



Zambia

Submission to the UN Universal Periodic Review
Forty-Second Session of the UPR Working Group of the Human Rights Council

Date: 14 July 2022

Submitted by: Equality Now, Young Women in Action, Women and Law in Southern Africa (WLSA) and The Forum for African Women Educationalists of Zambia (FAWEZA).

Introduction and Summary

1. **Equality Now** is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 160 countries.
2. **Young Women in Action (YWA)** is a not-for-profit, membership-based Non-Governmental Organisation established in 2002 to provide an enabling environment in which young women in Zambia can contribute towards their own empowerment and national development.
3. **Women and Law in Southern Africa (WLSA)** is a human rights Non-Governmental Organisation with a bias towards women's and children's rights. It was founded in 1989 by female lecturers in Southern African Universities to respond to the social and legal needs of women in the region; and develop women's rights methodologies. The organisation has presence in 7 countries which include Zimbabwe, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Zambia and Zimbabwe.
4. **The Forum for African Women Educationalists of Zambia (FAWEZA)** is a gender justice organisation with a mandate of promoting access to education for women and girls in Zambia. The organisation was formed in 1996 and is registered as a non-partisan non-governmental organisation under the Registrar Society of Zambia. FAWEZA's mission is to advocate for policies and legislation that promote gender equity and equality in education by fostering interventions that encourage positive attitudes towards girls' and women's education in Zambia.
5. During the previous UPR cycle, Zambia received 58 recommendations to strengthen and improve measures regarding women's and girls' rights protection. Of these

recommendations, 9 related to the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; 1 related to the ratification of the Convention Against Discrimination in Education; 16 related to the ratification of the Optional Protocols to the Convention on the Rights of the Child; 8 related to eliminating discrimination against women; 10 related to preventing and eliminating violence against women, including to strengthen efforts to eliminate sexual violence; 10 related to the protection of children, including adopting a standardized definition of 'child', and setting the age of marriage to 18 years; and 4 related to the right to education including the reintegration of adolescent mothers into formal education.

6. This submission outlines the challenges in the implementation of international norms and standards and the legislation of Zambia in addressing sexual violence, discrimination, child marriage, and the right to education for pregnant girls/teenage mothers. The submission also provides recommendations to the Human Rights Council for consideration for its follow-up on the preceding review.

Ratification of International and Regional Human Rights Instruments

7. It is noted that during the previous UPR cycle, Zambia was called upon to ratify the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, the Optional Protocols to the Convention on the Rights of the Child, and the Convention against Discrimination in Education.
8. Zambia has not yet ratified these instruments.

Sexual Violence in Zambia

9. Zambia has high rates of Sexual and Gender Based Violence (SGBV), which were further exacerbated during the COVID-19 pandemic. The State Party admits that the pandemic led to a diversion of resources from other programmes to safeguard the health of the citizens, and delays in implementing programmes. Indeed, the pandemic revealed crippling inequalities that exist in Africa, including in Zambia, with children and women bearing the brunt of fragility and disparity.¹ It has increased the gender inequality gap and exposed the Zambian government's failure to ensure that its COVID-19 response measures are gender-sensitive and therefore gender responsive, much to the detriment of women and children's rights.
10. The Children Code Bill **is yet to be enacted**, which means that the legislative environment still lacks sufficient protections for children against sexual violence and harmful practices and even comprises discriminatory and contradictory provisions that fail to protect children's rights and foster impunity.

Coordination by National Government

11. We note that following the elections held in August 2021 and the establishment of the new government, the Ministry of Gender was dissolved while the Ministry of Youth, Sport and Child Development re-aligned.² The functions of the Ministry of Gender are domiciled at the Office of the President while children's matters have been added to

the existing Ministry of Community Development and Social Services. Although the impact of the dissolution of the Ministry of Gender is yet to be measured, we are concerned that this administrative alignment which relegate gender and children's affairs to a department, fails to recognize the import of womens and children's rights and threatens to make gender concerns peripheral.

Legal provisions that enable impunity for perpetrators of sexual violence and harmful practices

The Place of Customary Law

12. The Constitution of Zambia is the supreme law and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of its inconsistency.³ It guarantees gender equality as it provides that every person in Zambia is entitled to the fundamental rights and freedoms regardless of any status including sex.⁴ No law shall make any provision that is discriminatory either of itself or in its effect on the basis of race, tribe, sex, place of origin, marital status, political opinions, colour or creed.⁵ However the provision of the Constitution with regard to discrimination is inapplicable with regard to marriage, adoption, divorce, burial, devolution of property on death or other matters of personal law in a customary law context thereby allowing the perpetuation of discriminatory practices unabated especially against women and children especially girls particularly given the patriarchal context
13. Specifically Article 23(4), clause (1) of the Constitution of Zambia, which provides for non-discrimination, does not apply where another law provides for, among others:
 - adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
 - the application of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.
14. It is important to note that culture, customs and traditions in Zambia are an integral part of society. Article 165 guarantees the existence of the institution of chieftaincy and traditional institutions. Parliament is forbidden from enacting legislation which confers the right to recognise or withdraw the recognition of a chief or which derogates from the honour and dignity of the institution of chieftaincy. A chief is bestowed and derives allegiance from the fact of birth or descent, in accordance with the customs, traditions, usage or consent of the people in a chieftdom.
15. Section 34 of the Marriage Act provides that nothing in the Act shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner apply to marriages so contracted. Sections 17 and 34 exempt all marriages under any African customary law from the minimum age of marriage requirements (21 years) under the law. There is no minimum age of consent to marry

under Zambian customary law as the current customary practice allows any girl who attains puberty to get married.

16. Further, Section 12 (1) (a) of the Local Court Act, CAP 29 of the Laws of Zambia, which is mandated to administer customary law provides that: *“Subject to the provisions of this Act, a local court shall administer the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law.”* These provisions guarantee that statutory law prevails in case of conflict with customary practices.
17. In addition, section 16 of the Subordinate Court Act provides that *‘subject as hereinafter in this section provided, nothing in this Act shall deprive a subordinate court of the right to observe and to enforce the observance of, or shall deprive any person of the benefit of, any African customary law, such African customary law not being repugnant to justice, equity or good conscience, or incompatible, either in terms or by necessary implication, with any written law for the time being in force in Zambia’*.
18. Whereas the foregoing means that where customary and statutory laws conflict, statutory law prevails, the Constitution exempts the application of statutory law in some instances. The effect is that the constitutional principles of gender equality and non-discrimination do not apply where customary law provides for adoption, marriage, divorce, burial, and devolution of property. Customary law in Zambia is unwritten and is predominantly patriarchal and discriminatory, leaving children, and especially girls, vulnerable to rights violation.

The definition of a child and age of marriage

19. The Constitution (2016 Amendment) defines a child as a person who is below the age of eighteen years. However, there is incongruence in subsidiary legislation with different statutes providing different ages for the age of an adult and as such whilst the Constitution is the supreme law of the land, the incongruence serves to send mixed messaging in the age of an adult and therefore serves to undermine protections in the law for children against violations through unreasonable exceptions such as on marriage or the age of consent. The inconsistencies are as provided here below.
20. The Employment of Young Persons and Children Act defines a child as a person under the age of 14 years while those over the age of 14 but under 18 are referred to as “young persons.”⁶
21. Section 18 of the Education Act No. 23 of 2011 prohibits marrying or marrying off of a learner who is a child; or preventing or stopping a learner who is a child from attending school for the purpose of marrying him or her off. Any person who contravenes this provision is liable upon conviction to a period of not less than 15

years and may be liable to imprisonment for life. A person who contravenes this section commits an offence and is liable, upon conviction, to imprisonment for a period of not less than fifteen years and may be liable to imprisonment for life. The Act further prohibits a child who is a learner from contracting marriage, but this is subject to the Constitution and other written laws.

22. The Marriage Act sets the minimum legal age of marriage in Zambia at 21 years but allows any person below 21 years to obtain the written consent of a parent or guardian before a marriage is contracted. If a parent or guardian unreasonably refuses to give consent, a Judge of the High Court may, on an application being made, consent to the marriage. If no parent or guardian resides in Zambia, written consent to the marriage can be given by the Minister, a Judge of the High Court, or a District Secretary.
23. Section 33 of the Act provides that a marriage between persons either of whom is under the age of 16 years is void. However, this does not apply where a Judge of the High Court has given his consent to the marriage, on an application being made, and on being satisfied that in the particular circumstances of the case it is not contrary to the public interest.
24. Sections 17 and 34 of the Marriage Act exempt all marriages under any African customary law from the minimum age of marriage requirements (21 years) under the law. There is no minimum age of consent to marry under Zambian customary law as the current customary practice allows any girl who attains puberty to get married.
25. The inconsistency in age of marriage is similarly reflected in the Penal Code. Section 136 states that any person who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour.
26. Section 138 of the Penal Code criminalises defilement and provides that any person who *unlawfully* and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life. This section creates a loop-hole regarding the use of the term “unlawful” as it demonstrates that there are scenarios where it is allegedly lawful such as when “marriage” occurs and hence creates impunity for perpetrators.

Marital rape

27. Although the Anti Gender-Based Violence Act provides for sexual violence within marriage there is no provision in the Penal Code that criminalises rape in marriage providing for its punishment. A failure to recognize marital rape in the law allows for this rape to be perpetuated unabated fostering impunity.

The right to education for pregnant girls and teenage mothers

28. We commend the State Party for transforming the Re-entry Policy into a Statutory Instrument and for its efforts to widely disseminate and ensure its implementation in all primary and secondary schools. The Re-entry Policy guarantees girls the right to stay in school as long as they choose during pregnancy, take maternity leave, and return to school to continue with their studies. This supports the Education Act, 2011, which protects and provides for the right to education for pregnant girls and teenage mothers.

Safe spaces in schools

29. Section 32 of the Education Act mandates the education board or board of management to develop procedures for preventing the gender-based violence of employees, teachers and learners at educational institutions and to establish mechanisms of dealing with cases of gender-based violence.
30. Schools further have guidance and counseling teachers who support learners, provide psychological support, deal with GBV and re-entry as well as manage the Grievance Redressing Mechanism and the Referral Pathways at the school level. However, these teachers are not trained or provided with the necessary support to meaningfully undertake this role within the principles of doing no harm and ensuring child safeguarding.

Awareness raising

31. Despite the presence of a legal and policy framework on sexual violence against women and girls in Zambia, the reality is that sexual violence remains a huge threat. Social stigma, cultural practices, differing levels of implementation, and policy ignorance act as barriers to ending sexual violence in Zambia. There is a need to raise awareness among members of the public and in communities to ensure a change in attitudes among other critical state obligations to prevent and protect its citizenry from sexual and gender based violence.

Access to Justice for Survivors

32. The right of access to justice is a fundamental element of the rule of law, and it is essential to the realisation of human rights everywhere. This right is multidimensional and comprises six interrelated and essential components: justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims.⁷
33. Unfortunately, the Anti-Gender-Based Violence Fund, established under part VI of the Anti-Gender Based Violence Act is yet to be fully operationalised and resources allocated. The fund is a core aspect of accessing justice for survivors as it supports their access to justice as well as responds to their medical and psychosocial needs emerging from the violation in the first instance.

34. The Child Protection Unit under the Zambia Police Service and the GBV fast track courts have enhanced access to justice due to their prioritisation of cases involving children. **However, the GBV courts are sparse and the police, prosecutors and judicial officers have capacity gaps in handling SGBV cases.**
35. The introduction of the new Police Medical Examination Report Form for GBV cases especially sexual offences (ZP Form 32B) is welcome as it is more user friendly and comprehensive, with sufficient room for explanation. **Although the form should be free, survivors are often requested to pay for copies due to inadequate resources. This is a barrier that may discourage survivors from reporting cases and hence not access justice.**
36. One Stop Centres have referral service providers and receive and follow-up cases that are reported. When the centres were handed over to the Ministry of Health, their operation and funding has since depended on the administration of the specific hospitals, resulting in differing responses. There is a need to standardise the care and operation of the One Stop Centres and ensure sufficient resourcing including human resource, transport and financial allocation.
37. The Gender Equity and Equality Commission,⁸ is yet to be established. It is responsible for promoting the attainment and mainstreaming of gender equality and its mandate includes:
- a) monitor, investigate, research, educate, advise and report on issues concerning gender equality;
 - b) ensure institutions comply with legal requirements and other standards relating to gender equality;
 - c) take steps to secure appropriate redress to complaints relating to gender inequality, as prescribed.

Suggested Recommendations for the State Party

We respectfully urge the Council to recommend to Zambia with regard to violations addressed here:

38. Fast-track the ratification of the Optional Protocols to the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women; and the Convention against Discrimination in Education.

Coordination by the National Government

39. Prioritize children and gender issues by ensuring that sufficient human, technical and financial resources are provided to the following functions to effectively coordinate all activities for the implementation of the Convention on the Rights of the Child:

- a) Child Development, Child Policy, and Child Welfare Services under the Ministry of Community Development and Social Welfare; and
- b) Gender-Based Violence, Gender Equity and Equality, National Gender Policy, the Anti-Gender Based Violence Committee, and the Human Rights Commission under the Office of the President.
- c) One-stop centres under the Ministry of Health
- d) National Prosecution Authority

40. Accelerate the establishment of the Gender Equity and Equality Commission.

Place of customary law

41. Amend Article 23(4)(1) of the Constitution to provide for statutory law to take precedence over customary norms, as well as align other legislation that exempts the application of statutory law so as to conform with the Convention.

Age of a child and minimum age of marriage

42. Align national legislation to provide for a uniform definition of a child in line with the Convention and Constitution including accelerating the adoption of the Marriage Bill (2015).

43. Undertake a comprehensive review of the Penal Code to criminalize child marriage and marital rape, amend the definition of defilement and penalize offenses under the Anti-Gender Based Violence Act.

The right to education

44. Ensure that the Re-entry Statutory Instrument is implemented by all schools including religious institutions and that the right to education for pregnant girls and teenage mothers is protected and fulfilled.

Safe spaces in schools

45. Provide training for guidance and counseling teachers.

Awareness-raising

46. Upscale awareness-raising not only at the institutional level but also at the national and local level to ensure the public is aware of children's rights.

Access to justice

47. Fast-track the development and implementation of the operational guidelines for the various institutions including the Zambia Police Service, National Prosecution Authority, and the Judiciary for the handling of child matters among them timelines on cause disposal, prioritization of child matters, specialized personnel to handle child matters, training of specialized persons to build their capacity.

48. Ensure that police officers, judicial officers, prosecutors, and medical personnel are comprehensively trained on how to handle cases of SGBV as part of their induction

after recruitment and have continuous specialized capacity building throughout their service.

49. Provide adequate resources to the Zambia Police Service to address SGBV.
50. Make sure that the One-Stop Centres are fully functioning and provided with sufficient human, technical and financial resources to effectively cater to survivors of SGBV.
51. Provide resources for the full implementation of the Anti-Gender-Based Violence Act which includes the establishment of shelters and the GBV Fund.
52. Establish fast-track courts countrywide to enhance access to justice.
53. Take all necessary measures to ensure that the laws and policies providing for children's rights are fully implemented and that their implementation and data on children including on SGBV and re-entry are monitored and safeguarded by an independent body as provided under the Children's Code Bill.

Endnotes

1. "Gender and the Coronavirus Outbreak: Think Global Health". Council on Foreign Relations. 10 April 2020.
2. Debates and Proceedings, National Assembly of Zambia, Tuesday, 14th September, 2021.
<https://www.parliament.gov.zm/node/9812> and order paper <https://www.parliament.gov.zm/node/9494>
3. Article 1 (1) of the Constitution of Zambia (Amendment) No. 2 of 2016
4. Article 11
5. Article 23(1)
6. The Employment of Young Persons and Children Act, Section 2: "young person" means a person who has ceased to be a child and who is under the age of eighteen years.
7. Committee for the Elimination of All Forms of Discrimination against Women 'General Recommendation 33 on Women's Access to Justice' CEDAW/C/GC/33 3 <https://undocs.org/pdf?symbol=en/CEDAW/C/GC/33>.
8. Gender Equity and Equality Act, No. 22 of 2015 (GEEA)