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**Kitwe District Land Alliance**

**CGD**

**Centre for Global Dialogue**

**Joint Submission of Zambian Civil Society Organizations to the Universal Periodic Review - 2022 by:**

FIAN ZAMBIA, Plot 2 B Zimbabwe Road Rhodespark, email; ; [fianzambia@gmail.com](mailto:fianzambia@gmail.com),  
Phone; +2607775052288

Kitwe District Land Alliance (KDLA), Choka House Room 3 Oxford Avenue, Kitwe Email;  
[kdla@yahoo.co](mailto:kdla@yahoo.co), (+260)966518854

Zambia Climate Change Network (ZCCN), Mulungushi Conference Centre First Floor New Wing, Phone, +260977198965, Email; [zccnzambia@gmail.com](mailto:zccnzambia@gmail.com),

Chibombo Child Development Agency, Precem off Great East Road Chibombo email;  
[vsilumbwe@yahoo.com](mailto:vsilumbwe@yahoo.com); Phone +260977339999

Centre for Global Dialogue (CGD) Off Bitone Road 10 Miles Chibombo, email, [cgdialogue@gmail.com](mailto:cgdialogue@gmail.com) Phone+260955881870

Free Press Initiative, Plot No. 1 Chinunda Road, Off Buluwe Road, Woodlands Extension, Lusaka,Zambia; Phone Number: +260954723936

## **Zambia and Human Rights**

Zambia ratified the International Covenant on Economic, Social and Cultural Rights on 10 April 1984, International Covenant on Civil and Political Rights – 10 April 1984, Convention on the Elimination of All Forms of Discrimination against Women – 21 June 1985 and Convention on the Rights of the Child – 06 December 1991. This means, under its international human rights obligations, the Government of Zambia has the duty to guarantee the enjoyment of the right to food and nutrition, right to water and healthy environment, right to life, rights of women and rights of the Child.

### **Focus of the report**

This joint report will focus on the following human rights areas:

- The Right to Food and Nutrition: information has been provided by FIAN Zambia
- The Right to Water and Healthy Environment: Information has been provided by Kitwe District Land Alliance and Zambia Climate Change Network
- The Rights of the Child: Information has been provided by Chibomba Child Development Agency
- The Rights of Women and Right to Life: Information has been provided by Centre for Global Dialogue
- The Right to Freedom of Speech and Information: Information has been provided by Free Press Initiative Zambia

### **Follow-up on the previous recommendations from session 28 of the third review**

The follow-up on the previous recommendations was done taking into consideration the focused human rights areas in this report. In the third review the following recommendations have been provided to the State of Zambia: Ratification of the:

- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Three Optional Protocols to the Convention on the Rights of the Child;
- International human rights instruments which have not been ratified

The government of Zambia did not comply with those recommendations including no ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

## **Recommendation**

- The government of Zambia must ratify the international human rights instruments recommended by the UPR.

Further recommendations have been provided to the government of Zambia:

- Accelerate the process of domestication of international human rights instruments to which it is a party;
- Strengthen public policies to address economic and social challenges, particularly in the area of health, such as access to drinking water;
- Enhance its targeting mechanisms with regard to the delivery of social assistance to ensure that children and women, particularly pregnant and breastfeeding women, are not left behind;
- Adopt effective measures to put an end to discrimination based on gender and to violence against women, as well as to child marriage. This would include awareness-raising campaigns and trying to bring in local authorities and traditional leaders into the process;
- Consider the abolition of the death penalty, in accordance with the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Increase women's participation in political and public life;
- In combating violence against women and girls, Zambia should swiftly and fully implement the Convention on the Elimination of All Forms of Discrimination against Women. This also includes the full implementation of the Anti-Gender-Based Violence Act of 2011 and the allocation of adequate budget resources for the Anti-Gender-Based Violence Fund
- Guarantee that journalists and other media workers can carry out their work independently and without fear of persecution, including by reviewing its defamation laws to make sure they are in full compliance with international human rights law.

The government of Zambia has not recognized in the constitution or in a stand-alone Bill the right to food and nutrition, right to water and healthy environment, rights of the child, rights of women and right to life that would render more effective the implementation of the UPR recommendations. In addition, the government of Zambia did not review its defamation laws to make sure they are in full compliance with international human rights law

## **Recommendation**

- The government of Zambia must include in the constitution or enact a stand-alone Bill on the right to food and nutrition, right to water and healthy environment, rights of the child, rights of women and right to life.
- The government of Zambia must review its defamation laws and ensure that they are in full compliance with the international human rights law

## **Current situation of focused human rights areas in this report**

### **The right to food and nutrition**

In Zambia, the right to food and nutrition is not justiciable. Hence, there are numerous cases of forced evictions, land grabbing, displacements and taking over of common resources by corporates in Zambia. In this report, three cases of the violations of the right to food and nutrition in the context of ZAMPALM Limited, Dangote Cement Industries and Amatheon Agri Zambia Limited have been highlighted.

#### **The Case of ZAMPALM Limited**

In 2008, ZAMPALM a subsidiary company of ZAMBEEF Zambia expressed interest in acquiring customary land in Chief Kopa's Chiefdom for establishing a palm oil plantation. In 2009, ZAMPALM acquired the land through forced eviction of three community members namely: Sankalimba, Namusalwa, and Kepi. The affected land of 73.9423 hectares was occupied by 76 families, contained two burial sites, and a local River, Baka Baka River and Bangweulu wetland.

In a written agreement, the affected Community members agreed that, ZAMPALM limited shall compensate all the affected families in terms of building materials and money for labor in order to build their new houses. Furthermore, the agreement states that those with water wells will be paid amounts as agreed with parties involved. ZAMPALM will build New Apostolic Church and compensate the families for their cassava fields and other fruits that will be destroyed.

According to the discussions with the affected community members in Sankalimba Village, the agreement was not respected and the affected community members were forcefully displaced. In their narration: in the early morning in 2009, between February and March, ZAMPALM conducted forced eviction of the Namusulwa, Kepi and Sankalimba villages.

According to the information gathered from the meeting held with the affected community members in Sankalimba and Namusulwa: without anywhere to go, they were given by ZAMPALM corrugated iron roofing sheets, bags of cement and some money for labor to rebuild their new houses. However, they were not given alternative land.

#### **The case of Dangote Cement Industries**

Dangote Cement Industries expressed interest to acquire land and invest in Chief Chiwala's Chiefdom located in Masaiti District of Zambia. In 2010, it was decided by Senior Chief Chiwala that 400 households in Majariwa village would be displaced to pave the way for construction of the Dangote Cement Industries Zambia Limited.

In July 2011, Dangote Industries Zambia Limited was granted a land of 139,0000 ha and a certificate of title was issued by the government of Zambia.

On August 3, 2012, Dangote Industries Zambia Limited was granted a mining license in respect of another piece of land in extent of 1020,3000 hectares by the Ministry of Mines and Minerals Development.

On April 15, 2014, Dangote Quarries Zambia Limited was granted another piece of land in extent of 247,8010 hectares and a certificate of title was issued by the Government of Zambia. The mining license and certificates of title issued to Dangote Quarries Zambia Limited and Dangote Industries Zambia Limited, were issued to them in form of land which was occupied and used as a residence and farming purposes by the affected community members and their generations before.

Customary land of 250 ha belonging to 234 households was grabbed by Chief Chiwala and given to Dangote Industries Zambia Limited to build the factory. So far no compensation has been made and all 234 households do not have land to cultivate.

In 2020, Dangote Industries Zambia Limited blocked and diverted the Mwatishi River. This resulted into the River to stop flowing in its natural stream. At the time Dangote Industries blocked and diverted the Mwatishi River, 241 households had cultivated and planted various crops and vegetables along the river banks. The crops were destroyed as a result of this action and the affected households were exposed to hunger.

In addition, according to a community member, 132 households in Kalulu, Chingwere and Chisoboya have been affected by the mining activities due to their proximity to the cement factory and quarry mine (e.g. cracks to the houses, diminution of underground water).

#### The case of Amatheon Agri Zambia Ltd

Amatheon Agri Zambia Ltd (AAZ) is a subsidiary of Amatheon Agri Holding N.V., an agricultural investment company based in the Netherlands (Amsterdam) with its operating office based in Germany (Berlin). AAZ began farming operations in Zambia in Mumbwa District in 2012. It then acquired already 32.000 hectares of land in the colonial farming block called "Big Concession". The actions of AAZ undermine the enjoyment of the right to food and nutrition in a way that:

- Casualization situation does not guarantee the availability of nutritious food at all the time to the casual workers who are not earning enough money to buy food ;
- Confiscating community livestock (cattle and goats) by AAZ when they stray into AAZ farm and charging community members by AAZ for any livestock found straying in AAZ farm (K500 for each animal) put community members in financial distress and poverty which in turn do not allow community members to feed themselves in dignity;
- Threatening by AAZ to evict some community members around the AAZ farm, put them under pressure which could lead to give up their farms to AAZ;

- Community members living at the Kabwashe River reported that access to water has been severely limited since 2017, when AAZ built dams at upstream for its irrigation. Community members downstream reported that since that time they had to stop cultivating vegetables, which provided a major source of income and nutritious meals.

## **Recommendations**

- The government of Zambia must strengthen protection against forced evictions in accordance with the criteria established by the Committee on Economic Social and Cultural Rights;
- The government of Zambia must guarantee the explicit recognition in the constitution or a stand-alone Bill of the right to food and nutrition;
- The government of Zambia must ensure that all affected communities members due to forced eviction and land grabbing are adequately compensated;
- The government of Zambia must regulate properly the activities of corporations and ensure that they do not abuse human rights.

## **The Right to Water and Healthy Environment**

Zambia's surface water bodies are under stress from industrial discharge, sewerage, farm run off including pesticides, herbicides, fertilizers, while ground water resources are contaminated by on site sanitation industrial and agriculture effluent and solid waste. In a

There is lack of access to clean drinking water especially for rural and peri urban communities. In Chibombo District communities are forced to draw water from unsafe sources such as shallow wells. Hence, there is perpetuated prevalence of water borne diseases such as cholera.

In 2019 the Zambian Government signed Statutory Instrument (SI) No. 62 of 2017 degazetting the Forest Reserve number 27,<sup>1</sup> despite knowledge that the forest reserve was the only remaining in Lusaka and recharge area for the Chalimbana, Ngwere and Chongwe rivers. The degazetting of the Forest Reserve Number 27 has resulted in the drying up of the aforementioned rivers in Chongwe District and Rufunsa District. Henceforth, this problem has given much pressure on women and children as they walk long distances to fetch water for household use. Clean water has also been an issue as animals (i.e. cattle, goats, chickens, and sheep among others) compete for water points.

In Fisenge area in Kitwe a private company called Golden lay limited, diverted part of the water from the Fisenge stream to fill up its irrigation dam. As a result during the dry season, the water level becomes very low in the stream. And consequently there is inadequate water for domestic and other uses for the Fisenge community.

## **Recommendations**

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<sup>1</sup> government of Zambia statutory instrument no. 62 of 2017 & the forests act (act no. 4 of 2015)

- The government of Zambia should domesticate all provisions of the international treaties including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.
- The government of Zambia must provide clean and safe drinking water
- The government of Zambia should protect common water resources such as XXXX

## **The Right of a Child**

In Chibombo District of Zambia Central Province, a girl child is considered as capital of the family. At the moment a girl reaches puberty, her family marries her in exchange for money and or livestock animals such as cattle. Most often, in a case where a girl is in school, her family goes as far as pulling her out from school and send her to marriage, so as to benefit the family.

The Zambia Police Service reported that in the 1 second quarter of 2021, 576 children were defiled. That number increased by 10% from that reported in the first quarter of the same year. The violence include among others: child labor, lack of protection of children while in detention, lack of recognition of recognized minimum age (14) of criminal responsibility, sexual exploitation, etc... Children have also fallen victims to Gender-Based Violence (GBV). As of February 2022, 1,814 children were abused countrywide, representing 22.9% of all the victims of Gender-Based Violence reported. Girl children were the most affected with GBV, accounting for 1,342 2 (74%) cases compared to boys at 472 (26%) cases. Child marriage in Zambia is currently estimated at 29%, a slight decrease from 31% reported in 2014.<sup>2</sup>

## **Recommendations**

- Harmonize statutory and customary marriage age limits through statutory instruments.
- Enhance the protection of the rights of the child, including by abolishing child labor, combating malnutrition and shielding child perpetrators during detention
- Adopt and implement improvements to the legislation relating to children, in particular, increase the minimum age of criminal responsibility to an internationally acceptable age of 14
- address the high rate of child labor, prohibit the forced marriage of children, and end violence and sexual exploitation, including abuse, neglect and ill-treatment

## **Right to Life**

Under the current Constitution of Zambia, it is lawful for a person to be sentenced to death. According to Article 12 of the current Constitution of Zambia law 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

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<sup>2</sup> Policy Brief Ending Violence Against Children in Zambia March 2022 World Vision

has been convicted”.<sup>3</sup> During the celebrations of the Africa Freedom Day in Lusaka Zambia Republican President Hakainde Hichilema Announced the Abolition of Death Penalty which now awaits Parliamentary Approval.

## **Recommendation**

- The government of Zambia should ensure that the death penalty is abolished as soon as possible

## **Women’s Rights**

According to the report by Christian Churches Monitoring Group (CCMG, long-term observation, 2021) the CCMG observers reported a total of eighty-five (85) pre-election verified incidents of politically motivated violence.<sup>4</sup> Additionally, majority of these incidents (76 total), took place during the campaign period from 12th May 2021 through Election Day on August 2021. Christian Churches Monitoring Group notes that overall violence escalated immediately after the start of the official campaign period and subjected with then suspension of in-person campaign; thus, it is likely the suspension limited the triggers of politically motivated violence and contributed to a reduction in the incidents at several points throughout the campaign period. On the other hand, pre-election violence in the previous regimes has limited women to participate actively in Zambian politics. The pre-election resulted from the inadequate response from the police service and by the Electoral Commission of Zambia (ECZ). In as much as the Acts of politically motivated violence are subject to Zambia’s Penal Code but additionally are expressly forbidden under the Electoral Code of Conduct and Statutory Instrument (SI) 35 of 2020 on the Electoral Code of Conduct Enforcement, which details additional investigations, sanctions and provisions by the ECZ<sup>5</sup>, the recommendation that the report put across was like if the latter is not put into consideration fewer and few women will participate in active politics in Zambia especially from the opposition parties.

## **Recommendation**

- The government of Zambia should promote women’s empowerment by increasing the number of women in leadership positions

## **Right to Freedom of Speech and Information**

Article 20(1) of the Constitution of Zambia states that, “ Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say,

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<sup>3</sup> Constitution of Zambia article 12

<sup>4</sup> Christian Churches Monitoring Group 2021 General election observation Final report, 8 march 2022.

<sup>5</sup> Statutory Instrument number 35 of 2020, code of conduct; [ Electoral Act (2016, 109), the Electoral (Code of Conduct) Regulations 2016 ("the Code")].



freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence". However, this is not sufficient enough to allow citizens to freely express themselves and also allow journalists to get information from those in power. While freedom of information or Access to Information is mentioned under freedom of expression in Article 20(1) of the current Constitution, there is no independent guarantee enshrined in the 1992 Constitution.

The Zambian Government received a number of recommendations related to freedom of expression issues during the session 28 of the third review. Specifically, the Government was asked to consider taking steps to amend the Defamation laws. Here we would like to highlight the Defamation Act, which over the years has been used to arrest people who criticize the president, and to quickly adopt a Bill on freedom of information (Access to Information).

Some of the issues that have arisen due to lack of a proper law in relation to access to information are;

- The use of restrictive legislation to suppress freedom of expression such as the defamation Act;
- Incidents of violence and harassment against journalists and human rights defenders (political party cadres storming radio stations hosting opposition political parties);
- Lack of media independence and censorship (case of Zambia National Broadcasting Authority (ZNBC) being controlled on what to air and what not to air by those in power);
- Restrictions on the right to association
- Right to peaceful protest (The case of Pilato and other musicians who went to protest in the bush for fear of being arrested in 2021. Some were actually arrested after the protest).

Other provisions of the law that are being used to suppress freedom of expression and freedom of the press include section 57, 71, 116A and 177(1) of the Penal Code and the State Security Act of 1969.

## **RECOMMENDATIONS**

- The government of Zambia should Repeal laws that limit freedom of expression, in particular the provisions of the Penal Code on sedition, defamation, and obscenity, end the special legislative protection given to the reputations of the President and give full recognition to the principle that public figures must tolerate

- a greater degree of criticism than ordinary citizens;
- The government of Zambia should Provide constitutional guarantees for the protection of freedom of information and ensure enactment of the Access to Information Bill into a Law without delay;
  - The government of Zambia must abolish the law on Defamation of the President