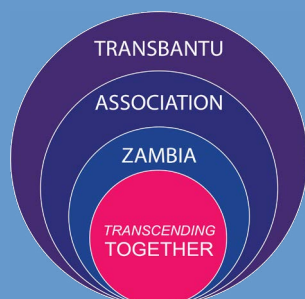


Zambia

Civil Society Engagement Scan in Health Policy and Law



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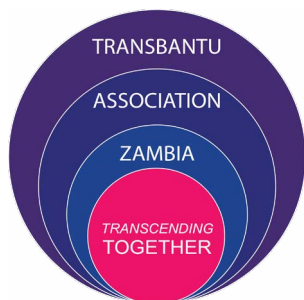
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Zambia

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Foreword

UNDP collaborating with Civil Society Organisations (CSOs) such as TransBantu Association Zambia, Intersex Society of Zambia, Friends of Rainka Zambia and representatives of Government institutions have worked on several programmes and projects aimed at the reduction of new HIV infections amongst Key Populations (KP). The most recent intervention being the Legal Environment Assessment (LEA), which identifies legal and policy barriers to accessing HIV and Sexual Reproductive Health Services for key populations. Further an Engagement Scan has been developed in consultation with CSOs and Government to inform and guide civil society interventions aimed at creating an enabling environment in policy and law or address these policy barriers. Most KP led CSOs working in the space of HIV and Sexual Reproductive Health rights endeavor to engage with government however they are not aware of the right channels for engagement.

Zambia has signed and ratified several international and regional human rights treaties that commit to protecting the rights of all persons, particularly vulnerable and key populations. Further enshrined in the national Constitution is the Bill of rights which provides for the right to equality and non-discrimination, life, privacy, liberty, association and assembly, health, fair labour practices, social protection and freedom from torture or degraded treatment, amongst other things. These commitments therefore set the tone for an inclusive approach in the design, planning, implementation and management of programmes and HIV/SRH services.

With the adoption of the 2030 Agenda, UN Member States pledged to ensure “no one is left behind” and committed to “endeavor to reach the furthest behind first”. The Zambia’s 7th National Development Plan (7NDP) themed ‘Accelerating development efforts towards Vision 2030 without leaving anyone behind’ embraces Sustainable Development Goals (SDGs) an indication of the countries commitment towards achieving the targets set therein. Additionally, the inclusion of key populations in National AIDS Strategic Framework (NASF) 2017-2021 which is also anchored on leaving no one behind is another milestone and commitment demonstrated by the government in HIV/AIDS prevention and care response, providing an entry point for advocacy with relevant institutions.

The National AIDS Strategic Framework (NASF) 2017 – 2021 recognises that, in addressing the HIV/SRH services for key populations in an efficient, effective, and respectful manner is the right thing to do from a public health perspective. Strides have been made to ensure that stigma and discrimination towards men who have sex with men and other gay men, transgender persons and sex workers in public health facilities is addressed. However, the structural and legal barriers to ensure their protection, including lesbian women remains. Over the past 2 years it has been observed that there is a commitment to achieving gender equity and equality, which is required in the spirit of “not leaving anyone behind” with regards to HIV prevention, treatment, care and support. This NASF is therefore designed to provide adequate space and opportunities for communities, civil society, private sector, development partners (bilateral and multi-lateral agencies) and Government institutions to actively participate in the implementation of evidence-based HIV and AIDS programmes, depending on their mandates and comparative advantages.

This guide therefore enlists these treaties and highlights key institutions, government ministries and international bodies relevant for influencing human centred policy and law reform and advocacy work implemented by CSOs. It is also a quick reference point for CSOs especially Young Key Populations on how and when policy or legal reform processes can be initiated.

We encourage CSOs that work on HIV and SRH rights and related issues to read this guide and continue to make meaningful contribution in the transformation of policies and law for the vulnerable and key population.

TransBantu

Acknowledgements

The Engagement Scan is a tool for Civil Society Organisation (CSOs) in Zambia working on HIV and Sexual and Reproductive Health Rights to plan for, and strategically engage and advocate for legal and policy reform and action where policy and legal gaps and challenges exists.

Special gratitude goes to the different individuals in line Ministries and key Institutions who provided the necessary information and guidance on how CSOs can engage with these entities i.e. officials from the the Ministry of Health; the Ministry of Justice, Ministry of Home Affairs, the Ministry of Labour and Social Welfare; the Ministry of Gender the Ministry of Youth and Child development. Key institutions being acknowledged include Attorney General's Office, the Director of Public Prosecutions' office, National Assembly, Human Rights Commission and Police Public Complaints Commission officials.

The National Steering Committee members and Advocacy Working Group is appreciated for guiding the completion of the Engagement scan including Daliso Mumba, Chileshe Chilatu, Fortune Chibamba (NAC), Dr Oliver Mweemba; Professor Anita Menon (UNZA – School of Public Health / Psychology Dept), Chan Mubanga, Natasha Chama (Trans Bantu Zambia), Henry Sakala, Musa Bwalya (Friends of Rainka), Dr. George M Phiri (Zambia Police), Lungu Yotam (Zambia Correction Services), Gezepi Chakulunta (Ministry of Home Affairs), Mamoletsane Khati (PANOS), Maurice Musheke (Pop Council), Foster Hamuyube (Human Rights Commission), McLean Kabwe (FHI 360), Dr Tina Chisenga (Ministry of Health), Mr. Miti (Ministry of Justice), Katendi (Zambia Law Development Commission), Rebecca Ng'ambi, Kennedy Mutale (SHARPZ), Derrick Maalumo (PREO), Chilufya Hampongo (TALC), Chantel Chirwa (ZASWA), Taurai Vincenzo (Titandizeni), Simataa Simata (ZYP).

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The project would not have been possible without the generous financial support from the Government of Netherlands, Ministry of Foreign Affairs.

Acronyms

ACHPR	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
AFRONET	Inter African Network for Human Rights and Development
ARCMH	African Regional Council for Mental Health
CCJP	Catholic Commission for Justice and Peace, Zambia
CSOs	civil society organisations
ES	engagement scan
KPs	key populations
LAZ	Law Association of Zambia
LEA	Legal Environment Assessment
MP	Member of Parliament
MSM	men who have sex with men
NAC	National AIDS Council
PLD	Parliamentary Legal Department
PWUD	people who use drugs
PPCC	Police Public Complaints Commission
UN	United Nations
UPR	Universal Periodic Review
ZIMT	Zambia Independent Monitoring Team
ZLDC	Zambia Law Development Commission
ZAMRO	Zambia Reconstruction Organisation
ZNBC	Zambia National Broadcasting Corporation

Introduction and Background

Zambia is a landlocked country in southern Africa with almost 1 in 2 people under the age of 15 years. In 2010, youth aged 15-35 years accounted for 33.3% in rural areas and 41.9% in urban areas. In 2012, Zambia was amongst the 10 fastest growing economies in Sub-Saharan Africa. This record of growth, however, did not translate into improved income and living standards of ordinary citizens. This is particularly notable for rural dwellers. In 2010, rural poverty was an estimated 77.9% compared to 27.5% for urban areas.¹

In 2017, the Zambian population was projected to be at 17.9 million. Zambia continues to experience high rates of HIV. Data from the latest Demographic and Health Survey (ZDHS 2013-14) estimates HIV prevalence to be at 13.3% for adults aged 15-49 yrs. HIV prevalence is higher among females (15.1%) than among males (11.3%). The Zambian HIV epidemic is geographically heterogeneous, with provincial HIV prevalence rates ranging from 6% to 18%. Higher prevalence rates are in the provinces of Copperbelt (18.2%), Lusaka (16.3%), Western (15.4%), Southern (12.8%), and Central (12.5%). Prevalence is lowest in Muchinga (6%), North-Western (7.2%) and Eastern (9.3%). There are significant rural-urban differences: the HIV prevalence rate is double in urban areas (18.2%) compared to rural areas (9.1%).

According to a formative assessment done by the Population Council in 2016, HIV prevalence among key populations (KPs) in Zambia is limited due to a lack of evidence-based data. Current information reveals that HIV prevalence among KPs is generally high, over 35%, as compared to the general population. The HIV prevalence amongst Sex workers is estimated at 56.4% and Prisoners at 27.4% (UNAIDS 2016).² Key Populations are also reported to have sexual networks beyond their risk groups, such as spouses and other regular partners. The 2013-2014 ZDHS show that HIV disproportionately affects girls and boys differently. Estimated HIV prevalence rates among adolescent girls and boys aged 15-19 is 3.5% for girls and 1.8% for boys. It is much higher specifically amongst adolescents aged 18-19 years, with a prevalence of 6.6% for girls compared to 4.5% amongst boys of the same age.

Young people and key populations remain a priority in the HIV national response. The NASF (2017-2021) identifies young people and key populations as priority targets for the new strategy noting that young people “face increased barriers due to limited and inappropriate HIV services.” The NASF further notes that “key populations are growing in Zambia; the population of female sex workers; men who have sex with men (MSM); transgender and people who use drugs (PWUD) as they assert to their right to health and access to SRH services. Evidence also shows an increase of male sex worker populations, attributed to high poverty levels. The NASF 2017-2021 articulates guidance and suggests a comprehensive package of services targeting key population so that the Fast-Track targets can be reached”.

The introduction of multi-party democracy gave much birth to the formation of civil society organisations (CSOs) in Zambia. The major role of CSOs is advocacy for strengthened

1 (GRZ, CSO, 2011)

2 UNAIDS Country Report <http://www.unaids.org/en/regionscountries/countries/zambia>

mechanisms for accountability and transparency amongst the governance institutions. Civil society organisations in Zambia have also been politically engaged in regulating State power. For example, a coordinated campaign by the Oasis Forum, an alliance of different organizations, fought against the unconstitutional third-term bid by Dr. Chiluba in 2001. After an extended protest, Dr. Chiluba conceded and nominated Levy Mwanawasa as his successor. CSOs also promote and protect human rights and against any human rights violations including corruption.

Additionally, CSOs complement government in the provision of services, such as safe drinking water, health care services and education. In Zambia, the faith based organisation such as the Churches Health Associations of Zambia offer medical services to the vulnerable people especially in rural areas. CSOs also play a role in sensitizing citizens about their rights and responsibilities, mobilize constituencies, such as the vulnerable and marginalized sections of society to participate more fully in politics and public affairs.

In as much as CSOs contribute to the promotion of good governance they also face a number of challenges. To be formally recognised as a CSO, an official registration certificate is required, and offered by the Government registrar of CSOs. As such CSOs that challenge the State are threatened with de-registration. Additionally, CSO have limited resources to reach out to the communities in need. The lack of resources hinders them from accessing the communities in the rural and most remote areas. Lack of cooperation amongst CSOs for various reasons is another major challenge as it defeats collective bargaining and advocacy on specific targeted issues.

Purpose of Engagement Scan

This Engagement Scan (ES) seeks to address barriers key populations face in accessing health care services, and in particular the extent to which the legal and policy environment complies with relevant human rights obligations as provided in the Constitution. The purpose of the engagement scan is to provide a tool for CSOs working on HIV and sexual and reproductive rights to plan for and strategically engage and advocate for legal and policy reform and action where gaps and challenges have been identified while at the same providing opportunities for strengthening existing mutually-beneficial partnerships with government and other relevant key actors in the country in the formulation, adoption and implementation of appropriate action.

The ES is comprised of two components: a timeline/calendar of events and a supporting document. The supporting document provides a legal and policy background, background on the various institutions relevant to legal and policy reform, particular processes for legal and policy reform and, specific and strategic key opportunities for which CSOs can plan.

The ES is a living document. The timeline/calendar of events should be regularly updated with new information on approaching advocacy opportunities. The supporting document should be reviewed and updated every five years to take into account possible realignment of government ministries, government departments and quasi-government institutions and roles and mandates.

The engagement scan is organized as follows:

Section 1: Provides a background on the legal framework in Zambia, including the laws and the international and regional human rights treaties applicable in Zambia.

Section 2: Outlines the key national institutions and processes relevant when attempting legal or policy reform. This includes the Executive, Legislative, Judiciary and Administrative bodies, and traditional bodies.

Section 3: Discusses the various regional institutions and processes that can change law and policy.

Section 4: Discusses the relevant international institutions and processes that can change law and policy.

Section 5: Identifies other key influencers in Zambia.

Section 6: Covers the key recommendations identified in the Legal Environment Assessment to address the gaps in the legal and policy environment.

Section 7: Lists the potential opportunities for advocacy to address some of the key recommendations identified in section 6. It identifies various advocacy strategies for addressing the gaps in the law and policy environment.

Section 8: Provides a timeline listing key dates for potential advocacy opportunities. The timelines need to be regularly updated as more information on key dates is available.



1

Legal Framework

Zambia does not have a single code containing its laws. These are drawn from a variety of sources. The following are sources of law in Zambia:

- Constitution
- Legislation
- Common Law
- Judicial precedent
- Customary Law
- Authoritative texts

The Constitution of Zambia

Zambia has had five constitutional cycles. At independence in 1964, it inherited a constitution with a Bill of Rights modelled on the 1963 Nigerian Constitution³. Although the Bill of Rights was entrenched⁴, the entrenchment provision was removed by an amendment in 1969 achieved by the ‘referendum to end all referenda.’⁵ This made it easy for the government to make a further amendment in 1973 that abolished multiparty-ism in favour of one-party rule. Then, in 1991, the constitution was revised to reinstate multiparty politics. The 1991 constitution brought back the entrenchment clause to lock the Bill of Rights and, for the first time, expressly affirmed the principle of constitutional supremacy.⁶ In January 2016, the Zambian Constitution, except for the Bill of Rights, was again amended for the fifth time. Fundamental rights are provided for in Part Three (the Bill of Rights) of the Constitution. These include the following.

Fundamental Rights and Freedoms	Article 11
Right to life	Article 12
Personal Liberty	Article 13
Freedom from torture or degrading treatment	Article 15
Protection of privacy	Article 17
Right of accused persons	Article 18
Freedom of expression	Article 20
Right to association and assembly	Article 21
Protection from discrimination	Article 23

3 Alfred Chanda, *Human Rights Law in Zambia: Cases and Materials* (University of Zambia Press 2007)

4 Constitution of the Republic of Zambia 1964, art. 72(3).

5 Muna Ndulo and Robert Kent, ‘Constitutionalism in Zambia: Past, Present and Future’ (1996) 40 *African Law Journal* 264.

6 Constitution of the Republic of Zambia 1991, art. 1(2).

Legislation

Legislation refers to laws that have been passed by Parliament and have been assented to by the President. Laws enacted by Parliament are called an Act. A Bill is a draft Act which is yet to be enacted and enforced. The process by which a Bill becomes an Act is covered on page 19. Subsidiary legislation refers to laws passed by other bodies to which Parliament has validly delegated such legislative powers, such as municipal by-laws.

Regulations are rules or directives prescribed by an appropriate authority. Often the appropriate authority will issue regulations outlining how best to comply with specific, enacted laws. Regulations are often issued by the relevant Ministry.

Precedent

Precedent forms part of the law of Zambia. Decisions of Superior Courts are binding on lower courts. Decisions from South African courts and other jurisdictions similar to Zambia are persuasive, and courts refer to them in formulating their decisions. Written works by eminent authors also have persuasive value in the courts of Zambia. These include writings of the old authorities as well as contemporary writers from similar jurisdictions. Decisions by Magistrates' courts do not become precedent. However, Magistrates' Courts are bound by decisions of the High Court and the Supreme Court of Appeal.

Customary Law

Customary law is often not written or codified though some customary law is part of statutes. Local courts are widely in place to administer customary law, especially cases relating to marriage, property, and inheritance. Customary law must not be repugnant to natural justice or morality or incompatible with the provisions of any written law and in compliance with the Constitution.

Common Law

Zambia like most former English colonies adopted common law as part of its law. Common law includes doctrines of equity and the statutes, which were in force in England on 17 August 1911, as well as any statutes of later than this date in force in England are all applicable in Zambia subject to the provisions of the Constitution of Zambia and to any other written law. This type of law is also heavily dependent on past practice.

Regional and International Law

Zambia is signatory to many international and regional treaties. For the rights in the treaties to be justiciable they must be domesticated. Currently, Zambia has yet to domesticate any regional or international treaty. However, international and regional treaties can be applied by courts in their interpretation of fundamental rights.

Zambia has ratified a number of global and regional human rights treaties relevant to HIV:

- International Convention for the Protection of all Persons from Enforced Disappearance

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- African Charter on Human and Peoples' Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Zambia has signed but not ratified four relevant global and regional human rights treaties. Thus, Zambia is obligated to adhere to the object and purport of the treaties.

- African Charter on the Rights and Welfare of the Child
- Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Unfortunately, there are several international and regional treaties Zambia has yet to ratify:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Second Optional Protocol to the International Covenant on Civil and Political Rights

Key Opportunity: Complaints to International Treaty Bodies

Individual complaints can be made to the following international bodies:

- ✓ Human Rights Committee for violations of the ICCPR
- ✓ Committee on the Rights of Persons with Disabilities for violations of the CRPD

How to file a complaint with these international bodies is covered in section 4.





2

Key National Institutions and Processes Relevant to Law and Policy Reform

There are several key national institutions/offices that are relevant to law and policy reform. These are as follows:

- President
- Ministers (Government Ministries)
- Attorney General
- Director of Public Prosecutions
- National Assembly
- Portfolio Committees
- Parliamentary Legal Department
- Judiciary
- Human Rights Commission
- Gender Equity and Equality Commission
- Police Public Complaints Commission
- Public Protector
- Zambia Law Development Commission
- Traditional authorities

The key processes that are covered in this section are as follows:

- Drafting and promulgation of policies
- Enacting statutory instruments
- Law reform
- Constitutional reform
- Litigation
- Complaints to the Human Rights Commission, Gender Equity and Equality Commission, Police Public Complaints Commission, and Public Protector

Key Institutions in the Executive

The relevant institutions for policy and legal reform based in the Executive branch are as follows:

- Offices of the President and Vice-President
- Attorney General
- Director of Public Prosecutions
- Ministers

Office of the President and Vice President

Article 33(1) states that there shall be a President of the Republic of Zambia who shall be the Head of State and of the Government and the Commander-in-Chief of the Defence Force and that exercise of Executive power by the President shall be in accordance with the Constitution.

The relevant functions of the President are as follows:

- Approve Government policy and cause it to be implemented;
- Initiate and approve Government Bills for introduction to the National Assembly and assent to Bills which have passed the National Assembly; and
- Recommend the accession and ratification of international agreements and treaties to the National Assembly.⁷



Contact details

Office of the President
Roma, Lusaka
Tel: 021 129 4034



How CSOs can engage with the Office of the President

Generally, CSOs do not directly engage with the Office of the President, but rather targeted the parent Ministries.

Attorney General

The Attorney General is appointed by the President.⁸ The Attorney General is the principal legal advisor to the government and an ex-officio member of cabinet as s/he represents the government in court and in any other legal proceedings to which government is a party.

The Attorney General is responsible for the following:

- Signing bills to be presented to the National Assembly;
- Represent the government in civil court cases; and
- Give advice on an agreement, treaty or convention to which the government intends to become a party or is interested in.

⁷ S 114 of the Constitution.

⁸ Art 54(1) of the Constitution.

Contact details

Attorney General: Mr Mumba Malila
Ministry of Justice
PO Box 50106
Fairley Road
Ridgeway, Lusaka
Tel: +260 21 125 0438
Email: mumbamalila@yahoo.com



How can CSOs engage with the Attorney General?

- The Attorney General's office is a public institution, CSOs can approach the Attorney General's office anytime during working hours seeking a meeting or write to the Attorney General raising their concerns on a specific issue and requesting a meeting
- Bring to the attention of the AG – cases related to misinterpretation of the Law including nonenforcement or compliance.
- Participate in public consultation on drafting and law reform initiatives
- Advance issues of public interest



Director of Public Prosecutions

The Director of Public Prosecutions is appointed by the President subject to ratification by the National Assembly.⁹ The qualifications for appointment to this office are the same as that for a Judge of the High Court with experience biased on criminal law. The Director of Public Prosecutions is the Chief Prosecutor for the Government and Head of the National Prosecutions Authority.¹⁰ The Director of Public Prosecutions is primarily responsible for criminal proceedings. This includes instituting, undertaking, continuing and discontinuing such proceedings.

Article 56(3) provides that the DPP shall have power in any case which he considers it proper to:

- a) Institute and undertake criminal proceedings against any person in any court, other than a court martial, in respect of any offence alleged to have been committed by that person;
- b) Take over and continue any such criminal proceedings as have been instituted or undertaken by any other person or authority;
- c) To discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

⁹ Ss 180-182 of the Constitution
¹⁰ S 180(3) of the Constitution.



Contact details

Plot BLX 29B
Independence Avenue
PO BOX 33970
Lusaka
Tel: 0211-375600



How CSOs can engage with the Director of Public Prosecutions

Key populations who are victims of human rights violations and CSOs may want to approach the National Prosecuting Authority to advocate for particular prosecutions. For example, CSOs working with sex workers may approach the National Prosecuting Authority to advocate for the prosecution of perpetrators and systemic violations of human rights.

They may also sue or petition the government for persistent violations and government inaction to stop violence or the root causes thereof.

Government Ministries

The various Ministries established by the State are responsible for the development of specific sector legislation and policies. Each Ministry is responsible for engaging and consulting with stakeholders, including relevant CSOs, when developing policies, Bills or amendment to laws.

The functions of Government Ministries include:

- the administration of any Act of Parliament assigned to the Ministry by the President;
- attending Parliament and Parliamentary Committees in order to answer questions concerning matters for which they are responsible
- directing the operations of government;
- preparing, initiating and implementing national legislation
- developing and implementing national policy and national and subsidiary strategic plans and
- conducting government business in Parliament.

Ministries have a policy of engaging stakeholders, including relevant civil society organisations when they develop policies, bills or amendment of laws and national sector strategic plans and guidelines. The contact information for the Ministries relevant for HIV-related legal and policy reform is provided below:

The Ministries relevant for HIV and AIDS-related legal and policy reform include:

- the Ministry of Health;

- the Ministry of Justice,
- Ministry of Home Affairs
- the Ministry of Labour and Social Welfare;
- the Ministry of Gender
- the Ministry of Youth and Child development

Their specific mandate of each Ministry, the legislation administered by the Ministry and its contact details are listed below:

Ministry of Health

The Ministry aims to provide effective quality healthcare services close to the family as possible. This ensures equity of access to health service delivery and contributes to the human and socioeconomic development. It also targets to attain Sustainable Development Goals on health and other national health priorities.

The Ministry of Health strives to:

- Create awareness through family health promotion that the responsibility for one's health rests in the individuals as an integral part of the family, community and nation.
- Promote awareness among Government employees and the community at large that, health problems can only be adequately solved through multisectoral collaboration involving such sectors as Education, Agriculture, Water, Private Sector, including not for profit and faith-based organisations
- Ensure that the health services are equitably available and accessible to all the people in the country
- Train and make available competent and adequate number of human resources to manage health services.
- Ensure the availability of drugs, reagents and medical supplies and infrastructures.
- Promote and sustain public-private partnership in the delivery of health services.
- Promote traditional medicine and alternative healing system and regulate the practice.
- Ensure that the health sector is financed through diverse, sustainable equitable and cost-effective financing mechanisms.

Examples of Legislation, Policies and Strategies Administered by the Ministry

Relevant legislation administered by the Ministry include the following:

- Public Health Act;
- the Medical and Allied Professions Act;
- the Mental Health Act
- the Zambia Mental Health Policy;

- the Zambia National Health Policy
- the Reproductive Health Policy
- the Zambia National Health Strategic Plan 2017 -2021
- the Adolescent Health Strategic Plan
- the Integrated Family Planning a Scale up Plan 2013 – 2020



How can CSOs engage with the Ministry of Health?

- CSOs can approach the various Ministry to provide relevant evidence on key issues, related to barriers in accessing health services by key populations;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry.
- CSOs can also approach the Ministry to discuss and raise concerns regarding specific gaps in the legal and policy framework. This can be done through one-on-one meeting or targeted stakeholders' gathering in a form of roundtable, seminar, breakfast meeting or high-level consultation/dialogue



Contact Details

Ministry of Health; Ndeke House
Haile Selassie Avenue
PO Box, 30205 ; Lusaka
Website: <http://www.moh.gov.zm>

Ministry of Justice

The Ministry of Justice is charged with the responsibility of facilitating the administration of justice and promoting the observance of the rule of law. The MoJ through its mission statement strives to “provide legal services, facilitate dispensation of Justice and promote governance mechanisms, in order to uphold good governance principles and practices in Zambia”.

Amongst other functions the Ministry is responsible for

- Formulation and amendment of laws and policies that fall within the mandate of the MoJ
- Research and identification of gaps in the law and considering complaints from stakeholders
- Initiate research on relevant issues, generate white papers, and engage the public for comments in collaboration with stakeholders

- Collaborate with institutions related with the discharge of human rights related initiatives including implementation of the constitution.



How can CSOs engage with the Ministry of Justice?

- CSOs can approach the MoJ with specific concerns relating to gaps in the law or areas that require law reform.
- CSOs can engage the MoJ on relevant legislative and policy reform and policies.
- Advocate for the implementation and domestication of all the human rights related conventions and protocols.
- Participate in the drafting of relevant legislation



Contact Details

Ministry of Justice
Lusaka, Zambia
Tel: 021 125 5763
Website: <http://www.moj.gov.zm/>

Ministry of Home Affairs

The Ministry is charged with the responsibility of providing and maintaining internal security in order to promote sustainable socio-economic development for the people of Zambia.

Amongst other functions of the MoHA related to the LEA include the following maintaining order; immigration and deportation; anti trafficking; national registration, passport and citizenship; Prisons and Correctional Administration; Registration of Births, Marriages and Deaths; Registration of Societies and implementation of all related policies and legal frameworks.



How can CSOs engage with the Ministry of Home Affairs?

- CSOs can approach the various MoHA to provide relevant evidence on key issues, related to barriers in accessing public services by key populations;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry in relation to name change and gender identity registration.
- CSOs can also approach the Ministry to discuss and raise concerns regarding specific gaps in the legal and policy framework.



Contact details

Ministry of Home Affairs
Lusaka, Zambia
Tel: 021 125 7880

Ministry of Labour and Social Welfare

The Ministry is charged with the responsibility of formulating and administering labour laws and policies as well as monitoring and evaluating social security programmes, schemes, research development of social security standards and the promotion of social security.

The ministry also safeguards and promotes the health and safety of workers in particular, and generally looks into the working environment of workers through preventive actions and measures in workplaces. Furthermore, the ministry ensures harmonious industrial and labour relations in the country. It also regulates the labour and employment sector in order to enhance the sector's contribution to sustainable social and economic development of the country.

Apart from departments that look into coordination of policies and budgets, finance and human resources, the ministry has the occupational safety and health, national productivity development, social security and labour departments



How can CSOs engage with the Ministry of Labour and Social Welfare

- CSOs can provide evidence on relevant barriers facing key populations;
- participate as partners in the various committees established by the Ministry;
- conduct specific analysis; and present position papers to the Ministry.
- CSOs can also discuss and raise concerns regarding specific gaps in the legal and policy framework including the lack of implementation thereof



Contact Details

Ministry of Labour and Social Welfare
New Government Complex, Independence Avenue,
P.O. Box 32186, Lusaka, Zambia.
Tel: +260-211-221432,
Fax: +260-211-225169,
Web-Site: www.mlss.gov.zm,

Ministry of Gender

The Ministry of Gender is committed to protecting and promoting women's rights, curbing gender-based violence and reducing gender inequalities by making progressive changes to legislation to strengthen the protective environment. It aims to prioritise the advancement of women and strengthen their capacity to influence decision-making at the highest level on matters pertaining to gender equity and equality.

The Ministry is charged with coordination and monitoring the implementation and of the National Strategic plan, Gender related policies and legal framework.

Examples of Legislation, Policies and Strategies Administered by the Ministry

- National Gender policy
- Matrimonial Causes Act;
- Anti-Gender Based Violence Act No. 1 of 2011; and
- Gender equity and equality Act No.22 of 2015

Programmes implemented as part of its mandate:

Gender Policy Formulation

Gender Mainstreaming

Economic Empowerment of Women

Prevention of gender-based violence and the multidisciplinary management of survivors

Monitoring and Evaluation

Communication and Advocacy

Technical Backstopping or institutional Capacity Building around gender

How can CSOs engage with the Ministry of Gender?

- CSOs can provide evidence on relevant barriers facing women and girls, key populations, especially young key populations and persons with disability;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry.
- CSOs can raise concerns regarding specific gaps in the legal and policy framework.
- Collaborate with the Ministry in creating awareness on the various policies and legal framework including GBV related programmes.





Contact Details

Ministry of Gender
Government Complex 2nd Floor,
Independence Avenue, Kamwala
P.O BOX 30719, Lusaka
Phone: 211-230031/211-230024
Fax: 230336
<http://www.gender.gov.zm>

Ministry of Youth, Sport and Child Development

The Ministry draws its mandate from the portfolio functions as outlined in the Government Gazette Notice No. 836 of 2016 which outlines the portfolio functions.

The MYSCD objectives are: -

- To develop, implement and support youth empowerment initiatives for active youth participation and sustainable National Development.
- To ensure that there is adequate modern infrastructure at district, provincial and national levels for youth, sport and child development.
- To effectively coordinate and manage the implementation of youth, sports and child development programmes.
- To coordinate the formulation and review of policies and legislation in order to provide a framework for effective implementation of youth, sports, children programmes.
- To effectively and efficiently plan, monitor and evaluate the implementation of child, youth and sports programmes in order to ensure realization of set goals and targets
- To effectively and efficiently manage and develop human resources in order to enhance individual and organizational performance
- To provide financial, administrative and logistical support services in order to enhance the operations and implementation of the Ministry's programmes

Through its National Youth policy, the Ministry seeks to provide an enabling environment that promotes the rights and obligations of the Youth and foster their participation in national development.

The MYSCD Legislation, Policies and Strategies Administered by the Ministry include:

- Youth Policy
- Sports Policy
- Child Policy;

Programmes implemented as part of its mandate:

- Child Development;

- Co-ordination of Sports Organisations;
- Co-ordination of Youth Organisations;
- Sports Development;
- Street Children;
- Youth Entrepreneurship and
- Youth Skills Development.

How can CSOs engage with the Ministry of Youth Sport and Child Development

- Create awareness on issues facing key populations and the need for inclusive planning processes
- Advocate for the inclusion of Key populations in strategic and relevant committees established within the Ministry.
- CSOs can provide evidence on relevant barriers facing key populations, especially young key populations;
- Participate as partners in the various committees established by the Ministry;
- Conduct specific analysis; and present position papers to the Ministry.
- CSOs can raise concerns regarding specific gaps in the legal and policy framework.



Contact detail

Ministry of Youth and Child development
 Permanent Secretary
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 Independence Avenue, Kamwala,
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 Phone No.: +260211224011
 Email: info@MYSCD.gov.zm



Legal and Policy Reform Relevant to the Executive

Drafting and Promulgation of Policies

Article 50 of the Constitution identifies policy making as a central function of the Government, and therefore a key responsibility of any Ministry. Policies are formulated and reviewed within the relevant Ministerial department. For instance, the Ministry of Health would be

responsible for drafting and reviewing HIV-related policies with the technical support from the National AIDS Council (NAC).

The relevant Ministries may organise a number of meetings regarding the draft policy to engage various stakeholders. Based on the input provided in the meetings and any written submissions, the Ministry will finalise the policy. However, the extent to which the Ministry seeks external inputs is dependent on the particular policy and Ministry. Further, it is also based on which CSOs the Ministry has established relationships.

The Ministry of Health and NAC coordinate the HIV response, including the development of HIV-related policies, through Technical Working Group meetings that are usually held quarterly. CSOs can input into drafting of new proposed policies, guidelines and legislation through these TWG meetings.



How CSOs can engage in policy formulation and review

There are other few ways that CSOs can engage with the policy formulation/review process:

- Engage with and sensitize Ministerial staff or Committees on critical areas of interest that affect citizens or a specific community.
- Provide oral and written submissions to Ministerial staff when they call meetings to discuss specific policies or review of policy.
- Strengthen capacity of the affected community to engage with policy makers
- Request meeting with ministerial staff to provide input on policies or proposed policies.
- Meaningful participation in Technical Working Group meetings to provide relevant input.

Statutory Instruments

The Constitution defines statutory instruments as “a proclamation, regulation, rule, by-law, order or other similar legal instrument made under a power conferred by this Constitution or an Act of Parliament;”¹¹ A statutory instrument is drafted by a responsible government or quasi-government institution. Once drafted, the relevant minister approves the draft and the draft is then sent to the Ministry of Justice for approval. A statutory instrument must be published in the Gazette¹² within 28 days after it is made.¹³ If that is not done then the instrument is void.¹⁴ A challenge to the constitutionality of the statutory instrument can be lodged within 14 days of the publication of the statutory instrument in the Gazette.¹⁵ In

11

12 A gazette is an official publication for the purpose of notifying the actions and decisions of the government of Zambia.

13 S 67(2) of the Constitution.

14 S 67(2) of the Constitution.

15 S 67(3) of the Constitution.

addition, CSOs have the right to provide input on the statutory instrument prior to it being published in the Gazette.



How CSOs can engage with statutory instruments

There are other few ways that CSOs can engage with enacting statutory instruments:

- Engage with and sensitize ministerial staff on policy and legal reform issues.
- Submit position or issue paper to the relevant Ministry
- Engage with relevant ministerial officials to discuss ongoing law reform processes or the potential of drafting new laws
- Provide oral and written submissions to relevant Ministry when they call meetings to discuss specific statutory instruments.
- File a case in court challenging the constitutionality of a statutory instrument. This must be done within 14 days of the publication of the statutory instrument in the Gazette.

Key Institutions in the Legislature

Parliament is comprised of the President and the National Assembly.¹⁶

The President calls Parliament to meet, orders elections to take place and assents to bills, but otherwise does not play an active role in parliamentary work.

The primary work of the Parliament is conducted by the National Assembly, which consists of Members of Parliament. Members of Parliament are elected for a five-year term on the basis of elections at which every adult person aged eighteen (18) years and above and permanently resident in Zambia is entitled to vote. The National Assembly sits three times a year.¹⁷

The relevant functions and powers of the National Assembly are as follows:

- To debate and pass legislation;
- To agree to the ratification of or accession to international agreements which have been negotiated and signed by the Executive; and
- To uphold the Constitution and ensure the government acts in accordance with the Constitution and national interest.

¹⁶ Art. 62 of the Constitution.

¹⁷

Visiting the National Assembly

Sessions of the National Assembly and Committee meetings are open to the public. Individuals who choose to attend Committee meetings need to do the following:

- a) Clearly state their names and addresses of the organisations they represent;
- b) Behave as they would in the Chamber during Parliamentary debates. That is, they should not participate in the proceedings of the committee meetings unless they are invited to give oral submissions by the Committee;
- c) Not take into the committee rooms such articles as walking sticks (except for cases of a medical nature), umbrellas, brief cases or parcels of any type, newspapers, magazines or cellular phones. Any such articles must be deposited at the reception; and
- d) Avoid unnecessary movements while the meetings are in session. In addition, they are advised not to applaud, laugh and converse loudly while the meetings are in progress.

Submissions to the Committees can be made online at <http://www.parliament.gov.zm/node/210>.



Contact details

Parliament Road
P.O. Box 31299
Lusaka 10101

Email: info@parliament.gov.zm or webmaster@parliament.gov.zm

Tel: +260 211 292425-36

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How CSOs can engage with the National Assembly

There are a number of ways CSOs can engage with the National Assembly:

- Visit the National Assembly when it is in session to learn more about its operation (YKPs encouraged to understand Parliament processes).
- Reach out to specific members of the National Assembly seeking them to raise particular issues in the National Assembly through questions to the relevant government Ministers or through moving motions for discussion of the issue/s by National Assembly.
- CSOs can petition Members of the National Assembly on specific legal changes or lobby for specific oversight over the Executive
- Collaborate with and capacitate Parliamentarians on pertinent issues that affect specific sectors of the community

Parliamentary Portfolio Committees

To assist in carrying out the functions of the Parliament, the Parliament has established parliamentary committees that are responsible for defined areas of Government administration. Parliamentary sessional committees are classified into three distinct categories as follows: Housekeeping, General Purpose and Portfolio Committees.

The Committees consist of eight members other than the Vice-President, Ministers, Deputy Ministers, or any other member holding or acting in any office prescribed by or under an Act of Parliament, appointed by the Speaker at the commencement of each session.

The Committees can do the following:

- To study and report on the mandate, management and operation of Ministries, departments and agencies assigned to them by the Standing Orders Committee or the House;
- To initiate investigations on specific policy or subject matter;
- To examine and make recommendations on Bills referred to them in the House; and
- The provisions of standing orders governing the proceedings of the committee in their consideration of committee stages of Bills with necessary modifications.¹⁸

The relevant Portfolio Committees are as follows:¹⁹

- Committee on Economic Affairs and Labour. This Committee is responsible for the following Ministries: Finance and National Planning; Commerce, Trade and Industry; Mines and Minerals Development; and Labour and Social Security.
- Committee on Health, Community Development and Social Welfare. This Committee is responsible for the following Ministries: Health and Community Development and Social Services.
- Committee on Legal Affairs, Governance, Human Rights and Gender Matters. This Committee is responsible for the following Ministries: Legal Affairs and Gender in Development Division.
- Committee on Sport, Youth and Child Affairs. This Committee is responsible for the Ministry of Youth, Sport and Child Development.

A list of which Members of Parliament are on which committees can be found at this link: <http://www.parliament.gov.zm/committees/composition>. A schedule of when the committees sit can be found here: http://www.parliament.gov.zm/committees/timetable_grid

¹⁸ <http://www.parliament.gov.zm/node/109>

¹⁹ <http://www.parliament.gov.zm/node/109>



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How CSOs can engage with Portfolio Committees

- Send written submissions to the relevant Portfolio Committee on specific bills it is considering.
- Request meetings with the relevant Portfolio Committee to discuss specific issues and bills.
- Advocate for the relevant Portfolio Committee to initiate investigations on specific issues or policies.
- Capacitate Members of Parliament on key specific issues and mobilise stakeholder's engagement

Parliamentary Legal Department

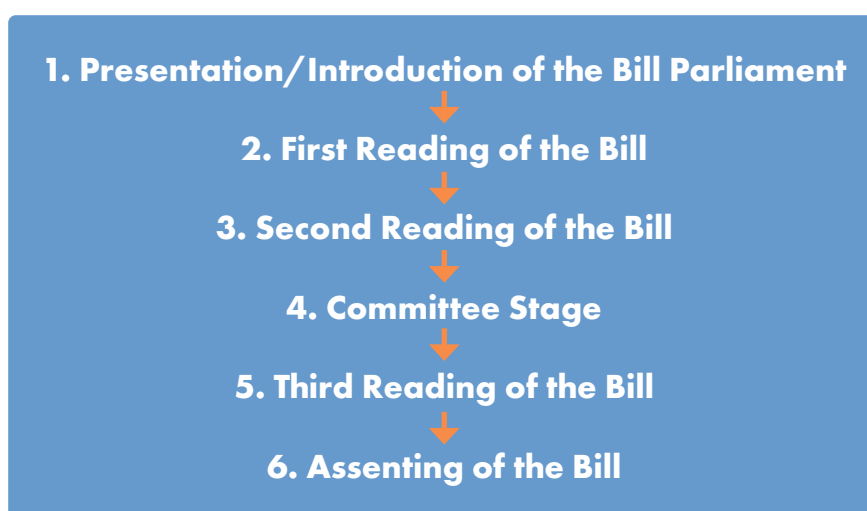
The Parliamentary Legal Department (PLD) is critical to the National Assembly's process of enacting new legislation. The PLD includes the Parliamentary Legal Counsel, the Deputy Parliamentary Legal Counsel, Assistant Parliamentary Legal Counsel and the Legal Assistant. The relevant functions of the PLD are as follows:

- Drafting Private Members' Bills and advising MPs on private bills;
- Providing legal opinions to MPs on various issues concerning parliamentary work, including preparing discussion papers, memoranda and conducting research on legal matters and other issues.
- Assist MPs to scrutinize bills and draft proposed amendments to bills. The PLD also ensures that the bills passed by the House are assented to by the President and subsequently printed as Acts of Parliament by the Government Printer.
- Drafting rulings on Points of Order raised by MPs, and announcements for use by the Speaker. The department also prepares written memoranda for the Committee on Privileges, Absences and Support Services for use during the consideration of matters before them.
- Officers in the Legal Department attend to court cases involving the National Assembly as a government institution, in conjunction with the Attorney General's Chambers in the Ministry of Justice.

- The PLD conducts research on procedural matters and participates in revising the National Assembly Standing Orders and Members' Handbook, subject to approval by the Standing Orders Committee.
- The PLD provides research to the Law Development Commission, which is engaged in law revision.
- Provides advice to Parliamentary Committees. This also involves writing legal opinions and memoranda for use by the Committees and other departments.
- Examining bills and Statutory Instruments before the National Assembly to ensure that they are not repugnant to the Republican Constitution and other existing laws.

Legal and Policy Reform Relevant to the Parliament

Law Reform/Review and Enacting New Legislation



Who can introduce a bill?

A Minister or Member of Parliament (MP) can introduce a bill in Parliament. A bill introduced by a Minister is a public bill. While a bill introduced by an MP is a private bill. Generally, for bills introduced by a Minister, they are drafted within the relevant Ministry, sent to the Attorney General for final drafting and ensuring compliance with other laws and the Constitution, then submitted to Parliament for consideration.

Under section 88(1) of the Constitution, A citizen may petition the National Assembly to initiate the enactment, amendment or repeal of legislation.

What happens once the bill is introduced in the National Assembly?

There are two readings of the bill in the National Assembly.

The First Reading

The first reading is where the bill is read for the first time to the Parliament serving as initiation or notification of the proposed bill to the members of the house. The second reading stage is when debate on the proposed bill is facilitated. Members debate and vote on whether the bill should progress to the next stage, the committee stage.

Committee stage – Second Reading

At committee stage, a specialized group of representatives appointed by Parliament scrutinise the bill and make necessary amendments. The committee then reports back to the house where amendments are debated and voted on.

Third Reading

The Third reading is where the bill is re-proposed to the House and Members debate and vote on whether to decline or allow the legislation to stay in its original form. For a bill to pass the National Assembly, it needs the approval of a majority of the MPs.

Presidential Assent

The final stage is the assent by the president, which is required in order for a bill to become an Act or Law. The President has 21 days to assent to the bill or has to send it back to the National Assembly for reconsideration. If the President sends the Bill back to the National Assembly for reconsideration, the National Assembly can either amend the Bill or can enact it with two-thirds of Members of Parliament supporting the Bill. If the Bill has been amended, the Speaker submits it to the President for his or her assent. If the Bill is passed without amendment, the President must assent to the bill.



How CSOs can engage in the Law Reform Processes

- Providing oral and written submissions to the National Assembly when a bill is at the Committee stage, including suggestions for amendments.
- Participate in any public hearings by making an oral or written submission.
- Engage with and sensitize Parliamentarians regarding relevant issues.
- Work with a particular member of the National Assembly to introduce a private bill.
- Monitor closely the work and sessions of relevant Committees, especially those that monitor the government ministries that implement laws, policies and programmes that directly affect them.
- Capacity building or sensitization of Portfolio Committee Members on specific or critical issues for consideration when the Bill is being drafted.

Constitutional reform

A Bill to amend the Constitution is a similar process to other bills. However, there are two key distinctions. First, it needs to be published in the Gazette at least 30 days before the first reading of the Bill in the Assembly. Second, it needs not less than two-thirds of all the members of the Assembly to pass.

How CSOs can engage with the Constitutional reform process

- Providing oral and written submissions to the National Assembly when a bill is at the Committee stage, including suggestions for amendments.
- Participate in any public hearings by making an oral or written submission.
- Engage with and sensitise parliamentarians regarding relevant issues.
- Work with a particular member of the National Assembly to introduce a private bill.
- Monitor closely the work and sessions of relevant Committees, especially those that monitor the government ministries that implement laws, policies and programmes that directly affect them.



Key Institutions in the Judiciary

The primary institution in the judiciary are the courts. The courts have the responsibility to dispense justice and provide remedies to aggrieved persons. The courts must apply the Constitution and the law impartially, expeditiously and without fear, favour or prejudice. They must comply with principles which guide the judiciary as including that justice must be

done to all, irrespective of status, justice must not be delayed and that the role of the courts is paramount in safeguarding human rights and freedoms and the rule of law

The key institutions in the Judiciary are as follows:²⁰

- Constitutional Court
- Supreme Court
- Court of Appeal
- High Court
- Specialist courts
- Other courts

Constitutional Court

The Constitutional Court is the final court in all matters relating to the Constitution. No judgment of the Constitutional Court can be appealed to the Supreme Court. It can also hear cases relating to the President, Vice-President or the election of a President and appeals relating to the election of Members of Parliament and Councillors.

Supreme Court

The Supreme Court of Zambia consists of the Chief Justice, the Deputy Chief Justice, seven Supreme Court judges or such greater number as may be prescribed by an Act of Parliament. The Supreme Court is the final court of appeal on all matters as it has a supervisory and review jurisdiction over all courts of Zambia including jurisdiction for all legal disputes. The Supreme Court can hear appeals from the Court of Appeal.

Court of Appeal

The Court of Appeal can hear appeals from the High Court, other courts and quasi-judicial bodies. However, it cannot hear Constitutional matters and matters relating to the President, Vice-President or the election of a President.

High Court

The High Court has authority to hear criminal and civil cases and appeals from lower courts. The High Court has a number of established divisions. These are Industrial Relations Court (exclusively concerned with industrial and labour matter), Commercial Court, Family Court and Children's Court. The High Court can hear any civil or criminal matter.

Specialist courts in Zambia

Specialist courts address specific matters. They include the Industrial Court.

²⁰ SS 118 to 146 of the Constitution.

Other courts

Magistrate courts have original jurisdiction in some criminal and civil cases; local, or customary, courts handle most civil and petty criminal cases in rural areas. Local courts employ the principles of customary law and Presiding judges can invoke customary law to render judgments on such matters as marriages, divorces, inheritances, civil proceedings, including minor criminal matters. It is important to note that judgments by local courts are often not in accordance with the Penal Code. There are also subordinate courts, and small claims court (that adopt arbitration as a mode of resolving disputes and uses local infrastructure to operate).

Legal and Policy Reform Relevant to the Judiciary

Litigation

Legal representation is an essential requirement when initiating any litigation within the courts. The particular detail of how to file litigation will differ from court to court and is dependent on the matter being filed. Thus, consulting a lawyer or legal advisor is necessary for filing litigation.

Generally, litigation can be initiated in the court of first instance through a petition or a complaint.²¹

With respect to cases involving violations of the constitution, the complaint or petition should include the petitioner's or complainant's name and address, the facts in the case, the laws which have been allegedly violated, and the relief sought.²² It should be signed and be accompanied with an affidavit which verifies the facts.²³ Once a lawyer files the complaint with the court and serves the other parties with the complaint, the other parties have to respond to the allegations in the complaint. The applicants have the opportunity to respond to the respondents' response. Once the initial papers are filed the parties agree with the court on the relevant dates for filing their legal argument. The petitioners/applicants will file their legal argument first. The respondents will then file their legal argument. Any amicus curiae whose application is approved by the court can then file their legal argument. The case will then be heard, either through a trial or an oral hearing, after which the court will issue a ruling.

Any decision of the High Court can be appealed to the Court of Appeal. Decisions of the Court of Appeal can be appealed to the Supreme Court. All matters relating to violations of the Constitution have to be filed in the Constitutional Court. The decision of the Supreme Court and Constitutional Court is final. The only other legal option is to appeal the decision of the Constitutional Court or Supreme Court to the African Commission on Human Rights or an international treaty body, such as the Human Rights Committee.

Litigation is characterized by delays in the disposing of cases.

²¹ It is unclear whether organisations working on the issue being challenged can institute litigation.

²² See e.g. Constitutional Court Rules s 1(2).

²³ S 4 Constitutional Court rules.



How CSOs can engage in litigation

- CSOs can bring lawsuits as an organization challenging particular laws, policies or practices that impact the matters the organization seeks to address.
- CSOs can also find individuals/members who have been directly impacted by a particular law, policy or practice which they seek to engagement.

Key Administrative Institutions

Human Rights Commission

Section 230 of the Constitution provides for the Human Rights Commission. The Human Rights Commission is responsible for ensuring that the Bill of Rights is upheld and protected. Specifically, the Human Rights Commission is responsible for the following:

- Investigate and report on the observance of rights and freedoms;
- Take necessary steps to secure appropriate redress where rights and freedoms are violated;
- Resolve disputes through negotiation, mediation or conciliation;
- Carry out research on rights and freedoms and other related matters;
- Educate citizens on rights and freedoms.

Complaint to Human Rights Commission²⁴

Any aggrieved person or any person acting on his or her behalf, an association acting in the interest of its members, or a person acting on behalf of and in the interest of a group or class of persons can file a complaint to the Human Rights Commission alleging a violation of human rights.

The complaint can be oral or written and has to be addressed to the Secretary. In the case of an oral complaint, the Secretary will write out the complaint.

The complaint must be signed or thumb-printed. It should also contain the complainants name and address.

The complaint must be filed within 2 years of the human rights violation having occurred.

²⁴ Ss 10-11 of the Human Rights Commission Act

How CSOs can engage with the Human Rights Commission

- CSOs can lodge a complaint with the Human Rights Commission as long as they follow the requirements outlined above.
- Meet with the Human Rights Commission to discuss pertinent issues affecting citizens and develop strategies for the protection and promotion of human rights.
- Assist communities to file a complaint to ZHRC
- Collaborate with ZHRC on capacity building interventions on International Human Rights Conventions
- Preliminary investigations on Human Rights Violations
- Consistently engage commissioners through seminars, workshops or other educational foras.



Contact details

Human Rights House, Independence Avenue
P.O. Box 33812, Lusaka
Tel: +260-21-1-251327/251357
Fax: +260-21-1-251342
Website: www.hrc.org.zm



Gender Equity and Equality Commission

Section 231 of the Constitution establishes the Gender Equity and Equality Commission. The Gender Equity and Equality Commission is responsible for shall promoting the attainment and mainstreaming of gender equality. It is expected to do the following:

- Monitor, investigate, research, educate, advise and report on issues concerning gender equality;
- Ensure institutions comply with legal requirements and other standards relating to gender equality;
- Provide redress for complaints relating to gender inequality.

The Gender Equity and Equality Commission has yet to be formed. The Gender Equality and Equity Act 22 of 2015 outlines the formation of the Gender Equity and Equality Commission. Once formed and operational, the Gender Equity and Equality Commission could be a useful avenue for legal and policy reform.

The Commission is responsible for—

- a) ensuring, in liaison with the Ministry responsible for gender, that gender equality and equity is attained and mainstreamed in public and private affairs and structures;

- b) monitoring, investigating, researching, educating, lobbying, advising and reporting on issues concerning gender equity and equality;
 - c) recommending, to appropriate authorities, any measures that need to be taken to ensure gender equity and equality; and
 - d) taking steps, in liaison with appropriate authorities, to secure redress for complaints relating to gender equity and equality.
- (2) Notwithstanding the generality of sub-section (1), the Commission shall
- a) promote gender mainstreaming in the systems of governance;
 - b) develop, undertake or manage information and educational programmes in order to promote public understanding of gender equity and equality; and
 - c) perform such other functions as provided under this Act.



How CSOs can engage with the GEEC once established

- Establish relationships with members of the Gender Commission to discuss gender rights violations and empower GEEC to advocate for specific laws and policies.
- Sensitize the Gender Commission on relevant issues, such as sexual orientation and gender identity
- Popularise the implementation of the Gender Equality and Equity Act 22 of 2015

Police Public Complaints Commission

Section 237 of the Constitution establishes the Police Public Complaints Commission (PPCC). The Police Public Complaints Commission is responsible for the following:

- Receive and investigate complaints against police actions;
- Investigate complaints against police actions which result in serious injury or death of a person;
- Make recommendations to the appropriate institution or authority for action.

Complaints to the Public Police Complaints Commission

The PPCC is empowered to investigate complaints involving the police, which may be submitted by victims, agents of victims or organizations representing victim interests. The PPC's findings, recommendations and directions can be submitted to various authorities including the Director of Public Prosecutions, the Inspector-General of Police, or to the Anti-Corruption Commission. The Public Police Commission Act outlines how individuals can make a complaint:

- The complaint should be made within a year of the complainant knowing about the harm.

- The complaint can be made either orally or written.
- The complaint should be addressed to the Secretary of the Commission
- The complaint needs to include the following:
 - Name, age and address of person making the complaints
 - Detailed statement of facts
 - Signature or thumbprint

How CSOs can engage with the PPCC

- CSOs can lodge a complaint with the PPCC as long as they follow the requirements outlined above.
- Raise awareness among CSOs and partners on the role of PPC and how to lodge a complaint.



Contact details

The Secretary
Police Public Complaint Commission
Old Kent Building
PO BOX 33753
Lusaka



Public Protector

Sections 243-248 of the Constitution outline the powers, roles and responsibilities of the Public Protector. The Public Protector is responsible for investigating an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function if the decision or omission is unfair, unreasonable or illegal or not compliant with the rules of natural justice. The Public Protector when investigating a matter can enforce the attendance of witnesses and examining them on oath; examine witnesses outside Zambia; compel the production of documents; enforce decisions issued by the Public Protector; and cite a person or an authority for contempt for failure to carry out a decision. The Public Protector cannot investigate matters if they are before a court or a quasi-judicial body; the matter is related to an officer in the Parliamentary Service or Judicial Service; involves the dealings or relations between the government and a foreign government or international organisation; or is criminal in nature, among others.

The relevant functions of the Public Protector are as follows:

- Initiate, receive and investigate complaints of alleged or suspected maladministration

- Investigate any complaint of human rights arising from maladministration or any conduct which the Public Protector has reasonable grounds to believe may be connected with, or conducive to, maladministration
- Be the lead agency in matters of combating maladministration
- Adopt and strengthen mechanisms for educating the public to respect the public good and public interest, and in particular
- Bring an action before a Court.
- Hear an appeal by a person relating to an action or decision taken or omitted to be taken in respect of that person.
- Make a decision on an action to be taken against a public Officer or Constitutional Office holder, which decision shall be implemented by an appropriate authority.

Complaints to the Public Protector

CSOs and individual victims of human rights violations can file a complaint with the Public Protector. The complaint must be written and include details of the complainant and details of the offender.



How CSOs can engage with the Public Protector

CSOs can lodge a complaint with the Public Protector following the requirements outlined above.

One-on-one meeting and/or targeted engagement in form of awareness raising.



Contact details

Tel: 021 1228330

Email: info@oppz.gov.zm

Website: www.oppz.gov.zm

Zambia Law Development Commission

The Zambia Law Development Commission (ZLDC) is a statutory body established under the Zambia Development Commission. The ZLDC is composed of the following part-time members:

- A Judge nominated by the Judiciary
- A representative of any School of Law in a public university
- A representative of the Institute of African Studies at the University of Zambia
- The Chief Parliamentary Draftsman

- A representative of the Law Association of Zambia
- The Director of the Institute of Advanced Legal Education
- Not more than four other persons appointed

The relevant functions of the ZLDC are as follows:

- Revise and reform the law in Zambia;
- Codify unwritten laws in Zambia;
- Review and consider proposals for law reform referred to the Commission by the Minister or the members of the public;
- Hold seminars and conferences on legal issues;
- Translate any piece of legislation into local languages;
- Encourage international co-operation in the performance of its functions under this Act; and
- Do all such things incidental or conducive to the attainment of the functions of the Commission.

How can CSOs engage with the ZLDC?

- Seek meetings with the ZLDC to raise their awareness of key human rights issues.
- Provide written submissions when requested.



Contact details

The Director
Zambia Law Development Commission,
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P O Box 34670,
Kabulonga, Lusaka



Key Traditional Authorities

The Constitution under sections 165-172 addresses the chieftaincy and the house of chiefs. The House of Chiefs is made up of 5 chiefs from each province. They are elected by the chiefs in each province to sit on the House of Chiefs.²⁵ Zambia has a total of two hundred and eighty-seven (288) Chiefs. The Chiefs are administered by the Ministry of Chiefs and Traditional Affairs. House of Chiefs is a department under the Ministry of Chiefs and Traditional Affairs. The functions of the House of Chiefs include:

²⁵ S 169(2) of the Constitution

- Review policy and legislation relating to Chiefs Affairs
- Create an enabling environment for Chiefs to participate in Governance and National issues;
- Consider and discuss any Bill dealing with custom or tradition;
- Initiate, discuss and decide on matters that relate to customary law and practice;
- Consider and discuss any other matters referred to it by the President;
- Submit resolutions on any Bill or other matters referred to it by the President and the President shall cause such resolutions to be laid before the National Assembly
- Ensure that relevant legislation is sourced and made available to members so as to facilitate smooth functioning of the House;
- Develop and implement schedules of sessions for the HOCs;
- Develop sustainable liaison between the House and relevant stakeholders.



How CSOs can engage with traditional authorities

Traditional authorities can be easily accessed through community structures. However, they do not have strict formal procedures of engagement. CSOs can engage with traditional authorities orally or through written submissions.



Contact details for the House of Chiefs

Mr Coillard C. Chibbonta
Permanent Secretary
Tel: +260 211 254 158



3

Regional Institutions and Processes

Regional Institutions

The relevant regional institutions are as follows:

- African Commission on Human and Peoples' Rights (ordinary and extraordinary sessions)
- African Committee of Experts of the Rights and Welfare of the Child
- NGO Forum
- Special Mechanisms

African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) established under the African Charter on Human and Peoples' Rights (ACHPR) consists of eleven experts who serve in their personal capacity. They are nominated by parties to the ACHPR. The African Commission is responsible for monitoring state compliance with the ACHPR, interpreting and applying the rights and obligations outlined under the ACHPR, and promoting and ensuring the rights outlined in the ACHPR.

The African Commission holds its "ordinary sessions" in March or April and in October or November. The sessions usually last 15 days. One of the sessions is held at headquarters in Banjul, The Gambia. The Chairperson may also decide to hold additional "extraordinary sessions" at the request of the African Union (AU) Chairperson or a majority of Commission members.

To participate in the activities of the African Commission, civil society organizations need to apply for observer status before the African Commission or work with an organisation that already has observer status. Currently, 8 civil society organizations in Zambia have observer status:²⁶

- Inter African Network for Human Rights and Development (AFRONET)
- Zambia Independent Monitoring Team (ZIMT)
- Catholic Commission for Justice and Peace (CCJP), Zambia
- Zambia Reconstruction Organisation (ZAMRO)
- Women and Law in Southern Africa
- African Regional Council for Mental Health (ARCMH)
- Citizens for a Better Environment
- Institute of Wildlife, Forestry and Human Development Studies
- The Permanent Human Rights Commission of Zambia (affiliate status)

²⁶ <http://www.achpr.org/states/zambia/>



Key opportunity: Obtaining observer status

To participate in the activities of the African Commission, civil society organizations need to apply for observer status before the African Commission or work with an organisation that already has observer status.

To apply for observer status, NGOs must provide information on how their objectives and activities aim to promote or protect Charter principles, their human rights work, and their financial resources. NGOs must apply (at no cost) at least three months before a session.

With observer status, NGOs can make a public statement in African Commission public sessions and file complaints with the African Commission.

NGO Forum

Prior to ordinary sessions, there is an NGO Forum. The NGO Forum brings together NGOs to share information, meet the Commissioners, and adopt resolutions on issues that will be discussed by the African Commission. These resolutions are then submitted to the African Commission, who can use them when considering the adoption of resolutions by the African Commission.²⁷ The NGO Forum is a critical opportunity and platform for key population organisations to raise their issues regionally.

The NGO Forum is coordinated by the African Centre for Democracy and Human Rights Studies, an NGO based in Banjul, The Gambia.

Special Mechanisms

Under Article 23 of the Rules and Procedures of the African Commission, the African Commission has established special mechanisms for addressing the protection of rights in a number of thematic areas. Some of the mechanisms relevant to HIV include:

- The Committee on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV
- The Special Rapporteur on the situation of human rights defenders
- The Special Rapporteur on Prisons Conditions of Detention and Policing in Africa
- The Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
- The Special Rapporteur on Rights of Women
- The Special Rapporteur on Freedom of Expression and Access to Information
- Committee for the Prevention of Torture in Africa
- The Working Group on Economic, Social and Cultural Rights

²⁷ <http://www.ishr.ch/news/ngo-forum>

The special mechanisms can conduct country missions and hold convenings and meetings to promote issues in their mandate and investigate particular rights violations, if agreed to by the country. They can also promulgate resolutions and guidelines on issues within their mandate.²⁸



What Special Mechanisms Can Do

- ✓ Conduct country missions
- ✓ Hold convenings and meetings to promote relevant issues
- ✓ Investigate particular rights violations, if agreed to by the country.
- ✓ Issue resolutions and guidelines on relevant issues

Regional Processes

The relevant processes at the regional processes are as follows:

- Monitoring country compliance with regional treaties and submission of shadow reports
- Communications to the African Commission and its Committees and Experts
- Special Mechanisms/Special Rapporteurs

Monitoring country compliance with regional treaties

Under the ACHPR, all state parties are required to submit periodic activity reports outlining the country's compliance with the rights and obligations guaranteed under the ACHPR. Once a country has submitted their report, the African Commission considers the report at one of the three sessions it holds in the year.

CSOs can submit “shadow reports” providing the African Commission with information regarding the human rights situation in the country. The shadow report is a written document outlining how the country is abiding by or violating the rights guaranteed in the international treaty.

In a public session, the African Commission considers the country's report, including discussing issues and asking questions of particular concern and permitting NGOs to make statements from the floor. In addition, CSOs can draft shadow reports on the country's compliance with the ACHPR. A template is provided in Appendix A.

The African Commission then issues concluding observation providing recommendations to the country for ensuring compliance with the ACHPR.

²⁸ For more information regarding the special mechanisms: <http://www.achpr.org/mechanisms/>.

Communications to the African Commission²⁹

Individuals, NGOs, who have observer status at the African Commission, and other state parties can lodge communications with the African Commission in cases where state action violates the ACHPR.

The following are requirements for submissions of communications. Guidelines on how to file a complaint to the African Commission are provided in Appendix D.

- include the author's name even if the author wants to remain anonymous;
- include the name(s) of the complainant or complainants, their nationalities, occupation or profession, addresses and signatures. If the communication emanates from an NGO, it should include the address of the institution and the names and signatures of its legal representatives. If the communication is from a State Party, the names and signature of the State representative, together with the national seal would be required.
- the communication must be in writing, and addressed to the Secretary or Chairman of the African Commission;
- should describe the violation of human and/or peoples' rights that took place, indicate the date, time (if possible), and place where it occurred. It should also identify the State concerned.
- the complainant must have exhausted all available domestic legal remedies or indicate the reasons exhausting domestic legal remedies was not possible;
- the communication must not be written in insulting language directed against the state or the African Union;
- the communication must not be based exclusively on news from the media;
- the communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies; and
- the communication must not deal with a matter which has already been settled by some other international human rights body.

Communications should be sent to the Secretariat of the Commission which is based in Banjul, The Gambia. Once a communication is received, it is registered under a file number in the Commission's Official Register of Communications kept at the Secretariat of the African Commission. The Secretariat will acknowledge receipt of the author's letter of complaint. If more information is required, the author will be informed accordingly.

As soon as the communication is registered, a summary is made and is distributed to all the commissioners. A letter is written to the complainant acknowledging receipt of the communication. No letter is sent to the State party concerned at this stage. The Secretariat has to wait for a response from at least seven of the eleven members to indicate that they have received the communication and approved seizure. Alternatively, if the Secretariat does

29 African Commission on Human and Peoples' Rights. Information Sheet No. 2: Guidelines for the Submission of Communications Organisation of African Unity; African Commission on Human and Peoples' Rights. Information Sheet No. 3: Communication Procedure.

not receive minimum number of seven responses, the communication shall be presented to all the commissioners at the Commission's next session.

The African Commission initially determines whether the communication is admissible. Once it is determined that it is, the African Commission considers the merits of the communications, the parties are able to make written or oral presentations to the African Commission. Some States send representatives to the Commission's sessions to refute allegations made against them. NGOs and individuals are also granted audience to make oral presentations before the Commission.

After the session, the African Commission will issue its decision and recommendations.

Special Mechanisms/Special Rapporteurs

CSOs can engage with Special Mechanisms through written communications outlining concerns regarding human rights violations and requesting investigation of such violations, country visits, and potential resolutions or guidelines. Detailed information regarding the contact information and mandate of the Special Mechanisms can be found at <http://www.achpr.org/mechanisms/>.

How CSOs can engage with regional mechanisms and processes

- Obtain observer status.
- Draft shadow reports. A template for a shadow report is available at Appendix A.
- File a communication with the African Commission or the child rights committee of experts.
- Engage with relevant Special Rapporteur or Mechanism through writing a letter outlining relevant human rights concerns in country.





4

International Institutions and Processes

International Institutions

The relevant international institutions are as follows:

- Treaty Bodies
- Special Procedures
- Human Rights Council

Treaty Bodies³⁰

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. There are ten human rights treaty bodies composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties. The treaty bodies relevant to HIV are as follows:

- Human Rights Committee
- Committee on the Elimination of Discrimination Against Women
- Committee on the Rights of the Child
- Committee against Torture
- Committee on Migrant Workers
- Committee on Economic, Social and Cultural Rights
- Committee on the Rights of Persons with Disabilities

Special Procedures³¹

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. As of 30 September 2016 there are 43 thematic and 14 country mandates.

Special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and others in which they bring alleged violations or abuses to their attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation. Their tasks are defined in the resolutions creating or extending their mandates.

Special Procedures relevant to HIV include:

- Special Rapporteur on the rights of persons with disabilities;

30 United Nations Human Rights Office of the High Commissioner. Monitoring the Core International Human Rights Treaties available at <http://ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

31 United Nations Human Rights Office of the High Commissioner. Special Procedures of the Human Rights Council available <http://ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Special Rapporteur on the human rights of migrants;
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and
- Special Rapporteur on violence against women, its causes and consequences.



What Special Procedures Can Do

- ✓ Undertake country visits to assess the human rights situation.
- ✓ Investigate individual complaints of rights violations
- ✓ Conduct thematic studies
- ✓ Convene expert consultations on relevant human rights issues

Human Rights Council³²

The Human Rights Council is an inter-governmental body within the United Nations (UN) system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year.

The Human Rights Council is made up of 47 UN Member States which are elected by the UN General Assembly.

International Processes

The relevant processes at the international level are as follows:

- Complaint to treaty body
- Drafting shadow reports
- Universal Periodic Review

Complaint to Treaty Body³³

A number of the treaty bodies are empowered to hear individual complaints. In particular, the Human Rights Committee; the Committee on the Elimination of Discrimination against

32 United Nations Human Rights Office of the High Commissioner. United Nations Human Rights Council available at <http://ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>.

33 United Nations Human Rights Office of the High Commissioner. Human Rights Bodies - Complaints Procedures available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

Women; and Committee on the Rights of Persons with Disabilities can hear complaints of violations of the rights of the respective treaties.

Individuals, countries and NGOs can file complaints against state parties. The complaint should be in writing and contain the following information:

- Details of the complainants, including name, nationality, date and place of birth, and address;
- The country against whom the allegations is being made;
- The treaty articles being violated;
- Whether domestic remedies have been exhausted and if not, why domestic remedies have not been exhausted;
- Facts of the complaint;
- Complainant's signature; and
- Any corroborating evidence, such as domestic court decisions and evidence confirming the facts alleged.

A template for filing a complaint is provided in Appendix C. Information on where complaints should be sent can be found: <http://www.ohchr.org/EN/HRBodies/TBPPetitions/Pages/IndividualCommunications.aspx#contact>

Shadow Reports

Countries submit periodic reports to the relevant treaty bodies on how the rights are being implemented under each international human rights treaty. In addition to the country report, civil society organizations can submit “shadow reports” providing the treaty body with information regarding the human rights situation in the country. The shadow report is a written document outlining how the country is abiding by or violating the rights guaranteed in the international treaty. A template for a shadow report to a treaty body is provided in Appendix B. CSOs can also make oral submissions when the country is questioned about its report.

In the light of all the information available, the relevant treaty body examines the report in the presence of a State party's delegation. It outlines a list of questions based on the country's report and shadow reports. Based on this constructive dialogue, the treaty body publishes its concerns and recommendations, referred to as “concluding observations”.

Universal Periodic Review³⁴

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in its country and to fulfil its human rights obligations. As one of the main features of the Human Rights

³⁴ United Nations Human Rights Office of the High Commissioner. Universal Periodic Review available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

Council, the UPR is designed to ensure equal treatment for every country when its human rights situation is assessed.

The UPR is similar to State reporting in that it requires States to submit human rights reports for consideration by the Human Rights Council, and stakeholders have an opportunity to participate. All UN Member States are subject to peer review by fellow States once every four years.³⁵ Other than the national report, the UPR is also informed by a stakeholder report, based on information provided by NGOs and national human rights institutions, and a report based on information provided by the UN Country Team operating on the ground, human rights treaty monitoring bodies and other UN sources.

CSOs can participate in the national process of developing the government report and also draft their own stakeholder report. While there is no scope for direct participation by CSOs in the Working Group sessions where the interactive dialogue/review takes place, they may make representations to the full Human Rights Council when the outcome of the review is being debated and discussed. They can also lobby other governments to raise in the Working Group issues of concern to them and to make appropriate recommendations for consideration by their own government.

The State under review will indicate which recommendations it accepts, and it is expected to implement these recommendations. The accepted recommendations, like the treaty body recommendations present an opportunity for CSOs to further engage their government. These can be used as reference points and lobby/advocacy tools. It is advisable for CSOs to keep track of the reporting cycles of the Human Rights Council, which countries are being reviewed, the accepted recommendations, etc. This information is available on the website of the UN Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>.

Special Procedures

Individuals, state parties, and NGOs can engage with Special Procedures through written communications outlining concerns regarding human rights violations and requesting investigation of such violations and country visits.

35 The UPR was adopted by the UN General Assembly, as a mechanism of the UN Human Rights Council, to review the implementation of human rights in all the UN Member States. The Human Rights Council is a subsidiary body of the General Assembly established in 2006, whose primary function is promoting universal respect for and the protection of all human rights and fundamental freedoms for all, addressing situations of violations of human rights, and promoting the effective coordination and the mainstreaming of human rights within the UN system - UN General Assembly Resolution 60/251, UN Doc A/RES/60/251, 15 March 2006.



How CSOs can engage with international mechanisms and processes

- Engage with relevant Special procedures (special rapporteurs, working group, specialised committees, etc.) through writing a letter outlining human rights concerns in country and requesting investigation or a country visit.
- Provide input in the national process of developing the government report for the UPR process.
- Draft stakeholders' submission during UPR process.
- Engage with other governments to raise questions in the Working Group sessions.
- Draft a shadow report
- Use the concluding observations and recommendations of the human rights treaty monitoring bodies to advocate for domestic changes.
- CSOs can file a complaint with the relevant treaty body.



5

Other Influential Actors

Media

There are a number of key media outlets in Zambia. The key television network is the Zambia National Broadcasting Corporation (ZNBC). With regards to print media, there are two government-sponsored newspapers—The Daily Mail and The Times of Zambia—and a few privately owned papers that have national circulation including The Mast, The Daily National, The Nation's Newspaper and The Daily Monitor. The internet is one of the main sources that journalists and bloggers in Zambia use to express their critical views about the government. Some websites like Mwebantu, Zambia reports and Zambia Watchdog are very popular with social media users. There are many radio stations in Zambia which are relevant.

Traditional and social media are key tools for indirectly engaging with different processes and institutions to form and shape public opinion since it is key in holding state actors accountable.

Legal

The Law Association of Zambia (LAZ) is a professional corporate body. LAZ represents the legal profession in Zambia and it currently has a membership of more than 1,000 legal practitioners. LAZ can be useful in finding supportive lawyers and obtain legal advice.

The Legal Aid Board provides legal aid in civil and criminal matters and causes to persons whose means are inadequate to enable them to engage practitioners to represent them.



6

Potential Opportunities

Some examples of potential opportunities related to addressing equality and non-discrimination include the following:

Legal Reform

Work with Parliament to enact specific equality and anti-discrimination provisions to protect the rights of people living with HIV and TB, vulnerable and key populations.

Engagement with Relevant Ministries

Engage with relevant ministries to do the following:

- Discuss the integration in the review of the National HIV/AIDS/STI/TB Policy, strong equality and anti-discrimination protection for all Zambians, including for people living with HIV and its co-infections, as well as vulnerable and key populations.
- Conduct awareness-raising and sensitization campaigns to reduce HIV- and TB-related stigma and discrimination, including working in all sectors and with political, traditional and religious leaders
- Sensitize healthcare workers to reduce stigma and discrimination against all people living with HIV, TB, vulnerable and key populations.



7

Key Recommendations to Address Gaps in the Legal and Policy Environment

The key recommendations to address the gaps in the legal and policy environment in this section are identified based on a March 2019 report of the Legal Environment Assessment (LEA). The engagement scan could therefore be used in advocating for the implementation of the LEA recommendations outlined under the following categories: equality and anti-discrimination; health laws and policies; Adolescent and Young People; LGBTI Populations; Sex work, People who use drugs; inmates; criminalisation of HIV; employment; education and Information; social welfare; access to justice; and women and end equality and gender based violence.

Equality and Anti-Discrimination

- Enact specific equality and anti-discrimination provisions to protect the rights of people living with HIV and TB, vulnerable and key populations.
- Integrate, in the review of the National HIV/AIDS/STI/TB Policy, strong equality and anti-discrimination protection for all Zambians, including for people living with HIV and its co-infections, as well as vulnerable and key populations.
- Conduct awareness-raising and sensitization campaigns to reduce HIV- and TB-related stigma and discrimination, including working in all sectors and with political, traditional and religious leaders
- Sensitize healthcare workers to reduce stigma and discrimination against all people living with HIV, TB, vulnerable and key populations.
- Strengthen access to justice and enforcement of rights for HIV-related discrimination.

Health laws and policies

- Strengthen access to appropriate healthcare services, including psychosocial support and expanded access to PrEP, for key populations, including young key populations
- Provide in law for voluntary, informed consent to HIV testing and counselling and for the age of consent to HIV testing.
- Consider lowering the age of consent (from 16 years) for access to health services.
- Provide in law for the right to confidentiality with regard to all health information and health status, including information relating to key populations, and for strict conditions under which disclosures may take place
- Strengthen training for health workers on human rights, gender equality and medical ethics, to reduce stigma and discrimination and protect the health rights of people living with HIV, TB and key populations, including young key populations.
- Strengthen training for healthcare workers on the specific and diverse health needs of key populations, including young key populations.
- Integrate youth- and key population-friendly health services in mainstream health care centers.

- Strengthen access to complaints mechanisms for HIV-related human rights violations within healthcare.

Adolescents and Young People

- Harmonise the legal framework to prohibit marriage below 18 years of age.
- Strengthen provision in law and policy for access to adolescent health care information and services, including access to condoms in schools and comprehensive sexuality education that provides for the rights and needs of all young people, including young key populations.
- Include clear provision in law / policy for the (lowered) age of consent to SRH and HIV services.
- Ensure abortion, where legal, is not subject to minimum age of consent requirements or parental consent and strengthen access to safe abortion, including post-abortion care.
- Train health care workers on the SRHR of young people and the provision of adolescent-friendly health care services.
- Strengthen dialogue with and sensitization of traditional authorities and communities to challenge harmful gender norms, particularly child marriage.
- Provide for increased and strengthened mechanisms for reporting and follow-up of sexual violence and abuse of children (e.g. community centres, child protection units in schools; youth-friendly victim/witness offices within Victim Support Units) and support for families
- Expedite the review of the Anti-GBV Act to provide for prevention of all forms of gender-based violence.
- Strengthen training and sensitization of police to provide child and youth-friendly services
- Promote young people's participation in policies to integrate HIV and sexual and reproductive health and rights services and policies, including comprehensive sexuality education.
- Strengthen community and family participation in adolescent friendly health care services.

LGBTI Populations

- Support legal reform, through submissions to the Zambia Law Development Commission, to amend the Penal Code and Criminal Procedure Code to decriminalize same-sex sex between consenting adults.
- Ensure the involvement of LGBTI populations in law review and reform processes.
- Sensitise LGBTI populations, including young key populations, on their rights.

- Conduct community awareness-raising and sensitization campaigns to reduce stigma and discrimination against LGBTI populations, including young key populations.
- Provide pre-service and in-service training to health care providers on the human rights of and healthcare needs of LGBTI populations, including young LGBTI populations
- Integrate sexual and reproductive health care services, including psycho-social support services, for the needs of LGBTI populations, including young LGBTI populations.
- Sensitise law enforcement officers on the rights of LGBTI populations.
- Strengthen access to justice for LGBTI populations, including through strategic litigation.
- Strengthen access to economic empowerment initiatives for LGBTI populations to overcome marginalisation
- Prioritise further research on LGBTI populations, including young LGBTI populations.

Sex Workers

- Make submissions to the Zambia Law Development Commission to review laws criminalizing aspects of sex work and provisions misused against sex workers, in their review of the Penal Code and Criminal Procedure Code
- Ensure the involvement of sex workers in law review and reform processes.
- Sensitise sex workers on their rights.
- Conduct community awareness-raising and sensitization campaigns to reduce stigma and discrimination against sex workers.
- Train and sensitise health care providers on the rights and health care needs of sex workers.
- Strengthen appropriate sexual and reproductive health care services for sex workers.
- Train and sensitise law enforcement officials on the rights of sex workers and take measures to protect sex workers from violence, harassment and abuse.
- Strengthen appropriate healthcare services for sex workers.

People who use drugs

- Review provisions in the Narcotic Drugs and Psychotropic Substances Act that act as barriers to access to harm reduction and health care services for people who use drugs
- Ensure the involvement of people who use drugs in law review and reform processes.
- Adapt and operationalize the UN system endorsed core package of nine essential harm-reduction services for people who inject drugs, which have been shown to reduce HIV infections (IAWG, 2014):
- Introduce needle and syringe exchange and distribution programmes

- Integrate drug dependence treatment, including opioid substitution therapy
- Intensify HIV testing and counselling for people who inject drugs
- Provide antiretroviral therapy
- Prevention and treatment of sexually transmitted infections
- Implement condom programmes for people who use drugs and their sexual partners
- Targeted information, education and communication for people who used drugs and their sexual partners
- Provide diagnosis and treatment of, and vaccination for, viral hepatitis and Prevention, diagnosis and treatment of tuberculosis
- Train and sensitise health care providers on the rights and health care needs of people who use drugs
- Train and sensitise law enforcement officials on the rights of people who use drugs and take measures to reduce violence and human rights violations against people who use drugs.

Inmates

- Support the review of the Prisons Act to, , inter alia, review the Prisons Act, in line with the 2016 Constitution, international standards and act on the Auditor General's 2014 recommendations.
- Ensure the review of the Prisons Act includes strengthened rights of all prisoners and protects all prisoners, including juveniles and women prisoners, from sexual violence.
- Increase access to legal representation to ensure access to justice for all accused persons, including juvenile accused
- Implement all existing legal provisions to decrease overcrowding in prisons (including allowing for the release of awaiting-trial prisoners, alternative sentencing, where appropriate and for carrying out parole hearings timeously).
- Implement all existing legal provisions to protect juveniles in prisons (including for the elimination of extended pre-trial detention, the expansion of non-custodial sentencing options, the separation of juvenile and adult inmates, the transfer of juveniles to juvenile detention facilities on conviction and for increased reformatory schools).
- Strengthen the investigation and response to prison offences involving sexual violence and exploitation in Zambian prisons, including for young inmates
- Strengthen access to voluntary HIV, TB and SRH care services for inmates, including the full package of HIV prevention and care services as well as those for TB, regardless of laws criminalizing same-sex acts or harm reduction, and including provision of condoms, comprehensive harm reduction services, voluntary and evidence-based treatment for drugs and ART, in line with SADC standards.

- Promote and put in place mechanisms for whistle-blowing on human rights exploitations by both correctional officers and fellow inmates.

Criminalisation of HIV Transmission

- The enactment of a specific provision criminalizing HIV transmission, exposure or non-disclosure in Zambia is not recommended.
- Develop prosecutorial guidance on the appropriate use of the Anti-Gender-Based Violence Act and Penal Code provisions in relation to HIV.
- Ensure that the review of the Anti GBV-Act and Penal Code exclude overly broad provisions criminalizing HIV transmission, exposure or non-disclosure.

Employment

- Review employment law and policy to specifically prohibit discrimination on the basis of HIV and TB status, health status, sexual orientation and gender identity.
- Review employment law and policy to specifically prohibit pre-employment HIV testing.
- Develop a national occupational health and safety policy that integrates protection from HIV and TB in the working environment.
- Strengthen employer and employee's awareness of access to justice for workplace-related rights violations, in terms of section 36(4) of the Employment Act.
- Strengthen co-ordination, in law, policy and strategies, of TB control and management in Zambian mines between the key government ministries of Health, Mines and Labour.
- Strengthen monitoring and evaluation of HIV & TB workplace policies and programmes in all workplaces, and in particular mines and mining communities

Education and Information

- Strengthen access to education, including through ensuring adequate funding for all schools and learning institutions.
- Strengthen the provision of comprehensive sexuality education that accommodates the needs of all adolescents, including young key populations, in the school curricula, in line with ESA Commitments.
- Strengthen training of guidance and counselling teachers to provide emotional, social, and psychological support to all young learners, including students affected by HIV, TB as well as young key populations,
- Strengthen efforts to address bullying in schools on the basis of e.g. sexual orientation and gender identity.

Social Welfare

- Increase resources for social protection programmes, including for vulnerable and key populations in the context of HIV and TB.
- Advocate for livelihood and empowerment support schemes to provide support for key populations, particularly young key populations

Women, Gender Inequality and GBV

- Expedite the review of the Anti-GBV Act 2011 to strengthen prevention of GBV and access to justice for violations.
- Develop community awareness campaigns to increase knowledge of rights and redress amongst women and girls and to challenge gender inequality, harmful gender norms and GBV amongst men and boys.
- Increase funding for government implementation of responses to gender inequality, harmful gender norms and gender-based violence (e.g. for Ministry of Gender, Ministry of Health, Ministry of Labour and Ministry of Education)
- Monitor and evaluate the level of mainstreaming and implementation of programmes related to:
 - The National Gender policy;
 - The Matrimonial Causes Act; and
 - The Anti Gender Based Violence Act No. 1 of 2011
- Strengthen databases, through the National Gender Monitoring and Evaluation Technical Working Group and institutions such as the Central Statistical Office (Ministry of Gender, 2014).

Access to Justice

- Strengthen people living with HIV, TB, vulnerable and key populations', including young key populations', awareness and understanding of their human rights.
- Strengthen campaigns to reduce stigma and discrimination against people living with HIV, TB, vulnerable and key populations, including young key populations, amongst communities.
- Train service providers, including health workers, social workers and educators on the rights of people in the context of HIV, TB and SRHR, including the rights of people living with HIV, TB, vulnerable and key populations, including young key populations.
- Strengthen access to legal support services, including pro bono lawyers, legal aid and paralegal support services for people living with HIV, TB, vulnerable and key populations, including young key populations

- Train members of the judiciary to sensitize them to HIV, SRHR and human rights issues affecting people living with HIV, TB and key populations, including young key populations.
- Strengthen the Zambia Human Rights Commission's role in research, investigation and monitoring of the rights of people living with HIV, TB and key populations, including young key populations
- Training and sensitize law makers and law enforcement officials, including at higher level, to the rights of key populations, including young key populations
- Strengthening access to justice and disciplinary action for police violations of rights



8

Timelines to Note

February	Parliament opens
March	Human Rights Council session - UPR
April	African Commission session
May	Parliament closes for winter
September	Parliament opens/HRC session
October/November	African Commission session
December	Parliament closes

Appendices

Appendix A: African Commission Shadow Report Template

African Commission on Human and Peoples' Rights
[number] Ordinary Session
[dates of session]
Report on [issue] in the [name of country]
Under the African Charter on Human and Peoples' Rights
in response to
The [number] Periodic Report of the Government of [country]
presented at
The [number of session] Ordinary Session of the Commission [date of session]
prepared by
[name of organization]
[description of organization]
and
[name of organization]
[description of organization]
[date of submission]

Executive Summary

1. [Summarize the human rights violations your report addresses and your recommendations for action by the Government of _____.
 - a. _____'s international, regional, and domestic commitments to human rights include [_____].
2. [Identify the relevant treaties that Government has ratified.]
3. [Identify the relevant provisions in Government's Constitution.]
- 4.. [Describe any recent statements by the Government of _____ that it will honor its human rights commitments, e.g., the state report, statements during the Universal Periodic Review.]
 - a. The Government of _____ has failed to uphold its human rights obligations in the context of [_____].
5. [Give an outline of the topics the report will cover. Note: This template has 5 topics, but your report may have more or fewer topics.]

A. [Topic 1]

6. [Summarize the human rights violations addressed in Topic 1.]
7. [Briefly describe the relevant treaty language and how it relates to Topic 1.]
8. [Summarize the “procedural history” of Topic 1. What, if anything, did Government say on the topic during the last African Commission review, during the last Universal Periodic Review, and during the last reviews by the relevant UN treaty bodies? What were the relevant outcomes of those procedures?]
8. [Describe the Government's current position on the topic, as extracted from the latest state report. If the state report is silent on the topic, look to any recent official pronouncements.]
- 10.[Describe the reality, explaining why the Government's position is inaccurate, incomplete, misleading, or false. Incorporate first-hand accounts and other documentation of human rights conditions on the ground, if relevant.] [Note: This part will likely take multiple paragraphs. It is the most important and most substantive part of the report.]

Suggested questions for the delegation from the Government of _____:

Suggested recommendations for the Government of _____:

B. [Topic 2]

- 11.[Summarize the human rights violations addressed in Topic 2.]
- 12.[Briefly describe the relevant treaty language and how it relates to Topic 2.]
- 13.[Summarize the “procedural history” of Topic 2. What, if anything, did Government say on the topic during the last African Commission review, during the last Universal Periodic Review, and during the last reviews by the relevant UN treaty bodies? What were the relevant outcomes of those procedures?]

14 [Describe the Government's current position on the topic, as extracted from the latest state report. If the state report is silent on the topic, look to any recent official pronouncements.]

15.[Describe the reality, explaining why the Government's position is inaccurate, incomplete, misleading, or false. Incorporate first-hand accounts and other documentation of human rights conditions on the ground, if relevant.] [Note: This part will likely take multiple paragraphs. It is the most important and most substantive part of the report.]

Suggested questions for the delegation from the Government of _____:

Suggested recommendations for the Government of _____:

III. Conclusion

16.[Restate your main points and your most important recommendations.]

Appendix B: Shadow Report Template for International Bodies

1. Title
2. Reporting Organization(s):
 - Note whether this is an individual or coalition submission.
 - List and briefly describe the organization or coalition of organizations and advocates authoring and/or endorsing this submission, including the geographic scope of the organization(s), focus issues, location and mission.
 - If the coalition is large, include the full list of organizations and individual signatories as a footnote or annex.
3. Introduction and Issue Summary
 - Note whether this is an update to a prior submission.
 - Briefly summarize (1-2 paragraphs) the human rights issue your submission addresses. Focus on providing updates since your previous submission (if applicable).
 - Highlight the following aspects: roles played by federal, state and local government in your issue; legislation that could remedy the human rights situation; relevant data; charts; and stories from victims and survivors.
4. Relevant Question in List of Issues
 - If issue was included in the List of Issues, note which question in the list your issue pertains to.
 - If the language in the question did not sufficiently address the issue, suggest modified language and other suggested questions to be raised during the US review.
5. Government Response
 - If the relevant government submits its replies on time, reference the government's position in respect to your issue.
 - If the relevant government has not submitted its report, reference the government's position based on outside information.
 - Explain how the government's position comports with its obligations under the ICCPR, keeping in mind Committee's questions, prior concluding observations, and (if applicable) general comments.
6. Recommended Questions
 - 2-3 questions the relevant Committee should ask the Government during the review.
 - List, in order of priority

7. Suggested Recommendations

- 2-3 recommendations the Committee should provide to the Government upon its review
- List, in order of priority
- Recommendations may include changes to law, policy, or practice at the local, state, or federal level.
- Recommendations should include specific policies, laws and even legislation or programs that you want the Committee to include in the concluding observations.

Appendix C: Model Complaint Form for International Treaty Bodies

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

Please indicate which of the above procedures you are invoking:

Date:

I. Information on the complainant:

Name: First name(s):

Nationality: Date and place of birth:

Address for correspondence on this complaint:

Submitting the communication:

on his/her own behalf:

on behalf of another person:

If the complaint is being submitted on behalf of another person:

Please provide the following personal details of that other person

Name: First name(s):

Nationality: Date and place of birth:

Address or current whereabouts:

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint

Or

If you are not so authorized, please explain the nature of your relationship with that person: and detail why you consider it appropriate to bring this complaint on his or her behalf:

II. State concerned/ Articles violated

Name of the State against which the complaint is directed:

.....

Articles of the Covenant or Convention alleged to have been violated:

.....

III. Exhaustion of domestic remedies/ Application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of the particular case. Please explain how you consider that the facts and circumstances described violate your rights.

.....
.....
.....

Author's signature:

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization):
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful):
- Complaints to and decisions by any other procedure of international investigation or settlement:

- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights:
- Please include, if necessary, an indication in a UN language (Arabic, Chinese, English, Spanish, French and Russian) of the contents of the accompanying documentation.
- Your communication should not exceed 50 pages (excluding annexes). In case your application exceeds twenty pages, you must also file a short summary.

Appendix D: Guidelines for submitting complaint to the African Commission

- a. Complainant(s) (please indicate whether you are acting on your behalf or on behalf of someone else. Also indicate in your communication whether you are an NGO and whether you wish to remain anonymous).

Name

Age

Nationality

Occupation and/or Profession

Address

Telephone/Fax no

- b. Government accused of the Violation (please make sure it is a State Party to the African charter).
- c. Facts constituting alleged violation (Explain in as much a factual detail as possible what happened, specifying place, time and dates of the violation).
- d. Urgency of the case (Is it a case which could result in loss of life/lives or serious bodily harm if not addressed immediately? State the nature of the case and why you think it deserves immediate action from the Commission).
- e. Provisions of the Charter alleged to have been violated (if you are unsure of the specific articles, please do not mention any).
- f. Names and titles of government authorities who committed the violation (if it is a government institution please give the name of the institution as well as that of the head).
- g. Witness to the violation (include addresses and if possible telephone numbers of witnesses).
- h. Documentary proofs of the violation (attach for example, letters, legal documents, photos, autopsies, tape recordings etc., to show proof of the violation).
- i. Domestic legal remedies pursued (Also indicate for example, the courts you've been to, attach copies of court judgments, writs of habeas corpus etc).
- j. Other international avenues (Please state whether the case has already been decided or is being heard by some other international human rights body; specify this body and indicate the stage at which the case has reached).



*Empowered lives.
Resilient nations.*

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