



Universal Periodic Review

Human Rights Council

Submission on Zambia's civil and political rights by the Southern African Centre for the Constructive Resolution of Disputes¹, Hope for Human Rights², Anti-Voter Apathy Project³, Transparency International Zambia⁴, Federation for Trade Union in Zambia/Zambia Union of Financial Institutions and Allied Workers⁵, Prisons Care and Counseling Association⁶, Zambia Media Women Association⁷

¹ **The Southern African Centre for the Constructive Resolution of Disputes (SACCORD)** is a Zambian based Non-Governmental Organization (NGO) registered in 2000 under CAP 119 of the laws of Zambia to deal with issues pertaining to Human Rights, peace, security and democracy in Zambia and the Southern African region.

² **Hope for Human Rights** is a non-governmental organisation involved in the promotion of the observance of Human Rights in Zambia. It was established in the year 2006 and formally registered with the Ministry of Home Affairs (Registrar of Societies) on the 15th of November 2010.

³ **The Anti-Voter Apathy Project (AVAP)** was registered on 26th December, 1995 with the Registrar of Societies. AVAP is a Non-Governmental Organisation (NGO) actively involved in the promotion of democracy, political and voter participation, respect for human rights and other good governance related issues.

⁴ **Transparency International-Zambia (TI-Z)** is a local chapter of the international anticorruption movement – Transparency International. TI-Z is a non-governmental organization with a registered office in Lusaka. The organisation has been in existence in Zambia since June 2000 and has since then been involved in significant and high profile activities meant to raise awareness on anti-corruption and the need for a consolidated approach to tackling corruption at different levels. TI-Z has been implementing programmes in the following areas: Governance and Management, Capacity Building, Research and Advocacy, Communication and Coalition Building.

⁵ **Zambia Union of Financial Institutions and Allied Workers (ZUFIAW)** is the union of choice in the finance, banking, buildings societies, pension funds, insurance, micro finance, bureau de change and all financial related institutions in Zambia. Established in 1970 as Zambia Union of Bank Officials, ZUFIAW's membership is drawn from 32 institutions. ZUFIAW is affiliated to the Federation of Free Trade Unions of Zambia (FFTUZ) and UNI Global Union, Switzerland

⁶ **Prisons Care and Counseling Association (PRISCCA)** exists to supplement / compliment government efforts in rehabilitating prisoners and prisons. The organisation was in 2002 under cap 119 of the laws of Zambia.

⁷ **Zambia Media Women Association (ZAMWA)** is Member Association of Female Journalists and Media Practitioners in Zambia. ZAMWA's primary assemblage is women and members pool resources and their professional skills in increasing visibility on women issues. The rationale is that media is a powerful tool for social change and agenda setting.

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Executive Summary

This submission has been prepared by a group of civil society stakeholders working in the areas of civil and political rights. The Southern African Centre for the Constructive Resolution of Disputes, Hope for Human Rights, Zambia Union of Financial Institutions and Allied Workers, Transparency International Zambia, Zambian Media Women Association, Anti-Voter Apathy Project, Prisons Care and Counseling Association submit this information for consideration during the Universal Periodic Review of Zambia at the Human Rights Council.

This report begins by highlighting various international conventions to which Zambia is a state party relating to civil and political rights. The report will also make reference to some concluding remarks from the treaty monitoring bodies. The report further seeks to evaluate the extent to which Zambia was able to implement the 2008 agreed UPR recommendations, while at the same time giving an assessment of the current state of civil and political rights in the country. The report will mainly focus on conditions in detention facilities, death penalty, police and other law enforcers' brutality, freedom of association, expression and assembly.

Protection of civil and political rights in Zambia

1. Over the past years, the State of Zambia has continued to pursue attempts that seek to strengthen civil and political rights in the country. Civil and political rights, under the Zambian Constitution, are found in part III, titled "Protection of the Fundamental Rights and Freedoms of the individual", which is also referred to as the national Bill of rights. Article 11 summarizes the rights and freedoms contained in Part III for every person as:-
 - (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; and
 - (d) Protection for the privacy of his home and other property and from deprivation of property without compensation.

International Human Rights ratified by Zambia in relation to Civil and Political rights

2. Being a signatory to the following international conventions, the State of Zambia has assumed obligations to promote respect and fulfill the human rights related to Civil and political rights.
 - The UN Convention relating to the status of Refugees (1951)
 - International Covenant on Civil and Political Rights (ICCPR) (1984)
 - International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)(1972)

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Committee Against Torture (CAT) (1998)
- Convention on the Rights of Persons with Disabilities (ICRPD) (2010)

Living Conditions of Detainees

3. Zambia's prison system is facing a lot of challenges. Overcrowding is so severe that it poses a health danger to a number of detainees which is a clear violation of the detainees' human rights. According to a joint report by Human Rights Watch, AIDS and Rights Alliance for Southern Africa and the Prisons Care and Counseling Association produced in April, 2010 Zambia has over 15,300 prisoners who are packed in space meant to accommodate just 5,500. In addition to overcrowding, detainees suffer from malnutrition, grossly inadequate medical care, and the risk of rape or torture as evidenced by the high rates of HIV infections⁸. Of the 86 prisons in Zambia, only 16 have health facilities within prison premises⁹. This has led to a lot of prisoners not receiving medical attention on time as they have to be taken to health facilities which are outside the detention facilities. This is further compounded by bureaucracy and general lack of respect for detainees' rights by some prison officials who refuse to take the sick to clinics or hospitals. According to *Unjust and Unhealthy, HIV, TB and Abuse in Zambian Prisons*¹⁰, the officers tend to ignore pleas from other detainees for them to take the sick to clinics. Below are excerpts of statements by some interviews conducted:

'I have seen people die in the night in the cell.....there is nothing we can do. We shout for someone, but the guards will say, "he is just playing sick, he wants to escape. Let us wait two or three days, and see how he will be." And then he dies'.

– **Nickson**, 36, Mukobeko Maximum Security Prison, September 30, 2009

They say, "you're going to Chimbokaila [Lusaka Central Prison]? It's a death sentence." Not because they are afraid you will be given beatings, but because of TB. They know the conditions are bad.

– **Dr. Chisela Chileshe**, director, Zambia Prisons Service Medical Directorate, Lusaka, February 6, 2010¹¹

4. The above described harsh conditions of detention, including deprivation of food, constitute inhumane conditions of detention in violation of the ICCPR¹². International standards require that prisoners be supplied with "food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."¹³ This standard has been cited with approval by the UN Human Rights Committee when examining the minimum standards that a state must

⁸ " Unjust and Unhealthy, HIV, TB, and Abuse in Zambian Prisons April, 2010"

⁹ " Unjust and Unhealthy, HIV, TB, and Abuse in Zambian Prisons April, 2010"

¹⁰ ibid

¹¹ Page 8 " Unjust and Unhealthy, HIV, TB, and Abuse in Zambian Prisons April, 2010"

¹² Manfred Nowak, "U.N. Covenant on Civil and Political Rights, CCPR Commentary," (2nd edition) (Kehl: N.P. Engel, 2005), pp. 165, 172-75, 244-29.

¹³ UN Standard Minimum Rules for the Treatment of Prisoners, para. 20(1).

observe for those deprived of their liberty, “regardless of a State party’s level of development.”¹⁴

5. The congestion has been attributed to a lot of failures within the prison system in Zambia such as malnourishment, the spread of communicable diseases and prisoner violations by other prisoners. Although the Zambian government has introduced a Parole system for early release of prisoners with lesser sentences or good behavior, this move has not helped in reducing congestion in the detention facilities. The current prison system does not provide adequate correctional and rehabilitative facilities intended create a conducive environment to assist prisoners become better and productive citizens after serving sentences. This leads to some ex-prisoners committing similar offences and getting re-arrested and detained thus further re-congesting the facilities.

6. RECOMMENDATIONS

- Government must urgently construct new detention facilities and rehabilitate existing infrastructure to meet the increasing number of detainees.
- Reform the prison system as correctional and rehabilitation centres to promote reintegration of ex-prisoners into society.
- There is need for government to establish a health post at every Prison so that prisoners access health care services.

HIV Programmes for Detainees

7. The National AIDS Council puts the HIV/AIDS prevalence in prisons to be around 27% against a national average of 14%. A number of factors have been attributed to this situation such as Male to Male sex (MSM), sharing of shaving appliances (razor blades, etc), tattooing, Intravenous Drug Use (IVDU), inadequate HIV/AIDS educational activities, sharing of ear piercing instruments¹⁵. Another report by an organization called IN BUT FREE (IBF) conducted a research to determine the extent and magnitude of the HIV and AIDS epidemic in Zambia’s prisons also found the prevalence to be the same with Lusaka prisons recording as high as 42% prevalence rate¹⁶. The IBF report also found that there were Men having sex with Men within these prisons¹⁷. The report found that Only 35 out of 2,201 prisoners surveyed reported having had sex with another man. This is 0.01 percent. However, when asked if they knew if sex between men was being practiced in their prison, 1,579 out of 2,208 (i.e. 72 per cent) responded that MSM “is practiced by few to many prisoners”. And when asked whether there was need for authorities to introduce condoms in prisons, the respondents said no as there was no need because prisoners do not engage in sex¹⁸.
8. Clearly, there is HIV/AIDS in prisons and it continues to spread due to a number of factors such as stated above and detainees’ conditions were being worsened by poor access to medical services for opportunistic infections and poor nutrition.

¹⁴ See *Mukong v. Cameroon*, No. 458/1991, para. 9.3.

¹⁵ <http://inbutfree.org/> 20/03/2012

¹⁶ <http://psihealthylives.com/2012/02/the-hiv-and-aids-situation-in-zambian-prisons.html>

¹⁷ <http://psihealthylives.com/2012/02/the-hiv-and-aids-situation-in-zambian-prisons.html>

¹⁸ In But Free - sero-behavioral survey of the HIV and AIDS situation in Zambian prisons November 2011

9. RECOMMENDATIONS

- HIV/AIDS programmes should include subject on same sex activity to instill behavior change bearing in mind that condoms cannot (presently) be distributed in prisons.
- Conjugal Rights should be given to all (married) prisoners to allow them meet their partners as a means to reduce desire for sex.

Death Penalty

10. The Zambian Constitution allows the death penalty in Part III on the Protection of Fundamental Rights and Freedom of the Individual. Article 12 in this section, dealing with the protection of the right to life, Article 12 (1) states: “No person shall 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.¹⁹” The Constitution of 1996 amending the 1991 Constitution maintains the article. The Zambian Penal Code, section 43, foresees that the death penalty be enforced in cases regarding high treason, murder and armed robbery. Zambia has had a de facto moratorium since 1997, when the last executions took place although the courts have continued to sentence suspects to death²⁰.

11. Having refused to abolish the death penalty during the 2008 UPR, Zambia has continued to be non-committal on the abolishment with its two abstentions on 18th December,, 2008 and 21st December, 2010, on the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly.

By 27th December, 2011 there were 279 prisoners on death row in Zambian prisons with a good number still awaiting sentencing. Commissioner of Prisons Mr. Percy Chato stated that the number was too high in relation to the holding cells that were available for the condemned section of the prison where death row inmates are held²¹.

12. RECOMMENDATIONS

Zambia should consider abolishing the death penalty as it has not served as a deterrent to serious crime.

Police and other law enforcers Brutality

13. The Human Rights Watch (HRW) has continuously published reports of torture in Zambia at the hands of the Police or Prison authorities. In its 2010 report, HRW said that the Zambian police routinely engaged in cruel, inhumane, and degrading treatment, include torture, to extract confessions from suspects. The report added that hanging suspects from the ceiling and beating them to coerce confessions is routine police practice in Zambia²².

¹⁹ Article 12(1) Constitution of Zambia amendment # 18 of 1996

²⁰ <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=25&nome=zambia>

²¹ <http://allafrica.com/stories/201112270958.html>

²² <http://www.hrw.org/news/2010/09/03/zambia-police-brutality-torture-rife>

Reports of suspects dying in police cells suspected to have been tortured by police have continued with cases such as the one in Garden Compound on 12th November, 2010²³ Ng'ombe police post, John Laing Police post Bennie Mwiinga in Lusaka. There have also been cases of police brutality including killings by the police such as the 14th January, 2011 Mongu killings, 3rd March, 2011 Mazabuka killings and the 20th April, 2011 Mansa killings²⁴.

14. RECOMMENDATIONS

- Zambia needs to enhance training in Human Rights for Police officers and other law enforcers.
- The Republic of Zambia must reduce the bureaucracy and strengthen the mandate of Police Public Complaints Authority (PPCA) to make it easy for the community to report cases on police brutality

Freedom of Expression and Assembly

15. Article 21 of the Zambian Constitution guarantees the right to assemble. This right is one of the key rights in the Zambian Bill of Rights. In addition, the Public Order Act (1996) was enacted to help in regulating meetings, processions and demonstrations and is administered by the Zambia Police Force. The Public Order Act has continued to be used by the police and government by extension to deny citizens the right to demonstrate and hold processions on flimsy grounds. The law has also been used against opposition political parties during political events. Furthermore, it has also been used to deny people in Zambia the right to hold processions on the pretext of public safety. The Zambia police have a very poor record of crowd controls going by its use of force when dispersing protesters and the use of live ammunition on protestors which has led to injuries and loss of lives²⁵.
16. In 2009, the Zambian government enacted an NGO Act which to a larger extent aims to restrict the work of NGOs in the country especially the ones working in the areas of governance and human rights²⁶. The composition of the board is heavily tilted towards interests of the government as most board members are from government institutions with the law giving the minister powers to appoint the chairperson and the vice and further powers to reject nominated members from NGOs.

“14(1) The Board shall consist of fifteen members —

(2) The Board shall comprise—

(a) Two members appointed by the Minister by virtue of the members' knowledge or experience in development and welfare management;

(b) One person each from the-

- i. Ministry responsible for health;
- ii. Ministry responsible for home affairs;
- iii. Ministry responsible for economic planning;
- iv. Ministry responsible for community development; and

²³ <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154376.htm>

²⁴ www.parliament.gov.zm/index.php?option=com_content&task=view&id=1603&Itemid=86&limit=1&limitstart=5

²⁵ <http://www.lusakatimes.com/2011/11/20/police-live-ammunition-angers-government/> 02/04/2012

²⁶ <http://www.irinnews.org/Report/85860/ZAMBIA-NGOs-fear-law-will-hobble-their-activities>

- v. The Ministry responsible for local government;
 - (c) A representative of the Attorney - General;
 - (d) Seven members elected by the Congress; and
 - (e) The Registrar, as ex-officio member.
- (3) The Minister shall, on receiving the names of the proposed representatives under subsection (2), consider the nominations and may reject any nomination:

17. (1) The Board shall reject an application for registration of a non-governmental organisation if— the proposed activities or procedures of the non-governmental organisation are not in the public interest;²⁷”
18. Although the NGO Act is not fully operational, the minister responsible has already signed a statutory instrument to bring it into force. In its current form, the Act will make it very difficult for advocacy NGOs to easily do their work and requires to be amended so it does not deny the right to associate.
19. The National Assembly Powers and Privileges Act has also been used by parliament to insulate itself from public scrutiny as well as criticism over some of its positions and rulings. Some people in Zambia have been found guilty of contempt of parliament and risking being sent to jail²⁸.

20. RECOMMENDATIONS

- The government must revise the Public Order Act and the Defamation Act to guarantee the right to Association and Expression.
- The government must consider repealing or reforming the NGO Act so that it can guarantee the right to associate as guaranteed by article 20 (1)of the Zambian Constitution.
- We urge the Zambian government to also consider reforming the national assembly powers and privileges Act and laws on contempt of court to guarantee freedom of expression.

Freedom of Information

21. In 2002, the Zambian parliament showed a lot of will in passing the Freedom of Information Law. However, the Zambian government decided to withdraw the Bill before parliament for further consultations. These consultations that have been on-going for the last ten years are negatively affecting the country’s progress in enacting the Freedom of Information Law. There have been a number of meetings with different stakeholders on how to move forward although the government which has assumed the leading role has not been helpful. Although the new government has promised to enact the law, there is no guarantee as the case was the same with the previous government²⁹.
22. By prohibiting free access to information about matters of public interest- on the pretext of national security and public order, officials breach Zambia’s obligation to respect, protect, and

²⁷ The Non-Governmental Organisation Act 2009

²⁸ http://www.postzambia.com/post-read_article.php?articleId=25938

²⁹ <http://www.lusakatimes.com/2012/03/26/freedom-information-law-august-state/>

fulfill the right of the people to know and participate meaningfully in the affairs of the government³⁰.

23. In its 1996 concluding Observation, the Human Rights Committee noted with concern Zambia's limitations on media, thus: "The Committee is concerned by reports of arrests and charges against journalists for the publication of newspaper articles. Use of the criminal process to ensure accountability of the press for the veracity of its reports is not compatible with articles 19 of the covenant. Robust and even harsh criticism of government figures is an essential part of free speech in a democratic country."³¹

24. As a result of the failure by the country to have this law in place, it is almost impossible to officially get information from public officials. Most information with the government continues to be treated as confidential which makes it state secret and thereby risky for anyone to use or publish it for journalists.

25. RECOMMENDATIONS

- The government should consider enacting the Freedom of Information Law which was withdrawn from parliament 10 years ago. This should be done with deliberate haste so that people's rights are not unnecessarily violated
- The Zambian government should consider revising the Official Secrecy Act to be in line with the Access to information laws

26. Freedom of Association

The Zambian constitution in article 21 guarantees the freedom of association and it is from this that an Act of parliament was developed to promote and protect the interests and rights of employers and workers. The Industrial Relations Act sets out conditions for establishing labour unions. Over the years, relations between government and unions have been unstable with government interfering in the election of certain union leaders. In 2011, a critic of the government Mr. Rayford Mbulu who was the president of the Mineworkers Union of Zambia (MUZ) was disqualified from contesting the position of president of the Zambia Congress of Trade Unions (ZCTU) on a technicality that he was no longer an employee though he was president of another workers union.

27. Currently the labour movement has taken the government to court for amending labour laws which are in contravention of the ILO convention 89 and article 21 of the Zambian Constitution. In some companies there is continued abuse of workers with other companies not allowing their members to form unions within their establishments. Workers who go on strike continue to be threatened with dismissal by both government and private employers.

28. In 2009, nurses in Zambia went on strike to protest the poor conditions in hospitals and improvement of their conditions of service. The government responded by continuously intimidating the striking workers until they called off their strike. In 2010, workers at Maamba

³⁰ <http://indylaw.indiana.edu/humanrights/shadowreports/Zambia%20Press%20Freedom.pdf>

³¹ U.N. Human Rights Committee: Concluding Observations of the Human Rights Committee: Zambia. CCPR/C/79-April 1996 at para 15 & 28

Collum mine were short at by their two supervisors for going on strike to protest poor working conditions³² and the Zambian government did very little to protect workers' interest³³.

29. **RECOMMENDATIONS**

The Industrial and Labour Relations Act amendment of 2008 should be reviewed so that it is brought in conformity with the ILO Convention 89 and article 21 of the Zambian constitution.

³² http://www.postzambia.com/post-read_article.php?articleId=14713

³³ http://www.terradaily.com/reports/Zambia_president_defends_China_after_mine_shooting_999.html