponents of Hichilema were arrested for insulting the president multiple times.

We additionally seek the repeal of the cybercrimes and cyber security Act 2021 Among others, the Cyber Security and Cyber Crimes Act, seeks to promote the "responsible use of social media platforms". The act may also allow the government to listen to people's conversations without a court order. Furthermore, the law orders that service providers should provide services that are "capable of rendering real-time and full-time monitoring facilities for the interception of communications". This will be done through the setting up of a Central Monitoring and Coordination Centre through which intercepted communication and call-related information will be forwarded.

The Act falls far short of regional and international standards and instruments on human rights such as the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention, which sets the standards for cybersecurity and personal data protection laws as well as capacity building, knowledge exchanges and experience sharing among signatories. Fears dominant are that the state could be relying on cybersecurity laws to curtail freedom of expression and of the media.

Recommendations:

The State Party should:

- Continue repealing these archaic laws such as the cybercrimes and cyber security 2021 that take away the freedom of expression of citizens and do not guarantee safety of journalists and Human Rights Defenders.
- Continue enacting laws that promote freedom of expression for all and make it safe for journalists and HRDs

Issue 27: *Please provide information on the legal framework regulating freedom of assembly, and on measures taken to protect participants in assemblies from violence. In this regard, please clarify the requirement to give the authorities prior notice of all demonstrations and respond to allegations that the authorities often assert that such events do not have permission to proceed or cancel them at the last minute. Please also comment on information received that peaceful protests against the Government and political meetings organized by the opposition are frequently restricted under the Public Order Act and that, in many cases, the suppression of assemblies has resulted in arbitrary arrests, damage to property, physical injuries and, at times, deaths.*

Comments from Civil Society

Freedom of Assembly is provided for under Article 21 of the Bill of Rights Part iii of the Constitution. We further have the Public Order Act which is under review, and should the amendment take place it shall be called the Public Gathering Act, which expands and enhances the freedom of Assembly of all. However, we still see the breach of these fundamental freedoms such as freedom of expression, freedom of assembly and movement. This situation worsens when the

election period approaches as opposition political parties have been stopped from assembling in a particular are on the basis that they did not get clearance from the police, or the president was suddenly in the area for presidential visits, as was the case in Kabwata, in February 2022.

The biased application of the Public Order Act by police made it difficult for the opposition political parties to carry out their campaigns during elections. We commend the new dawn government for its effort to amend this law.

In its application, freedom of assembly is only guaranteed for the President and the vice-President. Opposition does not have the same freedom.

Recommendations:

The State Party should:

- Enact the Public Gathering Bill into law, inclusive of protections which expands and enhances Freedom of Assembly for all.
- Carry out systematic re-training for the law enforcement agencies / staff with a view of ensuring that application of the Public Gathering Bill is applied effectively.
- Put in place strong measures that prevent enforcers from interpreting the law as they please so as to ensure that people's freedom of assembly is not violated especially during elections.

q. Rights of the child (arts. 23-24 and 26)

Issue 28: *In view of the Committee's previous concluding observations (para. 22) and the State party's report (paras. 64–71), please indicate the measures taken, including the legal framework, to prohibit the use of corporal punishment against children in all situations. In light of the Committee's previous concluding observations (para. 26), please provide information on measures taken to raise the minimum age of criminal responsibility and clarify how section 14 of the Penal Code Act has been applied. Please provide information on the adoption and implementation of the Marriage Bill (2015), addressing child marriage. Please also provide information on measures taken to protect children's health and lives from lead poisoning, which particularly affects children living near former industrial lead mines and has reportedly led to death in some cases. Please also provide information on efforts to prevent and to address child labour and exploitation, especially in mining, agriculture and domestic service.*

Comments from Civil Society

In relation to this issue, CSOs were concerned with a number of rights of the child that suffer blatant violations of their fundamental rights provided for in the Convention on the Rights of the Child (CRC). Key to these were

- **Corporal punishment:** the enacted Children's Code Act of 2022 & Education Act, prohibits corporal punishment in schools for any offence from the learner. However, very little dissemination & awareness raising is being done.
- **Penal Code Act 13-2022** raised minimum criminal age from 8 to 12; this is progress but does not align with international standards (CRC recommendations from 2022 asked Zambia to raise age to at least 14).
- Current **Marriage Act** provides that minimum legal age is 21 and age 18 with parents' consent. The draft marriage bill brings the age for marriage to 18 years old without consent, harmonising customary & statutory law, which is important, but the draft law still has gaps. For example, it

does not define child marriage & does not contemplate any punitive measures if child marriages are celebrated in violation of the law. Indeed, the bill should explicitly stipulate that child marriage is prohibited and that it is a criminal offence. Also, it is important for the discussion on draft bill to be inclusive & participatory, including CSOs from all parts of the country.

Recommendations:

The State Party should:

- Enhance the review and enactment of the new marriage bill which commenced in 2015, and define child marriage and add punitive measures in the Bill.
- Reconsider the age of criminal responsibility to be aligned with international guidelines at 14.
- Simplify the Children Code Rights Act of 2022 and carry sensitisations for public awareness to be rolled out by government and CSOs.
- Corporal punishment should be criminalised in schools in order to protect the learners.
- Consider enacting laws that will abolish corporal punishment for children out of schools.

r. Participation in public affairs (arts. 7, 14 and 25-26)

Issue 29: *Please indicate the measures taken to guarantee free and transparent elections. Please respond to reports about high levels of political violence perpetrated against opposition leaders, their supporters and those perceived to hold views contrary to those of the Government. Please provide information on the measures taken to investigate such offences and prosecute and punish the perpetrators, and to prevent similar incidents occurring during the upcoming election. Please provide information on the measures taken or envisaged towards implementation of the Constitutional Court's judgment in the case of Godfrey Malembeka v. Attorney General and Electoral Commission of Zambia, and to provide a legal framework and an effective process to guarantee that persons deprived of their liberty can exercise their right to vote.*

Comments from Civil Society

CSOs are concerned on a number of issues that challenge women and youths to effectively participate in public affairs, especially in elections. In as much as there is legislation for Zambia to carry out free & transparent elections, enforcement of this law remains a challenge and in most cases the electoral body blames inadequate resources for this. Other specific concerns raised by the CSOs in this scenario were as follows:

- Voter Education: prisoners were allowed to vote recently[3], but it is not clear whether they were all able to.
- Voter registration: not transparent, discrimination during registration in the way in which provinces are covered during registration.
- Inadequate provisions (i.e., infrastructure) to the implementing agent (i.e., Electoral Commission of Zambia – ECZ) to accommodate non-state agents in providing oversight in the continuous voter registration initiative.
- Political parties attach a fee to aspiring candidates during internal nomination while the electoral body also has nomination fee attached to all nominations for candidates. This has

[3] https://www.africanews.com/2020/12/19/zambia-s-electoral-commission-registers-the-country-s-inmates-to-vote/ and https://au.int/en/pressreleases/20210814/aueom-statement-preliminary-findings-zambias-2021-general-elections.

led to the monetarization of political participation and it consequently hinders participation of the youth and women.

- The grade 12 Certificate qualification limits women and young people from participating. In essence, education qualifications criteria is cardinal as a means of promoting competence. In as much as participation should be inclusive, it should not dilute the need to have capable candidates. Education opportunities should be available and accessible to all.

The other concern identified is that of discrimination where women political players are victims of sexual harassment, bullying and harassment including in cyber space. Discrimination was identified as more prevalent is situations where persons with disabilities seek to participate in this noble process. It was noted that people with disabilities are often victims of verbal abuse, linked to adoption processes in political parties which discriminate against them.

Financing of political campaigns disadvantage the participation of women and youth, especially where it is required to provide campaign Information, Education and Communication (IEC) material and also meeting costs for transporting, feeding and also paying for cost of venues for meetings for supporters during campaigns.

CSOs are concerned that the decentralisation of the Electoral Commission has not been done – there is no presence at district level, this depends on local authorities as doing so will facilitate continuous Voter Registration. The decentralised electoral commission operation will as well facilitate continuous voter education that can as well benefit the Correctional Facilities (Prisons).

The CSOs are concerned and ask that the sexual and gender-based violence committed during participation in public affairs in general and in election campaigns should be considered as a criminal offence and should be guaranteed in the process of peaceful assembly.

The appointment of Commission Heads brews biasness. The legislation that accords the Presidency to nominate and appoint heads of commission services such as the Electoral Commission of Zambia (ECZ) and Human Rights Commission (HRC) after Parliamentary ratification are not accompanied by the necessary vetting measures that promote transparency and inclusiveness. Regardless of the ratification process through Parliament, the counteraction is that often Parliament is mainly comprised of members from the ruling party, and this consequently leads to voting that is partisan than on merit basis. The positions for instance are not advertised to the general public and the media barely provides sufficient information to citizens, on the candidates for these positions when the Presidency unveils the nominated individuals. The lack of scrutiny breeds room for partiality in discharging of their mandates as they assume allegiance to the appointing authority.

Enforcement of legislation and policy measures that promotes citizenry participation in governance discourse is not adequate. For instance, the Local Government Act of 2019 and the Constituency Development Fund Act of 2018 have provisions that compel gender sensitivity when forming committees that oversee localised development but only a handful of committees adhere to these provisions.

There is a need to strengthen the ratification and vetting of candidates nominated to as Commissioner. This can be enhanced through the enactment of the Access to Information Bill which would accord the media, civil societies and general population to scrutinise and research on

nominated candidates for the positions. Additionally, there is need to increase information about the vacancies in these positions as a means of promoting transparency, fairness and inclusion.

The Political Parties bill should have provisions of mixed member systems embedded to compel political parties to ensure that youth, women and persons with disabilities all have equal opportunity to find their names on the ballots. Additionally, the legislation will give guidance on political parties financing which will subsequently demonetarize politics to ensure that candidates without financial backing are considered and given a fair opportunity. The legislation should also provide provisions on gender-based violence and hate speech as a mechanism to curb induced negligible participation.

Recommendations:

The State Party should:

- Change the Constitution to use proportional representation to elect leaders such as the mixed member electoral system at political party and election levels This system compels political parties to have demography reflective candidates for elected position and consequently the ballots will have a mixed proportion of candidates.
- Promote impartiality of the electoral body (Electoral Commission of Zambia) through appointments of election commissioners made by parliament to guarantee its independence.
- Strengthen/build capacity of Conflict Management Committees at district level and operate continuously as a decentralised mechanism to resolve inter-party conflicts.
- Strengthen the ratification and vetting of candidates nominated to as Commissioner.
- Enact the Political Parties Bill with provisions of mixed member systems, financing and mechanisms to curb induced negligible participation.
- Strengthen the capacity of monitoring mechanisms of structures at sub-national levels, recognise the need to capacitate state local government authorities and elected duty bearers to enable them to adequate execute their functions given that they have the mandate of promoting community participation in public discourse. The lack of community participation erodes the ability for citizens to appreciate their role in fostering good governance.