



**International Covenant on
Civil and Political Rights**

Distr.: General
14 December 2022

Original: English
English, French and Spanish only

Human Rights Committee

137th session

27 February–24 March 2023

**Consideration of reports submitted by States parties
under article 40 of the Covenant**

**Replies of Zambia to the list of issues in relation to
its fourth periodic report***

[Date received: 28 November 2022]

* The present document is being issued without formal editing.



Constitutional and legal framework within which the Covenant is implemented (art 2)

1. In relation to the application of provisions of the Covenant by domestic Courts, the State party has continued to apply the provisions of International Human Rights instruments, particularly the ICCPR as observed in the case of *Gift Nkanza v. The People SCZ Judgement No. 31 of 2015* wherein Article 14 of the ICCPR was applied.

2. Before the State party ratifies an international instrument or enacts any piece of legislation, the State party is required to consult all stakeholders and this serves as a means of awareness.

3. The State party has made significant progress in domesticating International Human Rights Instruments including the provisions of the International Covenant on Civil and Political Rights through the following pieces of legislation:

- (a) The Children's Code Act No. 12 of 2022;
- (b) The Probation of Offenders (Amendment) Act No. 14 of 2022;
- (c) The Legal Aid Act No. 1 of 2021;
- (d) The Penal Code (Amendment) Act No. 13 of 2022;
- (e) The Electoral Process (Amendment) Act No. 32 of 2021; and
- (f) The Public Gatherings Bill 2022.

4. The interaction between customary law and statutory law has its genesis and recognition under Article 7 of the Constitution. The Article provides that:

“The Laws of Zambia consist of —

- (a) this Constitution;*
 - (b) laws enacted by Parliament;*
 - (c) statutory instruments;*
 - (d) Zambian customary law which is consistent with this Constitution;*
- and*
- (e) the laws and statutes which apply or extend to Zambia, as prescribed.”*

5. The Constitution recognizes the validity of customary law and its validity is on condition that it is consistent with the constitution. The Constitution to this effect provides in Article 1 (1) that:

“This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.”

6. The Zambia Law Development Commission has completed the review of various pieces of legislation with the intent to, inter alia, domesticate provisions from international and regional human rights instruments including the ICCPR.

7. The State party continues to review laws to eliminate incompatibilities between customary law and the provisions of the statutory law to ensure that the laws are compatible with the minimum dictates of the Covenant, the Republican Constitution and other written laws. The State party emphasizes the precedence of statutory law over customary law, therefore, any person whose rights are violated under any setting, has the right to commence an action in court for an appropriate remedy.

8. The State party has continued working towards ensuring that the Human Rights Commission's budget and human resource is sufficient to enable it effectively fulfil its mandate. For instance, the State party has progressively increased funding to the Human Rights Commission amidst a tight fiscal space. In 2018, the Commission's budget stood

at ZMW13,809,290 (US\$ 863,080) while in 2022, the budget increased to ZMW21,199,507 (US\$ 1,324,949) representing an increase of 35 percent.

9. With regard to the Commission's financial independence, the President has granted standing approval for the Commission to receive support from cooperating partners. This standing approval ensures financial independence in that the Commission does not need to regularly seek approval from the President.

10. During the 1st and 2nd quarter of the year 2022, the Commission received 20 complaints relating to maladministration of Justice; 281 complaints against Secure Protection of the Law; 9 complaints in relation to Right to life (Extra-Judicial Killing); 2 complaints pertaining to Protection from Harassment; 40 complaints relating to Torture; Inhuman and Degrading Treatment; 2 complaints relating to Personal Dignity; 4 complaints relating to Protection from Discrimination; 50 complaints relating to Personal Liberty; 4 complaints in relation to the right to Assembly and Association; 2 complaints against Rights of Immigrants; and 2 complaints relating to the Right to privacy. During the 3rd Quarter of the year 2022 the Commission received 31 complaints pertaining to maladministration of Justice; 397 complaints relating to Secure Protection of the Law; 12 complaints in relation to the Right to life (Extra-Judicial Killing); 2 complaints relating to the Protection from Harassment; 18 complaints against Torture, Inhuman and Degrading Treatment; 1 complaint in relation to Personal Liberty; 8 complaints relating to Protection from Discrimination; 14 complaints relating to Personal Liberty; 1 complaint concerning freedom to Assembly and Association; and 1 complaint pertaining to Personal identity.

Anti-corruption measures (arts. 2 and 25)

11. The State party has adopted various measures to prevent and combat corruption, such as ensuring the involvement of the Anti-Corruption Commission in procurement of goods and services by the Government. This is to ensure that there is adherence to relevant procurement laws and regulations. Further, the Commission will be participating in all recruitment processes to ensure transparency in the manner the process is conducted. The Commission has so far participated in several recruitment processes including those that were recently concluded under the Ministries of Health and Education. The lessons gathered will enhance transparency. As a preventive measure the State party has spearheaded the establishment of over 140 Integrity Committees. The Integrity Committees which have been created in both public and private sectors, promote transparency and accountability measures in the delivery of public services. Ministries, departments and Spending Agencies strive to implement best practice mechanisms such as gifts and benefits policies, gift registers, conflict of interest policies/guidelines, Codes of Ethics, Whistleblower Policies and Customer Service Charters as a way of building integrity during public service delivery. This has enabled most institutions in the country to deliver their services to the public in a transparent, equitable and fair manner as well as reduce resource wastage.

12. In addition to the above preventive measures, the State party has scaled up its awareness programs anchored on the motto 'a corruption free Zambia begins with me'. This has helped renew stakeholders' interest in the fight against corruption. The Commission increased its engagement with members of the public through radio and television programs; lectures and community talks, public rallies, exhibitions at strategic events such as traditional ceremonies; agriculture and commercial shows. The Commission has also translated information on corruption in seven local languages to ease communication with the public as well as making it available in braille to cater to all members of the public.

13. As a combative measure the State party established the Economic and Financial Crimes Court in order to speed up the dispensation of Justice in the prosecution of corruption and economic crimes. The Court was established to address the challenge of the slow process of prosecuting corruption and economic crimes in the courts of law.

The State party constituted a Joint Investigation Team comprising various law enforcement agencies whose expertise and competences enhances the fight against corruption. The Team continues to work collaboratively with the Financial Intelligence Centre (FIC).

14. The above measures have resulted in an improvement in the following areas:

(a) enhanced transparency in the procurement and recruitment process as well as greater cooperation with relevant stakeholders in eliminating opportunities for corruption;

(b) there has been a significant increase in the number of reports made to the Commission. For example, in the first three quarters of 2022, the Commission received a total of 430 complaints out of which a total of 373 were authorised for investigations. From these reports well over 50 arrests were made out of which 25 convictions were secured;

(c) disposal of court cases within a shorter period, unlike in the past where corruption matters would take many years to conclude, and in the process, discourage stakeholders; and

(d) cooperation with other law enforcement agencies has helped harness the competencies of peer institutions and information sharing in fighting corruption.

Status of emergency (arts. 2, 4, 6–7, 9 and 19)

15. The State party has not reviewed Article 25 of the Constitution to align it with Article 4 of the Covenant including the requirement to inform other State parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the rights it has derogated from in time of public emergency.

16. The State party has had no state of emergency since the adoption of the Committee’s concluding observations in 2007. However, on 5th July, 2017, the former President of the Republic of Zambia, H.E. Dr. Edgar Chagwa Lungu invoked Article 31 of the Constitution to proclaim a State of Public Threatened Emergency to deal with “acts of sabotage” by subversive elements of society after fire gutted the country’s biggest market, the Lusaka City Market on 4th July, 2017. The proclamation lasted for three months and empowered the police to ban public gatherings and impose restrictions on travel.

17. The State party promulgated Statutory Instrument No. 22 of 2020, The Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations, 2020 which imposed restrictions on all forms of public gatherings, trade or vending among others. During this Covid-19 period, the Zambia Police Service adopted the Standard operating procedures for enforcement of the Covid-19 regulations which among other things encouraged non-custodial measures to avoid overcrowding in Police custody.

Non-discrimination (arts. 2–3 and 26)

18. The State party remains resolute in its efforts to enhance human rights by continuing in its efforts to review the Constitution through an amendment of the Bill of Rights. The State party intends to amend the Bill of Rights during the implementation of the Eighth National Development Plan for the period 2022 to 2026.

19. The State party recognized the fact that the rights of persons of unsound mind were not sufficiently addressed. In this regard, the State party enacted the Mental Health Act, No. 6 of 2019 to sufficiently provide for the promotion and protection of the rights of person with mental illness and the improvement of mental health care.

20. Pursuant to the Lands Act, Chapter 184 of the Laws of Zambia, all land is vested in the President who holds in perpetuity for and on the behalf of the people of Zambia. The State party has a dual tenure system namely customary and statutory tenure.

Approximately 90% of the country is officially designated as customary Area. It is occupied by 73 tribes, headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs. Usually, land under customary tenure does not allow for exclusive ownership rights. No single person can claim to own land as the land belongs to the community or ancestral clan. Land is deemed as belonging to members of the community for their own use. However, the Lands Act provides for conversion of customary tenure to leasehold tenure with the consent from the Chief. The State party is in the process of implementing the Land Policy which will enhance security of tenure under customary land.

21. The measures the State party has put in place to address discrimination on recommending/allocating large tracts of land to foreigners and the elite at the expense of the poor indigenous include but not limited to the following: development of the Customary Land Bill that should address security of tenure under customary land; hosting of the Indaba with the Royal Highnesses to discuss land administration and management issues at customary level; implementation of the Land Policy, for example, regulating the access to land by non-Zambians, equitable allocation of land to achieve a gender sensitive, youth, disable and socially marginalised group; collaborating with other key stakeholders in land administration, for example, the Ministry of Local Government and Rural Development, in the implementation of the Urban and Regional Planning Act No. 3 of 2015. The State party is in the process of engaging Provincial Lands Officers to get an inventory of land under customary tenure undergoing conversions.

22. The State party considers same-sex relationships as violating its values, morals and beliefs as enshrined in the Constitution. Therefore, the State party has no intention of repealing provisions on the laws that pertain to the criminalisation of consensual same-sex relationships.

23. The State party received 28 reports of same-sex sexual relations during the period under review.

24. The State party has not received any complaint of discrimination, stigmatization, harassment and violence, including those that were arrested by the Police, on the basis of sexual orientation or gender identity.

Gender equality (arts. 3 and 26)

25. In order to achieve the aspirations of the National Gender Policy and Gender Equity and Equality Act (2015), the State party has provided for programs on gender equality in the 8th National Development Plan. Gender inequalities have been reducing as indicated by the positive trend in the gender inequality index (GII) from 0.627 in 2011 to 0.539 in 2019. The State party wishes to report that the allocation of resources to National Gender has been increasing over the years especially towards the Women Economic Empowerment Fund. The State party shall continue to increase resources allocation to the Gender division.

26. The creation of the Gender Equity and Equality Commission is provided for in the Constitution of the Republic of Zambia and the Gender Equity and Equality Act of 2015. However, the Commission has not been appointed.

27. The State party continues to make strides to ensure equitable access to land for men and women. In order to promote gender equality in the ownership of land, the National Land Policy has provided for 50% of available for alienation to be allocated to women.

28. The State party reports that the proportion of women in parliament is at 15.2 percent. The number of women elected as councilors is even much lower as out of the 1,698 elected, only 141 are women, which represents 8.3 percent. This information clearly confirms that much lower numbers of women are elected at parliamentary and local government levels. However, there is no information available to explain the impact that the Constitutional provision has had on this status.

Violence against women, including domestic violence (arts. 2–3, 6–7, 24 and 26)

29. The State party has operationalised the Anti-Gender Based Violence Committee established under the Anti-Gender Based Violence Act. The Act has been made available and accessible in a simplified manner and mode for the users the of Act, including person with disabilities. Service providers at health facilities and Zambia Police under the Victim Support Unit (VSU) are oriented and equipped with skills in handling persons with disabilities with regard Sexual Gender Based Violence cases, to facilitate smooth referrals of clients with disabilities and survivors of GBV. The State party has also rolled out Fast Track Courts in provincial centres to ensure continued quality legal services thereby strengthening capacity of the already established six (6) Anti-Gender Based Violence and user-friendly Fast Track Courts. The fully functioning 6 Fast Track Courts have been equipped with ICT training on gender case management thereby facilitating timely disposal of Gender Based Violence cases. The State party further, has developed guidelines for management of the Gender Based Violence Fund and has also raised the minimum standards for the operation of shelters for Gender Based Violence. The State party escalated the roll out of a GBV Sensitive Grievance Redress Mechanism to enhance reporting of cases in all 116 Districts. To make reporting effective, the State party created a toll-free line to provide psychosocial support on Gender Based Violence.

30. The State party reports that during the past five (5) years 112,636 cases were reported to the Police out of which 15,840 cases were prosecuted. 3,011 were convicted.

31. As stated earlier, the State party has established 6 GBV Fast Track Courts in 6 provincial centre and they are operational. Currently, an additional four (4) Fast Track Courts are being constructed in the remaining 4 provincial centers which will lead to all ten (10) provinces having a GBV Fast Track Court.

32. A total of sixty-four (64) One-Stop centers have been rolled out countrywide. All 64 One-Stop centers have been provided with the necessary resources to perform their functions. An additional thirty (30) are earmarked to be rolled out to an additional 30 Districts.

33. The total number of shelters for victims of domestic violence is fourteen (14). The shelters are managed by the department of social welfare in the Ministry of Community Development and Social Services. The State party is in the process of rolling out more shelters in Chililabombwe, Mumbwa, Chinsali and Kapiri Mposhi.

34. In order to enhance the effectiveness of the law enforcement agencies to respond to violence against women, a GBV module has been developed that will be rolled out in all Police academies. This will facilitate moving away from ad-hoc training for officers under the Victim Support Unit (VSU). All graduates from Police academies will be trained in GBV response and prevention.

35. The State party, through the Ministry of Education, has developed a School-Related Gender Based Violence (SRGBV) Action Plan. Additionally, 446 provincial and district staff have been trained in the prevention and response to SRGBV. These have cascaded the training to guidance and counselling teachers in schools. Further, the State party is rolling out a grievance redress mechanism in schools to accord pupils an avenue to report cases of GBV.

Death penalty (art. 6)

36. The State party seeks to abolish the death penalty and is currently in the process of amending the Penal Code to remove provisions relating to the death penalty.

37. The death sentence is the prescribed penalty for the offences of Treason, aggravated robbery with a firearm and Murder. Therefore, where the Courts convict a person for one of the said offences, the Court is compelled to subject the convict to the death penalty. The increase of the number of death sentences pronounced is commensurate to the number of convictions that warrant the imposition of the sentence.

38. The Judicial system provides an appellate procedure where the person subjected to the Death Sentence is afforded an automatic appeal to determine the correctness of the imposition of the sentence. In cases where a person is exonerated, the law provides for civil remedies which include an action for false imprisonment or malicious prosecution.

Termination of pregnancy and sexual and reproductive rights (arts. 6 and 17)

39. The State party continues to implement the Termination of Pregnancy Act, Chapter 304 of 1972, in order to protect the right to life of an unborn child.

40. The Termination of Pregnancy Act allows the termination of pregnancy by a registered medical practitioner if he and two other registered medical practitioners are of the opinion that that the continuance of the pregnancy would involve a risk to the life of the pregnant woman; or risk of injury to the physical or mental health of the pregnant woman; or risk of injury to the physical or mental health of any existing children of the pregnant woman; greater than if the pregnancy were terminated. The Act also allows termination where it is determined that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

41. The State party continues to implement measures aimed at reducing maternal mortality by ensuring universal access to family planning, skilled attendance at birth, and basic and comprehensive emergency obstetric care. Efforts to reduce maternal mortality have continued including the institutionalization of maternal and perinatal death surveillance and response. In order to enhance maternal health care services at primary health care level, the State party offers services relating to safe contraception for free. State party has constructed 563 out of the projected 650 health-posts and 92 out of 115 mini-hospitals. Further, the State party is in the process of constructing an 800 bed-space mother and new-born specialized Hospital in Lusaka. This will reduce the distances women will have to cover to access safe motherhood services, including family planning, antenatal care, delivery services and postnatal care.

Right to life and excessive use of force (arts. 3 and 6–7)

42. The State party relies on the Penal Code Chapter 87 and the Zambia Police Act Chapter 107 of the Laws of Zambia as a legal standard for appropriate use of force and firearms. Section 18 of the Penal Code provides instances where law enforcement officers are permitted to use force. Where any person is charged with a criminal offence arising out of the arrest, or attempted arrest, forcibly resists such arrest or attempts to evade being arrested, the law permits officers to apply minimum force. In addition, Section 24 (3) of the Zambia Police Act allows the use of firearms only for (a) preventing an escape, or attempted escape of a felony; (b) forceful rescues or attempted rescues of a person from lawful custody and forceful prevention or attempt to prevent the lawful arrest of that person.

43. The Act further provides for the procedure to be adopted when using a firearm in the above instances. As regards (a), unless the officer has reasonable grounds to believe that he cannot otherwise prevent the escape and unless a warning of the intention to use force is given to such person and the warning is unheeded. As regards (b), unless the officer has reasonable grounds to believe that he or any other person is in danger of grievous bodily harm and that he cannot otherwise effect such arrest or prevent such rescue.

44. The State party does not use Section 18 of the Penal Code to apply deadly force with impunity to disperse an assembly. Section 18 allows for the use of minimum force for resisting arrest. The force used is determined by the gravity of the offence committed. Thus, it does not entail the “use of deadly force to disperse an assembly”. Nonetheless, police are permitted to use batons, chemical irritants such as pepper spray and teargas, electric shock weapons such as tasers and water cannons. Further, under Service

Instruction No. 227, Zambia Police has procedures for dispersing riots. The power only extends to preventing unlawful processions and/or gatherings and not taking of life. Thus, if an officer commits homicide, the liability will be on that specific officer.

45. In the Vespers Shimuzhila matter, investigations were conducted and a request was made to a coroner to conduct an inquest. The coroner gave an open verdict.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)

46. The State party is still undergoing consultations on the Anti-Torture Bill and currently working towards the promulgation of an Anti-Torture Act. The State party is also working on the amendment of the Penal Code which shall include provisions relating to torture.

47. The State party does not have a definition of torture in its legislative framework. However, Article 15 of the Constitution, the Anti-Gender Based Violence Act and the Children's Code Act provide for the prohibition of torture. Although there are currently no criminal sanctions that directly relates to torture, the Penal Code provides for sanctions relating to assault occasioning grievous bodily harm and murder. Further, in criminal cases, the State party does not admit into evidence confession statements obtained by torture.

48. The mandate of the Police Public Complaints Commission is to initiate and investigate complaints against Police action. After investigations into a complaint, the Commission submits a report and recommendation to the Zambia Police Commission and the Director of Public Prosecution, where it finds that an offence has been committed. It also sends a report of its findings and recommendations to the Inspector General of Police for disciplinary or administrative action against the concerned Police Officer. The Commission also sends its report to the Permanent Secretary responsible for Home Affairs for information.

49. The State party has continued in its efforts to decongest the prison population by constructing more modern prisons/correctional centers and open-air farms. The State party provides conditional releases to inmates through the prerogative of mercy and Parole system. Although the parole system's main aim is to promote good behavior and reformation amongst inmates, it has ultimately contributed to the decongestion of the prison population. Zambia Police is mandated to release on bond suspects under section 33 of the Criminal Procedure Code for offences which are bailable. Further, Zambia Police adopted the Standard Operating Procedures for enforcement of Covid-19 regulations. These Procedures also encourage non-custodial measures to avoid overcrowding in police custody. The Courts are also empowered to make non-custodial orders such as community service, probation orders and bail releases of inmates.

50. The State party remains committed to improving sanitary conditions in detention centers around the country and has ensured the provision of access to running water in all detention centers. The State party has also with the support of cooperating partners, ensured the provision of hygiene packs such as bathing soaps, washing detergents, toothpastes and brushes, disinfectants as well as other sanitary products to inmates.

51. As regards ventilation, the State party has continued to modernize its detention centers through the rehabilitation of existing infrastructure and construction of modern detention facilities. In relation to the control of diseases in detention centers, the State party remains resolute in ensuring that healthcare services are brought closer to inmates through the provision of quality healthcare services, which has resulted in the implementation of the following programmes:

(a) mass screening and treatment of Tuberculosis (TB) in correctional centers which took place in 2021;

(b) assessment of HIV, TB, STI and Hepatitis B in correctional centers conducted in 2021 which indicated infection reduction from 14% in 2020 to 6% in 2021 representing an 8% reduction in HIV and Communicable diseases in correctional centers; and

(c) development of the Zambia Correctional Service 2022-2026 Health Strategic Plan.

52. In order to promote access to adequate health care services to those in detention Centers, the State party has established 29 health care facilities which include two mini hospitals within correctional centers. During the period 2015 to 2021, the State party employed 226 medical personnel to work in the health facilities established in correctional centers. With reference to the provision of adequate health care for female inmates, female inmates have equal access to health care services located within and outside the correctional facilities.

53. The State party has also put in measures to separate juveniles from adults in prisons/correctional centres country wide. This can be evidenced from the enactment of the Children's Code Act. Section 103 (3) provides that a child shall not be kept in custody in an adult prison or correctional center. The State party has embarked on developing a five (5) year roll-out plan on the implementation of the Children's Code Act aimed at building separate child transit centers and reformatory centers.

54. With regard to female inmates being guarded by male officials, Section 12 (1) of the Zambia Correctional Service Act provides that *a male Correctional Officer may be deployed to work in a female prison or correctional centre, or with female inmates, except that the female inmates shall be in the company of a female correctional officer.* In light of this, all female correctional centres are managed by female Officers in charge.

55. The State party domesticated the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2020. In addition, section 32(1) (b) (ii) of the Zambia Correctional Service Act provides for prisoners' complaint mechanism. Section 32 (1) (b) (ii) provides that an Officer-in-Charge shall, on admission of an inmate to a prison or correctional centre, provide t an inmate access to information relating to the procedure for making requests or complaints. At every prison/correctional centre, there is an inmate's complaint book where all inmates' complaints are recorded by the Officer-in-Charge. Where an inmate makes a complaint about violence towards him/her either by an officer or a fellow inmate, investigations are carried out by the Officer-in-Charge. Where an allegation is proved, appropriate disciplinary action is taken by the Officer-in-Charge either against the officer or inmate.

56. The State party has put in place measures to improve the conditions of inmates on death row, particularly, the provision of adequate lighting, ventilation and minimum floor space.

57. One of the measures that have contributed to reducing overcrowding for inmates under death row is through conditional releases obtained through Presidential pardon. This is done through the Commutation of sentences from death row to life imprisonment and from life to terminable sentences. According to the Zambia Correctional Service Annual Report of 2021, 224 inmates' sentences were commuted from death sentence to life imprisonment, 4 inmates from death row were pardoned and released and 8 inmates' sentences were commuted from life to terminable sentences making a total of 236 inmates. In turn, all inmates under death row whose sentences have been commuted are removed from the death row section and put in various appropriate classes of prisons/correctional enters, thereby decongesting the Death-row section.

58. The State party complies with the Section 25 of the Zambia Correctional Service Act which regulates the use of force and weapons on inmates by Correctional Officers. With regard to access to clean water, the State party has ensured the provision of clean running water to prison/correctional centres; and has also ensured the provision of medical care, bedding, food and sanitation to prisoners. In 2021, the State party provided 335 inmates with new bedding, from the targeted 6,696 inmates. This exercise has continued in 2022. The State party provides food for inmates 3 times a day.

Freedom of movement (art. 12)

59. Opposition political leaders were denied access to some parts of the country by police officers, in cases where intelligence information was received by the Police that the political leader intended to hold public gatherings.

60. The State party has commenced the review of the Public Order Act Chapter 113 of the Laws of Zambia in order to remove archaic provisions that stifle the enjoyment of the freedom of assembly, procession and other forms of public gatherings.

Administration of justice (art. 14)

61. Article 122 of the Constitution guarantees the independence of the Judiciary and protects the Judiciary from the control or direction, of a person or authority. Further, a person holding public office shall protect the independence, dignity and effectiveness of the Judiciary. Furthermore, the Constitution in Article 118 makes provision for the tenets of Judicial Authority which include accountability, transparency, fairness and responsibility. The Constitution adopts the principle of separation of powers by the creation of the three (3) arms of government that operate independent of each other and are mandated to perform specific functions. The Constitution divides the organs of government into the Executive, Legislature and the Judiciary. Article 62 vests the Legislature with legislative powers; Article 91 bestows the President with executive power⁷; and Article 119 vests judicial power in the courts and creates an independent judiciary.

62. As regards the appointment and removal of judges, the Constitution establishes both the Judicial Service Commission and the Judicial Complaints Commission whose respective mandates are to make recommendations to the President on the appointment of judges, and to hear and investigate complaints made against Judges and recommend the removal or retention of the Judge who is a subject of the Complaint thereby assuring the independence of the Judiciary. Article 114 of the Constitution provides for the qualifications for appointment of a Judge and requires that the person must have the requisite experience, qualification in Law and must be a person of utmost integrity. The grounds for removal of judges as contained in Article 143 relate to a judge's incapacity to perform the functions of his office. Further, disciplinary proceedings relating to removal of a judge are held in camera and the judge is entitled to appear, be heard and be represented by a legal practitioner or other person chosen by the judge.

63. The State party is guided by the Criminal Procedure Code which provides for the release of persons arrested without a warrant on Police Bond for bondable offences within 24 hours. Cases of prolonged detention have mainly been on account of detainees failing to meet conditions for granting bond such as bringing forward sureties. In relation to adolescents, section 56 (1) of the Children's Code Act provides that a child under arrest shall be released by a law enforcement officer on the child's own recognisance or a recognisance entered into by the child's parent, guardian, close relative of the child or the person having parental responsibility for the child, unless the offence which the child is accused of is a serious offence.

64. The State party recognises that the right to legal representation is a fundamental right of every accused person, to this end the State party enacted the Legal Aid Act No. 1 of 2021 which repealed and replaced the Legal Aid Act of 1967 in order to ensure that indigent persons access legal services. The Legal Aid Board established Legal Services Units in eight (8) districts around the country which have been placed in various courts, police stations and correctional facilities. Over the last five years the State party has granted legal aid to 90, 296 people. Legal aid has been granted in criminal cases such as murder and aggravated robbery among others. Legal aid has also been granted in civil cases that range from commercial transactions, employment matters and divorce matters, among others. Legal aid services are intended for the poor and vulnerable and as such the Legal Aid Board has not denied any persons in need of their services.

Right to privacy (art. 17)

65. The State party adheres to the provisions of the Bill of Rights which emphasize the protection for privacy of home and other property. Section 19 (2) of the Criminal Procedure Code allows a police officer to enter upon any premises and at, any time to enter and search therein, and, in order to effect entry, to break into such premises. Section 19 is only invoked where obtaining a warrant would afford escape or destruction of materials of particular importance to an investigation or matter under investigation.

66. In relation to searches conducted without a warrant, the Constitution in Article 17 (2) (a) provides for circumstances in which a search can be conducted without a warrant. The circumstances include where it is reasonably required in the interests of defence, public safety, public order, public morality and public health.

67. The Constitution mandates the Human Rights Commission to promote and protect Human rights, including investigating alleged human rights violations by law enforcement agencies and providing remedies to persons whose rights have been violated. There are other mechanisms that hold the police accountable to the Zambian people for human rights violations they commit; such as police internal investigations leading to a greater number of police officers being prosecuted and punished for gross human rights violations. The independent Police Public Complaints Commission, composed of civilian and State representatives also investigates public complaints against police officers. Any person whose privacy, family, home or correspondence has unlawfully been interfered with can report the conduct of such police officer to the Commission. The Commission investigates Police actions and ensures transparency and accountability by police officers in the handling of criminal matters, in accordance with the Constitution.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 6–8, 24 and 26)

68. The principal law to prohibit and criminalise human trafficking is the Anti-Human Trafficking Act No. 11 of 2008. Zambia has continued to record both internal and transnational trafficking for various forms of exploitation especially labour exploitation and domestic servitude affecting the most vulnerable persons including women and children. In this regard, the State party through the National Anti-Human Trafficking Committee coordinates activities of all relevant institutions on matters connected to trafficking of persons. The committee also conducts sensitization of the public on the dangers of trafficking of persons. The Committee previously operated on an ad-hoc basis. However, a secretariat has since been established under the Ministry responsible for Home Affairs and Internal Security. There are steps being taken to amend the Act to provide establishment of a full department responsible for implementation of the Act.

69. The State party has developed various tools to aid identification of victims of human trafficking. These tools include national referral mechanisms for victims of human trafficking and vulnerable migrants. The State party has also introduced profiling forms, standard operation procedures for the department of immigration and institutionalisation of human trafficking modules within the training curriculum for Zambia Police, the Department of Immigration and the Ministry responsible for Community Development and Social Services.

70. The State party has continued building capacity in prosecutors and investigators by developing human trafficking manuals.

71. The State party has been engaging bilaterally with the identified source and other transit Countries in an effort to improve efficiency in addressing transnational organized crime. Further, the State party, through the Ministry of Community Development and Social Services which is responsible for protection services including provision of shelters to victims of trafficking, is operating two (2) shelters in the Eastern (Chipata town) and Western (Sesheke town) provinces of Zambia. The Ministry of Community Development and Social Services receives funding from the Treasury under the national budget to manage these shelters. Additionally, the Ministry of Community Development

and Social Services supervises all private shelters including safe houses and has developed guidelines and standards for shelters and safe houses used to house victims of human trafficking and other categories of vulnerable migrants.

72. The Anti Human Trafficking Act, makes provision for compensation to victims of human trafficking. The Act empowers the court to award compensation to victims of human trafficking in addition to other remedies. The quantum of the compensation is determined by the Court.

Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7 and 13)

73. The State party is a generally stable country and has an open-door policy towards refugees. Matters regarding the protection of refugees, asylum seekers and migrants are embodied in the Immigration and Deportation Act No. 18 of 2010 coupled with the Refugee Act No. 1 of 2017. The Refugees Act in Section 53 (1)(2)(3) empowers the Commissioner to ensure that specific measures are taken to ensure the safety of women and children seeking asylum status. It also provides for protection of unaccompanied and separated children. It further provides for family tracing for purposes of family unification.

74. Section 5 of the Refugees Act provides for the Refugee Determination Committee whose functions include receiving and considering applications for recognition of refugee status. These applications considered by the Committee are for all categories of asylum seekers. The Act also provides that a child who is need of refugee status, whether accompanied or unaccompanied by the parents or by any other person should receive appropriate protection and assistance. Section 11 of the Refugee Act provides that the application for recognition as a refugee shall be made to the Commissioner for Refugees or an authorized Officer (Immigration Officer/ Police Officer or a Public Officer). This category of Officers is found in all districts for the purpose of lodging applications for asylum-by-asylum-seekers. Therefore, the state through the Office of the Commissioner for refugees ensures that asylum-seekers are registered upon arrival in the country and that the refugee status determination is conducted within sixty days of receipt of asylum applications as prescribed by section 12 of the Refugees Act. Refugees that wish to reside in urban areas require urban residence cards. If they wish to engage in any business or employment, he or she is required obtain the relevant permit in accordance with the immigration and deportation Act.

Freedom of religion (art. 18)

75. The State party in its Constitution guarantees the rights to freedom of association and conscience. Therefore, religious leaders are protected from political pressure and have been able to engage in any discourse about the government.

76. The State party's Constitution prohibits treating a person differently, directly or indirectly, on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status. This is enshrined under the Bill of Rights. Therefore, persons are not denied access to institutions on the basis of their religion.

Freedom of expression, peaceful assembly and association, and protection of journalists and human rights (arts. 6–7, 9, 19, 21–22 and 25)

77. Freedom of Expression is a fundamental human right as guaranteed in Part III of the Constitution of Zambia. Specifically, Article 20 (1) provides that no person shall be hindered in the enjoyment of his freedom of expression, 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. The above provision does not extend to conduct, or statements, which incite war, genocide, crimes against humanity, or other forms of violence, or statements which vilify or disparage others, or incite hatred.

78. Further, the Constitution of Zambia guarantees freedom of the media under Article 20, Clause (2) which provides that no law shall make any provision that derogates from freedom of the press. The above and other statutory and policy provisions, underscore Government's commitment to freedom of expression and freedom of the media as fundamental pre-requisites in deepening the country's democracy and development. It is to be noted, however, that sexual minorities such as homosexuals, are outlawed in Zambia and, therefore, in conflict with the subject at hand (freedom of expression).

79. The State party protects journalists, human rights defenders, and activists without discrimination. In addition, the State party is working with the Human Rights Defenders Network and Civil Society Organizations to develop legislation for human rights defenders. The development of domestic legislation is underway.

80. Both public and private media are free to host anyone, regardless of their political affiliation. The State party has also ensured that radio stations are free from political interference. In addition, the State party is in the process of developing the Access to Information Bill which will, among others, enhance the independence and freedom of journalists in the nation. Under the Penal Code various provisions that prejudice the independence of the media are being reviewed and legislation on Human Rights Defenders is being developed.

81. The State party is in the process of amending the Penal Code provisions relating to defamation of the President and defamation of foreign Princes. Publication of false news espoused by Section 67 was declared null and void by the High Court in 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 and is null and void, and therefore invalid for constitutionality.

82. Defamation of the President is unlawful and any person that defames the President commits an offence and will be arrested accordingly. Arrests are effected to ensure that law and order is maintained and not to silence the critics of the President. The State party reports that Freedom of assembly and association is a fundamental human right guaranteed by Article 21 of the Constitution. The exercise of the right is governed by the Public Order Act, Chapter 113 of the Laws of Zambia. Under the Public Order Act a convener of an intended assembly is required to give the police notice of the assembly in the prescribed manner and form at least seven (7) days before the proposed date of the assembly so that adequate number of Police officers are deployed to properly marshal their assembly. This is aimed at ensuring orderliness and safety of the assemblers and other people. Where intelligence information is received to the effect that an assembly is likely to cause disorder, the conveners are engaged and advised to propose an alternative date when the intended assembly would take place in a peaceful manner. Assemblies convened outside the parameters of the law are not allowed to proceed.

83. The State party reports that political meetings and selected instances of protests against Government restricted under the Public Order Act relate to those where intelligence information is received to the effect that the protest is likely to be characterized by lawlessness. Where protesters have already assembled, suppression of those protests usually poses a challenge thereby resulting into arrests, damage to property, physical injuries to both the protestors and the police and at times, deaths.

Rights of the child (arts. 23–24 and 26)

84. The State party has enacted the Children's Code Act which prohibits the use of corporal punishment on children. Section 22 of the Act provides that a person shall not

impose corporal punishment as a form of punishment on a child. A person who infringes the right of the Child is liable on conviction to a fine, imprisonment or both. Further, Section 28 of the Education Act No. 23 of 2011 provides for further legislative measures for the protection of children against corporal punishment.

85. The Penal Code was amended to increase the minimum age of criminal responsibility from eight (8) to twelve (12) years.

86. The Marriage Act, Chapter 50 of the Laws of Zambia, sets the legal minimum age of marriage at 21 years. Sections 17 and 34 of the Act, exempts all child marriage below the age of 21 years. In addition, the State party under the Children's Code Act prohibits subjecting a child-to-child marriage or to cultural rites and religious or traditional practices, that are likely to negatively affect the child's life, health, social welfare, dignity, and physical or psychological development. The Act makes further provision for the care and protection of a child that is likely to be subjected to child marriage or to customs and practices prejudicial to the child's life, education and health. In addition, the Education Act criminalizes the marrying or the marrying off of a learner who is a child.

87. The State party has developed the Environmental Management (Amendment) Bill, 2022, to provide for registration of toxic substances that are produced during mining activities. This is aimed at protecting children's health and lives from lead poisoning and other types of poison emanating from mining areas. Further, the Bill contains provisions that shall require mining projects to conduct Environmental Impact Assessments (EIA) for purposes of adequately mitigating the effects that mining undertakings have on the environment and protecting people's human rights within the proximity of mining areas. In response to lead poisoning which particularly affects children living near former industrial lead mines, the State party has been treating children and their families affected by lead poisoning in Kabwe district. In March 2022, the State party established a new technical committee to tackle extreme levels of lead pollution and to protect human health and the environment.

88. The Employment Code Act No. 3 of 2019 prohibits the employment of children in any industrial undertaking. The Act defines industrial undertaking as a mine, quarry and other works for the extraction of minerals from the earth. Further, section 22 of the Children's Code Act provides that a person shall not subject a child to economic exploitation or any work that is hazardous or likely to interfere with the child's education, physical or mental health, spiritual, moral, emotional or social development. As regards domestic services, section 14 of the Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2011 provides that a person shall not employ a child as a domestic worker. In addition, Children's Code Act prohibits subjecting children to economic exploitation or any work that is hazardous or likely to interfere with the child's education, physical or mental health, spiritual, moral, emotional or social development. Further, the State party has provided measures in the Employment Code Act to bring to an end all forms of child labor. These include setting the minimum age of a child for the purposes of admission to employment, the number of hours and conditions of employment of a child.

Participation in public affairs (arts. 7, 14 and 25–26)

89. Legislative measures have been put in place to enhance free and transparent elections. Article 45 (2) (b) of the Constitution provides that the electoral process and system of administering elections shall ensure that elections are free from violence, intimidation and corruption. Further, Article 54 of the Constitution provides for an Electoral Code of Conduct which contains provisions prohibiting electoral violence. These legislative provisions provide the framework for providing free and fair elections. The Electoral Process Act No. 35 of 2016 under section 110 provides that the Electoral Commission of Zambia may disqualify a political party or candidate that breaches the Electoral Code of Conduct. The Electoral Code of Conduct also provides for acts which are permissible and non-permissible during election campaigns. The Commission has further formulated the Electoral (Code of Conduct) (Enforcement) Regulations, 2016

and the Electoral (Code of Conduct) (Enforcement) (Amendment) Regulations, 2019 which outline the procedure for disqualification of political parties and candidates who breach the Code of Conduct.

90. To guarantee transparency, key electoral processes are open to the public. During the 2019 delimitation exercise, the Commission consulted stakeholders in all the 116 districts so as to get their views on the delimitation of electoral boundaries. The delimitation process resulted in the increase of wards and polling stations making electoral services more accessible to the people. The number of wards increased from 1,624 to 1,858 while polling stations increased from 8,999 to 12,152. The State party has further facilitated provision of media programmes and platforms to political parties and other stakeholders to enhance access to public media and coverage.

91. The State party compiled a new register of voters for the 2021 General Elections. The register was subject to inspection by the public. Arising from the registration of voters exercise, the number of registered voters increased to 7,023,499 voters. From the time the registration process started the State party periodically shares the statistics for the continuous registration of voters to members of the public. During campaigns, the Electoral Process Act prescribes the campaign period. The campaign period is guided by the campaign timetable which is developed in consultation with political parties and candidates. The implementation of the timetable is decentralised to constituency and ward level to enhance coordination and monitoring of campaigns and to reduce clashes between political parties. In order to enhance inclusivity, voter education is provided to different stakeholders including persons with disabilities through the development of specialised materials in braille and sign language as well as providing specialised training by representatives from organisations representing persons with disabilities. Approximately, 21,649 Persons with Disabilities (PWDs) comprising 10,626 males and 11,023 females have been reached.

92. The State party continues to receive reports of political violence perpetrated by different political parties with complaints being received from both the ruling and opposition political parties. In response to the reports on violence, the state party suspended physical campaigns in areas that recorded high levels of violence such as Lusaka, Namwala, Nakonde, Ikeleng'i and Mpulungu between two to four weeks. The said suspension related to physical campaigns only.

93. The Electoral Commission's mandate does not extend to investigation and prosecution of offenders. However, where a complaint is confirmed, the Commission may censure political parties and candidates. This is in accordance with section 11(1) of the Electoral Code of Conduct which empowers the Commission to reprimand a candidate or stakeholder for breach of the Code of Conduct. Further, the Commission can summon political parties and candidates when in receipt of complaints of electoral violence. In addition, during elections, the National Conflict Management Committee is reconstituted to resolve electoral complaints. District Conflict Management Committees are also reconstituted in the 116 districts to resolve electoral disputes at district level. During the 2021 General Elections, 116 District Conflict Management Committees were reconstituted to resolve electoral disputes in the districts. Electoral dispute mechanisms are currently being reviewed to enhance the capacity of conflict management committees to handle disputes. In instances where political violence results in assaults, damage to property or death, such cases are reported to the police for investigations and possible prosecutions in accordance with the Penal Code and Criminal Procedure Code.

94. In furtherance of the right to participate in public affairs and the right to vote, the State party for the first time facilitated the voting by persons in lawful custody following an amendment to the Electoral Process Act No. 35 of 2016. As a result, 93 polling stations were established in correctional facilities country wide. At the time of registration, a total number of 20,000 were eligible for registration. However, a total of 14,084 inmates registered as voters in correctional facilities. Voter education for inmates was undertaken through the distribution of Information, Education and Communication (IEC) materials – posters, brochures, fliers, manuals and handbooks.