

## FOLLOW UP TO THE PREVIOUS REVIEW

1. During its third review in 2017, Zambia received a total of 203 recommendations of which it accepted 183, partially accepted 1 and noted 19 recommendations.<sup>1</sup> Despite this, very few recommendations were implemented.
2. However, President Hichilema, who came to power in 2021, has openly declared that he wants to lead a country that respects human rights and informed Amnesty International that his administration “wants to institutionalize human rights”.<sup>2</sup>
3. Zambia committed to make primary education free throughout the territory.<sup>3</sup> Under Hichilema’s administration, primary and secondary education is now free, as part of removing barriers to access to education. However, schools still face shortages of resources, from classroom blocks, shortage of books and learning materials.
4. Zambia also supported recommendations to address the situation of persons with albinism, assuring them protection against attacks and killings.<sup>4</sup> Sadly, persons with albinism continue to be subjected to violent attacks and mutilation due to superstitious misconceptions about albinism.
5. Regrettably, Zambia noted 19 recommendations on ratifying remaining international human rights treaties and on engaging with UN mechanisms,<sup>5</sup> in particular, on the need to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
6. While Zambia committed to ensuring that the rights to freedom of expression, peaceful assembly and association are respected, protected, promoted and fulfilled,<sup>6</sup> the process to amend repressive legislation which poses a threat to freedom of expression and freedom of peaceful assembly is slow.
7. Despite committing to reform,<sup>7</sup> criminal defamation legislation is still being used to suppress criticism of the President.
8. The previous PF government often used oppressive legislation and arbitrary regulation, especially in the run-up to the by-elections of 2019 and general elections of 2021, to step up attacks against media freedom and freedom of peaceful assembly in Zambia. Security forces and political cadres associated with the PF subjected media workers, political activists and others who criticized the government to harassment and intimidation. This is despite Zambia’s acceptance at the previous review of a recommendation to uphold the rights to freedom of expression and peaceful assembly, making it more conducive to the rule of law in Zambia.<sup>8</sup>
9. Zambia also committed to extend an invitation to the United Nations (UN) Special Procedures, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to visit Zambia.<sup>9</sup> Amnesty International notes that only the Special Rapporteur on the right to food visited Zambia in May 2017.

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

10. Despite Zambia putting in place a National Development Plan 2017-21, committing to put in place policies and strategies to enhance access to justice, observance of the rule of law and human rights and to enacting ‘consequential legislation to give effect to the provisions made in the Constitution’, there is a significant gap in translating this into action. Repressive legislation still exists and has been used to restrict human rights since the last review.
11. Despite committing to take measures to put in place an enhanced Bill of Rights to safeguard human rights in its National Development Plan as well as accepting recommendations to ‘widen the scope of the Bill of Rights’,<sup>10</sup> Zambia is still yet to provide a legal roadmap for public consultations on the amendment of the Bill of Rights to include economic, social and cultural rights in the Constitution to ensure that the right to food is enshrined in the Constitution and can be adjudicated by the courts.

12. Amidst all this, authorities passed the Cyber Security and Cyber Crimes Act<sup>11</sup> in March 2021, which has negative ramifications on the enjoyment of digital rights, and which undermines freedom of expression. The Act contains broad and overly vague clauses which can limit the work of journalists. President Hichilema has indicated willingness to review and amend this law.<sup>12</sup>
13. The Zambia Law Development Commission (ZLDC) presented a detailed report on 15 February 2022, on laws incompatible with human rights standards that need to be reformed.<sup>13</sup> These include insult and defamation laws, minimum age of criminal responsibility, and they also called for the abolition of the death penalty. Zambia is yet to ratify key international human rights treaties relevant to these particular laws.<sup>14</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Restrictions on freedom of expression and the press

14. During the tenure of former President Edgar Lungu between 25 January 2015 and 24 August 2021, there was a systematic erosion of the right to freedom of expression. The state mainly used the law to criminalize peaceful dissent and a wide range of charges, including criminal defamation, incitement of public disorder and sedition were brought against government critics. Opposition leaders, activists, and other people were arrested for questioning certain government decisions.
15. In August 2019, the then President of the National Democratic Congress (NDC) party Chishimba Kambwili was arrested for criminal defamation of President Lungu after the release of a video in which he allegedly implied that the head of state was a dog.<sup>15</sup> In the video that went viral on social media, Kambwili had said, "Some dogs from Chawama do not get tired of travelling." Chawama is a township in the capital, Lusaka, where Lungu previously lived and served as a Member of Parliament. During that time, Lungu had been traveling abroad including to India and Japan.
16. Critics continue to be arrested under the incumbent government of President Hichilema. Opposition official, Raphael Nakacinda, of the PF was arrested in December 2021 in Lusaka on a charge of insulting the president after he advised the frequently travelling Hichilema to "put your buttocks down" and address the prevailing high cost of living.<sup>16</sup> In January 2022, Nakacinda was arrested for defamation of the President again.<sup>17</sup> Chilufya Tayali, leader of Economic and Equity Party was arrested on 19 May 2022 and charged for defamation of the President.<sup>18</sup>
17. The 2021 Cyber Security and Cyber Crimes Act has been used to silence online organizing. Drafted with the aim of protecting people from various forms of online abuse, this law nevertheless contains many draconian provisions including infringing on the right to privacy, giving blanket powers to authorities to conduct searches and seizures without warrants, and ordering internet shutdowns. All these measures are incompatible with an open society and the right to freedom of expression.
18. In May 2021, Dr Brian Sampa, the president of the Resident Doctors Association of Zambia (RDAZ), was suspended by the Health Professional Council of Zambia (HPCZ) after he convened a meeting on 19 May calling for strike action over poor working conditions and arrears in the payment of doctors' salaries and allowances.<sup>19</sup> He was subsequently sacked from a government post by the Ministry of Health, for inciting doctors to participate in a week-long go-slow.<sup>20</sup> As he continued addressing members of the association through Zoom, the Inspector General of Police threatened to arrest him and anyone attending Zoom meetings, under the newly enacted Cyber Security and Cyber Crimes law.<sup>21</sup>

19. The media has not been spared. The previous PF government undermined operations of the media through the deployment of state institutions to shut down independent critical media outlets, especially those deemed to be platforms for opposition parties and civil society.
20. In October 2017, the Independent Broadcasting Authority (IBA) summoned Prime Television's management to answer allegations that they had violated the provisions of their broadcasting license when they covered a story about the then official opposition UPND's parliamentary candidate for Kalulushi town, Everisto Mwalilino, who had accused PF government officials of electoral corruption.<sup>22</sup> In April 2020, the IBA subsequently cancelled Prime Television's license "in the interests of public safety, security, peace, welfare or good order" following the media outlet having run stories about Covid-19 corruption and Bill 10.<sup>23</sup> In August 2021, the IBA granted PRIME Television an operating licence, 16 months after withdrawing it on "public interest" grounds.<sup>24</sup>
21. Threats to independent media have not stopped under the new UPND government. In June 2022, a UPND lawmaker, Kankonyo MP Heartson Mabetwa, threatened News Diggers, a popular private newspaper, with closure after the publication ran a story quoting the UPND secretary general saying the party, which was elected on a campaign of job creation, did not sign a contract with anyone to guarantee them employment.<sup>25</sup>
22. The use of violence and harassment against journalists working for independent media outlets and damaging the property of these outlets remained rife under the former PF government. PF members used violence to prevent the media from airing programmes which featured opposition leaders. In April 2019, for instance, PF cadres halted a live programme on Power FM Radio Station in Central Province featuring then opposition NDC leader Chishimba Kambwili.<sup>26</sup> Incensed by Kambwili's criticism of the government, the cadres broke the door to the studio, forcibly halted the programme, threatened to kill Kambwili and destroyed property belonging to the station.<sup>27</sup> Despite reporting the matter to the police, none of the culprits were arrested.
23. Attacks on the media have continued under the new administration. On 4 December 2021, UPND cadres stormed Mpika FM radio station ordering a stop to a programme featuring a PF Member of Parliament.<sup>28</sup>

### **Freedom of peaceful assembly, use of excessive force and impunity**

24. During the PF's rule, police continued to implement the 1955 Public Order Act in a selective manner, which restricted the right to freedom of assembly of opposition parties and civic society organizations. Section 54 of the Public Order Act provides that anyone who intends to assemble or convene a public meeting, procession or demonstration must give the police seven days' notice. The law does not require formal approval by the authorities for such assemblies; however, the police interpret this provision to mean that permission is required before any public assembly can proceed.
25. Under PF administration, peaceful assemblies organized by political parties or civil society organizations and activists were banned or dispersed by the police using excessive force; however, those suspected to be responsible for using excessive force have rarely been held to account. In April 2017, police stopped a UPND rally in Kanyama Township in the capital, Lusaka, on "security" grounds.<sup>29</sup> Although the UPND had notified the police in advance of the rally, they unlawfully dispersed the rally, resulting in the death of 20-year-old Stephen Kalipa, one of the protesters.<sup>30</sup> Although an investigation was opened in 2017, no one has yet been arrested in connection with the incident.
26. There have been sporadic incidents of violent clashes between supporters of the former governing PF and the incumbent ruling UPND since Hichilema came to power. Violent clashes marred the Kaumbwe parliamentary by-elections in December 2021 in Eastern Province where suspected cadres from the ruling UPND are reported to have attacked the campaign teams of the opposition Socialist Party and PF.<sup>31</sup> The by-elections in Lusaka's Kabwata constituency in February 2022 also featured a series of violent activities that saw the beating of

opposition PF supporters by suspected UPND cadres.<sup>32</sup>

### **The death penalty**

27. Although during its last UPR, Zambia rejected recommendations to abolish the death penalty in line with its hiatus on executions in place since 1997, Zambia continued to commute death sentences. On 24 May 2022, President Hichilema pledged to abolish the death penalty.<sup>33</sup> The President has also vowed to work with Parliament to amend the country's penal laws under which the death penalty is permissible to fully repeal this punishment.
28. In his announcement, the President also indicated that he will be commuting 30 death sentences to life imprisonment.

### **Persons with albinism**

29. Persons with albinism continued to be subjected to violent attacks and mutilation due to superstitious misconceptions about albinism. In June 2021, criminal gangs posing as police officers attacked a home in the Senga district, mutilating a two-year-old child.<sup>34</sup> In July 2021, a nine-year-old boy from Chasefu district had his finger chopped off by a relative and another man. One of the men fled and the other was arrested and detained awaiting trial.<sup>35</sup> The latest report was on 25 June 2022, where a 10-year-old boy's finger was chopped off by three identified people.<sup>36</sup>

### **LGBTI Rights**

30. During its last review, Zambia merely noted recommendations to repeal laws that criminalize same-sex conduct between consenting adults and review all legislation, policies and programmes to foster equality and prevent discrimination on the basis of real or perceived sexual orientation or gender identity.<sup>37</sup> This follows a similar trend in the two previous reviews in 2012 and 2008 where Zambia also rejected recommendations to decriminalize consensual same-sex conduct
31. On 27 November 2019, the Lusaka High Court sentenced two men, Japhet Chataba and Steven Sambo, to 15 years' imprisonment for engaging in consensual same-sex sexual conduct in a hotel in 2017.<sup>38</sup> In May 2020, former President Lungu pardoned the couple among 3000 pardons in commemoration of Africa Day.<sup>39</sup>
32. In May 2022, current President Hichilema reiterated his stance against gay rights stating that he has from the days of opposition been against 'gayism'.<sup>40</sup> This followed pronouncements made by the Minister of Information and Media, Chushi Kasanda, during her first press briefing in September 2021 that the UPND government does not support gay rights as Zambia was a Christian nation.<sup>41</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Zambia to:**

#### **The national human rights framework**

33. Urgently develop a clear roadmap to institutionalize human rights through legal and institutional reforms.

34. Provide a legal roadmap for public consultations on the amendment of the Bill of Rights to include economic, social and cultural rights in the Constitution to ensure that the right to food is enshrined in the Constitution and can be adjudicated by the courts.

### **Restrictions on freedom of expression and the press**

35. In line with previous recommendations, repeal Section 69 of the Penal Code on criminal defamation of the President.
36. Repeal sections that are inconsistent and incompatible with international human rights standards in the Cyber Security and Cyber Crime Act.
37. In line with Zambia's previous commitment, issue a standing invitation to all UN Special Procedures.
38. Speedily enact and operationalize the Access to Information bill.

### **Freedom of peaceful assembly, use of excessive force and impunity**

39. Prohibit the use of live ammunition in public order or crowd control situations in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
40. Repeal or amend laws violating the rights to freedom of assembly, in particular the Public Order Act and the criminal defamation clauses in the Penal Code, and ensure their alignment with international human rights to which Zambia is a state party, in particular the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights
41. Ensure the non-recurrence of human rights violations by state security, in particular the Zambia Police Service, through undertaking a programme of institutional and other reforms to ensure respect for the rule of law and foster respect for human rights.

### **The death penalty**

42. As previously recommended, ratify without reservation the Second Optional Protocol to the International Covenant on Civil and Political Rights, on the abolition of the death penalty.
43. Establish an official moratorium on execution with a view towards abolishing the death penalty.
44. Review all death penalty cases with a view to commuting all death sentences to terms of imprisonment.

### **Rights of persons with albinism**

45. Protect persons with albinism from further attacks by providing secure houses and visible police patrol and expediting prosecution of suspected perpetrators of such attacks.
46. Conduct community education programmes to debunk superstitious beliefs that body parts of persons with albinism bring luck in business and politics.

### **LGBTI Rights**

47. Repeal laws that criminalize consensual same-sex conduct between adults and review all legislation, policies and programmes to foster equality and prevent discrimination on the basis of real or perceived sexual orientation or gender identity.

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- <sup>5</sup> WG UPR, Report: Zambia, (previously cited), recommendations 131.1-131.111 (Lithuania, Mauritius, Guatemala, Italy, Angola, Mexico, Australia, France, Sweden, Togo, Spain, Armenia, Benin, India, Botswana, Iraq, Burkina Faso, Slovakia, Rwanda, Chile, Congo, Honduras, Ghana, Indonesia, Denmark, Uganda, Portugal, Chad, Mongolia, Azerbaijan, Cote d'Ivoire, Republic of Korea, Nigeria, South Africa, Philippines, Kenya, Norway, Madagascar, Central African Republic, Paraguay, Ukraine, United Kingdom of Great Britain, Northern Ireland, Montenegro, Republic of Venezuela, Sierra Leone, United States of America, Canada, Finland, Netherlands, Senegal, Tunisia, Djibouti, Timor-Lester, Argentina, Maldives, Uruguay, Germany, and Namibia).
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