



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Fourth periodic report submitted by Zambia  
under article 40 of the Covenant, due in 2011\***

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## **Executive Summary**

This Report is based on objective and reliable information of Zambia's fulfilment and implementation of the United Nations International Covenant on Civil and Political Rights. This Report gives an account of the normative framework in which civil and political rights are protected in Zambia. During the State party's presentation of its third Periodic Report to the Committee, the Committee raised concerns and recommendations. This Report addresses these concerns and recommendations. It also outlines the legislative, administrative, judicial and other measures in place to ensure the fulfilment of Zambia's obligations and commitments under the Covenant.

The Report also gives an account of the challenges and constraints faced in the implementation of the Covenant on Civil and Political Rights. It highlights the key national priorities, initiatives and commitments which Zambia intends to use to overcome the key challenges and constraints. The Report emphasises Zambia's continuous efforts and commitments towards strengthening the protection of civil and political rights.

The Committee is invited to note that the responsibility of preparing State Reports in Zambia lies with the Ministry of Justice. The process of preparing the national Report commenced with an initial workshop which was held in Lusaka by the Ministry of Justice, intended to collect information and views for the Report.

This was followed by consultative workshops whose objectives were to familiarize the participants with the obligations under the Covenant and to gather information on the implementation of civil and political rights in Zambia for inclusion in the national Report. The participants and stakeholders who were consulted in this process were drawn from Government institutions, Civil Society Organisations and the Human Rights Commission.

## **Part I. Responses by the State Party to recommendations raised by the United Nations Human Rights Committee**

1. Zambia is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and she ratified the ICCPR on 10th April, 1984. As a State Party to the ICCPR, Zambia is obliged to report periodically on the implementation of the provisions of the ICCPR by responding to recommendations of the United Nations Human Rights Committee (the Committee) and by indicating administrative, judicial and legislative measures which the State Party has taken in order to protect the rights enshrined in the ICCPR. In light of the foregoing, Zambia presented its Third Periodic Report to the Committee in January, 2006 and the Committee raised various concerns and recommendations following the presentation of the Third Periodic Report. The following are the responses to the recommendations made by the Committee.

2. In paragraphs 1 to 8 of the concluding observations made by the Committee acknowledgment was made of the positive aspects highlighted in Zambia's Third Periodic Report such as the establishment of the Human Rights Commission and the Police Public Complaints Authority.

### **Harmonisation of Domestic law with the Covenant**

3. The Committee recommended in paragraph 9 of its concluding observations that the State party should ensure the harmonisation of its domestic law with the Covenant in a timely manner and that the State party should also, throughout the constitutional review process, raise awareness of the public at large of the international obligations the State party has undertaken upon ratification of the Covenant.

4. The State party wishes to report that it is committed to the process of reviewing and harmonising domestic laws in line with the requirements of the ICCPR. To this effect, the Zambia Law Development Commission (ZLDC) in conjunction with other stakeholders engaged in an exercise to audit and review various pieces of legislation from 2006 to May, 2017 in order to ensure harmony and consistency of legislation with the Constitution and with Zambia's international obligations.

5. The following pieces of legislation were considered during the audit:

- (i) Citizenship of Zambia Act No.33 of 2016 (regulations are now under consideration in order to ensure that provisions of the Act are implemented);
- (ii) Gender Equity and Equality Act, Act No.22 of 2015;
- (iii) Persons with Disabilities Act, Act No 6 of 2012;
- (iv) Mental Disorders Act, Chapter 305 of the Laws of Zambia (the recommendation from ZLDC is that the Act needs to be repealed and replaced to conform with the Constitution and with international best practice);
- (v) Juveniles Act, Chapter 53 of the Laws of Zambia (the recommendation from ZLDC is that the Act must be amended and specific amendments were recommended such provisions on the need for accused juveniles to be separated from adults and brought as speedily as possible for adjudication);
- (vi) Ratification of International Agreements Act No 43 of 2016 (The Act makes provision for robust approaches towards ratification, state party reporting and domestication of international instruments. There is need for regulations to give full effect to the Act);
- (vii) Public Order Act, Cap 113 (Recommendations were made to enhance the provisions of the Act in order to ensure its that implementation of the provisions of the Act complies with the spirit of the Constitution, in particular the protection of, inter alia, the Freedoms of expression and Freedom of assembly);

(viii) Anti-Corruption Act (recommended amendment to, inter alia, remove discriminatory practices, where certain public offices are exempted from investigations);

(ix) Prison Act Cap 97 (Decision to draft Correctional Services Bill to move from a penal to a correctional system);

(x) The Education Act, Chapter 134 has been repealed and replaced with the Education Act No 23 of 2011 (one of the key developments is the express prohibition of corporal punishment in the new Act); and

(xi) The Children's Code Bill to domesticate the United Nations Charter on the Rights of the Child.

6. The Committee is further invited to note that the State party enacted the Anti-Gender Based Violence Act No. 1 of 2011 and the Anti- Human Trafficking Act No. 11 of 2008 which, among other things, comply with Articles 3 and 8 of the ICCPR.

7. With respect to raising awareness of the public at large of international obligations, the State Party acknowledges that more work needs to be done. However, with the enactment of the Ratification of International Agreements Act, 2016, the State Party is required to hold nationwide consultations before ratification of international instruments and the consultations will serve as a means of awareness. In addition, with respect to treaties to which Zambia is a party, consultation and validation workshops are required to be made during the preparation of periodic reports and this serves as one of the means to raise awareness of international obligations the State Party has undertaken upon ratification of the Covenant.

### **Budgetary Allocation to Zambia Human Rights Commission**

8. The Committee recommended in paragraph 10 of its concluding observations that the State party should make all possible efforts to increase the budgetary resources of the Zambian Human Rights Commission to permit it to discharge its functions effectively. The State party was further urged to ensure that the Commission is able to seek and receive funds from international institutions or any other source as it deems appropriate and encouraged to enhance the powers and the status of the Commission. The State party was also requested to ensure that the rules governing the Commission are in full compliance with the Principles relating to the status of National Human Rights Institutions (The Paris Principles).

9. The State party wishes to report that Section 22 (2) of the Human Rights Commission Act provides that 'the Commission may, subject to approval of the President, accept any money by way of grants or donations from any source and raise, by way of loans or otherwise, such money as it may require for the discharge of its functions'. Given this, the Human Rights Commission is able to seek and receive funds from international institutions or any other source as it deems appropriate. However, the Commission is required to seek approval of the President before seeking or receiving funds from sources other than Government. This requirement is not unique to the Human Rights Commission. Most institutions that are permitted to source funding from sources other than government are required to seek the approval of the President or the Minister responsible for Finance. The purpose of this requirement is based solely on the need to protect the sovereignty and public policy of the State party in order to enhance transparency and overall regulation of regional and international cooperation within the Republic of Zambia.

10. The State party also wishes to report that the Human Rights Commission Act provides for the functions and powers of the Human Rights Commission and its composition. The State party confirms that the provisions of the Act are in full compliance with the Paris Principles. For instance, section 3 of the Human Rights Commission Act provides that 'the Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority'. Further, the Commission has the discretion to develop its own rules to govern its operations.

11. The following chart reflects the budgetary allocations from the State Party to the Zambia Human Rights Commission for the period 2010 to 2017.

**Human Rights Commission - Budgetary allocation and releases for the Period January 2010 to December 2017**

<i>Year</i>	<i>Sub-Item</i>	<i>Budget ZMW</i>	<i>Released ZMW</i>	<i>% Released</i>
2010	Personal Emoluments	6 595 279.40	6 594 039.35	99.9
	Non-Personal Emoluments	1 992 314.63	1 675 820.56	84.1
	<b>Total</b>	<b>8 587 594.03</b>	<b>8 269 859.91</b>	
2011	Personal Emoluments	7 966 723.05	7 966 723.05	100
	Non-Personal Emoluments	2 071 824.11	2 071 824.11	100
	<b>Total</b>	<b>10 038 547.16</b>	<b>10 038 547.16</b>	
2012	Personal Emoluments	8 348 460.79	8 348 460.79	100
	Non-Personal Emoluments	2 382 597.73	2 264 158.51	95.0
	<b>Total</b>	<b>10 731 058.52</b>	<b>10 612 619.30</b>	
2013	Personal Emoluments	9 529 153.52	10 113 448.38	106.13
	Non-Personal Emoluments	4 430 250.48	2 738 827.00	61.8
	<b>Total</b>	<b>13 959 403.00</b>	<b>12 852 275.38</b>	
2014	Personal Emoluments	11 090 783.00	11 090 948.00	100
	Non-Personal Emoluments	4 652 939.00	4 141 141.50	89.00
	<b>Total</b>	<b>15 743 722.00</b>	<b>15 232 089.50</b>	
2015	Personal Emoluments	10 861 643.00	10 786 478.00	99.3
	Non-Personal Emoluments	4 563 162.00	2 856 492.00	62.6
	<b>Total</b>	<b>15 424 805.00</b>	<b>13 642 970.00</b>	
2016	Personal Emoluments	9 704 077.00	10 640 900.00	109
	Non-Personal Emoluments	1 817 278.00	1 440 416.34	79
	<b>Total</b>	<b>11 521 355.00</b>	<b>12 081 316.34</b>	
2017	Personal Emoluments	10 364 815.00	6 960 935.00*	67.2
	Non-Personal Emoluments	1 817 278.00	1 817 278.00	100
	<b>Total</b>	<b>12 182 093.00</b>	<b>8 778 213.00</b>	

Note: \* Represents amounts received as at 31st August 2017.

**Communications No.390/1990 and No. 856/1999**

12. The Committee in paragraph 11 of its concluding observations requested that the State party follow up on the Committee's recommendations in Communication No.390/1990 (*Bernard Lubuto v Zambia*) and Communication No. 856/1999 (*Alex Soteli Chambala v Zambia*) and provide a Report to the Committee on the matter.

13. The State party wishes to report that the death penalty is still on its statute books and no amendments have been effected to limit its application. However, as previously reported, there has been a de facto moratorium on the death penalty in Zambia. The last execution took place in January 1997 and no death warrants have been signed since then.

14. The Committee is also invited to note that both Alex Soteli Chambala and Bernard Lubuto received Presidential Pardons in 2002.

### **Review of Article 23 of the Constitution**

15. The Committee recommended in paragraph 12 of its concluding observations that the State party should review article 23 of the Constitution in order to bring it in line with articles 2, 3 and 26 of the Covenant.

16. The State Party acknowledges the need to review Article 23 of the Constitution and wishes to report that efforts were made in 2016 to expand the Bill of Rights by way of a Referendum in accordance with Article 79 of the Constitution. However, the Referendum was not successful and the State Party remains committed to the protection of the rights of all persons without discrimination.

### **Compliance of Customary Laws and Practices with rights provided for in the ICCPR**

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

18. The State party wishes to report that The Zambia Law Development Commission (ZLDC) undertook research on the Restatement of Customary Law in Zambia. Proceeding therefrom, the ZLDC undertook a review of legislation and developed new laws such as the Gender Equity and Equality Act with the view to eliminate traditional customs that create inequality between men and women. These include the following:

- (i) Development of the Anti-Gender Based Violence Act of 2011 (the Ministry of Gender and ZLDC are reviewing the Act to come up with penalties for offences);
- (ii) The review of the Intestate Succession Act to ensure that widows are not disadvantaged in the sharing of the estate of their deceased husbands;
- (iii) The Development of legislation to regulate Marriages under Customary Law (Amendments proposed to the Marriage Act, Chapter 50 of the Laws of Zambia);
- (iv) Development of legislation to regulate Customary Land Tenure; and
- (v) Review of the Penal Code and Criminal Procedure Code.

### **Raise awareness of the Precedence of Statutory Law over Customary Laws and Practices**

19. The Committee in paragraph 14 of its concluding observations recommended that the State party should increase its efforts to raise awareness of the precedence of statutory law over customary laws and practices, and of the right to appeal before statutory courts. It should make those involved in the administration of local justice aware of the rights contained in the Covenant and encourage them, in particular, to take into consideration the right of every person not to be discriminated against.

20. The State party wishes to report that Article 1 (1) of the Constitution of Zambia (Amendment) No. 2 of 2016 provides that;

*“This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of its inconsistency.”*

21. The Supreme Court of Zambia has affirmed this position in cases such as *Chibwe (Rosemary) v. Chibwe* (Austin) 2000 where it held the Ushi customary practice which does not allow for a wife to inherit any matrimonial property upon dissolution of marriage to be

discriminatory against women. The Supreme Court also held that customary law in Zambia is recognized by the Constitution provided its application is not repugnant to any written law.

22. Further, Local Court Justices are trained during their orientation on the need to uphold the supremacy of the constitution in relation to customs and customary law that is in conflict with the law. Furthermore, members of the public are made aware of supremacy of the constitution over customary law and practices through public awareness and clarification from the members of staff of the Local Courts.

### **Article 25 of the Constitution should be in line with article 4 of the Covenant**

23. The Committee recommended in paragraph 15 of its concluding observations that the State party should bring article 25 of the Constitution in line with article 4 of the Covenant. It should also establish a mechanism by which it informs other States parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the rights it has derogated from in time of public emergency, as required by article 4(3) of the Covenant.

24. Article 25 of the Constitution as it stands in its current form, does not have a mechanism of informing other state parties to the Covenant of the right derogated from in time of public emergency.

25. The State Party also wishes to report that Articles 30 and 31 of the Constitution of Zambia (Amendment) Act, 2016 regulate the declaration of a state of emergency and a threatened state of emergency respectively.

### **Adoption of legislation on Counter-Terrorism**

26. The Committee recommended in paragraph 16 of its concluding observations that the State party should ensure that the rights enunciated in the Covenant and in particular its provisions governing limitations and derogations to these rights, are fully taken into consideration when adopting counter-terrorism provisions and laws and the State party should also bear in mind the need to define acts of terrorism in a precise and narrow manner.

27. The State party enacted the Anti-Terrorism Act No. 21 of 2007. This Act defines terrorism as “an act or omission in or outside Zambia and is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public or compel a government or an inter-organisation to do, or refrain from doing any act, and is made for the purpose of advancing a political, ideological or religious cause which:

- (a) Constitute an offence within the scope of a counter terrorism convention listed in the fifth schedule;
- (b) Causes or is intended to cause death or serious bodily harm to a person;
- (c) Causes or intended to cause serious damage to private or public property;
- (d) Endangers a person’s life;
- (e) Creates a serious risk to the health or safety of the public or a section of the public;
- (f) Involves the use of firearm or explosives;
- (g) Involves the release into the environment or any part thereof to any dangerous, hazardous, radioactive, harmful substance, toxic chemical, microbial or other biological agent or toxin;
- (h) Is designed or intended to disrupt any computer system or the provision of services directly related to communications, infrastructure, banking or financial services, utilities, transportation or other essential infrastructure or services;

- (i) Is designed or intended to disrupt the provision of essential emergency services such as Police, civil defence or medical services;
- (j) Causes serious risk to national security;
- (k) Causes damage to a vessel or is likely to endanger the navigation of any vessel on inland or international waters; and
- (l) Causes damage to any aircraft or airport, is intended to or is likely to cause damage to any air navigation facilities or endanger the safety and lines of persons and property, affect the operations of air services or undermine the confidence of the public in the safety of Civil Aviation.”

28. Section 2(1) of the Anti-Terrorism Act compliments the above stated definition by making provision that terrorism or a terrorist act constitutes an offence within the scope of the international counter terrorism conventions listed in Annex I.

## **Death Penalty**

29. The Committee recommended in paragraph 17 of its concluding observations that the State party should review the Penal Code to ensure that the death penalty is imposed only for the most serious crimes and that the State party should ensure that public debate on the death penalty is conducted on the basis of a full presentation of all aspects of the matter.

30. The State party wishes to report that the death penalty is still on its statute books and no amendments have been effected to limit its application. However, there has been a de facto moratorium on the death penalty in Zambia.

31. Article 12(1) of the Constitution provides that “a person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.” There are three offences that carry the death penalty, namely, Murder (Section 200 of the Penal Code), Punishment of murder (Section 201 of the Penal Code), Aggravated Robbery (Section 294 of the Penal Code), and Treason (Section 43 of the Penal Code).

32. Despite having retained the death penalty in its laws, Zambia is a ‘de facto abolitionist State.’ The last executions in Zambia were carried out in 1997, during the presidency of the late Dr. Frederick Titus Jacob Chiluba. Since then, successive Presidents have been reluctant to authorise any executions.

33. Former President, the late Dr. Levy Patrick Mwanawasa, officially announced that he would not sign any death warrant during his tenure. During his tenure, therefore, President Mwanawasa commuted the sentences of 100 death-row prisoners to life imprisonment.

34. Former President, Mr. Rupiah Bwezani Banda, officially announced that he would not sign any death warrant during his tenure. During his tenure, therefore, President Banda pardoned and commuted the sentences of 53 death-row prisoners to life imprisonment.

35. Former President, the late Michael Chilufya Sata, officially announced his opposition to the death penalty. During his tenure, therefore, President Sata commuted the sentences of 123 death-row prisoners to life imprisonment.

36. Current President, President of the Republic of Zambia Mr. Edger Changwa Lungu through the powers vested in him by the Article 97 of the Constitution (Amendment) Act No.2 of 2016 has been commuting death sentences to life imprisonment. In July, 2015 President Lungu commuted the sentences of 332 death-row prisoners to life imprisonment. Official records indicate that this number represented all death-row prisoners in Zambia at the time.



## Reducing Maternal Mortality and Amending Abortion laws

37. The Committee recommended in paragraph 18 of its concluding observations that the State party should increase its efforts in combating maternal mortality and should amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk.

38. The State party has made progress in reducing maternal mortality, with an indication that maternal mortality has decreased from 398/100,000 live births in 2001 to 591 per 100,000 live births in 2007. Institutional deliveries have increased from 43% in 2001 to 48% 2007, 67% in 2013/2014. Although the State party has made some progress in reducing the levels of maternal mortality rates to current estimated levels, there is recognition that the levels of maternal mortality are still high.

39. Factors that have contributed to maternal mortality in Zambia include delays in seeking health care by pregnant women, prohibitive cultural or traditional practices, and inadequate knowledge about danger signs in pregnancy and labour; inability to access health facilities and delays in receiving care at the health facilities. Other challenges have included shortage of skilled human resource, inadequate equipment and supplies in health facilities and inadequate infrastructure especially delivery space and mother's shelters.

40. To effectively address these challenges, the State party has put in place policies and strategic plans including the National Reproductive Health Policy; Maternal New born and Child Health Roadmap; Countdown Recommendations for Zambia; Maternal Neonatal & Child Health Communication Strategy; Comprehensive Abortion Care guidelines; Safe-motherhood Guidelines; Family Planning Guidelines; Sexual and Gender Based Violence guidelines and the mainstreaming of the Maputo Plan of Action.

41. Human Resource: Other measures include the Zambia Health Workers Retention Scheme which is a programme that gives more incentives to health workers in remote or hard to reach areas. Through this programme, almost all the district hospitals have doctors. The scheme is now being extended to other health workers including nurses, paramedics and clinical officers. The Government has also intensified training of nurses and direct entry into the midwifery programme has been introduced.

42. Community Groups: The State party has encouraged Safe Motherhood Action Groups (SMAG) which are oriented towards sensitizing the community on the danger signs in pregnancy and the importance of delivering in the health facilities. These community groups are being scaled up so that they can cover all rural communities. Currently there are 51 districts with SMAG health centres and there are 4 health centres with SMAG in the communities.

43. The Traditional Leaders have also been engaged in consultations for amendments to the Marriage Act to help reduce on early marriages and other harmful traditional practices, which contribute to high rates of maternal mortality.

44. On Abortion, the State party wishes to report that the law has not been amended. However, the State party invites the Committee to note that there are laws which allow abortion under certain circumstances. The Termination of Pregnancy Act Chapter 304 of the Laws of Zambia provides that:

*“A person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if he and two other registered medical practitioners, one of whom has specialised in the branch of medicine in which the patient is specifically required to be examined before a conclusion could be reached that the abortion should be recommended, are of the opinion, formed in good faith*

- (a) That the continuance of the pregnancy would involve:
  - (i) Risk to the life of the pregnant woman; or
  - (ii) Risk of injury to the physical or mental health of the pregnant woman; or
  - (iii) Risk of injury to the physical or mental health of any existing children of the pregnant woman greater than if the pregnancy were terminated.

(b) That there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.”

45. The Penal Code (Amendment) Act No.15 of 2005 also allows a female child who has been raped or defiled and becomes pregnant to terminate the pregnancy in accordance with the Termination of Pregnancy Act.

### **Efforts to Combat Gender Based Violence**

46. The Committee in paragraph 19 of its concluding observations called upon the State party to significantly strengthen its efforts to combat gender-based violence and to ensure that cases are dealt with in an appropriate and systematic manner. The State party was encouraged, in particular, to increase the training of staff of Victim Support Unit offices and of the Police on violence against women, including sexual abuse and domestic violence. The State party was urged to adopt specific legislation criminalising domestic violence and to adopt immediate and concrete measures to combat sexual violence against young girls in the school environment.

47. The State party wishes to report that it has enacted the Gender Equity and Equality Act which seeks to, among other things, establish the Gender Equity and Equality commission, prohibit harassment, victimisation and harmful social, cultural and religious practices and empower women to achieve gender equity and equality.

48. Further, the Gender Equity and Equality Act also:

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

49. Further, the State party wishes to report that the following measures have been and will continue to be implemented in order to combat gender-based violence and to ensure that cases are dealt with in an appropriate and systematic manner by the:

- (i) Establishment of fast track courts to deal with cases of gender-based violence. These courts are currently being piloted in Kabwe and Lusaka districts;
- (ii) Procurement of DNA Analysis equipment for collection of forensics evidence by the Zambia Police. This has helped to convict perpetrators of sexual violence especially in cases of incest;
- (iii) Establishment of One Stop Centres (OSCs) that provide holistic services to victims of GBV under one roof in order to quicken service delivery. This has helped victims to access services such as PEP and Emergency contraceptives to prevent HIV infection and unwanted pregnancies. So far there are 25 OSCs that are operational;
- (iv) Scaling up of shelters for GBV survivors to ensure the safety of women and girls who are victims of GBV or threatened with violence. So far, Zambia has shelters in 5 provinces;
- (v) Scaling up trainings on the multidisciplinary management of victims of gender-based violence;

- (vi) Launch and implementation of the National Strategy on Ending Child Marriage aimed at protecting young women and girls from early marriage;
- (vii) Establishment of the Ministry of Chiefs and Traditional Affairs which has enhanced working with traditional leaders who are custodians of custom in order to address harmful cultural practices that predispose women and girls to gender based violence and HIV infection;
- (viii) Implementation of the Girls Education, Women Empowerment & Livelihoods (GEWEL) project which is designed to empower women through improved livelihoods of 75,000 rural women and provide secondary school bursaries to 14,000 girls who are currently not in school due to poverty;
- (ix) Social empowerment interventions in schools and communities such as safe spaces where adolescents and young women are being equipped with life-skills to reduce their vulnerability to gender-based violence and HIV;
- (x) Establishment and continued implementation of a special bursaries scheme for female students at the public universities and technical colleges;
- (xi) Working with men as agents of change in fighting gender-based violence and HIV. The country is also running several campaigns such as the HeForShe campaign, I care about her campaign, Good Husband campaign, Boyz2Men and the Men Engage Campaign;
- (xii) The implementation of the Agricultural Development and Value Chain Enhancement (ADVANCE) Project which aims at empowering women and the youths through increased agricultural production and enhanced value chains for agro-products in order to improve livelihoods among 8, 640 households in rural communities over a five-year period;
- (xiii) The establishment of the Women Economic Empowerment Fund with the view to creating financial capacity and skills for women groups to tap into the available local resources and opportunities countrywide. Predominantly, women participate in the economic life of the country through agriculture based livelihoods especially in the production of food crops.

### **Protection of Prisoners from Acts of Violence**

50. The Committee recommended in paragraph 20 of its concluding observations that the State party should ensure that any act of violence committed against a prisoner is duly prosecuted and punished, and that women held in police custody or in prison are never guarded by male officers. The Committee requested the State party to provide detailed information on the system put in place to hear complaints of prisoners for acts of violence.

51. The State Party wishes to report that historically, many police stations and posts were built during the colonial and early post-independence era, when the population was much lower and most detainees were male. Therefore, some facilities did not cater for females, entailing that in some instances, some female detainees were detained in improvised spaces. With the increase in population and much higher numbers in female detainees, there arose a challenge to establish more and improved detention facilities. New modernised detention facilities/ holding cells have been constructed together with the construction of new police stations countrywide.

52. Some of the recently constructed modern police stations with modernised holding cells are; Chelstone Police Station; Embassy Police Station; Lufwanyama Police Station; Kazuungula Police Station; Ngabwe police Station; Mwense Police Station; Chirundu Police Station; Chibombo Police Station; the first ever in Chibombo District; to mention a few. The completed projects and on-going projects have modern prototype plans to ensure better conditions for all detainees; thus, the new cells have, in addition to having male holding facilities, made provision for holding female detainees and juveniles. This has made it easier to secure female detainees.

53. In addition, female detainees, by statute, can only be searched by female officers as provided in section 24 of Criminal Procedure Code (CITE). And it is police practice at all police stations and posts that female detainees are to be escorted to and from their holding cells by female police officers. Officers-in-charge are required to make regular check-ups on all detainees in holding cells, but are accompanied by female officers when checking the female block.

54. The State party wishes to report that persons committed to correctional facilities under lawful order are protected by law from any act of violence. In particular, Sections 43(b) (iii), (v), (vi) and 51 (i) of the Prisons Act Chapter 97 of the Laws of Zambia guarantee such protection. Section 43 of the Prisons Act provides that a prison officer commits an offence against discipline if he or she uses obscene, abusive or insulting language against a prisoner and if he or she offers or uses unwarranted personal violence on any person in his or her custody. Section 51 makes provision that where an offence against discipline is of such gravity that it cannot be punished by the Prisons authority, the matter shall be referred to the Subordinate Court.

55. Further, there is the Legal Services Unit (LSU) being pioneered by the PLEED program that has seen the establishment of offices at the Subordinate. The Legal Services Unit presence is currently registered at the following:

- (i) Livingstone - 2 Legal Aid Assistants;
- (ii) Choma - Legal Aid Assistants;
- (iii) Kitwe - Legal Aid Assistants;
- (iv) Lusaka - Legal Aid Assistants;
- (v) Chingola - 2 Legal Aid Assistants;
- (vi) Ndola - renovations are taking place at the Subordinate Court and it is estimated that the LSU will be launched by September 2017.

56. The LSU also grants assistance to districts that do not have the LSU presence such as Kafue, Siavonga, Chirundu, Chongwe, Mumbwa, Luangwa and Itezhi Tezhi. There is need to open additional 3 districts if funds permit in order to enhance access to Justice by prisoners.

### **Investigation, Prosecution and Punishment for Cases of Torture or Ill treatment**

57. The Committee in paragraph 21 of its concluding observations recommended that the State party should ensure that each case of torture or ill-treatment is seriously investigated, prosecuted and punished in an appropriate manner under its criminal legislation, and that adequate reparation, including compensation is granted to victims. In order to facilitate such policy, the State party should envisage criminalising torture and cruel, inhuman degrading treatment as such. The State party is also encouraged to significantly increase its efforts to ensure that police investigators are adequately trained in techniques of investigations and in human rights, and that they are provided with sufficient investigation equipment.

58. The State party wishes to report that the Constitution prohibits torture. In particular, article 15 of the Constitution provides that “a person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment”. The challenge which exists is that torture has not yet been criminalised and in the absence of such criminalisation, the offences under the Penal Code are referred to for purposes of prosecution and punishment.

59. Furthermore, the State party wishes to report the Police Public Complaints Authority established under Act Number 18 of 2016 also provides a mechanism through which investigation of complaints against police actions can be initiated.

60. The Police Investigators training at Lilayi has Human Rights Course and the HRC present a module on Human Right annually. Southern African Region Police Chief

Corporation Organisation (SARPCCO) conducts capacity building workshops on Human Rights.

61. The Zambia Police Service training has been revised, it is being conducted by TEVETA and UNZA for a period of 3 years. The Officers are also trained at International Law Enforcement Academy and some have been trained in Botswana and Egypt.

62. In August 2017 an Eight (8) member delegation of Zambia Police Officers drawn from various units was in Turkey for a five-day Training of Trainers (TOT), capacity building course under the auspices of the Turkish Corporation and Coordination Agency. The delegation underwent training meant to enhance ZP ability in various areas of modern law enforcement. The course has a multiplier effect as officers will be equipped with law enforcement skills to subsequently train other officers.

63. The State party also wishes to report that it is currently finalising the Anti Torture Bill which, among other things, defines torture and criminalises acts of torture committed, inter alia, by persons in authority.

### **Protection of Children from Violence**

64. The Committee recommended in paragraph 22 of its concluding observations that the State party should prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools and should undertake public information efforts with respect to protection of children from violence.

65. The State party wishes to report that there are legislative measures for the protection of children against corporal punishment. Sections 14 and 330 of the Criminal Procedure Code were amended to outlaw corporal punishment in Zambia. Further, sections 24(c), 27, 36(c), 39 and 40(1) of the Penal Code, which prescribed corporal punishment as a form of punishment, were repealed through the enactment of Penal Code (Amendment) Act No.10 of 2003.

66. The State party further reports that it is committed to prohibiting corporal punishment in schools. Section 28 of the Education Act No. 23 of 2011 prohibits the imposition or administration of corporal punishment or degrading or inhuman treatment on a learner.

67. Furthermore, the State party wishes to report that Section 248A of the Penal Code proscribes Child Assault or Battery and it provides for a stiffer punishment on assault on a child.

68. In the Penal Code Amendment Act 315 of 2005, provision was made for making harmful cultural practices on a child a felony. Section 157. (1) provides:

*(1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.*

*(2) In this section "harmful cultural practice" included sexual cleansing, female genital mutilation or an initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.*

69. ZLDC is currently reviewing laws relating to children. The objective is to reform and consolidate the law to be in conformity with international standards. To this end, a draft Children's Code Bill is being developed to address among other issues:

- (i) Harmful cultural practices; and
- (ii) Violence in the home.

70. The State party wishes to report that the Human Rights Commission, Office of the Commissioner for Children, is a child friendly structure where children whose rights are violated by law enforcement officers can report. However, the State party acknowledges

that there is need to strengthen its enforcement of the decisions and recommendations of the Commission in order to effectively address matters reported by children.

71. The State party has also been raising awareness on the dangers of SGBV by conducting sensitisation campaigns against gender-based violence in districts. The awareness campaigns involve road shows, school debates and community campaigns. Traditional chiefs are also being trained in gender-based violence awareness against women and children.

### **Alternative Measures to Imprisonment.**

72. The Committee recommended in paragraph 23 of its concluding observations that the State party should develop alternative measures to imprisonment. It was recommended that the State party should take measures to ensure that the accused awaiting trial are not kept in custody for an unreasonable period of time and that it should significantly increase its efforts to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food. The Committee also recommended that to the extent that the State party was unable to meet the needs of detainees, it should immediately take action to reduce the prison population.

73. The State party wishes to report that measures have been put in place to reduce prison population. These include the construction of new prisons and open-air prisons in the Western, Northern and Eastern Provinces of Zambia and the construction of magistrate and local courts countrywide. The use of alternative measures to imprisonment has also decongested prisons. The State party has in place a national parole system whose main purpose is to decongest prisons which are over-crowded.

74. Section 306A of the Criminal Procedure Code makes provision for a Court to make a Community Service Order for an adult, where an offence is a misdemeanour and is punishable with imprisonment. The consent of the convicted person must however be obtained, first, before such an order can be made. Where the convict does not consent or comply with the Order, he will be liable to the term of imprisonment imposed by the Court in respect of the offence.

75. The Juveniles Act gives guidance on how to deal with children and juveniles in relation to sentencing. Section 72 (2) of the Juveniles Act, defines a child as a person below the age of 16 and as such cannot be sent to prison. However, Section 73(1) provides for methods for dealing with juvenile offenders and section 2 defines a 'juvenile' as a person below the age of 19. Section 73 sets out methods by which a juvenile can be handled:

- (i) Court can dismiss the charge;
- (ii) Court can make a probation order;
- (iii) Court can send the offender to an approved school;
- (iv) Court can send offender to a reformatory;
- (v) Court can order offender to pay a fine or damages or costs; and
- (vi) Court can also order parent or guardian to pay the fine.

76. Between the Period January 2012 to 10th January 2015, 643 prisoners were conditionally discharged under this parole system. Additionally, with respect to minor offences, courts have resorted to ordering convicted persons to carry out community service in accordance with provisions of the Penal Code or to pay fines as opposed to serving custodial sentences. The release of prisoners under the prerogative of mercy has also contributed to decongesting prisons. In 2011, 1712 prisoners were pardoned by the Republican President.

77. In order to increase its efforts to guarantee the right of detainees to be treated with humanity and dignity by ensuring that they live in healthy conditions and have adequate access to health care and food, the State party has put in place several measures which have

contributed to the improvement of prison facilities. The Prisons (Amendment) Act No. 16 of 2004 establishes a Medical Directorate Unit. This Unit has trained Prison officers in the medical field with the objective that each Prison station in Zambia should have a clinic and increased human resources to offer health care to Prisoners. To supplement the efforts of the Unit, the Ministry of Health has also been offering health services to Prisoners through the provision of personnel and drugs to Prison clinics.

78. The State party wishes to report that Health posts have been established in prisons for prisoners to access health services including Anti-Retroviral Therapy (ART). To supplement this initiative, cooperating partners have set up a Go-Centre that provides ART drugs at Lusaka Central Prison. Cooperating partners have also built a Tuberculosis (T.B.) clinic at Lusaka Central Prison and provide mobile clinics at prisons in three districts.

79. The State party has, with a view to dealing with the mental health of prisoners, established a mental Hospital at one prison facility and ensured the training of prison officers in social welfare to provide counselling to prisoners in all prisons in Zambia.

80. The State party has endeavoured to provide decent shelter for inmates through the construction of Correctional Centres throughout the Country. Thus, between 2013 and 2016, a total of four (4) correctional facilities were constructed catering for 1,050 inmates.

81. Furthermore, two correctional facilities with holding capacities of 2000 each, are under construction.

## **Part II. Implementation of specific provisions of the Covenant**

82. (The State party is required to indicate any updated legislative, judicial, administrative or other measures which have been put in place to comply with the provisions of the Covenant.)

### **Article 1: Self Determination**

#### **Legislative measures**

*Constitution of Zambia (Amendment) Act, 2016*

83. Preamble:

*“Recognise the right of the people of Zambia to manage affairs and resources sustainably in a devolved system of governance.*

*Confirm the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order.”*

84. Article 5 of the Constitution:

*“Sovereign Authority vests in the people of Zambia, which may be exercised directly or through elected or appointed representatives or institutions.”*

85. The Constitution of Zambia further obliges the people and the State to conduct the affairs of the State in such manner as to preserve, develop and utilise its resources for current and future generations. Article 16 of the Constitution also guarantees the right to protection from deprivation of property.

### **Article 2: Equal protection of rights in the Covenant**

#### **Legislative measures**

86. Constitution of Zambia (Amendment) Act, 2016.

87. Article 11 of the Zambian Constitution recognises and declares that every person in Zambia is entitled to the fundamental rights and freedoms of the individual irrespective of

their race, place of origin, political opinions, colour, creed, sex or marital status. Additionally, Article 23(3) defines the term discrimination to mean:

*“affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.*

88. This Article also prohibits the enactment of any law which makes any provision that is discriminatory either of itself or in its effect and declares that a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

89. Article 28 of the Constitution provides that if any person alleges that any of the provisions of the Bill of Rights have been, is being or is likely to be contravened in relation to them, that person may apply for redress to the High Court. This Article empowers the High Court to hear and determine the application and to make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the Bill of Rights. This judicial mechanism is available to persons whose protection from discrimination has been infringed.

90. The establishment of the Constitution Court is a fundamental step to ensuring that persons whose rights have been violated have an effective judicial remedy. Further, Article 244 (3) (c) of the Constitution No. 2 of 2016 empowers the office of the Public Protector to make a decision on an action to be taken against a public officer or constitutional office holder, which decision is implemented by an appropriate authority.

#### *Penal Code*

91. It was reported in the Third Periodic State Report that the Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia and the Penal Code Chapter 87 of the Laws of Zambia, expressly prohibit discrimination in the workplace and racial discrimination respectively.

#### *Persons with Disabilities Act No. 6 Of 2012*

92. In addition, the State party has enacted legislation which protects the rights of persons with disabilities. The Persons with Disabilities Act No. 6 of 2012 domesticates the United Nations Convention on the Rights of Persons with Disabilities. The legislation promotes and protects the rights of persons with disabilities to access to justice, participate in public and political life, the right to education, employment and freedom of movement. The Act prohibits discrimination against persons with disabilities with regard to all forms of employment, including conditions of recruitment and safe working conditions.

#### *Employment Act, the Minimum Wages and Conditions of Employment (General) Order, 2006*

93. The State party has put in place mechanisms for registering and addressing all types of labour complaints including discrimination against workers and is working on plans to improve efficiency in handling these complaints. The labour laws provide for paid leave, maternity leave and benefits. The Employment Act, The Minimum Wages and Conditions of Employment (General) Order, 2006 and collective agreements provide for maternity leave and remuneration when on maternity leave.

#### **Other Measures**

94. With respect to discrimination in the workplace, the State party wishes to report that complaints of discrimination are reported to the Ministry of Labour and Social Security. These complaints relate to discrimination against workers by employers on the grounds of gender, HIV/AIDS status, disability and nationality.



95. The majority of the complaints relate to foreign nationals with similar qualifications and responsibilities being paid higher remuneration than their local counterparts. These complaints have been most prevalent with respect to companies owned and operated by foreign investors. In addition, employment of persons with disabilities still remains a big challenge because the majority of establishments lack or do not provide 'disability friendly premises'.

96. Furthermore, an assessment of women workers' rights found that although some advances have been made towards wage equity, women still earn less in comparison to their male counterparts. This gap is partly due to the concentration of women in low-skilled, low-status jobs and segmentation of the labour market into feminine or masculine occupations, as well as in some cases women's shorter working hours due to unavailability for overtime or night-work because of family responsibilities.

97. In light of the foregoing, the State party remains committed to protecting workers against discrimination. The State party has commenced the process of reviewing all the labour laws to incorporate provisions that will ensure protection of workers' rights at all levels. Bearing in mind that some of these laws were enacted in the immediate post-independence era, their review will ensure that contemporary challenges are taken into account in the amendment of these laws.

98. An effective tool used by the State party to protect the fundamental rights of workers and identify conditions that result in discrimination is the undertaking of labour inspections. The inspections cover assessment of employers' performance with regard to wages/rate of pay, employment of children and young persons, days and hours of work, annual leave, paid sick leave, maternity leave, industrial relations, occupational safety and health standards, and social security and welfare in relation to what is provided for under various pieces of legislation. The State party has strengthened the system of labour inspections by increasing field stations, improving the tools used to conduct the inspections and budgetary allocation towards this function.

### **Article 3: Equal Rights of Men and Women**

#### **Legislative Measures**

##### *Constitution*

99. All men and women in Zambia are guaranteed the equal enjoyment of all civil and political rights set out in the Covenant. Article 11 of the Constitution prohibits discrimination on the ground of sex.

##### *Constitution (Amendment) No. 2 2016*

100. Preamble:

*Confirm the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order.*

101. The State party is however, mindful that gender inequalities still exist and in this regard has taken measures to ensure the equal role of women in society. In this regard, the amended Constitution No. 2 of 2016 under Article 235 (3) creates the Gender Equity and Equality Commission whose functions are to:

- (a) Monitor, investigate, research, educate, advise and report on issues concerning gender equality;
- (b) Ensure institutions comply with legal requirements and other standards relating to gender equality;
- (c) Take steps to secure appropriate redress to complaints relating to gender inequality, as prescribed; and
- (d) Perform such other functions as prescribed.

*Gender Equity and Equality Act*

102. In addition, the State party wishes to report that it has enacted the Gender Equity and Equality Act which seeks to among other things establish the Gender Equity and Equality commission, prohibit harassment, victimisation and harmful social, cultural and religious practices and empower women to achieve gender equity and equality. Further, the gender Equity and Equality Act also seeks to:

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

**Administrative Measures***Participation in Public Service*

103. With a view to promoting the representation of women in senior positions in the public sector, the State party developed a gender mainstreaming strategy within the Public Service Reform Programme for the period 2007 to 2011. The main objective of the strategy is to ensure increased representation of women in decision making positions in the Public Service and to ensure that all programmes being implemented are gender responsive. Currently in the Public Sector, there is representation of 26% of women in decision making.

*Equal Pay for Equal Work*

104. The Committee is invited to note that in Zambia salaries are not based on gender but on qualifications and position held and therefore on the basis of this criteria both women and men are treated the same. Further, the Employment Act Chapter 268 of the Laws of Zambia is being reviewed and it is envisaged that the review will embrace the principle of equal pay for work of equal value. (Employment Amendment Act No. 15 of 2015).

*Violence against Women*

105. The State party has enacted the Anti-Gender Based Violence Act No. 1 of 2011. The State party submits that while this Act does not criminalise domestic violence, it has made provision that an act of gender violence shall be inquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code, the Penal Code and any other law. The Act encourages courts of law to ensure speedy and efficient trial in the cases of gender-based violence.

*School Attendance for Girls*

106. The State party wishes to report that it is committed to ensuring school attendance for girls. In this regard, Section 15 of the Education Act expressly provides for the child's right to free basic education. It is also useful to note, further, that the State party has in place a Free Basic Education Policy and the Act merely provides a legal framework for the implementation of the policy. Additionally, section 17 of the Education Act has made provision for compulsory school attendance. Parents are mandated to enrol every child that has attained school-going age at an educational institution and ensure the child's attendance. Failure to adhere to or interference with this mandate is a punishable offence.

107. Low school attendance by girls has historically been attributed to a high drop-out rate resulting from high levels of poverty, financial constraints, long walking distances, unfavourable cultural beliefs, pregnancies and early marriages for girls. The State wishes to submit that in order to reduce drop out of girls from school, the Re-entry Policy has been reviewed with a view to allowing girls who fall pregnant to continue with their education. Furthermore, the Government has made a policy pronouncement of removing the cut-off point, which policy is aimed at further increasing access to high school education for girls.

108. School Attendance for Girls - Percentage (%):

<i>Year</i>	<i>Primary</i>	<i>Secondary</i>
2006	79%	69%
2010	83.3%	73.2%
2015	84.8%	73.3%

#### *Elimination of Traditional Practices and Customs affecting Dignity of Women*

109. With a view to eliminating traditional practices and customs affecting the dignity and personal integrity of women and girls, the State party has been sensitising traditional leaders to discourage their subjects from engaging in practices which affect women's dignity and personal integrity. Additionally, sensitization of traditional rulers on the disadvantages of early marriages has been undertaken with a view of discouraging early marriages. The State party recognises that traditional practices and customs play a major role in the lifestyles of a number of its citizens and in this regard, it has created Ministry of Chiefs and Traditional Affairs to strengthen the role of traditional leaders in governance.

### **Article 4: State of Emergency**

110. There is nothing to report on Article 4 (1) regarding a State of Emergency.

111. The information relating to the definition of terrorism under national law has been provided in PART I of this Report.

112. There have been no administrative or judicial cases in which measures on counter-terrorism adopted at the national level pursuant to United Nations Security Council Resolution 1373 (2001) have been applied and there are no measures to report on how the State party protects the values of the Covenant when complying with the sanction regime of the Security Council.

### **Article 5: Non-derogable Nature of Fundamental Rights**

113. The State party does not have legislation that would provide the opportunity for destruction of fundamental rights and freedoms recognised in the Covenant and while derogations are recognised by the Zambian Constitution under a state of emergency, such derogations do not affect the right to life, protection from slavery and forced labour, protection from inhuman treatment and provisions to secure the protection of law.

### **Article 6: Right to Life**

#### **Legislative Measures**

##### *Constitution*

114. The right to life in Zambia is protected under Article 12 of the Constitution which provides that "a person shall not be deprived of his life intentionally except in execution of the sentence of the court in respect of a criminal offence under the law in force in Zambia of which he has been convicted".

115. The State party is mindful of the Committee's recommendation that the death penalty which limits this right be imposed only for the most serious crimes.

*Penal Code*

116. The State party does not support arbitrary deprivation of life or extra judicial killings. In this regard, the Constitution of Zambia, the Prisons Act and the Penal Code prohibit arbitrary deprivation of life and provide adequate punishment to perpetrators should it occur.

## **Article 7: Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

117. Refer to paragraphs 57 to 63 of this Report.

## **Article 8: Prohibition of Slavery**

### **Legislative Measure**

*Constitution*

*Article 14*

118. (1) No person shall be held in slavery or servitude. (2) No person shall be required to perform forced labour.

*Anti-Human Trafficking Act No 10, 2008*

119. The State party has enacted the Anti-Human Trafficking Act No 10, 2008. This Act provides for the prohibition, prevention and prosecution of human trafficking and establishes centres for victims of human trafficking. Further, the Act makes provision for the domestication of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organised Crime.

120. The Anti-Human Trafficking Act establishes the Committee on Human Trafficking whose functions are to:

- (a) Coordinate the activities of all the relevant institutions on matters connected with trafficking;
- (b) Make recommendations for a national plan of action against human trafficking, monitor and report on the progress of the national plan of action;
- (c) Advise the Minister on policy matters connected with trafficking in persons;
- (d) Provide advice on the investigation and prosecution of trafficking of cases;
- (e) Propose and promote strategies to prevent and combat trafficking in persons;
- (f) Liaise with governmental agencies and non-governmental organisations to promote the rehabilitation and reintegration of victims;
- (g) Prepare guidelines for disbursements from the Fund;
- (h) Keep abreast with international and regional developments and standards on trafficking in persons; and
- (i) Deal with matters relating to human trafficking.

121. In response to this provision, an Inter-Ministerial Committee on Human Trafficking was established in the Ministry of Home Affairs comprising of officers from the Immigration Department, Ministry of Justice, Zambia Police Force, Zambia Revenue Authority and the Ministry of Community Development and Social Welfare. In addition, a secretariat on human trafficking has been established comprising Zambia Police Force, the

Immigration Department, Ministry of Home Affairs and Ministry of Community and Social Welfare and the State party has ensured that there are focal point persons on human trafficking issues in all government ministries.

### **Measures Taken to Protect and Rehabilitate Victims of Trafficking**

#### *Anti-Human Trafficking Act No. 11 Of 2008*

122. The Anti-Human Trafficking Act No. 11 of 2008 explicitly obligates the government to protect and rehabilitate victims of trafficking. The Immigration Department has in place deliberate measures for identifying victims of trafficking in order to ensure that they receive appropriate treatment. When identified, such victims are not deported but rather are issued travel documents to their countries of origin or issued temporary permits allowing the victims some time to decide where they want to leave the country.

### **Administrative Measures**

#### *Training of Public Officials in Trafficking*

123. With respect to training of public officers involved in addressing human trafficking, the Government has undertaken a number of training programmes from 2008 to date. These programmes have been undertaken in collaboration with cooperating partners and have targeted officers from Zambia Police force, Immigration Department, Zambia Revenue Authority, Drug Enforcement Commission and the Judiciary. These training programmes have been aimed at ensuring that public officers understand and are able to effectively implement the Anti Human Trafficking Act.

124. The State party has also conducted a number of workshops aimed at developing implementation strategies for human trafficking in Zambia. In 2010, a National Action Plan for Anti Human Trafficking was developed. In 2011, Standard Operational Procedures (SOPs) for law enforcement officers handling human trafficking were also developed.

125. The State party also participated in the formulation of a code of conduct for domestic workers and employers on forced labour and human trafficking. This was done through the Domestic Workers Union of Zambia and the International Labour Organisation (ILO).

#### *Sensitisation*

126. The State party rolled out a multi-media campaign against Human Trafficking called 'Break the Chain Campaign' to selected districts in 2010. The State party has also developed a Communication strategy on human trafficking. This strategy outlines a number of activities aimed at sensitizing stakeholders such as Lodge owners, hotel owners, transporters, employers especially in manufacturing and agriculture. Further, there has been increased sensitization in the media to alert the citizens what comprises human trafficking and how it can be avoided.

## **Article 9: Liberty and security of person**

### **Legislative Measures**

#### *Constitution*

#### *Article 13*

127. No person shall be deprived of his personal liberty except as may be authorised by law.

128. The right to liberty is guaranteed under the Constitution of Zambia. This right is however not absolute and is limited on grounds and in accordance with such procedure as are established by the Constitution itself. The State party endeavours to ensure that anyone

arrested or detained on a criminal charge is brought promptly before court and that these persons are tried within a reasonable time.

129. However, the Committee is invited to note that the State party faces challenges in the administration of justice. These include insufficient court infrastructure, inadequate human resources and challenges in securing attendance of witnesses by both the prosecution and defence.

130. With respect to the duration of detention with charges for terrorist suspect, the State party wishes to report that it had no terrorist suspects detained in prisons in 2014. Further, in relation to safeguards that exist against incommunicado detention and abuses of such practices, the State party wishes to report that these practices do not exist in its prison system.

131. The State party wishes to report that it does have in place a central register for prisoners. At every prison establishment, there exists a central register for each class of prisoners held therein. Access to the registers is possible through authorised channels.

132. The State party ensures that when irregular migrants are brought to prison for safe custody, they are treated as remandees with rights to judicial remedies which they are informed of on admission. Usually, their embassies and consulates are informed about them, to ensure that these provide as much assistance to their citizens as possible.

## **Article 10: Treatment of persons deprived of their liberty**

### **Legislative Measures**

#### *Prisons Act Chapter 97 of the Laws of Zambia*

133. The right and respect for the inherent dignity of a human person is considered extremely important and in this regard the State party endeavours to treat prisoners in a humane manner by ensuring that they have adequate access to health, educational and exercise facilities, food as well as access to family and lawyers. This is done in accordance with the Prisons Act Chapter 97 of the Laws of Zambia.

134. Specific measures to remedy problems such as overcrowding, inadequate or obsolete infrastructure, disease and violence in prisons have been addressed in paragraphs 72 to 81 above.

## **Article 11: Freedom from Imprisonment for Breach of Contractual Obligation**

### **Legislative Measures**

135. There is no express legal provision that a person shall be imprisoned on the ground of inability to fulfil a contractual obligations, however, the Committee is invited to note that the High Court Act Chapter 27 of the Laws of Zambia, the Subordinate Act Chapter 28 of the Laws of Zambia and the Debtors Act Chapter 78 of the Laws of Zambia when read together empower Courts to arrest a defendant to a cause of action if a plaintiff has reasonable cause for believing that the defendant shall abscond the country if not apprehended.

#### *Debtors Act*

136. Section 10 of the Debtors Acts provides as follows:

*“Where the plaintiff in any action before the High Court or any subordinate court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to the amount of twenty kwacha or upwards, and that there is probable cause for believing that the defendant is about to quit Zambia unless he be apprehended... such court may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and*

*until he has sooner given the prescribed security not exceeding the amount claimed in the action that he will not leave Zambia without the leave of the court.”*

137. There is a proviso to this provision that the court may release the defendant at any time on such terms as may seem just, and, in any event, no such defendant shall be detained in custody after the date of final judgment.

138. The State party wishes to emphasise that under Zambian law, the inability of a person to fulfil a contractual obligation is a civil matter as opposed to being a criminal offence. Therefore, all remedies for breach of contractual obligations lie within the civil courts and not the criminal courts.

## **Article 12: Freedom of Movement**

139. There are no new measures to report in addition to the measure reported in the Third Periodic Report.

## **Article 13: Expulsion of Aliens**

140. There are no new measures to report in addition to the measures reported in the Third Periodic Report.

## **Article 14: Right to Fair Trial**

141. There are no new measures to report under this Article. Information remains as tabulated in Zambia’s Third Periodic Report CCPR/C/ZMB/3.

## **Article 15: Prohibition of Ex Post Facto Laws**

### **Legislative Measures**

142. Article 18(8) of the Constitution provides that:

*“No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law: Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed.”*

## **Article 16: Recognition as a Person under the Law**

143. The State party relies on its Third Periodic Report CCPR/C/ZMB/3.

144. The State party wishes to report that it is committed to promoting birth registration in the country and measures have been put in place to promote registration as follows:

(a) Increased awareness campaigns on birth registration countrywide, with support from cooperating partners such as UNICEF and Plan International;

(b) Involvement of traditional leaders in birth registration of children in their communities through the reintroduction of village registers in chiefdoms; and

(c) Capacity development of the Department of the Registrar of Births and Deaths through training and provision of computers and transport.

145. The State party further reports that the Department of National Registration, Passport and Citizenship under the Ministry of Home Affairs, has re-organised its business processes in order to improve service delivery. To this end, an Integrated National Registration System is being developed under the Department of the Registrar of Births and

Deaths. Birth registration is one of the key sub-systems to be developed and fed into the Integrated National Registration System.

146. This sub-system will be designed to link to the Ministry of Health for birth record system. As the integrated system is developed, rural registration will be enhanced as officers will be collecting information on a regular basis to update the main system. More officers have been recruited to improve staffing levels in the district and an officer in each district has been assigned to deal with rural registration.

### **Article 17: Freedom from arbitrary interference with Privacy, Family and Home**

147. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

#### **Legislative Measures**

##### *Criminal Procedure Code*

148. Section 19(2) of the Criminal Procedure Code does allow for private property to be entered into by police officers without warrant in pursuit of a suspect or where there are reasonable grounds to believe that a suspect is hiding in a premise. This provision allows police entrance in premises where a search warrant cannot be obtained without affording the person to be arrested an opportunity to escape. Section 19(1) and (2) states:

*“(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.”*

*“(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful, in any case, for a person acting under a warrant, and, in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into such house or place, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.”*

### **Article 18: Freedom of Thought, Conscience, and Religion**

149. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

### **Article 19: Freedom of Opinion and Expression**

150. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

#### **Judicial Measures**

151. The Supreme Court of Zambia in the case of *McDonald Chipenzi v. The People* held that Section 67 of the Penal Code is unconstitutional and the State party is currently consulting on amendments to be made to the Penal Code.

152. Section 67 of the Penal Code provides as follows:

*67. (1) Any person who publishes, whether orally or in writing or otherwise, any statement, rumour or report which is likely to cause fear and alarm to the public or to*



*disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of a misdemeanour and is liable to imprisonment for three years. Publication (2) It shall be no defence to a charge under subsection (1) that he did not know or did not have reason to believe that the statement, rumour or report was false, unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report.*

## **Article 20: Prohibition of Propaganda relating to War or Racial, National or Religious Hatred**

### **Legislative Measures**

#### *Penal Code*

153. The State party wishes to report that in addition to what was reported in its third periodic State Report, section 46 of the Penal Code Chapter 87 of the Laws of Zambia, prohibits an act constituting propaganda to incite war between tribes or chiefs as follows:

*“Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by, or against any chief, or with, for, by, or against any tribal group, is guilty of a felony, and is liable to imprisonment for life.”*

154. With respect to prohibition of advocacy of national, religious or racial hatred that incite discrimination, hostility or violence, the following provisions of the penal code also prohibit actions that incite hostility and violence:

*“57. (1) Any person who*

*(a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;*

*(b) Utters any seditious words;*

*(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;*

*(d) Imports any seditious publication, unless he has no reason to believe that it is seditious;*

*is guilty of an offence and is liable for a first offence to imprisonment for seven years or to a fine not exceeding six thousand penalty units or to both; and any seditious publication shall be forfeited.”*

155. A seditious intention is defined as an intention that, among other things, is intended to bring into hatred or contempt or to excite disaffection against the Government as by law established, to promote feelings of ill will or hostility between different communities or different parts of a community or to promote feelings of ill will or hostility between different classes of the population of Zambia.

156. The following provision of the Penal Code Cap. 87, prohibits advocacy of hatred that incite discrimination:

*“70. (1) Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years. Expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour (2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.”*

## **Article 21: Freedom of Assembly**

157. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

## **Article 22: Freedom of Association**

### **Administrative Measures**

158. The State party has been requested to amend the Labour Act to, inter alia, provide for participation in trade union activities of workers in the prison service, judges, registrars of the court, magistrates and local court justices. The State party has also been requested to bring several sections of the Act into conformity with ILO Convention No. 87 regarding the right to strike. There are also additional concerns that trade union rights are widely flouted, particularly in the mining sector.

159. In this regard, the State party is currently undertaking a comprehensive review of the current labour laws and it is envisaged that the weaknesses identified by stakeholder will be addressed. The State party has also been working with social partners under the framework of Tripartite Consultative Labour Council, a structure established by law to promote workers' rights in Zambia.

### *Status Report on the Labour Law Reforms*

160. The State Party wishes to inform the Committee that Government is still in the process of making labour reforms. Government through the Tripartite Consultative Labour Council (TCLC) has since constituted the Permanent Tripartite Technical Committee (PTTC) to consolidate the various positions of social partners on the recommendations made in the Labour Law Reforms Issues Paper.

161. The consolidated positions will then serve as drafting instructions to the legislative Drafters who have been engaged by Government with technical support from the International Labour Organisation (ILO) to draft the Labour Code and the Industrial and Labour Relations (Amendment) Bill in order to bring the provisions of the Industrial and Labour Relations Act chapter 269 of the Laws of Zambia in line with ILO Convention No. 87 regarding the right to strike.

## **Article 23: Protection of the Family**

162. The State party is committed to ensuring equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution and also to the necessary protection of any children in the event that a marriage is dissolved.

### **Legislative Measures**

#### *Matrimonial Causes Act No. 20 of 2007*

163. The Matrimonial Causes Act No. 20 of 2007 was enacted to make provision for divorce and other matrimonial causes. The Act provides for maintenance of either spouse and for children, it also provides for settlement of property on dissolution of marriage and custody or guardianship of children.

164. This Act gives the same rights and responsibilities to men and women on dissolution of the marriage. The Act also provides for the maintenance of a party to a marriage and for children of the family; settlement of property between parties to a marriage on the dissolution or annulment of the marriage and custody or guardianship of the children of the marriage to which the matrimonial proceedings relate.

#### *Gender Equity and Equality Act No. 22 Of 2015*

165. Section 22 Gender Equity and Equality Act No. 22 of 2015 provides:

“22. (1) A woman has, on an equal basis with a man, power to decide and act on all matters relating to marriage and family life, including the same right— (a) to freely choose a spouse; (b) to enter into or leave a marriage; (c) to decide freely and responsibly on the spacing and number of children and to have access to information, education and means to exercise these rights; (d) as a parent, irrespective of her marital status, in matters relating to children; (e) to guardianship, wardship, trusteeship and adoption of children; (f) with her spouse, to choose a family name; (g) to choose a profession or an occupation; and (h) to own, acquire, manage, administer, enjoy and dispose of property. (2) The best interest of the child shall be the paramount consideration in matters provided for in paragraphs (d) and (e) of paragraph 1.”

### **Other Measures**

166. The Government of the Republic of Zambia introduced Social Cash Transfer (SCT) to help mostly households headed by elderly, widows and chronically ill in selected districts. The main objective of the SCT Programme is to reduce extreme poverty and the intergenerational transfer of poverty among beneficiary households. The SCT Programme has been operating in Zambia since 2003 when it was first introduced in one reduction of chronic poverty, food insecurity, vulnerability and risks.

167. In October 2013, the programme reached over 60,000 beneficiaries in 19 districts, and the Government announced a 800% increase in its funding for the programme. The increased funding allowed expansion of the programme to even more than 50 districts with 190,000 recipients in 2014. By March 2016 the total number of beneficiaries had increased to 969,094 from 78 districts. (First Progress Report on the District. Since then, SCTs has rapidly gained support as an effective response to the Implementation of the National Programme of Action, 2013-2016)

## **Article 24: Protection of Children**

### **Legislative Measures**

#### *Employment Act*

168. Zambia has enacted various laws and regulations to combat the worst forms of child labour. The Employment Act sets the minimum age for employment at 15, the age for admission to light work is 13 years while that of admission to hazardous work is 18 years. The Apprenticeship Act regulates the employment of minors as apprentices while the Employment of Children and Young Persons Act bars children under 18 from engaging in hazardous labour.

### **Administrative Measures**

#### *Birth Registration, Name and Nationality*

169. The State party has measures in place to ensure that all children in its territory enjoy the right to be registered immediately after birth, the right to have a name and the right to acquire a nationality. In this regard, the State party reports that some measures have been put in place to promote these rights including:

- (a) Increased awareness campaigns on birth registration countrywide;
- (b) Involvement of traditional leaders in birth registration of children in their communities through the reintroduction of village registers in chiefdoms; and
- (c) Capacity building of the Department of the Registrar of Births and Deaths through training and provision of computers and transport.

### **Children Deprived of a Family Environment**

170. The State party acknowledges that there has been an increase in the number of orphans and other vulnerable children within its territory and also that high unemployment

levels have contributed to the increase in the number of vulnerable groups dependent on limited resources.

*Child Labour and Economic Exploitation of Children*

171. The State Party wishes to submit that Government has established the National Child Labour Steering Committee and the District Child Labour Committees. The District Child Labour Committees are mandated to identify cases of child labour and engage the community in the fight against child labour whereas the National Child Labour Steering Committee coordinates the activities of the District Child Labour Committees.

172. There are in place, in addition to the measures reported in the third periodic report, measures to protect children who are deprived of a family environment. The Child Care Upgrading Programme (CCUP) has been mainstreamed into the normal functions of the Department of Social Welfare, District Social Welfare Officers (DSWO) nationwide. Further, the State party provides care for children removed from the streets by placing them at Chikumbi and Mufulira Children's centres which are wholly owned by Government. At these centers, children from the streets undergo rehabilitation before reintegration into their families. Before reintegration, families are assessed and provided with income generating activities to enable them provide basic necessities for the children.

173. The State party remains dedicated to the elimination of child labour and economic exploitation of children. This notwithstanding, child labour has become an area of concern in Zambia. In view of high poverty levels, most of the working children are compelled to work to supplement family incomes. Some of these children are engaged in hazardous work which is prevalent in agriculture, mining and street vending.

**Article 25: Access to the Political System**

174. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

**Article 26: Equality before the Law**

175. There are no new measures to report under this Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

**Article 27: The Rights of Minorities to Culture, Religion and Language**

176. The State party does not have any ethnic, religious or linguistic minorities or indigenous groups living within its territory. Accordingly, it has nothing new to report under in Article. Information remains as tabulated in Zambia's Third Periodic Report CCPR/C/ZMB/3.

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