



Human Rights Commission
Zambia

STATEMENT

UPR PRE-SESSION ON ZAMBIA

Geneva, 28 November, 2022

1- Organisation

This statement is delivered on behalf of the Human Rights Commission of Zambia, a National Human Rights Institution established pursuant to Article 230 (1) of the Constitution. The Commission has participated in UPR processes at national level since 2010.

2- National Consultations for the Drafting of the National Report

In Zambia, the drafting of the State Report for the 4th UPR cycle was led by the Ministry of Justice. The process did not include a national consultation of other Ministries, Departments and Agencies (MDAs) and Civil Society Organisations (CSOs) as required under international best practice. However, the MDAs and the National Human Rights Institution (NHRI) were consulted on critical information regarding implemented recommendations and in drafting of the final report.

3- Plan of the Statement

This statement addresses some of the topical issues the Commission considers critical in the Zambian human rights discourse, namely: (1) Death Penalty and (2) Torture, Cruel, Inhuman or Degrading Treatment or Punishment and (3) Rights of Persons with Disabilities.

4- Statement

- i. **Death Penalty**
 - A. **Follow-up to the 3rd Cycle Review**

During the 3rd Cycle review, Zambia received 22 recommendation relating to the death penalty. Of those, 13 were noted and 9 were supported. The recommendations that were not accepted were recommendations requiring specific action to abolish the death penalty and those accepted required general, continuing and considering action to move from the current *de facto* moratorium to abolishing the death penalty.

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Zambia has not ratified the 2nd Optional Protocol to the ICCPR relating to the abolition of the death penalty. The current Constitution of Zambia provides for the protection of the right to life except in execution of a sentence of a court (Article 12).

B. Recent Developments

After the last review, the Human Rights Commission mounted a rigorous campaign to abolish the penalty, arguing that the use of the death penalty is incompatible with fundamental human rights and dignity.

On May 24, 2022, the President of Zambia, Mr. Hakainde Hichilema made a pledge to work with the National Assembly to amend relevant laws to abolish the death penalty. The pledge has been followed with concrete legislative steps in form of a draft bill to amend the Penal Code. Amending the statutes to remove provisions for death penalty as ultimate punishment in capital offences, is the most practical and more feasible approach compared to previous focus on amending the Constitution, which requires a referendum.

However, maintaining Article 12 (1) in the Constitution leaves room for those not in favour of abolishing the penalty amend the law to reintroduce the death penalty in future.

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C. Recommendations

1. Ratify the 2nd Optional Protocol to ICCPR.
2. Consider amending Article 12 (1) of the Constitution in future Constitutional reviews to complete the process of abolishing the death penalty.

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ii. Torture

A. Follow up to the Review

A total of 6 recommendations were made to Zambia during the last review and all the 6 were supported. Four (4) of those required general action and 2 required specific action by the State. The recommendations were on two issues (i) ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and (ii) enacting anti-torture legislation.

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The Constitution of Zambia domesticates the Convention by absolutely prohibiting any form of torture. The Constitution provides that “no person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment” (Article 15).¹ Despite the constitutional prohibition of torture, there is no legislation to implement the prohibition. The absence of an anti-torture law in Zambia means that individuals who commit acts of torture continue being charged with lesser offences of common assault and assault occasioning actual bodily harm under Sections 247 and 248 of the Penal Code Act.²

B. Recent Developments

The Commission acknowledges the positive steps taken by the State to draft the Anti-Torture Bill which was adopted in principle by Cabinet on 4th December 2017, soon after the 3rd Cycle UPR review. The incidents of torture especially during investigations, arrest and detention of suspects have remained concerning. The 2017 – 18 State of Human Rights Report, for example, found that one in every two people in detention facilities had experienced torture in the process of investigation and arrest by Law Enforcement Agencies (LEAs).³

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¹ Constitution of Zambia

² Chapter 87 of the Laws of Zambia

³ Ibid, page

C. Recommendation

1. Expedite enactment and implementation of Anti-torture legislation.

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iii. Rights of Persons with Disabilities

A. Follow up to the Review

During the last review, Zambia received 9 recommendations relating to the rights of persons with disabilities. Four (4) were general, 2 continuing and 3 required specific actions. The recommendations were on 3 main issues, namely (i) ratification of the Optional Protocol to the Convention on Rights of Persons with Disabilities (ii) enhancement of legislation relating rights of Persons with Disabilities and (iii) improvement of welfare of persons with Disabilities.

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Since ratification of the Convention on the Rights of Persons with Disabilities in February, 2010, Zambia has made significant progress in domesticating the provisions of the Convention and enhancing protection and promotion of rights of persons with disabilities. The Persons with Disabilities Act,⁴ other laws and policies domesticate provisions of the Convention. The Zambia Agency for Persons with Disabilities (ZAPD) under the Ministry of Community Development and Social Services (MCDSS) is a legally established coordination mechanism mandated to plan and implement measures to promote the welfare of Persons with Disabilities (PwDs).

However, PwDs still endure high levels of discrimination and inequality in practice due to entrenched negative public attitudes and lack or limited awareness on the rights of PwDs. They continue to face challenges in accessing education, health, employment, land, Sexual Reproductive and Health Services (SRHR) and justice, among others.

The majority of public and private infrastructure including roads, schools, hospitals, courts, police stations, public administration offices, hotels and new buildings were inaccessible.⁵ Most public and private buses do not provide for ease of access for PwDs.

In particular, women and girls with disabilities, mostly live in poverty due to a number of factors, including lack of education, limited economic opportunities and social exclusion. They were more vulnerable to abuse, gender-based violence and discrimination in various forms which constitute a violation of their rights and fundamental freedoms affecting their development and advancement.⁶

B. Recent developments

The State has continued its work on aligning relevant legislation to the Convention. In 2019, the mental Health Act⁷ was enacted to provide for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability give effect to certain provisions of the United Nations Convention on the Rights of Persons with Disabilities.

⁴ No. 6 of 2012,

⁵Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia. See report here [1622404 \(un.org\)](https://www.un.org/en/press/docs/2019/1904/190404.un.org.pdf)

⁶ Human Rights Commission independent report submitted to the Committee on the rights of Person with Disabilities (CRPD), 2020.

⁷ No. 6 of 2019

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C. Recommendations

1. Implement recommendations made in the mission report to Zambia by the Special Rapporteur on Persons with Disabilities.
2. Strengthen capacity of the Zambia Agency for Persons with Disabilities (ZAPD) including increasing funds granted, to enable it effectively implement its mandate.

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