

Status of Human Rights in Zambia for the 42nd Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Republic of Zambia (Zambia) for the 42nd Session of the Universal Periodic Review (UPR).

Background

2. Zambia is located in southern Africa, and it has a population of 19.6 million people.¹ The majority of the population is Christian, with about 75% of the population identifying as Protestant, 20% as Roman Catholic, and 3% belonging to a different religion or identifying as nonreligious.²

3. Zambia's previous UPR was held on November 13, 2017.³ As a result of the review, Zambia received 203 recommendations, 183 of which Zambia supported.⁴ On the issue of human trafficking, it was recommended by the Republic of Korea, and supported by Zambia, that the government "[f]ully implement the Anti-Human Trafficking Act No. 11 of 2008 and ensure effective investigations into the cases of sale, trafficking and abduction of children to protect them from commercial exploitation."⁵ It was also recommended by Argentina, and supported by Zambia, that the government "[c]omply strictly with the normative provisions regarding the minimum age for marriage, and prevent and investigate cases of forced marriage, prosecuting the perpetrators and ensuring assistance to victims."⁶

Legal Framework

Human Trafficking

4. Under Article 24 of the Constitution of Zambia:

Article 24. Protection of Young Persons from Exploitation

1. No young person shall be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

2. All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

3. No young person shall be the subject of traffic in any form.
4. In this Article “young person” means any person under the age of fifteen years.⁷
5. Furthermore, under Article 11 of the Constitution:

Article 11. Fundamental Rights and Freedoms

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) *life, liberty, security of the person and the protection of the law;*
 - (b) freedom of conscience, expression, assembly, movement and association;
 - (c) *protection of young persons from exploitation; . . .*⁸
6. Zambia is also a party to the Convention on the Rights of the Child (CRC).⁹ Under Articles 6, 32, and 34 of the CRC:

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible *the survival and development of the child.*¹⁰

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.
2. States Parties shall take all legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.¹¹

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.¹²

7. Furthermore, Article 8 of the International Covenant on Civil and Political Rights (ICCPR), to which Zambia is a party,¹³ holds that “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.”¹⁴

Child Marriages

8. Under Section 17 of Zambia’s Marriage Act:

17. If either party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Zambia, of the mother, or if both be dead or of unsound mind or absent from Zambia, of the guardian of such party shall be produced and shall be annexed to the affidavit required under sections *ten* and *twelve* and, save as is otherwise provided in section *nineteen*, no special license shall be granted or certificate issued without the production of such consent.¹⁵

9. However, there are provisions of the Marriage Act that still permit underage marriage in accordance with African customary law. Under Section 34 of the Marriage Act, “nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner apply to marriages so contracted.”¹⁶

10. Zambia is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁷ Under Article 16 (2) of the CEDAW, “[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation shall be taken to specify a minimum age for marriage”¹⁸

Human Trafficking

11. In Zambia, the most common form of human trafficking is internal and consists mostly of women and children being trafficked for forced labor, sexual exploitation, and domestic servitude.¹⁹ However, there are cases of human traffickers traveling to neighboring countries, such as Malawi, to recruit children from poor families to come work on their farms.²⁰ Often, children are exploited for free labor in agricultural and mining sectors and women and girls are used for prostitution near mining camps.²¹ Zambia also serves as a destination country for human trafficking, meaning that individuals from neighboring countries are trafficked into Zambia for forced labor.²² Zambia shares border with eight different countries, and these porous borders, especially with Namibia, make it easy for traffickers to transport their victims undetected.²³

12. In Zambia, human trafficking is a “highly organized efficient network of criminals that target vulnerable children and women from and within rural areas.”²⁴ Traffickers utilize deceit to lure people living in desperate situations, and “are constantly coming up with new ways to lure their victims. They prey on desperation, curiosity and naivety and as such, children are an easy target.”²⁵ According to available statistics, “the Zambia Police Service Victim Support Unit recorded nine cases [of human trafficking] in 2017 and 31 in 2018 with Western Province recording the highest trafficking in persons cases standing at 74% of the reported cases.”²⁶ However, these low numbers of identified cases are not indicative of low rates of human trafficking; rather that there is a “lack of knowledge about the scourge among the members of the public,”²⁷ as well as the need for better trained law enforcement.

13. For example, in August 2020, a twelve-year-old boy attempted to “jump the Mchinji Border into Zambia before the police arrested him.”²⁸ When he was asked why he tried to cross the border illegally, he stated: “There was word that we should make the trip (into Zambia) to make money at an estate.”²⁹ This boy was “one of eight children, aged below 18, [who were] rescued from being trafficked to Zambia [over the course of a month].”³⁰ These children are “an example of children who are enticed into forced labour by Zambian and Malawian [traffickers] who take them across the border to rich Zambian estate owners bent on securing hard-working and cheap labourers from Malawi.”³¹

14. In April 2019, Zambian police arrested a Congolese national at the border in Sesheke District of Western Province in Zambia.³² At the time of his arrest, authorities also identified nine individuals whom he was trafficking from the Democratic Republic of Congo.³³ The victims ranged in age from two-years old to thirty.³⁴

15. The stories above illustrate how important it is that law enforcement officers are trained to recognize and prevent human trafficking. To that end, in 2019, forty members of the Zambian police participated in a three day training session on human trafficking to equip them with the knowledge and skills needed to combat this highly complex crime.³⁵ Zambia’s efforts to have better informed and trained police officers is important, and we encourage the government to implement the program across the country, particularly along the border, so that authorities have the necessary capabilities to identify and stop human trafficking when they encounter it.

16. Security forces were instrumental in 2018, when an individual was arrested for trafficking eight teenage girls from Zambia to Namibia with the promise that they would have a higher standard of living.³⁶ Thankfully, security forces were alerted to the situation and were able to rescue the victims and arrest the perpetrator.³⁷ For many victims, however, the story ends much differently and they find themselves working in forced labor or being sexually exploited.³⁸ Because human trafficking is not identified as frequently as it should be, reports of human trafficking in Zambia are limited. However, they do occur. The above are just a few examples.

Child Marriages

17. Zambia’s law generally prohibits individuals under the age of twenty-one from marrying, however, it contains loopholes and explicitly allows underage marriages to take place according to African customary law.³⁹ As a result, there are currently an estimated 1.7 million child brides in Zambia; 400,000 of them having been married before they turned fifteen.⁴⁰

18. Zambia has one of the highest rates of child marriages in the world with approximately 31% of women between the ages of 20-24 being married by the time they turned 18.⁴¹ Despite

Zambia's high rates of child marriage,

[t]he practice has become less common in the past decades, with 29 per cent of all young women aged 20–24 married before 18 years old, and 5 per cent before turning 15, in 2018, compared with 46 and 10 per cent, respectively, in 1993. However, the progress observed is not enough to eliminate child marriage by 2030 as set out in the Sustainable Development Goals (SDGs) – if the progress observed over the past 10 years continues, 22 per cent of all girls in Zambia will still be married in childhood at the end of this decade, and even if the rate of progress is doubled, 16 per cent of all girls will still be child brides in Zambia in 2030.⁴²

Thus, even though child marriage is illegal in Zambia, there still remains a significant challenge to eradicating the practice altogether because of “traditional and ingrained attitudes that make[] the practice accepted across society, while poverty is another major contributor behind child marriage.”⁴³

19. In 2022, Zambia acknowledged the need to do more to combat child marriages under customary law.⁴⁴ In fact, the Zambian Law Commission has reached a consensus with traditional leaders to fully eliminate all marriages for individuals under the age of eighteen.⁴⁵ However, at the time this report was drafted, Zambia has not yet adopted this provision.

20. In March 2020, Zambia, through the Ministry of Gender, hosted the First Steering Committee meeting of the India, Brazil, South Africa (IBSA) Programme for the purposes of “analyzing the progress, results and challenges in implementing the program to end child marriage and to provide second chance education for girls in Malawi and Zambia.”⁴⁶ The Permanent Secretary in the Ministry of Gender, Mr. Sastone Silomba, stated that “the Ministry was actively trying to ensure that that they used a multi-sectoral approach in dealing with the issue of ending child marriages.”⁴⁷ As a result, the Ministry of Gender would partner with the “Ministr[y] of Cultural and Traditional Affairs, Ministry of Education, Ministry of Community Development and Social Services, Ministry of Justice, Ministry of Home Affairs among others.”⁴⁸ These departments play a very special role in “ensuring that girls stayed in school and were not married off.”⁴⁹

21. In 2019, one 16-year-old girl shared the story of how she was married to a man who was twice her age. The girl suffered physical and sexual abuse at his hands.⁵⁰ Thanks to the work of a humanitarian group, the girl was rescued and able to return to school.⁵¹

22. In late November 2017, another girl shared the tragic story of how she was married off at the age of thirteen by her grandmother:

I was 13 when I got married. My husband was 30 years old. It was because of poverty. My grandmother arranged the marriage because she said she was too old to look after us. When I asked her about school, she said the same man who will marry you will take you to school. But when I got married, I stopped there and then. I could not continue to go to school because I was supposed to take care of my husband. I was hurt when I discovered I was pregnant, I was too young. I used to think that my life would change for the better when I got married, but even the dream that I had that I would take care of my young brothers and sisters turned out to be a myth. I'm just a child. I'm just the way you see me. And I wouldn't

like anyone who is 14 to go through what I have been through.⁵²

23. Similarly, Gloria (not her real name), a twelve-year-old Zambian girl, was forced to marry a thirty-five-year-old man after her father died and her mother could not take care of all her children. Six months into the marriage, she became pregnant, shortly after which, her husband suddenly died and she “was forced to marry her husband’s brother Routinely subjected to domestic violence, she miscarried. A few years later, Gloria [became] pregnant again, and was still carrying the baby when her second husband died, leaving her to give birth alone.”⁵³ This girl’s story illustrates not only the trauma and physical toll that child marriage can have on a young girl, but also highlights a loophole within Zambia’s marriage law that can be exploited – namely, the law allows underage marriage “[i]f either party to an intended marriage”⁵⁴ is under the age of 21, *but is a widow or widower*. Thus, it is possible for a young girl of thirteen – under the law – to be forced into marriage more than once before she even turns fourteen years of age.

24. Clearly, underage marriage can be extremely harmful and have a lasting impact on entire lives of the girls who are forced into them:

Child marriage robs girls of their childhood and threatens their lives and health. Girls who marry before 18 are more likely to experience domestic violence and less likely to remain in school. They have worse economic and health outcomes than their unmarried peers, which are eventually passed down to their own children, further straining a country’s capacity to provide quality health and education services.

Child brides often become pregnant during adolescence, when the risk of complications during pregnancy and childbirth increases – for themselves and their infants. The practice can also isolate girls from family and friends and exclude them from participating in their communities, taking a heavy toll on their physical and psychological well-being.

Because child marriage impacts a girl’s health, future and family, it imposes substantial economic costs at the national level, too, with major implications for development and prosperity.⁵⁵

Recommendations

25. Zambia must protect the vulnerable. While Zambia has completed the first step by adopting laws that prohibit human trafficking, it must go further to create an environment that advocates for and protects the victims of human trafficking as well as convicts human traffickers. We ask that Zambia implement programs to effectively train local law enforcement and border patrol agents to combat human trafficking and identify victims. Additionally, we request that Zambia create programs for the victims of human trafficking so that they can receive proper care and can return to a normal life. We encourage Zambia to educate vulnerable populations about the methods traffickers frequently use to trap their victims so that Zambians may less readily fall prey to traffickers.

26. We commend Zambia on its efforts to combat child marriages and would like to encourage Zambia to continue those efforts to fully eradicate child marriage in Zambia. Zambia must adopt the consensus that was reached with traditional leaders to establish eighteen as the

minimum age for marriage – with no exception made for African customary law. Because underage marriage has deep cultural and traditional ties, Zambia must continue to work with cultural leaders and educate the population regarding the dangers of child marriages and the harmful effects it has on girls.

¹ *Zambia*, WORLD FACTBOOK (May 19, 2022), <https://www.cia.gov/the-world-factbook/countries/zambia/>.

² *Id.*

³ *Universal Periodic Review — Zambia*, UNITED NATIONS HUMAN RIGHTS COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/zm-index> (June 1, 2021).

⁴ UPR of Zambia – Thematic List of Recommendations, OHCHR, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/ZM/MatriceRecommendationsZambia.docx> (June 1, 2021).

⁵ *Id.* at A/HRC/37/14 – Para. 131 & A/HRC/37/14/Add. 1, para. 2b.

⁶ *Id.*

⁷ Const. of Zambia art. 24, https://constituteproject.org/constitution/Zambia_2016.pdf?lang=en.

⁸ *Id.* art. 11 (emphasis added).

⁹ *Status of Ratification – Zambia*, UNHRC, <https://indicators.ohchr.org/>.

¹⁰ Convention on the Rights of the Child, G.A. Res. 44/25, art. 6 (Nov. 20, 1989), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹¹ *Id.* at art. 32.

¹² *Id.* at art. 34.

¹³ *Status of Ratification – Zambia*, *supra* note 9.

¹⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 8.

¹⁵ The Marriage Act sec. 17,

<https://www.parliament.gov.zm/sites/default/files/documents/acts/Marriage%20Act.pdf>.

¹⁶ *Id.* at sec. 34.

¹⁷ *Status of Ratification – Zambia*, *supra* note 9.

¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women art. 16 sec. 2, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹⁹ *Support to The Government of Zambia for The Implementation of Policy And The National Plan of Action Against Human Trafficking*, INTERNATIONAL LABOUR ORGANIZATION, https://www.ilo.org/global/topics/forced-labour/WCMS_116614/lang-en/index.htm#:~:text=Besides%20international%20trafficking%2C%20however%2C%20evidence,labour%20and%20commercial%20sexual%20exploitation (Jun. 1, 2021).

²⁰ *Malawi Struggles to Curb Human Trafficking*, DW (Nov. 5, 2022), <https://www.dw.com/en/malawi-struggles-to-curb-human-trafficking/a-61760165>.

²¹ *Trafficking Risk in Sub-Saharan African Supply Chains*, VERITE, <https://www.verite.org/africa/explore-by-commodity/copper/> (Jun. 1, 2021).

²² Kate Hairsine, *Malawi Struggles to Curb Human Trafficking*, ALL AFRICA (May 11, 2021), <https://allafrica.com/stories/202205120028.html>.

²³ *Rise Against Human Trafficking*, ZAMBIA DAILY MAIL LIMITED (Nov. 20, 2019),

<http://www.daily-mail.co.zm/rise-against-human-trafficking/>.

²⁴ Martina Anna Gwavava, *My First Encounter with Advocacy: Standing Up For Trafficking Victims*, GLOBAL SISTERS REPORT (Feb. 7, 2022), <https://www.globalsistersreport.org/news/social-justice/column/my-first-encounter-advocacy-standing-trafficking-victims>.

²⁵ Zondiwe Mbewe, *3 Congolese, Zambian get 25 Years for Human Trafficking*, NEWS DIGGERS (Apr. 16, 2018), <https://diggers.news/local/2018/04/16/3-congolese-zambian-get-25-years-for-human-trafficking/>.

²⁶ *Rise Against Human Trafficking*, *supra* note 23.

²⁷ *Id.*

²⁸ Sam Chunga, *Police Rescue Children from Trafficking*, The Nation (Aug. 18, 2020), <https://www.mwnation.com/police-rescue-children-from-trafficking/>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Congolese National Arrested for Human Trafficking*, RCV (Apr. 30, 2019), <https://rcvoice.co.zm/news/congolese-national-arrested-for-human-trafficking/>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Humphrey Nkonde, *Human Trafficking*, DEVELOPMENT AND COOPERATION (Sep. 17, 2018), <https://www.dandc.eu/en/article/zambias-rural-areas-poor-girls-are-often-promised-jobs-city-and-then-sold-human-traffickers>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Experts of the Committee on the Rights of the Child Ask Zambia about the Exposure of Children to Lead Contamination in Mines and about Child Marriage*, OHCHR (May 24, 2022), <https://www.ohchr.org/en/press-releases/2022/05/experts-committee-rights-child-ask-zambia-about-exposure-children-lead>.

⁴⁰ *Zambia Country Profile* UNICEF (2020), <https://www.unicef.org/media/111416/file/Child-marriage-country-profile-Zambia-2021.pdf>.

⁴¹ *Zambia Hosts the First Steering Committee Meeting of the IBSA Fund on Ending Child Marriage*, UN WOMEN AFRICA (Apr. 29, 2019), <https://africa.unwomen.org/en/news-and-events/stories/2020/04/zambia--ibsa-on-ending--child-marriage>.

⁴² *Together for a Zambia Without Child Marriage*, WORLD VISION INTERNATIONAL, <https://www.wvi.org/zambia/ending-child-marriage>.

⁴³ *Zambia Hosts the First Steering Committee Meeting of the IBSA Fund on Ending Child Marriage*, UN WOMEN AFRICA (Apr. 29, 2019), <https://africa.unwomen.org/en/news-and-events/stories/2020/04/zambia--ibsa-on-ending--child-marriage>.

⁴⁴ *Experts of the Committee on the Rights of the Child Ask Zambia about the Exposure of Children to Lead Contamination in Mines and about Child Marriage*, *supra* note 39.

⁴⁵ *Id.*

⁴⁶ *Zambia Hosts the First Steering Committee Meeting of the IBSA Fund on Ending Child Marriage*, *supra* note 43.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Child Marriage Survivors*, WORLD VISION INTERNATIONAL (Aug. 14, 2019), <https://www.wvi.org/stories/zambia/child-marriage-survivors>.

⁵¹ *Id.*

⁵² Gloria Diamon, *3 Survivors of Child Marriage Share Their Stories*, CAMFED (Nov. 28, 2017), <https://medium.com/@Camfed/3-child-brides-share-their-stories-for-givingtuesday-d220ef7272fc>.

⁵³ Lucy Sherriff, *'I was 12 When I Married a 35-Year-Old'*, BBC.com (Jan. 31, 2018), <https://www.bbc.com/news/business-42794898>.

⁵⁴ The Marriage Act, *supra* note 15.

⁵⁵ *Child Marriage*, UNICEF, <https://www.unicef.org/protection/child-marriage>.