



*Promoting Vibrant, Independent, Empowered
and Well-Coordinated
Civil Society Organizations in Zambia*

Zambia

Submission to the UN Universal Periodic Review 14th Session of the UPR Working Group

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**Joint submission by CIVICUS: World Alliance for Citizen Participation
NGO in General Consultative Status with ECOSOC and the Zambia
Council for Social Development (ZCSD)**

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1. (A) Introduction

1.1 CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.

1.2 Zambia Council for Social Development (ZCSD) is an Umbrella of Civil Society Organisations whose main goal is promoting vibrant, independent and well-coordinated civil society organisation in Zambia. It was formed in 1974 and got registered under the Registrar of Societies CAP 119 of the Laws of Zambia in 1975, number ORS/102/35/225.

1.3 In this document, CIVICUS and the Zambia Council for Social Development (ZCSD) outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in Zambia. This submission highlights major breaches of the Universal Declaration of Human Rights, the UN Declaration on Human Rights Defenders and the International Covenant on Civil and Political Rights.

- Section B expresses concerns regarding restriction of the freedom of association of civil society organisations through the Non-Governmental Organisations Act, 2009.
- Section C focuses on restriction of the freedom of expression.
- In Section D, CIVICUS and ZCSD make a number of recommendations to the Government of Zambia.

2. (B) Concerns regarding restriction of the freedom of association through the Non-Governmental Organisations Act, 2009

2.1 The Non-Governmental Organisations Act (2009) imperils the freedom of association in Zambia by creating a highly restrictive regulatory regime for NGOs that serves to impede rather than enable freedom of association. Key provisions of the Act restrict the independence of NGOs and subject them to excessive and unwarranted controls.

2.2 The Non-Governmental Organisations Act (2009) violates regional and international instruments on human rights that guarantee freedom of association, in particular the Universal Declaration of Human Rights (Article 20), the UN Declaration on Human Rights Defenders (Article 5 (b)) and the International Covenant on Political and Civil Rights (Article 22), to which Zambia is a party.

2.3 CIVICUS and ZCSD are concerned by three issues within the Act: problematic registration procedures and accompanying criminal sanctions, the risk of excessive

executive interference into NGO activities, and the imposition of a forced self-regulatory framework.

2.4 Problematic registration procedures and accompanying criminal sanctions:

2.4.1 The Act makes registration mandatory, even for small community associations, which lack the capacity to fulfil the heavy formalities incurred by registration procedures. Although the period for re-registering for NGOs has been increased from three to five years, the Act still places an additional burden on NGOs, affects their ability to fulfil their missions and hamper their work. The requirement to re-register not only imposes additional periodic bureaucratic hurdles for NGOs but also subjects them to a state of uncertainty regarding renewal of their registration which could act as a deterrent against expressing independent views on contentious political issues and thereby contributing meaningfully to public debates. The effect of this provision is that most NGOs are likely to have a reduced ‘watchdog’ role over the government for fear of de-registration or refusal to renew registration.

2.4.2 There are undefined grounds to refuse registration. The Act provides that the registration of an association will be subject to prior approval by the authorities, rather than a mere notification procedure. Registration can be denied on the basis that an NGO’s work is not in the “public interest,” a term that is not defined in the Act, allowing scope for the process to be determined in a subjective manner. An application for registration can also be rejected if the NGO Registration Board is satisfied with the recommendation of the NGO Council (an elected body of NGO representatives created under the Bill) that the application should not be approved. No grounds are prescribed for rejection of the application, which could unfairly prejudice the application submitted by groups which do not find favour with the NGO Council.

2.4.3 The Act has defined NGOs as compartmented groups involved only in relief welfare services and advocacy for the benefit or interest of the public. According to Section 4 of the Act, NGOs in Zambia shall be deemed to be such organisations as are involved in the “promotion of civic education, advocacy, human rights, social welfare, development, charity, research or any activity for the benefit of the public”. Accordingly, NGOs not fitting into the stated compartments of the provision of welfare services or advocacy activities risk not being registered as NGOs. Omission of NGOs engaged in activities to promote good governance makes them vulnerable to refusal or de-registration, which is leading to a state of uncertainty, particularly for groups critical of official policies.

2.4.4 The Act also provides for criminal sanctions against individuals operating unregistered NGOs, including a fine and imprisonment for a maximum of three years. According to international best practice, any association should be registered through a declaratory procedure by means of a mere statement and the transmission of its by-laws to the regulatory authority, and no criminal sanctions should be applied in the event of operation of an unregistered association.

2.5 The risk of excessive executive interference into NGO activities:

2.5.1 The Act provides for the establishment of an NGO Registration Board, with an executive-dominated composition, which would be given overreaching power to interfere with the independence of NGOs. Three functions of the NGO Board are particularly problematic: (i) the power to approve the area of work carried out by NGOs, which allows the government to determine their thematic and geographic areas of functioning and exercise control over their affairs; (ii) the power to provide policy guidelines to harmonise the activities of NGOs with the national development plan, which effectively co-opts NGOs into assisting in the fulfilment of the political priorities of the government as reflected in the plan; (iii) the power to advise on strategies for efficient planning and coordination of activities of NGOs, which treats NGOs as government subsidiaries, as opposed to independent entities free to formulate and execute their action plans in line with identified priorities.

2.5.2 The Act contains broad grounds to suspend or cancel a certificate of registration. The NGO Board has sweeping powers to prevent an NGO from carrying out its activities by suspending or cancelling the certificate of registration if: (i) the NGO fails to submit its annual reports or accounts within the time frame determined by the Registrar; (ii) if the NGO or any of its office bearers contravenes any provision of the Act or the code of conduct adopted by the NGO Congress; or (iii) if the NGO Council (elected by the NGO Congress) makes a recommendation this effect. Even a minor infraction can invite the heavy handed action of suspension or cancellation of the registration, when imposition of a penalty could help deter a violation. Moreover, no distinction is made between first time and repeat offenders. Additionally, no grounds are prescribed on the basis of which the NGO Council can make a recommendation to the Board, leaving scope for the exercise of executive discretion.

2.6 Imposition of a forced self-regulatory framework:

2.6.1 The Act places curbs on independence through forced self-regulation and monitoring. Although CSOs should aspire for greater transparency and higher standards of conduct in their internal and external affairs to enhance their legitimacy and credibility, in the interests of safeguarding the independence of the sector, self-regulatory initiatives and the creation of representative bodies should be voluntary and not imposed through law.

2.6.2 The Act forces NGOs to adopt a code of conduct. In contrast to established norms where umbrella bodies of NGOs adopt codes of conduct and invite their members to voluntarily adopt them, the Act uses the law to force NGOs to submit to a code of conduct. The Act requires all NGOs registered under it to form a collective forum called the Zambia Congress of NGOs which is obligated to adopt a code of conduct for the whole sector. This provision is particularly problematic regarding the autonomy of the NGO sector, because individual NGOs may not subscribe to positions adopted by the NGO Congress.

2.6.3 The Act co-opts the NGO Council to control and monitor the NGO sector. The Act restricts the independence of individual NGOs by vesting in the 12 member NGO Council (elected by the NGO Congress), a broad and over-reaching mandate to influence the affairs of their peers through the legal obligation to “facilitate” self-regulation on a number of issues including activities, funding, programmes, foreign affiliations, training, development of national human resources, institution building, scientific and technical development and other matters taking into account national security and public interest needs. Additionally, the Council is expected to play a monitoring role over the activities of other NGOs as its functions.

3. (C) Freedom of Expression

3.1 There have been several cases of restrictions on freedom of expression and attacks and arrests of journalists, which have imperilled the freedom of the press in Zambia. In July 2011, four media representatives working for *Muvi TV* were attacked by member of the Movement for Multiparty Democracy political party whilst investigating land rights in the area of Nakachenje.

3.2 In January 2011, two journalists working for the privately owned daily *The Post* and *Radio Lyambai* were arrested on charges of sedition. The journalists had produced international coverage of the secessionist movement in Barotseland, in the west of Zambia.

3.3 In June 2010, the editor of *The Post*, Fred M'membe, was arrested and sentenced to four months in prison with hard labour on charges of “contempt of court” for publishing an article about an ongoing trial in 2009. M'membe was later granted a conditional release pending the outcome of his appeal. M'membe had allowed the newspaper to print a story about the case of fellow journalist Chansa Kabwela, who was arrested for “distributing obscene photos likely to corrupt public morals”. Kabwela, on 10 June 2009, following a strike by Zambian doctors, sent Vice-President George Kunda, the health minister and several organisations a letter accompanied by a photo of a woman giving birth in a street. She had wanted to draw the authorities' attention to the worsening conditions for women having babies in the country.

5. (D) Recommendations to the Government of Zambia

5.1 CIVICUS and ZCSD call on the Government of Zambia to create an enabling environment for civil society to operate in accordance with the rights enshrined in the International Covenant on Political and Civil Rights and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect.

5.2 Regarding freedom of association, the Non-Governmental Organisations Act should be repealed and replaced by new legislation in conformity with Article 22 of the

International Covenant on Civil and Political Rights, to which Zambia is a party, and Article 5 (b) of the UN Declaration on Human Rights Defenders

A broad spectrum of NGOs and civil society groups should be consulted in the process of drawing up a new NGO Act

5.3 Regarding freedom of expression, all cases of attacks on journalists and restrictions on press freedom should be properly investigated and also referred to the National Human Rights Commission.

5.4 The Government of Zambia should extend standing invitation to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, Special Rapporteur on and Freedom of Assembly and Association.