



## Human Rights Commission Zambia

Human Rights House  
Mulungushi Annex, Ridgeway  
Independence Avenue  
P.O Box 33812,  
Lusaka 10101

Tel: +260 211 251 327/231357

[www.hrc.org.zm](http://www.hrc.org.zm)

E-mail: [infor@hrc.org.zm](mailto:infor@hrc.org.zm)

[director@hrc.org.zm](mailto:director@hrc.org.zm)

*September 2024.*

### **An independent Report to the African Committee of Experts on the Rights and Welfare of the Child by the Human Rights Commission of Zambia.**

---

#### **1.0. Introduction**

Zambia Human Rights Commission (ZHRC) is a National Human Rights Institution (NHRI) established under the Constitution of Zambia (Amendment) Act No. 2 of 2016 to promote and protect human rights. Its broad mandate is provided for under Art. 230 of the Constitution and Section 9 of the Human Rights Commission Act Chapter 48 of the laws of Zambia.

Submission of this report is pursuant to Art. 43 of the African Charter on the Rights and Welfare of the Child and Art.s 34, 37, 81 and 82 of the Rules of Procedure on representation and cooperation with civil society organisations. The report is based on the Commission's own monitoring and review of status of domestication of the Charter, related international human rights instruments as well as implementation of the the various laws, policies and programmes aimed at promoting and protecting the rights of the child. More significantly, submission of this report comes at a time when the country is in the process of implementing the recently enacted, and what is probably the most progressive piece of legislation on child rights ever in the history of the country, the Children's Code Act.

The report addresses identified thematic areas and comments on the gaps in legislation, policies, and programmes. It examines constitutional and legal frameworks, budgetary allocations for child rights programmes, principles of child survival and development, child participation (respecting the views of the child), protection from torture and child labour, coordination systems, children in conflict with the law, children with disabilities, and children's rights to education, leisure, and culture. The Commission also offers recommendations to address identified gaps in promoting and protecting the rights of the child.

## **2.0. Constitutional and Legal Frameworks**

The Commission takes cognizance of the significant strides made by the State to enhance the promotion and protection of child rights by ratifying and domesticating international and regional human rights instruments such as the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, Convention on the International Child Abduction, the African Charter on the Rights and Welfare of the Child, including some ILO Conventions under the Children's Code Act No. 12 of 2022. The Act has also harmonized and consolidated the laws relating to the promotion and protection of children's rights in the country. Other legal reforms include amendments to the Employment Code Act No. 3 of 2019 which prohibits child labour, the Anti-Trafficking Act No.16 of 2022 which protects vulnerable migrants including children in mixed migration forms, the Marriage Act No. 13 of 2023 which harmonized the age of contracting/registering marriage, the Penal Code Act No. 13 of 2022 that raises the age of criminal responsibility from eight (8) to twelve (12) years.

However, the Commission notes that despite commitments made during the 3<sup>rd</sup> and 4<sup>th</sup> Cycles of the Universal Periodic Review (UPR), the State has not taken steps to ratify other important human rights instruments, including, the three Optional Protocols (OP) to the Convention on the Rights of the Child (CRC) that is, the OP on the involvement of Children in Armed Conflict (OPAC), the OP on the Sale of Children, Child Prostitution and Child Pornography (OPSC), and the OP on a Communication Procedure (OPIC).

There are teething challenges relating to the implementation of the Children's Code Act. Although the creation of the Children's Court is a landmark development, the inadequate number of judges is hampering timely disposal of cases for children who come into contact with the law. Further, while the Act includes some transformative provisions such as mandatory non-custodial detention of children, inadequate facilities such as child transit centres where children in contact with the law could be kept before being taken to child reformatory centres is causing challenges in adhering to such human rights best practices.

More still needs to be done towards progressive realization of the right to education of children following the adoption of the free education policy including construction of more schools, employment of more teachers, provision of adequate teaching materials and enhanced sensitisation of parents, guardians and the

children themselves on the importance of education in order to reduce the number of children still not accessing education or dropping out of school.

Further, the Commission recognises the efforts of the State to harmonise the laws that define a child, in relation to Art. 266 of the Constitution. However, there are still other laws which define a child differently from the Constitution such as the Defence Act Chapter 106 of the Laws of Zambia.

In the same vein, the Commission welcomes the formulation of several policies, guidelines and frameworks relating to the rights and welfare of the child which include, but not limited to, National Child Policy, National Plan of Action, and National Strategy on Ending Child Marriages. In spite of the above milestones, implementation of these policies and guidelines to enhance children's rights remains fragmented, making it difficult to effectively monitor and report on successes or failures. In order to redress this challenge, the Children's Code Act provides for the creation of the National Coordinating Committee for Children (NCCC). Regrettably, two years after the enactment of the Act, the Committee is yet to be established and operationalised.

The Children's Code Act is a very ambitious and progressive piece of legislation. However, the fact that Economic, Social and Cultural Rights (ESCRs) are not enshrined under the Bill of Rights, creates a significant gap in the effective protection of children's rights. Further, the scope of the children's rights under the Bill of Rights need to be expanded while the definition relating to a child and young person under the Bill of Rights must be reviewed to be consistent with Amended Constitution and the Children's Code Act.

Other noticeable inconsistencies under the Bill of Rights relate to concerns on provisions of Art. 23 (4) (c) of the Constitution of Zambia. This is in relation to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law which essentially promote discrimination. Sadly, the Commission notes that there is no road map yet for the review and enhancement of the Constitution, to among other matters, include the expanded Bill of Rights which includes ESCRs.

## **Recommendations**

- (i) The State should develop a roadmap for constitutional reforms, which includes a thorough consultative process. The Constitutional review process should address inconsistencies in the promotion and protection of children's rights and provide for ESCRs.
- (ii) The State should expedite the review of the Defence Act and other laws which are inconsistent with the Constitution and international human rights standards.
- (iii) There is a need to step up implementation of Children's Code Act, including, but not limited to, operationalising the National Coordinating Committee for Children (NCCC), providing adequate child-friendly

facilities and adequately supporting institutions in the child justice delivery sector.

### **3.0. Budgetary Allocations to Child Rights Activities**

The Commission acknowledges the recent improvement in budgetary allocation and disbursements to the social sector such as health, education, gender and social protection support.<sup>1</sup> Also noted at the community level is the continued increase of the budgetary allocation towards the Constituency Development Fund (CDF), whose components include the development of the school infrastructures, health facilities, and education scholarships to deserving vulnerable children. Further, the increase in allocation of Social Cash Transfer as well as the scaling up of the school feeding programmes are ameliorating the impact of hunger and poverty, which are disproportionately high on the children and gravely undermine their welfare and the rights to health and education, among others.

Further, the Commission acknowledges the mainstreaming of budgetary allocation towards the promotion and protection of the rights of children under various public institutions such as the Department of Child in the Ministry of Youth, Sport and Arts; the Social Welfare Department under the Ministry of Community Development and Social Services; Child Protection Unit and the Victim Support Unit under Zambia Police Service.

Notwithstanding such progressing support, the promotion and protection of the rights of children largely remain fragmented. Hence the need to adequately invest in collaboration and coordination mechanism as well as capacity building and institutional strengthening among the institutions directly responsible for implementing and enforcing the Children's Code Act.

### **Recommendations**

- (i) The State should develop an inclusive Children's Code Act implementation plan or matrix, which clearly identifies responsible institutions, timelines and budget.
- (ii) The State must strengthen the mechanism of identifying and providing social protection support to child and female-headed households and families with persons and children with disabilities;

### **(iii) 4.0. Survival and Development**

---

<sup>1</sup> In the 2024 National Budget, a total of K60 billion has been allocated to the social sectors, encompassing Education, Health, Social Protection, and Water, Sanitation, and Hygiene (WASH). This allocation constitutes just one-third of the total budget. In comparison to the previous year's budget of K51 billion, this marks a notable nominal increase of 18 percent and a 3.8 percent rise in real terms.

(<https://www.unicef.org/zambia/media/3821/file/2024%20Social%20Sector%20Budget%20Analysis>) ([unicef.org](https://www.unicef.org))

The Commission acknowledges efforts that the Government is making towards the realization of children's right to life, survival and development. It also notes the achievements concerning reducing child mortality and malnutrition as well as the scaled-up child immunization drive especially with the re-emergence of polio, measles and cholera in some parts of Africa and Middle East<sup>2</sup>.

The recently published report of the UN Special Rapporteur on the right to development relating to the right to development of children and future generations reiterated the recognition of the entitlement of children to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The report highlighted a generational failure to promote and protect the rights of the child to development, including a recommendation for five action pillars to address the challenges in realizing the right to development for children. In Zambia, the continued economic challenges precipitated by the debt burden and exacerbated by the devastating drought conditions may have worsened the challenges of attaining reasonable outcomes in realizing the right to development for children. According to the World Health Organisation (WHO), "the drought has aggravated the nutritional status of many Zambians, particularly children and women in rural areas and other at-risk populations. Children experiencing food insecurity are especially at risk, as malnutrition weakens their immune system and heightens their susceptibility to illness".<sup>3</sup>

However, the Commission notes with concern that despite State efforts, there have been no studies or assessment of the socio-economic impacts of recent drought-induced economic downturn on the right to development for children. As a result, there is inadequate and targeted information for duty bearers on where to place priorities in children's programming and implementation of interventions.

### **Recommendation**

- (i) The State should consider adopting the proposed five action pillars proposed in the recent report by the Special Rapporteur on the right to development, to address challenges in realizing the right to development for children.
- (ii) The State should conduct a specific assessment on current economic hardships and drought conditions impacting on children's right to development and develop deliberate strategies/interventions focusing on mitigating the adverse impacts and ensuring enjoyment of the right to development.

### **5.0. Child Participation (Respect for the Views of the Child)**

---

<sup>2</sup> <https://www.unicef.org/esa/media/12571/file/UNICEF-Zambia-Budget-Brief-Health-2023.pdf>

<sup>3</sup> (WHO 01/03/2024; Govt. Zambia/SADC 31/07/2019).

[https://www.acaps.org/fileadmin/Data\\_Product/Main\\_media/20240315\\_ACAPS\\_briefing\\_note\\_drought\\_in\\_Zambia.pdf](https://www.acaps.org/fileadmin/Data_Product/Main_media/20240315_ACAPS_briefing_note_drought_in_Zambia.pdf)

The Commission commends the State's efforts at ensuring child participation, through various platforms including Children's Parliament, Child Rights Clubs, media and press clubs, school summits, councils, debate on thematic human rights issues, participating in the Commemoration of international and regional recognised days etc.

However, the Commission notes that these efforts are mostly stakeholders-driven with very little deliberate strategic State investment. Implementation of these programmes is highly dependent on the goodwill of Cooperating Partners and Non-State Actors, a situation that may not be sustainable. The number of children participating in these programmes is low and mostly from urban areas whilst majority of children population residing in rural areas continued to largely be marginalised and excluded from such participation.

### **Recommendations**

- (i) The State need to take a central role in fostering child participation using HRBA for effective participation, inclusivity, Accountability, Non-discrimination, Equality and Empowerment. In this way, the State will reinforce its commitments to promote and protect rights of the child.
- (ii) The State is encouraged to adopt policies or measures that place children at the centre of socio-economic policy making, increase the fiscal space for child sensitive programmes and interventions, make children visible in the budgeting process to ensure that policies are inclusive, broad in coverage and bridge the demographic divide.

### **6.0. Child Protection from torture**

The Commission notes that the Constitution of Zambia under Art. 15 prohibits any acts of torture and there is significant progress in raising awareness and enforcing laws prohibiting corporal punishment for children, which has officially been abolished. Policy, pronouncements and actions from the State have been very clear and unambiguous.

However, there is no specific subsidiary legislation giving effect to the Constitutional prohibition of torture. The absence of an Anti-Torture law in Zambia means individuals who commit heinous acts of torture, including on children continue being charged with lesser offences of common assault and assault occasioning actual bodily harm as provided for under Sections 247 and 248 of the Penal Code Act, Chapter 87 of the Laws of Zambia, which do not meet the threshold of the required punishment of the grave acts of torture under Art. 4 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). This relegates acts of torture to a minor offence no matter how serious the case may be including where acts resulted in grave injuries and permanent impairment, and in some cases, death.

Further, the Commission notes that, although corporal punishment has been outlawed in Zambia, it is still being practiced in some settings such as private homes

and schools, especially in rural areas. For example, some traditional groupings still use unconventional and crude methods of disciplining children during initiation ceremonies, which may be classified as acts of torture.

### **Recommendations**

- (i) The State should expedite the process of enacting and implementing the Anti-Torture law, which fully domesticates Art. 17 of the African Charter on the Rights and Welfare of the Child (ACRWC) and the UNCAT.
- (ii) The State must enforce all the available legal and administrative measures aimed at punishing perpetrators of torture and Other Cruel, Inhuman Or Degrading Treatment or Punishment, particularly against children, in order to end impunity.
- (iii) There is need to enhance awareness raising on corporal punishment by all stakeholders, especially in peri urban and rural areas in order to end acceptance or tolerance of torture.

### **7.0. Children in Conflict with the Law**

The Constitution and Children's Code Act provide clear practical guidelines in dealing with persons and particularly children in conflict with the law. Measures such as diversion, counselling, probation, mediation and community sentencing should be employed when dealing with children in conflict with the law. Non-detention of children is mandatory.

The Commission has, however, observed that some Law Enforcement Agencies shun use of alternative measures and continue detaining children in unsuitable adult detention facilities, which is inconsistent with the law and exposes children to hardcore criminals, harm, abuse, inhumane and traumatizing conditions. The continued detention of children in facilities devoid of separation of categories is inconsistent with Art.7(2) of the ACRWC. Even though this has in most cases been attributed to a lack of appropriate infrastructure, the Commission found in many cases that no effort was made to use alternative measures prescribed in law.

The Commission has also observed that delays in hearing matters relating to children have worsened after coming into effect of the new Act which establishes Children's courts presided over by Judges. It is evident that the current number of Judges is inadequate to address the challenge. This has been compounded by inadequate implementation guidelines and training, including inadequate child friendly court infrastructure. Further, inordinate delays in submission of social welfare reports persists resulting in delayed conveyancing of children to appropriate juvenile facilities.

### **Recommendations**

- (i) State should deploy or assign more Judges to Children's Courts to expedite disposal of children's cases.

- (ii) More capacity building and awareness raising need to be carried out, including providing clear and appropriate guidance to all involved in child justice delivery.
- (iii) State should initiate and scale up a programme of constructing and/or designating child-friendly Court facilities, child transit centres, child approved centres and child reformatory centres;
- (iv) The State should expedite reforms relating to implementation of the Children's Code Act and ensure advancements provided in the Act benefit children.

## **8.0. Children with Disabilities**

The Commission acknowledges measures taken by the State in the promotion and protection of the rights of persons with disabilities, including related international and regional commitments and their domestication in the Persons with Disabilities (PWDS) Act No. 6 of 2012. Further, the Children's Code Act under Section 15 emphasises recognition and protection of the rights for children with disabilities.

However, the PWDs Act does not make any reference to Persons and Children with Albinism (CwA). On the other hand, the Children's Code Act under Section 7 provides that "a person shall not discriminate against or punish a child on the basis of race, colour, sex, gender, age, language, political or other opinion, conscience, belief, tribe, pregnancy, health, ethnic or social origin, disability, property, birth, economic or other status", which is an international standard deemed to be inclusive of PwA.

However, there is need for the State to consider in its legislation the ACERWC recognition and pronouncement of Albinism as a form of disability and that Persons with Albinism were entitled to all benefits under the United Nations Convention of Persons with Disabilities (UNCRPD). It is generally agreed that CwA require specific recognition and additional protective measures due to their unique and additional vulnerabilities.

Additionally, enforcement of the two laws remains extremely weak especially when it comes to children with disabilities, including CwA.

## **Recommendation**

- (i) State should adopt and implement the African Union Plan of Action Resolution No. 19 2022 of ACERWC Working Group on the situation of Children with disability in Africa on ending attacks and other forms of violence against Children with Albinism in Africa (2021-2031).
- (ii) The State should develop specific national strategies to address the provisions and access to free or affordable health care services, protective gear, sun screen, and other assistive devices required by CwA.
- (iii) The State should also develop and adopt a policy and strategy on the promotion and protection of the rights of CwA.
- (iv) The Commission calls for the immediate ratification of the Protocol to the African Charter on Human and Peoples Rights on the rights of Persons with



Disabilities in Africa which provides protection mechanisms, especially on the rights of children with disabilities.

- (v) The State must take appropriate measures to raise awareness on the rights of Children with Albinism (CwA).
- (vi) The State must implement measures aimed at removing all impediments that discriminated against and stigmatized all children within their families and communities.
- (vii) The State must effectively implement the policy requiring construction of infrastructure especially learning infrastructure which considers the special needs of people and children with disabilities including provision of appropriate equipment with qualified teachers trained in handling children with disabilities.

## **9.0 Right to Education, Leisure and Cultural Activities**

The Commission commends the State for implementing various policies and measures in the education sector which has resulted into more learners enrolled in government schools. The state has extended student loans in higher learning institutions, including bursary support for vulnerable children from the Constituency Development Fund, increased recruitment of teachers to reduce the teacher- pupil ratio. Funding to schools and other learning institutions has been enhanced to enhance the learning environment and outcomes. The curriculum is also being revised to reflect the changed and emerging realities and needs of learners.

However, the Commission notes that notwithstanding the continued recruitment of teachers, the response to the free education has overwhelmed the available teachers, resulting into disproportionate teacher-pupil ratio. Further, the overwhelming enrolment has resulted into overcrowding due to limited infrastructure in terms of class rooms. Thus, the high Teacher-Pupil Ratio and the overcrowding of pupils in schools risk compromising the quality of education in public schools.

Further, although the government provides education support in the form of bursaries and education loans, it has been noted that many vulnerable children face challenges in accessing support due to unnecessary red tape which proves prohibitive for children from poor backgrounds. For example, the purchase of application forms through bank payments and accessed through online platforms poses a serious challenge in many rural parts of the country where internet connectivity is still poor and, in some cases, unavailable.

Despite remarkable progress being made in urban areas, school-going children in rural areas still face a lot of challenges such as long distances to access education and lack of technological gadgets, cheap and reliable internet to access education materials. Progression rate to secondary and tertiary levels especially among rural girls remains poor due to many traditional barriers such as teenage pregnancies, early marriages and bias against educating girls. This is compounded by limited access to adolescent-friendly services, inadequate and sometimes lack of essential learning materials especially in peri urban and rural areas. Access to education for

Children with Disabilities remains an issue as most schools have few to no appropriately trained teachers, learning materials and infrastructure.

### **Recommendations**

- (i) The State need to refocus resources to address classroom overcrowding resulting from free education including enhancing teacher recruitment to reduce the teacher – pupil ration.
- (ii) The State must enhance its efforts in seeking international cooperation and technical support towards the progressive realisation of the right to education, particularly for children and children with disabilities.
- (iii) The State need to pay attention to CwA and CwDs in general as regards access to education and ensure they are progressively consistent with commitments set out in the Charter.

### **10.0. Child Labour and Exploitation**

The State has implemented a number of measures aimed at addressing child labour and exploitation of children and young persons. The Employment Code Act of 2019 prohibits in absolute terms employment of children under the age of 15 and prescribes conditions under which young persons may be employed. The Children's Code Act prohibits subjecting 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. There are numerous other measures taken by the State to ensure compliance with state law and policy on child labour.

However, child labour and exploitation of children continues especially in artisanal and small-scale mines and family run businesses/operations and farms. In the Northern regions of the country, children are co-opted by their families in the collection of edible worms during the early months of the rainy season (November to January) while in other regions boys are enlisted into herding cattle at the expense of going to school.

The District Child Labour Committees established to monitor and protect children from child labour and exploitation experience operational challenges, making it difficult to stop the practice. Many of the outfits involved in child labour and exploitation of young persons deliberately neglect maintaining records and sometimes accuse parents of engaging children without their knowledge. Many children retrieved from child labour and or exploitative undertakings indicate family economic hardships and lack of social support among their families as key drivers of the practice.

### **Recommendation**

- (i) The State should consider taking up additional measures aimed at addressing the underlying causes of child labour such as enhancing social protection and economic empowerment schemes at household level.
- (ii) To increase budgetary allocation to child protection services and accountability measures at national and local government levels. This will enhance the capacity of child labour committees at district and community levels to carry out inspections and detect and expeditiously resolve cases of child labour.
- (iii)** The State also needs to strengthen early childhood centres to cultivate the culture and interest for learning in children and reduce the vacuum and temptation to engage in labour;
- (iv) Further, the State must develop strong laws and strengthen the enforcement mechanisms against drug abuse which is largely contributing to child delinquency and eventually to child labour and exploitation as drug-addicted children engage in all forms of labour to find money to quench their addiction.

## **11.0 Conclusion**

The Commission endorses and supports most of the findings highlighted in the Committee's mission report to Zambia of 2023. The findings resonate with the monitoring and observations of the Commission except in a few areas where the State may have since addressed some of the issues. The Commission is always available to work with the Committee and other stakeholders to develop an Action Plan on the rights and welfare of the child and to advance aspirations and accelerated realisation of international, regional and national commitments.