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**Consideration of reports submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights**

**Concluding Observations on the Combined 1<sup>st</sup> to 7<sup>th</sup> Periodic Report of the Republic of Zambia under the African Charter on Human and Peoples Rights, and Initial Report under the Maputo Protocol (2005-2019)**

Banjul, July 2023



## **Introduction:**

The Republic of Zambia (Zambia) ratified the African Charter on Human and People's Rights (the African Charter) on 10 January 1984, the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol) on 7 June 2006, and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) on 14 January 2011.

In accordance with the Charter's Article 62 and Maputo protocol's Article 26 provisions, Zambia submitted its Combined 1<sup>st</sup> to 7<sup>th</sup> Periodic Report on 2 November 2023. The report covers the period from 2005 to 2019 and includes a Section on the implementation of the Maputo Protocol.

Previously, in February 2006, Zambia submitted its Initial Report under the Charter (1986-2004), which was considered during the ACHPR 41<sup>st</sup> Ordinary Session, held in Accra/ Ghana from 16 to 30 May 2007.

Concluding Observations on the Initial Report of Zambia were adopted by the Commission during the same 41<sup>st</sup> Ordinary Session.

The present report was reviewed virtually on 12 May 2023, in the framework of the ACHPR 75<sup>th</sup> Ordinary (Hybrid) Session, held in Banjul/ by zoom from May 3<sup>rd</sup> to 23<sup>rd</sup> May 2023.

A Zambian high-level delegation, led by H.E. Mulambo Haimbe, SC, MP, Minister of Justice, attended the review virtually<sup>1</sup>.

The Commission expresses its appreciations for the presentation of the Report by the high-level delegation from Zambia, and the constructive dialogue that followed the presentation.

During the review, the Zambian Delegation informed that additional written replies to questions that were not addressed in the presentation, will be provided subsequently.

On 20 June 2023, the Commission received a written contribution from the Embassy of Zambia in Addis Ababa.

The Periodic Report under review highlights developments in Zambia in the promotion and protection of human and peoples' rights, as well as legislative, administrative and judicial measures taken in the framework of the implementation of the African Charter provisions, for the period 2005-2019.

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<sup>1</sup> The detailed list of delegation is attached (Annex).

At the normative level, the Commission notes with satisfaction the ratification by Zambia of several human rights instruments during the period under review, as well as the adoption of several policies and frameworks dealing with human rights, such as the 8<sup>th</sup> National Development Plan.

At the institutional level, the Commission welcomes the establishment by the Government of Zambia (GoZ) of the Police Public Complaints Commission, the Office of the Public Protector, the Department of Resettlement, the Legal Aid Board, and the Judicial Complaints Commission.

Zambia acknowledges the existence of challenges relating to human rights promotion, inter alia, limited human and financial resources.

The present Concluding Observations provides an account of the positive aspects and the factors restricting the enjoyment of human rights in Zambia. It also highlights areas of concern identified in the Report and from additional information provided during the review.

Finally, the Commission makes recommendations to Zambia on measures needed to strengthen the enjoyment of human rights, as guaranteed by the African Charter, the Maputo Protocol as well as other relevant regional and international human rights instruments.

## **I. General Recommendations**

### **- Article 62: Reporting obligations**

The Commission welcomes the commitment of the Government of Zambia towards its reporting obligations under the African Charter and the Maputo Protocol.

The Commission also commends the Government of Zambia for paying particular attention to the guidelines on State Reporting, in particular, those relating to the Maputo Protocol.

However, the Commission notes that the report under review does not cover the Kampala Convention, ratified by Zambia on 14 January 2011.

#### **Recommendations: The GoZ should:**

- Continue its commitment to the submission of periodic reports and strengthen its compliance with the relevant Commission guidelines in this regard.
- Include apart "C" on the implementation of the Kampala Convention in its next Periodic Report.

### **- Ratifications**

The Commission takes note of the Ratification of International Agreements Act n°34/2016 and welcomes the commitment of the State Party to positively consider ratifying international instruments, both under the African Union's framework and the United Nation's framework, as already recommended by the Commission in 2007.

While commending the positive steps taken in this regard, the Commission remains concerned that a set of African and other relevant international human rights instruments are yet to be ratified by Zambia, especially three Protocols to the African Charter.

During the review of the report, the Delegation of Zambia announced that the State Party made the Declaration under Article 34-6 of the Protocol to the Charter, on the African Court on Human and Peoples' Rights, accepting the competence of the Court to receive cases submitted by NGOs and individuals. The Commission welcomes this new development.



### Recommendations:

- The Commission reiterates its recommendation to Zambia to give a concrete expression to its intention to ratify the following instruments:
  - In the African Union's framework:
    - The Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa<sup>2</sup>;
    - The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities ;
    - The Protocol to the African Charter on Human and Peoples' Rights on the Right of Citizens to Social Protection and Social Security<sup>3</sup>;
    - The Protocol on the Statute of the African Court of Justice and Human Rights<sup>4</sup>.
  - In the United Nations' framework:
    - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
    - Optional Protocol to the Convention against Torture<sup>5</sup> ;
    - 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 Rights of the Child on the involvement of children in armed conflict<sup>6</sup> ;
    - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography<sup>7</sup>;
    - Optional Protocol to the Convention on the Rights of Persons with Disabilities ;
    - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
    - Optional protocol to the International Covenant on Economic, Social and Cultural Rights ;
    - 3<sup>rd</sup> Optional Protocol to the Convention on the Rights of the Child.
- Zambia should formalise with the African Union/ African Court the procedure for filing the declaration under article 34-6, announced by the Delegation during the review.

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<sup>2</sup> Signed on 17 July 2016.

<sup>3</sup> Open to ratification in 2022.

<sup>4</sup> Signed on 31 January 2010.

<sup>5</sup> Signed on 27 September 2010.

<sup>6</sup> Signed on 29 December 2008.

<sup>7</sup> *Ibid.*,

- **Article 1** : legislative measures on the domestication of the Charter’s provisions

The Commission takes note of the continuous efforts made by the Zambian Government in order to domesticate its international commitments, particularly through the adoption or amendments of laws and policies dealing with human rights, such as:

- The Children’s Code Act n 12/2022;
- The Probation of offenders amendment Act n 14/2022;
- The Penal Code amendment Act n 13/2022;
- The Legal Aid Act n 1/2021;
- The electoral process amendment Act 22/2021 ; and:
- The public gathering bill 2022.

**Recommendations: The GoZ should:**

- Continue its efforts to upgrade its legislative framework dealing with human rights and to operationalise it.
- Continue efforts to disseminate and popularise the African Charter and the Maputo Protocol.
- Provide adequate resources to implement the national human rights strategies and plans currently in force.

- National human rights framework

While concerned that the constitutional referendum conducted in August 2016 to amend the State Party’s Bill of Rights was unsuccessful<sup>8</sup>, the Commission welcomes the GoZ intention to pursue efforts in this regard, in order to enhance the Bill of Rights. The State party also intends to widen the scope of the Bill of Rights during the implementation of the Eighth National Development Plan during the period 2022 to 2026 to include economic, social and cultural rights.

The Commission also welcomes the establishment in August 2022 of the National Mechanism for Implementation, Reporting and Follow-up (NMIRF).

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<sup>8</sup>Article 79-3 of the Zambian Constitution states: “A bill for the alteration of Part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty percent of persons entitled to be registered as voters for the purposes of Presidential and parliamentary elections”.

**Recommendations: The GoZ should:**

- Pursue its efforts to **hold** a successful referendum in order to amend and update the Bill of Rights (Part III of the Constitution).
- Continue its efforts to upgrade its legislative framework dealing with human rights and to operationalise it.
- Continue efforts to disseminate and popularise the African Charter and the Maputo Protocol.
- Provide adequate resources to implement the Eighth National Development Plan (2022 - 2026).

- **Article 2: Non-discrimination**

The Commission takes note of the legislative measures aiming at preventing and combating discrimination in Zambia, such as Articles 23(1) and (2) and 266 of the Constitution, Section 29 of the Refugee Act No. 1 of 2017, and Section 5(2) of the Employment Code Act No. 3 of 2019.

**Recommendations: The GoZ should:**

- Consider adopting a comprehensive legislation prohibiting discrimination, in all spheres, based on sex, ethnic affiliation, descent, religion, disability, albinism, socio-economic status, HIV/ AIDS status, political opinions or any other status.
- Ensure that the derogations provided for in clauses: 4, 5, 6, 7 and 8 of Article 23 of the Constitution will not have any negative impact on combating all forms of discrimination in Zambia.
- Take measures to prevent and combat all kinds of racial discrimination against the San and Khoe peoples, especially with regards to their living conditions, economic and social environment and access to land.

- **Article 8: Right to Freedom of Conscience**

The Commission takes note of the 2021 Guidelines for Churches and Other Religious Organisations in Zambia, whose objective is to guide the operations of the religious groups and to recall the legislation affecting them.

The Commission is concerned that the abolition of the Ministry of Religious Affairs and National Guidance in 2021, which played an important role in facilitating interreligious



dialogue and coordinating religious events, as indicated by the Delegation, may affect have a negative impact on the exercise of freedom of religion and belief, as provided for in the Charter.

Also, the absence of information on the effective implementation of Chapter XIV of the Penal Code Act, which criminalises acts infringing on a person's enjoyment of religion, may constitute another source of concern.

**Recommendations: The GoZ should:**

- Review the National Guidance and Religious Affairs Policy of 2020 in a way to give concrete effect to Article 19 of the Zambian Constitution.
- Ensure effective implementation of the national legislation relating to freedom of religion.
- Ensure the registration of new religious groups in all circumstances.
- Take measures to strengthen interreligious dialogue, in the absence of a Ministerial Department dedicated to this subject.

**Article 13: Right to Participate in Public Affairs / Government**

The Commission is concerned about several restriction of freedom of expression and Internet blackout, as well as violence levels during the Zambian presidential elections of August 2021.

The Zambian Delegation recognises that the lack of sensitisation and consultation, financial restrictions and cultural reasons are the main challenges for the effective participation of all in public Affairs.

**Recommendations: The GoZ should:**

- Spare no effort to ensure the smooth running and transparency of forthcoming elections.
- Ensure full respect for freedoms of expression, assembly, association and opinion during upcoming elections.
- With reference to the failure of the 2016 referendum, strengthen measures to promote the inclusion and effective participation of young people in electoral processes.
- Amend the legislation relating to the Electoral Commission of Zambia (ECZ), in order to remove candidacy fees that may affect the participation of all in electoral processes.



- **Article 26: NHRI and other institutions**

The Human Rights Commission of Zambia is an “A” status accredited National Human Rights Institution by the Global Alliance of National Human Rights Institutions (GANHRI), is a member of the Network of African National Human Rights Institutions (NANHRI), and enjoys the affiliate status of the ACHPR.

The Commission welcomes the GoZ initiative to adopt the amended Human Rights Commission Bill of 2023, currently before the National Assembly awaiting legislative procedures, in order to increase the Commission's compliance with the Paris principles.

However, as in other States Parties to the Charter, limited human and financial resources may constitute a barrier to the full implementation of the NHRI mandate.

**Recommendations: The GoZ should:**

- Ensure the financial independence and continue providing adequate human and financial resources to the Human Rights Commission of Zambia.
- Finalise the amendment process of the Human Rights Commission Act No. 39 of 1996, in order to enhance the NHRI compliance with the Paris Principles, as recommended by the National Human Rights Commission itself.
- Involve the Human Rights Commission in the monitoring and the follow-up to the regional and international human rights organs' recommendations.
- Ensure effective independence of the Human Rights Commission members by avoiding any kind of conflicts of interest, such as their involvement in political activities.

## II. Civil and Political Rights

### Mandate of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary killings and Enforced Disappearances in Africa

#### Article 4: Right to Life

The Commission congratulates the country once more following the abolition of the death penalty through the adoption, on 23 December 2022, of the Penal Code Amendment Act No. 25 of 2022.

The Commission also welcomes the launching, by the GoZ, of the ratification process of the Second Optional Protocol to the International Covenant on Civil and Political Rights, in line with the Ratification of International Agreements Act.

Another positive development is the President decision to commute to life imprisonment all the sentences of those who were sentenced to death prior to the death penalty abolition.

#### **Recommendations: The GoZ should:**

- Support the ongoing efforts towards the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty.
- Strengthen the mandate and the role of the Police Public Complaints Commission in investigating allegations of unlawful and arbitrary killings and ensure prosecutions in this regard.
- Pursue the ongoing consultations with relevant stakeholders to make the declarations provided for in articles 31 and 32 of the Convention for the Protection of All Persons from Enforced Disappearance, relating to personal and inter-State communications.
- Pursue efforts in order to adopt a comprehensive law on enforced disappearances.
- Implement and disseminate the Commission's recently adopted Guidelines for the Protection of All Persons from Enforced Disappearance in Africa<sup>9</sup>.

<sup>9</sup> <https://achpr.au.int/fr/documents/2022-10-25/lignes-directrices-protection-personnes-disparitions-forcees-afrique>

### **Mandate of the Committee for the Prevention of Torture in Africa**

- **Article 5:** Prohibition of Torture and Cruel, Inhuman and Degrading Treatment

The Commission takes note of the various measures in place in Zambia to tackle the issue of torture as contained in the Report, in different contexts (during detention, at an educational institution ...etc.).

However, the slow enactment of the adoption of an Anti-Torture Bill process is a real source of concern for the Commission.

#### **Recommendations: The GoZ should:**

- The Commission reiterates its recommendation to the GoZ to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Fast-track the enactment of the Anti-Torture Bill process, and the amendment of the Penal Code to include provisions relating to torture.
- Address the gaps between existing legislation against torture and its implementation on the ground, particularly regarding investigations, prosecutions, convictions of perpetrators and victims' rehabilitation services.
- Strengthen the National Human Rights Commission resources to ensure its effective involvement in the prevention of torture.

### **Mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa**

- **Article 3:** Right to Equality before the Law and Equal Protection of the Law
- **Article 6:** Right to Personal Liberty and Protection from Arbitrary Arrest
- **Article 7:** Right to Fair Trial

The Commission takes note of the statistics on the prison population and the domestication of the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) by the GoZ in 2020, which is a commendable development.

The Commission also welcomes the statistics provided by the Delegation on the work of the Police Public Complaints Commission in 2022.

The National Human Rights Commission of Zambia reported that prisons were overcrowded by as much as 300% and conditions remained poor and not consistent with the Mandela Rules.



### **Recommendations: The GoZ should**

- Provide in its next Periodic Report disaggregated and updated statistics on the prison population, as well as the occupancy rate of prisons and detention centers in the country.
- Provide in the next Periodic Report information on the recruitment process of Police Officers.
- Also provide Data on disciplinary officers who have taken action which resulted either in death or injuries and information on the protection of people who complain of police officers.
- Take measures to address the issues in relation to the lengthy pre-trial detention, *inter alia*, through promoting the use of alternative sentences to incarceration, and improving issuance of bond and bail.
- Take concrete steps to fully operationalise the National Legal Aid Policy of 2018.
- Support the Police Public Complaints Commission with the needed human and financial resources to ensure its independence and allow it to fulfil its mandate.
- Ensure the full compliance with and the diffusion of the Commission's Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention (the Luanda Guidelines).
- Improve healthcare for prisoners.
- Improve food provision for prisoners, in particular by increasing the food budget.
- Pay particular attention to the situation of minors in conflict with the law.

### **Mandate of the Special Rapporteur on Freedom of Expression and Access to Information**

- **Article 9: Right to Receive Information and Free Expression**

The Commission takes note of the diversified media landscape in Zambia, which includes over 147 radio stations and over 58 television stations, licenced to broadcast in the country, 90% of which are privately owned.

After it has been pending for over twenty years, the Commission notes with satisfaction that Zambia has prioritised the process of enacting the Access to Information Bill which will, among others, enhance the independence and freedom of journalists in the nation. The draft Bill has been submitted to the Ministry of Justice and will be submitted to Parliament.

The Commission takes note of the case of MacDonald Chipenzi & 2 others vs. The People HPR/03/2014, wherein the court held that a prosecution based on section 67 of the Penal



Code contravenes Article 20 of the Constitution (which provides for the protection of freedom of expression).

**Recommendation: The GoZ should:**

- Fast-track the enactment of the Access to Information Bill and the Establishment of an independent oversight mechanism to oversee access to information.
- Ensure that all restrictions on freedom of expression and access to information, in particular, those provided for by Article 20(3) of the Constitution, take into account the principle of reasonable and justifiable limitations.
- Ensure fair treatment to media and prevent abusive closure or license withdrawal (cf The Post, June 2015).
- Review the 1953 Defamation Act in order to update its provisions, and ensure its compliance with current international standards.
- Ensure a better protection for journalists against harassment and intimidation in particular contexts, like elections.
- Strengthen the diversity of the media landscape by encouraging the private sector to launch audiovisual media.
- Ensure fair access to public subsidies for all media, including private media.
- Strengthen citizens' equitable access to Internet, access to information and freedom of expression on the Internet.

**Mandate of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa**

- **Article 10: Right to Freedom of Association**
- **Article 11: Right to Freedom of Assembly**
- **Article 13: Right to Participate in Government**

In Zambia, freedom of assembly and association is are guaranteed by Article 21 of the Constitution.

The Commission notes that the Non-Governmental Organisations Act is undergoing review and that it provides for a self-regulatory regime according to international best practices, including the African Commission Guidelines on Freedom of Association and Assembly in Africa.

Also, it's noted that the regime applied to the creation of associations in the country, under the Societies Act Chapter 119 and Non-Governmental Organisations Act No. 16 of 2009, is a system of prior registration and approval.

Also, the Commission welcomes the initiative of the GoZ, together with the Human Rights Defenders Network and other civil society organisations, to develop legislation for human rights defenders.

**Recommendations: The GoZ should:**

- Fast-track The Non-Governmental Organisations Act amendment, in accordance with the African Commission's Guidelines on Freedom of Association and Assembly in Africa.
- Consider switching to a declaratory system, with regards to the establishment of associations.
- Expedite the amendment of the Public Order Act (Chapter 113 of the Laws of Zambia), in order to strengthen the freedom of assembly.
- Ensure that the imperative of preserving public safety is used as a necessary and reasonable limitation of freedoms of association and assembly.
- Implement and popularise the Commission's Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa.
- Take measures to strengthen the protection of human rights defenders, including through considering the adoption of a specific law dedicated to this question.

### III. Economic, Social and Cultural Rights

#### Mandate of the Working Group on Economic, Social and Cultural Rights

In 2007, the Commission recommended to the GoZ to explore the possibilities to integrate the Directive Principles of State Policy as justiciable socio-economic rights and not leave them as mere aspirations.

The Delegation informed that the 2016 (unsuccessful) referendum to amend the Bill of rights included a proposal to make economic and social rights justiciable.

#### **Recommendation: The GoZ should:**

- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
  - Include justiciability of economic, social and cultural Rights in future attempts to amend the Constitution (The Bill of Rights).
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- **Article 14: Right to Property/ Right to housing**

The Commission notes that the State Party's Constitution recognises property rights and protects all individuals against the deprivation of property.

The Commission takes note with appreciation of the National Housing Policy (2020-2024) whose overall objective is to "facilitate the provision of sustainable, decent and affordable housing for all socio-economic groups in Zambia".

However, the Commission remains concerned about discriminatory practices inspired by customary laws (which affect the majority of predominantly rural Zambian households), relating to the right to property and the access to land, especially for women, which may constitute a barrier for the enjoyment of the right to property by all and for all.

#### **Recommendation: The GoZ should:**

- Implement the National Housing Policy, and the 2021 National Land Policy, with a particular focus on promoting non-discrimination and access to social housing for the most vulnerable.
- Combat discriminatory practices inspired by customary laws that affect the full enjoyment of the right to property.

- **Article 15: Right to Work under equitable conditions**

The Commission takes note of the statistic on the employment and unemployment rates in Zambia provided by the Delegation.

Unemployment remains among Zambia's most difficult and persistent challenges, as it's the case for other African countries.

Furthermore, the Commission is concerned about the high proportion of informal employment in Zambia (76.3% in 2023).

**Recommendations: The GoZ should:**

- Continue its efforts to combat child labor and forced labor.
- Enhance employment, in particular for vulnerable categories, within the Country's wide development project: "Zambia 2030".
- Pursue its efforts to address Gender-based discrimination and sexual harassment at the workplace.
- Address informal employment, in order to guarantee workers' rights and minimum standards of work conditions.

- **Article 16: Right to the enjoyment of the highest attainable standard of physical and mental health**

The Commission takes note with appreciation of GoZ efforts to increase the number of doctors in hospitals and health facilities, as well as the ratio of doctors per capita.

As in other African countries, the human and financial resources allocated to the health sector may constitute a real challenge and source of concern.

According to the Delegation of Zambia, healthcare budget has been progressing between 2019 (9.3%) and 2023 (10.4%). The Commission notes that this positive evolution is yet to meet the Abuja Declaration target (allocation of at least 15% of the annual budget to healthcare).



**Recommendations: The GoZ should:**

- Continue efforts to bring the budget allocated to the health sector in line with the standards required by the 2001 Abuja Declaration (15% of the annual state budget).
- Pursue efforts to strengthen the population's access to health facilities and increase the level of use of health services, in line with international standards.
- Redouble efforts to address the high maternal and infantile mortality rates in the county.

- **Article 17: Right to Education**

The Commission notes that basic education is compulsory and free of charges in Zambia since 2002.

The Commission welcomes the introduction of free education in early childhood and secondary school levels, the hiring of 30,496 new teachers, as well as the building of 120 new schools in Zambia.

**Recommendations: The GoZ should:**

- Continue its efforts to ensure equal access to education for all, especially in remote and rural regions, and for the vulnerable categories.
- Increase budgetary allocation to the education sector to fund expansion of infrastructural facilities and hiring of teachers.
- Ensure that private schools meet the required standards such as land, infrastructure, teaching and learning curriculum and assessment.

- **Article 22: Right to Economic, Social and Cultural Development**

The Commission takes note of the detailed information provided by the Delegation, with regards to the National Social Protection Policy of 2014 implementation, and the main challenges in implementing the development project: "Zambia 2030".

**Recommendations: The GoZ should:**

- The Commission reiterates its recommendation to the GoZ to Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Right of Citizens to Social Protection and Social Security.
- Continue its efforts to reduce poverty, foster socio-economic development and combat regional development disparities, in particular through the implementation of the development project: "Zambia 2030".

#### **IV. Rights of the family and vulnerable groups**

##### **- Mandate of the Working Group on Rights of Older Persons and People with Disabilities**

The Commission notes the legal framework for the promotion and protection of the rights of persons with disabilities, as well as the recognition by the GoZ that the rights and legal guarantees enshrined by the Persons with Disabilities Act and the National Policy on Disability, are not as well-known as they should be by people with disabilities.

The Commission welcomes the adoption of the National Ageing Policy in 2015, in order to provide guidelines aimed at uplifting the standard of living of Older Persons.

Zambia has not yet ratified the Protocols to the African Charter on Human and Peoples' Rights, relating to older persons and people with disabilities.

##### **Recommendations: the GoZ should:**

- Amend the Penal Code Act and the Criminal Procedure Code Act to remove derogatory language, such as unsound mind, in consultation with the disability sector.
- The Commission reiterates its recommendation to the GoZ to Ratify the Protocols to the African Charter on Human and Peoples' Rights, relating to older persons and people with disabilities.
- Strengthen its sensitisation efforts with regards to the rights of older persons and people with disabilities.
- Ensure the full and effective implementation of policies dealing with the rights of older persons, including their dignity, wellbeing, safety and security, and protecting them from any kind of abuses.
- Pursue its efforts to combat discrimination against peoples with disabilities and the age-related discrimination.

##### **Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa**

Zambia has an open-door policy for refugees of all nationalities. The Commission welcomes the enactment of the Refugee Act in 2017 in Zambia, which provides for the recognition, protection and control of refugees including their rights and responsibilities.

With regards to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Delegation reported that Zambia made reservations on Article 17 relating

to wage earning employment, Article 22 on public education, Article 26 on freedom of movement and Article 28 on travel documents.

The Commission notes that, despite reservations on Article 22, the Delegation indicated that a recognised refugee or a dependent of a recognised refugee may undertake studies in any primary and secondary school and shall not require a study permit to undertake such studies, which is a commendable development.

On another topic, the Commission welcomes that the Immigration and Deportation Act No. 18 of 2010, is guided by, among other principles: Promote a human rights-based approach and culture in respect of migration control (Section 5(30) (a)).

Although Zambia ratified the Kampala Convention on 14 January 2011, the report under review did not contain any specific part on the implementation of its provisions.

**Recommendations: The GoZ should:**

- Consider lifting reservations on Articles 17, 22, 26 and 28 of the 1951 Convention Relating to the Status of Refugees, in order to remove restrictions on the right to work, access to education and freedom of movement for refugees.
- Pursue the implementation of the Comprehensive Refugee response framework (CRRF), established in 2017.
- Ensure that the Refugees Act No. 1 of 2017 implementation addresses issues relating to denial of registration or slow process of refugee status determination for asylum seekers.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Concretise the Ministry of Home Affairs (MOHA) commitment to ensure that all children below the age of 18 born in Zambia, refugees with special needs and those aged 60 and above would receive residence permits without tight screening.
- Include in the next Periodic Report part "C" on the implementation of the Kampala Convention.
- Pursue its commitment to the "I belong" campaign to end statelessness by 2024.



### **Mandate of the Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV**

According to the Periodic Report (paragraph 56), HIV/ AIDS prevalence in Zambia is 13% for the general population, and may increase for specific groups (27% in prison and correctional facilities).

The Commission recognises the fact that in spite of its limited resources, the GoZ has embarked on a program to mitigate the effects of HIV by making available medication to prevent opportunistic infections for people infected with HIV.

Also, the national AIDS Strategic Framework (2017-2021) implementation allowed Zambia to Reach the 90% HIV testing, and 90% of the HIV tested people are on HIV treatment.

As in many countries in the region, the proportion of women aged 15 to 49 living with HIV/AIDS in Zambia is higher than that of men, which may accentuate their vulnerability.

#### **Recommendations: The GoZ should:**

- Elaborate a new framework, as a continuation of the National AIDS Strategic Framework (2017-2021).
- Adopt appropriate policies to deal with short-term challenges to the national response to HIV/ AIDS, such as the Covid-19 pandemic.
- Pay particular attention to people with HIV in special contexts, such as people in Prison and Correctional institutions.
- Eradicate traditional beliefs that encourage sexual abuse of minors, pretending that it will aid in or cure diseases, such as HIV/ AIDS.
- Strengthen the campaigns to raise awareness and promote comprehensive knowledge about HIV/ AIDS, particularly among adolescents and young adults and other vulnerable groups.

## V. Collective Rights/ Peoples' Rights

- **Articles 19-24: Mandate of the Working Group on Extractive Industries, Environment and Human Rights Violations**

The Commission takes note of the information on the types of natural resources that are exploited or available in the State's territory, provided by the Delegation, as well as relevant provisions of the Mines and Minerals Development Act No.11 of 2015.

The Commission appreciates the disclosure made by the Government that while there are a number of developmental projects taking place throughout the State, particularly in the mining sector, uneven distribution of resources and revenue generated from those activities hampers the trickle-down effect of such economic activities to the people, as many towns that are a hub for Foreign Direct Investment have very little growth and development.

The GoZ recognises that, despite its positive impact on the economy, mining has had various adverse effects such as water pollution (surface and underground), land degradation, air pollution and displacement of people, migration of people from urban areas as well as an increase in communicable and non-communicable diseases such as HIV/AIDS in mining communities.

### **Recommendations: The GoZ should:**

- For the next Periodic Report, comply with the Commission's State Reporting Guidelines on Extractive Industries, Environment and Human Rights Violations, and the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector - ACHPR/Res. 367 (LX) 2017.
- Strengthen the legal framework, by enshrining the principles of: State duty to protect human rights, corporate responsibility to respect human rights, and access to remedy for victims of corporate abuses.
- Ensure effective and rigorous participation of affected communities in the conceptualisation and the implementation of mining and other extractive industry projects, in particular, through the amendment of section 20 of the Mines and Minerals Development Act No.11 of 2015.
- Ensure a reasonable revenue sharing arrangement between the national government and local authorities in affected communities.
- Ensure the full protection of the rights of indigenous communities, women, children and other vulnerable groups in the context of business / extractive corporations' activities.
- Enhance the compliance of companies with national reporting obligations on the environmental and social impacts of their activities.

## **Mandate of the Working Group on Indigenous Populations / Communities and Minorities in Africa**

The Commission takes note of the feedback provided by the Delegation, informing that the State party has no detailed information on indigenous people.

The Delegation also informed that Zambia has 73 tribes, and citizens are granted protection from discrimination on the ground of race or tribe, under Article 23 of the Constitution.

### **Recommendations: The GoZ should:**

- Ratify the ILO Convention 169 on Indigenous and Tribal Peoples of 1989.
- Develop a legal or administrative framework that specifically recognises and protects the rights of indigenous peoples/communities, people belonging to National or Ethnic, Religious and Linguistic Minorities.
- Take measures to ensure the effective participation of all communities in decision-making bodies, including through the introduction of quotas.
- Take targeted measures to protect ancestral lands, including through the issuance of a collective title deed that can stand up in court.
- Strengthen and improve access for all communities to essential services such as education and health.

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## C- Maputo Protocol

### Mandate of the Special Rapporteur on Women's Rights in Africa

Zambia ratified the Protocol to the African Charter on the Rights of Women in Africa on 2<sup>nd</sup> May 2006.

The Commission commends Zambia for submitting its Initial Periodic Report in accordance with Article 26 of the Maputo Protocol, which is well articulated and in line with the relevant Guidelines for State Reporting (Under the Maputo Protocol).

#### **Recommendations: The GoZ should:**

- Pursue its commitment to submit Reports under Maputo Protocol, in line with the relevant Guidelines for State Reporting.
- Strengthen the involvement of civil society organisations in the elaboration process of the next periodic report.

### Legal and institutional framework

In Zambia, international instruments have no direct application at the national level. They only become applicable or binding upon domestication.

The Commission notes with appreciation of the domestication of the relevant provisions of the Maputo Protocol by the Gender Equity and Equality Act No. 22 in 2015, which covers a wide range of issues, including discrimination, violence, access to resources, and seeks to promote the realisation of women's rights in all spheres of life.

#### **Recommendation: The GoZ should:**

- Pursue its efforts to disseminate, popularise, and translate the Maputo Protocol, as well as capacity-building, education, and awareness programs for all law enforcement officials on women's rights in the country.

### Articles 2 and 3: Equality and Non-Discrimination

The Commission takes note of the information provided by the Delegation, relating to ensuring equality and non-discrimination against women, through the implementation of the Gender Equity and Equality Act No. 22 of 2015.



However, the GoZ recognises that The Gender Equity and Equality Commission, which is provided for in the Act and responsible for promoting gender equity and equality in all spheres of life, is yet to be operationalised. Eight (8) years after the adoption of the Act, this underperformance constitutes a real source of concern for the Commission.

With regards to the customary practices based on the inferiority or superiority of either sex or on stereotypical roles for women and men, the GoZ also recognises that more needs to be done to effectively address these issues, as traditional beliefs and practices that perpetuate gender inequality remain deeply entrenched in Zambian society.

**Recommendations: The GoZ should:**

- Fast-track the establishment of that The Gender Equity and Equality Commission.
- Continue its efforts to combat discrimination resulting from cultural or customary harmful practices and gender stereotypes.

**Articles 3-4: Violence against Women, elimination of harmful practices, right to dignity and rights to life, integrity and security**

The Commission takes note with appreciation of all efforts made by the GoZ in order to prevent and combat all kinds of violence against women, especially with regards to sensitisation, training and capacity building, Legal Aid and women's empowerment.

The Commission also welcomes the Gender Based Violence Act No. 1 of 2011, which provides for, among other measures, the establishment of shelters and financial assistance to victims of gender-based violence.

The Commission is deeply concerned by reports stating that, in Zambia, 52% of women 15 years and older have ever experienced physical violence, and 23% have experienced sexual violence, with those who are divorced, separated, or widowed experiencing the most violence. Moreover, very few victims of gender-based violence feel confident to report cases or seek help.

**Recommendation: The GoZ should**

- Ensure the effective implementation of the Gender-Based Violence Act No. 1 of 2011.
- Ensure full operationalisation of the Gender-Based Crimes Unit (GBCU), established in 2015, to prosecute offences related to gender-based violence cases, as well as the Victim Support Unit (VSUs).
- Strengthen specialised legal services offered to victims of gender-based violence, by allocating adequate budget and resources.
- Take concrete measures to amend the Penal Code in order to criminalise marital rape.
- Pursue raising awareness on violence against women, especially in rural areas.

**Article 5: Elimination of Harmful Practices**

Zambia has a dual legal system which consists of statutory and customary law. The Commission notes that statutory law takes precedence over customary law in Zambia.

The Periodic Report under review recognises that violence against women in the State party has been exacerbated by patriarchal attitudes rooted in cultural beliefs and traditions which make it difficult for women to be treated equally.

**Recommendations: The GoZ should:**

- Pursue efforts aimed at eliminating sociological barriers and stereotypes that hinder the realisation of women's rights, in particular by boosting schooling for young girls, and ensuring greater involvement of civil society organisations.
- Pursue its efforts to eradicate harmful practices, as defined in Section 2 and 3-1 of the 2015 Gender Equity and Equality Act, including child marriage, widow cleansing and Female Genital Mutilation.
- Ensure full respect of the Local Courts Act in Section 12 part (a), which provides that customary law applicable to any matter before it should not be inconsistent with natural justice or morality or incompatible with any other written law.

## **Articles 6 and 7: Marriage, Divorce, Separation and Annulment**

The Delegation informed that, thanks to the implementation of the National Strategy on Ending Child Marriage 2016-2021, the prevalence of child marriage had reduced from 42 percent in 2014 to 29 percent in 2018.

The Commission remains concerned about the fact that Zambia has one of the highest child marriage prevalence rates globally, with 29% of girls being married before their 18th birthday and 5% before the age of 15.

### **Recommendation: The GoZ should:**

- Adopt concrete measures, including of coercive nature, to prevent early marriages, instead of only discouraging it.
- Adopt measures to ensure that the traditional practice of payment of lobola (dowry) to the bride's parents would not constitute a form of child and/or forced marriage.
- Ensure that judicial and non-judicial procedures that determine, in practice, the division of matrimonial property at the dissolution of marriage are not discriminatory against women.

## **Article 9 - Participation in Political and Decision-Making Process**

Section 29 (1) of the Gender Equity and Equality Act provides that a woman in Zambia has on an equal basis with a man, the same right to vote in elections and referenda, participate in public decision, hold public office and represent the Government at international level.

However, the Delegation recognises that, in practice, women's representation in leadership and decision-making sectors remains low, and that the participation and representation of women in the 2021 elections was below international and regional standards.

### **Recommendation: The GoZ should:**

- Pursue its efforts to promote women's participation in Political and Decision-Making Process, through addressing issues relating to societal attitudes and gender stereotypes, limited access to education and political party structures.

## Articles 10 and 11: Right to Peace and protection of women in armed conflicts

**Recommendation:** The GoZ should pursue its efforts to develop the UN resolution 1325 National Action Plan.

## Articles 12 -17 - Economic, Social and Cultural Rights

### Article 12: Right to Education and training

The Commission takes note of the statistics on the proportion of girls (gender parity) at different levels of the educative system measures, provided by the Delegation.

**Recommendation:** Zambia should continue its efforts to strengthen the rights to education for girls in secondary and higher education, particularly in specific contexts and areas.

### Article 14: Right to health

In Zambia, the maternal mortality ratio has remained significantly high at 398 deaths per 100,000 live births in 2014. 36% of women still deliver outside health facilities and 33.3% of health facilities provided post abortion care (PAC), yet only 5% actually performed termination of pregnancy.

Reports also indicate that termination of pregnancy Act remains discriminatory in practice, requiring consent of 3 medical practitioners for a pregnancy to be terminated, which is practically mostly unattainable, especially in rural and peri-urban areas.

#### Recommendations:

- Amend and update the 1972 Termination of Pregnancy Act that require three medical practitioners to agree on the need for an abortion, to facilitate medical abortion according to Article 14-c of the Maputo Protocol.
- Redouble efforts in order to tackle problems relating to the high maternal mortality rate in the country.
- Pursue its efforts to adopt a policy on the access to contraceptives, especially for adolescents.



## Article 16: Right to Adequate Housing

**Recommendation:** Zambia should continue to give special attention to women in its policies and initiatives to implement the right to housing in the country.

## Articles 20-24 - Protection of Specially Protected Groups of Women

The Commission takes note of the existing legislative and policy frameworks to ensure legal and substantive equality to protected groups of women, including women with disabilities.

**Recommendation: The GoZ should:**

- Ensure effective implementation of existing measures to adequately protect the rights of widows, in line with the Maputo Protocol, especially those married under customary law and widows subject to cleansing in some rural areas.
- Consider amending the National Policy on Disability to provide for specific measures to address challenges that women with disabilities face.
- Adopt measures to strengthen the protection of the rights of women in prison, including pregnant women and nursing mothers.

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## Conclusion

The Periodic Reporting mechanism is an important component of the mandate of the African Commission on Human and Peoples' Rights.

State Parties' reporting obligations constitute, in fact, an effective tool for assessing the implementation on the ground of the human rights enshrined in the African Charter.

The Commission wishes to congratulate the Republic of Zambia for the submission and the review of its 1<sup>st</sup> to 7<sup>th</sup> Combined Periodic Report on the implementation of the Charter, and initial Report on Maputo Protocol.

The constructive engagement of the Zambian authorities during the Periodic Report review is also to be commended.

Zambia is encouraged to continue its constructive cooperation and engagement with the African Commission.

The Commission hopes that the present recommendations will be taken into account and implemented by the Government of Zambia.

The Commission is pleased to attest that Zambia is now up to date with its obligations under Article 62 of the Charter and Article 26 of Maputo Protocol.

In accordance with Resolution 517 on the method for calculating the time limit for the submission of periodic reports DACHP/Res.517 (LXX):

The Commission invites the Republic of Zambia to submit its next periodic report (8<sup>th</sup>) on the implementation of the provisions of the African Charter and the Maputo Protocol **in August 2025**.

ACHPR, 20 July 2023

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## Annexe

### List of the Delegation to the review of the Republic of Zambia's 1<sup>st</sup>-7<sup>th</sup> Periodic Report (12 May 2023)

1. Honourable Mr. Mulambo Haimbe, SC, MP, Minister of Justice and Head of Delegation;
2. Mrs. Mwenya Kaela Bwalya, Permanent Secretary Legal-Ministry of Justice;
3. Ms Nchimunya Nkombo, Director- Gender Division;
4. Mrs. Miyoba Muzumbwe Katongo, Assistant Director- Ministry of Justice;
5. Mr. Ernest Lungu, Assistant Director-Gender Division;
6. Mrs. Sambwa Simbyakula-Chilembo, Principal Counsel- Ministry of Justice;
7. Mr. Philip Chilambwe, Acting Principal Gender Officer-Gender Division;
8. Ms Bibian Chinyama, Acting Principal Gender Officer-Gender Division;
9. Ms Hawa Traore Musonda, Senior Legal Officer- Ministry of Justice;
10. Mrs. Jasmine Chinamansa Wamundila- Acting Principal Officer- Gender Division;
11. Ms Bwalya Salamu, Acting Senior Counsel, Ministry of Justice;
12. Mr. Japhet Chirwa, State Advocate- Ministry of Justice;
13. Mr. Simulyamana Niphegie Choonga, First Secretary Legal- Embassy of the Republic of Zambia, Addis Ababa.